

**YUBA COUNTY WATER AGENCY  
EMERALD COVE MARINA  
LEASE AGREEMENT**

This Emerald Cove Marina Lease Agreement (Agreement) is made and entered into effective as of October 1, 2015 (the "Effective Date") by and between Yuba County Water Agency ("YCWA"), a political subdivision of the State of California and Emerald Cove Marina, Inc. ("Lessee"), a California corporation doing business at 1103 Sutton Way, Grass Valley, CA 95945. YCWA and Lessee are individually referred to as "Party" and jointly referred to as the "Parties" in this Agreement. The Parties agree as follows:

**1. RECITALS.** This Agreement is made with reference to the following background recitals:

1.1. YCWA is the existing owner and operator of the Yuba River Development Project ("Project"), which includes New Bullards Bar Dam and Reservoir. A license ("Initial License") for the Project was issued by the Federal Power Commission, the Federal Energy Regulatory Commission's ("FERC") predecessor, to YCWA on May 16, 1963, effective on May 1, 1963. The Federal Power Commission's May 6, 1966 Order Amending License changed the Initial License's effective date to May 1, 1966, for a term ending on April 30, 2016.

1.2. The Initial License includes Exhibit R, Recreation Plan ("Exhibit R"), that identified YCWA responsibilities for on-shore and off-shore recreation at New Bullards Bar Reservoir.

1.3. Exhibit R was revised by YCWA on February 22, 1993. Exhibit R was approved by FERC on June 1, 1973, and a Revised Exhibit R ("Revised Exhibit R" and provided in Attachment 1 to this Agreement) was approved by FERC on August 19, 1993.

1.4. Exhibit R provides for, among other conditions that YCWA may, but is not required to, have the following recreation facilities at New Bullards Bar Reservoir: (a) Emerald Cove Marina; (b) Boat Slips; (c) Houseboats;<sup>1</sup> and (d) Small Boats.

1.5. The Marina is an existing facility with improvements (the "Marina") comprised of:

(A) A single combined floating general store and snack bar;

(B) Two floating slip docks with access, one with thirty-two 20-foot long boat slips (Dock A) and one with twelve 20-foot slips and thirty-eight 30-foot long slips (Dock B) – all available for rental, except for seven 20-foot slips of which four are for Marina's use, one is for YCWA's use, one is for the United States Department of Agriculture, Forest Service's ("Forest Service") use, and one is for the Yuba County Sherriff's Department's use.

(C) Six jet ski ports;

(D) One floating barge with a 500-gallon propane tank;

(E) One land-based, fuel storage tank, with a total capacity of 6,000 gallons with one compartment with a capacity of 4,000 gallons and a second compartment with a capacity of

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<sup>1</sup> In this Agreement, the term "houseboat" means water-craft with self-contained sewage and wastewater storage facilities and longer than 35 feet.

2,000 gallons, fuel line to two fuel pumps on one of the floating docks and one fuel pump on the other floating dock;

(F) A single floating sewage storage tank with a capacity of 3,000 gallons;

(G) A single administrative office on the floating docks, with informational display;

(H) A single mechanic's shop on the floating dock;

(I) An underwater mooring line, composed of 5/8-inch to 1-inch stainless steel cable, with 90 houseboat mooring balls, of which 80 are for rent;

(J) 10 houseboats;<sup>2</sup> one party cruiser pontoon boat; three patiboats; four high-performance patiboats; three ski/wakeboard boats; and three personal water crafts – all moored at the floating docks or mooring balls and available for rental. The pontoon boat, patiboats, ski/wakeboard boats and personal water crafts are collectively referred to as "small boats" in this Agreement;

(K) A 1,200 sq. ft. module home with a 3-foot wide by 60-foot long leach field;

(L) A water delivery line from a meter to the floating docks;

(M) A water delivery line from a meter to YCWA's warehouse and the Marina's modular home;

(N) A power line, including the panel, from a meter on the boat ramp to the docks and then to a panel on the Marina; and

(O) Fencing, including three gates, around the warehouse and modular home.

Attachment 2 to this Agreement shows the location of each Marina facility.<sup>3</sup> The land in the County of Yuba, State of California, on which the Marina is located is owned by YCWA and shown on Attachment 2 ("**Leased Real Property**").

1.6. On March 9, 1987, YCWA entered into a Construction and Operating Permit Agreement ("**Original Permit Agreement**") with Summer Sounds, Inc., for, among other things, operation and management of the Marina. The Original Permit Agreement was revised on August 13, 1987, and two change orders were issued to the revised Original Permit Agreement.

1.7. A third Change Order No. 3, dated May 1, 2006, to the revised Original Permit Agreement approved and implemented a transfer and assignment of the revised Original Permit Agreement as amended from Summer Sounds, Inc. to Lessee. The revised Original Permit Agreement expires on December 31, 2016.

1.8. On April 28, 2014, YCWA applied to FERC for a new license for the Project. The new license, when issued by FERC, may include different recreation requirements than those in the Revised Exhibit R.

<sup>2</sup> Includes one 60-foot long, one enclosed level "Sapphire" houseboat (sleeps 16); one 60-foot long, one enclosed level "Emerald" houseboat (sleeps 12); one 60-foot long, one enclosed level "Diamond" houseboat (sleeps 12); one 56-foot long, one enclosed level "Topaz" houseboat (sleeps 10); five 55-foot long, one enclosed level "Deluxe 55" houseboats (sleeps 10); and one 45-foot long, one enclosed level "Party Cruiser 45" houseboat (sleeps 8).

<sup>3</sup> The Marina does not include the existing Cottage Creek Day Use (i.e., Picnic) Area, Cottage Creek Boat Launch with public access dock, Water Treatment Plant, warehouses and laydown areas, dam safety barrier, and buoys, which are Revised Exhibit R recreation facilities owned and operated by YCWA and located on land owned by YCWA, and are shown on Attachment 2. No other recreation facilities are proximal to the Marina.

1.9. YCWA and Lessee desire to enter into a lease agreement under which Lessee would continue to lease, manage and operate the Marina and Leased Real Property past the December 31, 2016 expiration date of the revised Original Permit Agreement, on and subject to the terms of this Agreement.

## **2. LEASE TERMS; GENERAL OPERATING TERMS AND CONDITIONS.**

2.1. Grant of Lease. YCWA hereby leases to Lessee, and Lessee hereby leases from YCWA, the Leased Real Property on and subject to the terms and conditions in this Agreement and for the sole right and privilege to operate and maintain the Marina, as described in Attachment 2 to this Agreement, and provide related services, which are described in this Agreement. The Original Permit Agreement is terminated and superseded by this Agreement on this Agreement's Effective Date.

2.2. Right to Impose Restrictions. YCWA reserves the right to prohibit the sale or rental of any item that it deems objectionable or beyond the scope of merchandise necessary for proper service to the public and reasonably related to the operation of the Marina.

2.3. Use of YCWA Land. YCWA shall allow Lessee reasonable and necessary use of such portions of the New Bullards Bar Reservoir shoreline space on YCWA-owned land as indicated on Attachment 2 as may be required by Lessee for the operation and maintenance of the Marina. YCWA shall be wholly responsible for the maintenance and repairs needed to address normal wear and tear of the areas that would arise if Lessee were not using the areas, and Lessee shall be responsible for any additional maintenance and repairs which arise out of Lessee's activities. Lessee shall obtain YCWA's written approval for any temporary or permanent structures or improvements or physical modifications placed in these areas or to the existing Marina facilities described in this Agreement prior to the time the improvements or modifications are made.

2.4. Use of Cottage Creek Boat Ramp Parking Area. Between October 16 and April 30 and with YCWA's prior written approval, YCWA shall allow Lessee nonexclusive use of the portion of the Cottage Creek Boat Ramp parking area for Lessee's storage, parking areas for boat trailers, boats, trailers and vehicles consistent with and in no way conflicting with YCWA's uses. The purpose of this use is to remove stress on the houseboat mooring line in the reservoir by removing the houseboats from the reservoir during the non-recreation season. Rates for parking fees shall be as established by Lessee. Lessee shall obtain YCWA's written approval for any temporary or permanent structures or improvements or physical modifications made to or placed in these areas prior to the time the improvements or modifications are made. YCWA shall be wholly responsible for the maintenance needed to address normal wear and tear of the areas that would arise if Lessee were not using the areas, and Lessee shall be responsible for any additional repairs, trash pick-up or hazardous materials disposal costs that arise out of Lessee's activities, including accelerated degradation of the parking lot due to Lessee's winter storage of houseboats. Between May 1 and October 15, Lessee may not use this area without YCWA's prior written approval.

2.5. Water Supply. YCWA shall allow Lessee to purchase water for use at the Marina modular home as described in section 2.7 and other Marina facilities from YCWA's Water Treatment Plant at a rate of \$45.00 per 100 cubic feet, escalated at an annual rate of 3 percent from the Effective Date of this Agreement, to the extent that YCWA can supply water from its Water Treatment Plant after meeting the needs of Cottage Creek Picnic and

Day Use areas and other recreational uses as solely determined by YCWA. YCWA will make a good faith effort to provide water to the Marina's modular home. The delivery point for the water from YCWA to Lessee shall be at the meter shown in Attachment 2. Water delivery to Lessee shall be measured at the meter. Installation, maintenance and reading of the meter shall be by YCWA and at its cost. Lessee shall operate, maintain and repair the water supply line from the meter to the Marina facilities including the modular home. YCWA shall be responsible for maintenance of the water delivery system up to the meter. YCWA shall be under no obligation to provide for the conveyance system for transportation of the water from the meter to Lessee's place of use. The water rate shall be reevaluated by YCWA and Lessee every 10 years from the Effective Date of this Agreement to assure the fee adequately covers YCWA's cost for providing the water to Lessee.

2.6. Storage Space in Warehouse Building and Area. YCWA shall allow Lessee reasonable, non-exclusive use of the west one-half of the storage space in YCWA's warehouse building and warehouse yard shown in Attachment 2, consistent with and in no event conflicting with the needs of and use made by YCWA of such space or slab, which needs and use shall have priority over those of Lessee. Lessee shall obtain YCWA's written approval for any temporary or permanent structures or improvements or physical modifications placed in these areas prior to the time the improvements or modifications are made. Lessee shall be responsible for repairing any damage to the storage area, including those portions not used by Lessee, caused by Lessee's activities. Lessee shall be responsible for any permitting of the storage area necessitated by Lessee's activities. YCWA reserves the right to modify or relocate the warehouse building and yard. If YCWA does modify or relocate the warehouse building and storage space, YCWA will discuss accommodating Lessee's needs, but does not guarantee that Lessee's needs will be met at the modified or relocated warehouse building, and YCWA may terminate Lessee's right to use the storage space.

2.7. Modular Home. YCWA shall allow Lessee the use of an area adjoining the warehouse for placement of a modular home, and associated leach field, shown in Attachment 2, consistent with and in no event conflicting with the needs of and use made by YCWA of such area, which needs and use shall have priority over those of Lessee. Lessee shall be responsible to arrange for the installation of a Pacific Gas and Electric Company (PG&E) electricity meter to measure Lessee's electricity use at the modular home and warehouse, place the use in Lessee's name, and be fully responsible for payment for electricity. Lessee shall be wholly responsible for the leach field adjoining the modular home, including inspections, maintenance, repairs and permitting. Lessee shall obtain YCWA's written approval for any temporary or permanent structures or improvements or physical modifications to the existing modular home, leach field and meter prior to the time the improvements or modifications are made. Lessee shall be responsible for repairing any damage to the modular home and adjoining area, including those portions not used by Lessee, caused by Lessee's activities. YCWA reserves the right to modify or relocate the modular home to a different area on the Leased Real Property. If YCWA does modify or relocate the modular home, YCWA will discuss accommodating Lessee's needs, and YCWA will make a good faith effort to meet Lessee's needs regarding the modified or relocated modular home.

2.8. Photography. YCWA reserves the right to grant permits to persons or corporations engaged in the production of still and motion pictures and related activities for the use of the Marina and Leased Real Property for such purposes, provided such activities shall not,

as reasonably determined by Lessee, substantially interfere with Lessee's use of the Marina or Leased Real Property.

2.9. Condition of Marina Property Not Warranted. YCWA does not warrant that the condition of the Marina, Leased Real Property, adjacent and other YCWA land, Cottage Creek Boat Ramp Parking Area, water supply, or storage space referenced above, are suitable for Lessee's purposes under this Agreement.

2.10. Expansion of Existing Marina Property and Services. YCWA shall allow Lessee, at a charge negotiated with YCWA to cover YCWA incurred cost related to the expansion, to expand and enhance the Marina and Leased Real Property within the conditions of applicable laws, ordinances and regulations in place at the time the expansion is planned and completed. Lessee shall obtain YCWA's written approval for any expansion of the Marina and Leased Real Property prior to implementation of the expansion. Lessee, unless otherwise agreed to in writing by YCWA prior to any such expansion and enhancement, shall be wholly responsible for all costs associated with such expansion and enhancement, including but not limited to permitting, engineering, construction, maintenance or addition to houseboats or small boats for public use. Lessee shall also be wholly responsible for the preparation of any drawings or filings related to such an expansion and enhancement that are necessary for the purpose of obtaining FERC's or other agencies' with jurisdiction over the expansion or enhancement, approval of the expansion and enhancement. Upon completion and acceptance of any such expansions or enhancement, any additional facilities shall become part of the Marina facilities and shall be subject to all parts of this Agreement. Within 60 days of completing construction of such expansions or enhancements, Lessee shall be wholly responsible to provide to YCWA for approval revised Attachment 2 to this Agreement. Upon YCWA's approval, the revised attachment will be incorporated into the Agreement and supersede the earlier attachment.

2.11. Reducing Services. Lessee may, at its sole discretion, reduce services from the levels described in this Agreement, with 90 days prior notice to YCWA. Should Lessee so reduce services, YCWA reserves its right to offer these services either directly or through a third party. Otherwise, YCWA will not issue a lease to a third party or itself offer services on New Bullards Bar Reservoir similar to the services covered by this Agreement, with the exception of services required by the FERC license, other governmental agencies with jurisdiction, or other applicable federal, state or local laws or regulations. If YCWA does not choose to provide these services itself, Lessee shall have first right of refusal to provide such services, subject to negotiating a satisfactory agreement with YCWA.

2.12. Modifications to Area Surrounding Marina Property. YCWA reserves the right to make changes to the area adjacent to the Leased Real Property as may be ordered by federal, state or local agencies, including FERC, or as otherwise determined by YCWA.

2.13. Rent and Other Consideration. Lessee shall pay to YCWA as rental for the use and occupancy of the Leased Real Property the fees as described in section 3 and Lessee will perform the other services and obligations as described in this Agreement. All payments required to be made by Lessee under this Agreement shall be made without any setoff, deduction or counterclaim whatsoever.

2.14. Use of Property. During the term of this Agreement, the Leased Real Property shall be used by Lessee for the exclusive purposes as described in this Agreement and for other uses normally incident to those purposes, and for no other purpose. Lessee shall not

use or permit the Leased Real Property to be used for any other purpose, without the prior written consent of YCWA. Lessee shall not use or permit the Leased Real Property to be used in any manner or for any purpose that is in any way in violation of any federal, state or local statutes, ordinances, regulations, orders and other laws. Lessee shall not maintain, commit or permit the maintenance or commission of any nuisance or waste on the Leased Real Property.

2.15. Taxes, Assessments and Utilities. Lessee shall pay, and hold YCWA and the Leased Real Property and other property of YCWA free and harmless from, all of the following: (a) charges and fees for the furnishing of gas, water, sewer, electricity, telephone service, and other public utilities on the Leased Real Property during the term of this lease (except that YCWA will be responsible for garbage pickup and disposal from the on-site dumpsters in the Cottage Creek parking area); (b) all taxes, assessments and other charges levied or imposed by any governmental entity on the furniture, trade fixtures, appliances and other personal property placed by Lessee in, on or about the Leased Real Property; and (c) possessory interest tax, assessments and standby charges levied or assessed against the Marina by a governmental entity as a result of Lessee's use and occupation of the Leased Real Property, including any taxable possessory interest created by this lease. All such fees, charges, taxes and assessments shall be paid as they become due and payable, but in any event before they become delinquent.

2.16. Condition of Property. Lessee accepts the Leased Real Property, as well as any improvements and fixtures located on the Leased Real Property, in their condition as of the Effective Date of this Agreement.

2.17. Access by YCWA. YCWA, and its employees and agents, shall have the right to enter the Marina and Leased Real Property at all reasonable times, and at any time during an emergency, for the purposes of inspecting the Leased Real Property to determine whether Lessee is complying with this Agreement, of doing other lawful acts that may be necessary or appropriate to protect YCWA's interest in the Leased Real Property, or of performing YCWA's duties related to this Agreement.

2.18. Alterations and Liens. Lessee shall not make or permit any other person to make any structural alterations or construction and/or installing of real property fixtures to the Leased Real Property without the prior written consent of YCWA, which consent shall not be unreasonably withheld. Lessee shall keep the Leased Real Property free and clear from any and all liens, stop notices, claims and demands for work performed, materials furnished or operations conducted on the Leased Real Property. Lessee shall at all times indemnify, save and hold YCWA free, clear and harmless from any claims, liens, demands, charges, encumbrances or litigation arising directly or indirectly out of any use, occupancy or activity of Lessee, or out of any work performed, material furnished, or obligations incurred by Lessee, in, upon, about or otherwise in connection with the Marina or Leased Real Property and shall pay or cause to be paid for all work performed and material furnished to the Marina that will or may result in a lien on the Leased Real Property.

2.19. Damage and Destruction to Property. Lessee bears and assumes all risk of loss or damage to or destruction of the Marina and Leased Real Property, and any fixtures, equipment and improvements on the Marina and Leased Real Property, from fire, theft or any other casualty, whether or not insured, and Lessee shall hold YCWA harmless with respect to any such loss, damage or destruction during the term of this Lease. If the Marina or any improvements constructed or installed by Lessee on the Leased Real

Property are totally or partially destroyed, Lessee may, at Lessee's discretion, either (a) at Lessee's sole cost and expense repair, rebuild or restore the Marina and improvements to substantially the same condition as they were in immediately prior to such destruction, or (b) terminate this Agreement and surrender possession of the Leased Real Property to YCWA, in which case YCWA shall be entitled to any insurance proceeds of any applicable insurance maintained by Lessee for damage or destruction to real property fixtures on the Marina and Leased Real Property. Within 60 days after the occurrence or event causing the destruction, Lessee must give to YCWA either written notice of intention to restore the Marina and Leased Real Property under option (a) or written notice of termination of the Agreement under option (b). If, within the 60-day period, YCWA does not receive from Lessee either written notice, then this Agreement will remain in effect under option (a). If the Agreement remains in effect under option (a), then Lessee must complete restoration of the Marina and Leased Real Property within 180 days after the occurrence or event causing the destruction, unless this deadline is extended by YCWA for good cause shown by the Lessee. Upon such damage or destruction, YCWA shall have no duty or obligation under this lease to repair, rebuild or restore the Marina and Leased Real Property.

2.20. YCWA Operation of New Bullards Bar Dam and Reservoir. Lessee acknowledges that (a) YCWA operates New Bullards Bar Dam and Reservoir pursuant to certain permits, contracts and licenses that govern reservoir operations, water releases, water levels, and other matters, (b) these operations are undertaken primarily for YCWA water supply, hydroelectric power generation and flood control purposes, (c) as a result of these operations, runoff, inflow, climate change, and snow amount, the reservoir level will vary, sometimes substantially, from month-to-month and year-to-year over the term of the Lease, and (4) the reservoir level fluctuations could adversely affect the desirability and ability to boat on the reservoir and, therefore, also affect Lessee's Marina business and revenue. YCWA reserves the right and discretion to manage the reservoir and releases from the dam as it determines appropriate in order to comply with applicable permits and licenses and to further and manage its water supply, hydroelectric power generation and flood control purposes and objectives. Lessee bears and assumes all risk of economic loss or damage due to fluctuating or low reservoir levels and Lessee agrees to hold YCWA harmless with respect to any such loss or damage.

2.21. Condemnation. If at any time during the term of this Agreement, another government agency or quasi-public agency or entity takes title and possession of the Leased Real Property under the power of eminent domain, then this Agreement shall terminate as of the date that actual physical possession of the Leased Real Property is taken by the agency or entity. Any just compensation, damages or other payment for the taking of the Leased Real Property shall be awarded to and be the sole property of YCWA, except that any separate award for the taking of Lessee's leasehold compensation will be awarded to Lessee.

2.22. Restriction Against Assignment. Lessee shall not sublet, encumber, assign or otherwise transfer this Agreement or any lease or other right or interest in this Agreement, or any right or interest in the Leased Real Property, without first obtaining the written consent of YCWA, which consent shall not be unreasonably withheld, but which consent may be subject to a written assumption or reasonable amendment of this Agreement.

2.23. Default. In the event of any default by Lessee under this Agreement, in addition to any other remedies available to YCWA at law or in equity, YCWA shall have the right to

terminate this lease and all rights of Lessee hereunder by giving written notice of termination.

### 3. LESSEE OBLIGATIONS AND LIMITATIONS.

3.1. Condition of Marina and Leased Real Property. Lessee acknowledges that the Marina and Leased Real Property are in good and sufficient condition for the purposes for which Lessee is entering into this Agreement. Lessee agrees to accept the Marina and Leased Real Property in their existing condition, as of the Effective Date, "as is," and that YCWA shall not be obligated to make any alterations, additions, or betterments to the Marina or Leased Real Property except as otherwise provided for in this Agreement. Lessee agrees to operate, manage, maintain, repair and reconstruct the Marina and Leased Real Property such that they are in good operating condition and substantially equivalent or better condition throughout the term of this Agreement.

3.2. No Unauthorized Use. Lessee shall not use or permit the use of the Marina or Leased Real Property, in whole or in part, during the term of this Agreement for any purpose other than as stated in this Agreement without the prior written consent of YCWA.

3.3. Aircraft Services. Lessee shall not provide services related to aircraft including, but not limited to, aircraft rentals, mooring of amphibian aircraft, aircraft servicing, and the like. It is the intention of the Parties to clearly remove any authority of Lessee to provide any services to aircraft of any kind, except however in cases of emergency. However, this limitation shall not relieve Lessee of the responsibility to indemnify and insure YCWA for any liability which may be occasioned by the rendering of such services, whether accidental or intentional.

3.4. Staffing of Facilities and Surveillance. Unless otherwise agreed to in writing by YCWA, Lessee shall have one or more duly authorized individuals physically present somewhere on the Leased Real Property 24 hours per day during each recreation season and from sunrise to sunset every day during the off-season. For the purpose of this Agreement, the recreation season is defined as from April 15 through October 15, and the non-recreation season is defined as from October 16 through April 14. Lessee and its employees shall secure, inspect and protect the Marina and Leased Real Property from and against trespass, vandalism or destruction. In addition to its responsibilities, if any, to notify other governmental agencies in accordance with local, state, or federal law, Lessee shall be responsible for notifying YCWA immediately of any violations of law occurring on or about the Marina and Leased Real Property.

3.5. Security Devices. Lessee shall furnish, install, and operate at its own cost and expense any and all fences, warning lamps or lights, and other security devices that any insurance company insuring any portion of the Marina and Leased Real Property against loss by fire, theft or vandalism may deem necessary or merely advisable or recommended to prevent unauthorized persons from trespassing on the property and/or committing acts of arson, theft, vandalism, or destruction thereon.

3.6. Fees to the Public for Services. By December 1 of each year, Lessee shall provide to YCWA a schedule of fees that Lessee intends to charge to the public for major services at the Marina for the following year.

3.7. Spring and Fall Annual Meetings. Upon YCWA's request, YCWA and Lessee shall meet at the Marina in the spring of each year prior to opening of the Marina and in the fall of each year after the Marina has been closed for the season to review the condition of the



Marina and Leased Real Property, and discuss Marina operations and any pertinent issues related to this Agreement.

3.8. Services to be Provided by Lessee. Lessee shall provide the following services in accordance with the terms of this Agreement:

(A) Dockage, Sewage Disposal and Mooring for Houseboats and Dockage for Small Boats. Lessee shall assume liability and responsibility for all provisions, including without limitation related to dockage and sewage disposal of houseboat dockage agreements in force with houseboat owners, and provide dockage and sewage disposal services to any and all houseboats, patioboats or other boats on the reservoir.

(B) Inspections. Lessee shall assume liability and responsibility for all initial and annual houseboat (i.e., both private and Lessee-owned houseboats) inspections for safety, cleanliness, sea worthiness and compliance with current wastewater and sewage regulations, including when a houseboat is pulled from the water, as required by Yuba County Ordinance Code Chapter 8.50, as may be amended. The current fee for any of such inspections is \$100.00, as may be amended by the County, to be collected and retained by Lessee to cover its houseboat inspection costs. Lessee shall provide to YCWA by November 1 of each year a list of inspections, including when the inspection was performed; who performed the inspection (i.e., name of the person and affiliation); the number of the houseboat and owner's name; a copy of the certificate if one was issued; and if a certificate was not issued, a description of why it was not issued.

(C) Sewage Disposal. Lessee shall assume liability and responsibility for portable toilet pumping and flushing facilities for all public users of the toilets at the Marina Property in accordance with standards set forth herein and otherwise in accordance with local, state and federal law, and agreements with the Forest Service. Lessee shall also adequately, and in accordance with local, state and federal law, provide for the disposal of sewage and the cleaning, supplying, dumping and flushing of the portable toilets at the Marina. Lessee shall not be responsible for sewage disposal at the six floating public restrooms on the reservoir, at the boat-in campgrounds, or any other restrooms not explicitly included as Lessee's responsibility in this Agreement.

(D) Buoys. Lessee shall acquire, install and maintain buoys to indicate a no boat wake area near the Marina.

(E) Store. Lessee shall assume all liability for and assume all responsibility for the sale of cold food, ice, hot and cold beverages (e.g., beer, wine, spirits but only pursuant to a valid "Off-Sale" General License, Type 21), tobacco and other lawful vendible items, gasoline, oil, boat and picnic supplies, fishing, watersports and camping supplies in such manner as to reasonably meet the needs or demands of the public users of the facilities.

(F) Boat Slips. Lessee shall assume all liability for and assume all responsibility for providing boat slips with adequate ramps and walkways. Lessee shall provide, at no cost, to each of the following parties one boat slip with a minimum length and width of 20 and 10 feet, respectively: YCWA, Forest Service, and the Yuba County Sheriff's Department.

(G) On Land Gasoline Storage Tank. Lessee shall assume all liability and responsibility for providing for on-land (meeting all local, state and federal standards) storage units for gasoline with a lake access pumping unit accessible by boaters, which

system shall have a shutoff valve at the tank whereby until the lake access pump is activated, the release valve from the on-land tank to the lake access pump is not open.

(H) Water and Electrical Services to Marina. Lessee shall assume all liability and responsibility for providing proper installation, operation, maintenance and repair of water and electrical services to the Marina for the purposes of providing restroom facilities, lighting, gasoline pump operation, and other related activities as may be incidental to and reasonably necessary for the operation of the Marina. All electric lines or cables shall be underground from the service pole to the high water mark on the shoreline and then shall be aboveground, but not aerial, to run from said mark to the Marina ramp by means of a gravity feed cable system with self-braking mechanisms and then along and attached to the side of the ramp and up to the fuse box on the exterior of the Marina building. Lessee is wholly responsible to assure these facilities are fully consistent with all applicable laws, regulations and ordinances, and for any corrective or fines related to these facilities.

(I) Electrical Services to Modular Home and Warehouse. Lessee shall assume all liability and responsibility for providing proper installation of electrical services to the warehouse and Lessee's modular home. All electric lines or cables shall be underground, unless otherwise agreed to by YCWA. Lessee is wholly responsible to assure these facilities are fully consistent with all applicable laws, regulations and ordinances, and for any corrective or fines related to these facilities.

(J) Small Boat Rental. Lessee shall assume all liability and responsibility for providing for rental to the public a minimum of 12 small boats. As used in this provision, "boat" means solid-hull craft registered with the California Department of Motor Vehicles.

(K) Houseboat Rental. Lessee shall assume all liability and responsibility for providing for rental to the public of houseboats, consistent with section 3.8(Q). At the Effective Date, the Marina offers 10 houseboats for rental to the public.

(L) Houseboat Mooring. Lessee shall assume all liability for and assume all responsibility for providing houseboat mooring balls to be used for both privately-owned and Lessee-owned houseboats, to be located as shown in Attachment 2.

(M) Towing Service. Lessee shall assume all liability and responsibility for providing towing and/or recovery and fuel cleanup services for disabled watercraft. A reasonable fee may be charged by Lessee.

(N) Marine Repair Services and Parts Sales. Lessee shall assume all liability and responsibility for providing marine repair services and parts sales.

(O) Dry Boat Storage. Lessee shall assume all liability and responsibility for providing dry boat storage.

(P) Boat Shuttle Services. Lessee shall assume all liability and responsibility for providing boat shuttle services.

(Q) Monitoring Houseboats on Reservoir. Revised Exhibit R as amended provides that 80 houseboats may be on New Bullards Bar Reservoir at any time, with no more than 20 rented to the public and no more than 60 occupied overnight at any given time. For the purpose of this provision, "overnight" means off the mooring ball. Lessee shall be wholly responsible for assuring compliance with these requirements, and shall provide to YCWA by November 1 of each year a listing of the number of houseboats on the reservoir in the

previous season (i.e., from May 1 through September 30) by day. The reporting shall include: 1) number of private houseboats on the reservoir on that day; 2) number of houseboats rented to public that were on the reservoir that day and stayed on the reservoir overnight on that day; 3) number of houseboats that were on the reservoir that day but did not stay on the reservoir overnight on that day; and 4) total number of houseboats on the reservoir that day (i.e., sum of #1, #2 and #3).

(R) Availability of Information. Lessee shall assume all liability and responsibility for developing, posting and maintaining at the Marina for public information maps, brochures, information signs, regulations signs, etc. to advise Marina users of current information. The information will include any restrictions in effect (e.g., fire), and a sheet describing the most critical Yuba County ordinances and Forest Service regulations relating to public behavior while recreating on New Bullards Bar Reservoir.

(S) Invasive Aquatic Species, Including Non-native Dreissenid Mussels. Lessee shall assume all liability and responsibility for compliance with the aquatic invasive species regulations and requirements at California Fish and Game Code at sections 2300 through 2302, as may be amended, and for other pertinent laws and regulations regarding programs to prevent the introduction of non-native dreissenid mussel species into New Bullards Bar Reservoir from Marina activities. In coordination with YCWA, Lessee shall prepare and implement a program to prevent the introduction of non-native dreissenid mussel species in accordance with Fish and Game Code section 2302. Lessee shall provide YCWA for approval a copy of Lessee's program, and results of all inspections, including a copy of all boat and equipment inspection reports and follow-up actions. It is the intention of this measure that YCWA promptly be made aware of any records of invasive aquatic species including non-native dreissenid mussel species found on boats or equipment related to Marina facilities and operations and Lessee's actions related to those discoveries.

(T) Inspections and Communications with Agencies Related to Recreation. Lessee shall assume all liability and responsibility for arranging, implementing and following-up on all inspections and reporting regarding all Marina facilities, including but not limited to those related to houseboat inspections, electric, water, fuel and sewage facilities and handling related to the Marina and Leased Real Property. Lessee shall provide YCWA prompt notice whenever a federal, state or local agency inspector visits the Marina for an inspection or other agency purposes or discusses Marina activities or other activities related to New Bullards Bar Reservoir with Lessee, and provide to YCWA copies of all inspection reports and follow-up actions within 14 days of the inspection or issuance by an agency of a report, permit or approval. It is the intention of this measure that YCWA promptly be made aware of all inspections, tests, discussions, etc. that may affect Marina facilities and operations or recreation related to New Bullards Bar Reservoir or the Project. Lessee is not an agent for YCWA.

(U) Other Services. Lessee shall assume all liability and responsibility for providing for other facilities or services as may be required or otherwise authorized by this Agreement.

3.9. State Waterways and National Forest Laws. Lessee shall comply with and shall inform public users of the Marina as to state, federal and local laws, rules and regulations governing California state waterways and National Forest System (NFS) land where applicable to the use of New Bullards Bar Recreation Area. The appropriate notices shall be placed at the Marina office.

3.10. Nondiscrimination. During the term of this Agreement, Lessee shall comply with all applicable local, state, or federal laws, rules or regulations in regard to discrimination, disability accommodation or harassment in connection with employment or the furnishing to any person any accommodation, facility, service or privilege offered to or enjoyed by the general public.

3.11. Compliance with Law, Permits and Licensees.

(A) Lessee agrees to comply with all applicable local, state, and federal laws, ordinances, rules, regulations, permits, licenses, and orders, including the FERC Initial License, Revised Exhibit R, and any modified license for the Project that may be issued by FERC during the term of this Agreement, relating to the Marina and Lessee's use, occupancy, operation and maintenance of the Marina and Leased Real Property. Lessee shall not occupy or use the Marina or Leased Real Property, or permit the Marina or Leased Real Property to be used or occupied, nor do or permit anything to be done in or on the Marina or Leased Real Property, in whole or in part, for other than legal purposes or for a purpose or in a manner that creates a public or private nuisance.

(B) In particular, Lessee acknowledges that (a) YCWA has applied to FERC for a new license for the Project, (b) it is likely that during the term of this Agreement FERC will issue a new license that will supersede the Initial License and its Revised Exhibit R, and (c) the new FERC license may affect and require changes in or limits on Marina operations and the Leased Real Property. In agreeing to comply with applicable permits and licenses, Lessee understands and agrees that that obligation includes any new FERC license terms or conditions that may affect and require changes in or otherwise limit Marina operations. If Lessee finds that a new or modified FERC license term or condition materially expands or limits the scope of its Marina operations, materially increases the cost of performing its obligations under this Agreement, or materially reduces its Marina-related income, then Lessee may either terminate this Agreement on 6-months prior written notice to YCWA or request YCWA to meet to discuss appropriate changes to the Agreement. Upon receipt of such a request, the Parties will meet, confer and negotiate in good faith on appropriate Agreement amendments that would address and mitigate the impacts caused by the new or different FERC license terms and conditions. If the Parties are unable to agree to an amendment, Lessee may terminate this Agreement on a 6-month prior written notice to YCWA.

3.12. Standard of Operation. Lessee shall operate and maintain the Marina and provide the services described herein in a manner consistent with other properties and marinas in the State of California providing similar facilities and services and recognized as being "state of the art" recreational facilities, subject only to such limitations or requirements, if any, as may be imposed by law or as otherwise set forth herein.

3.13. Public Health and Safety Compliance. Lessee shall operate, and maintain the Marina and Leased Real Property in a good, clean, sanitary and safe condition keeping the same free of trash, garbage, waste, infestation and disease in compliance with any and all applicable present and future local, state, and federal laws, regulations, and rules, or orders of any governmental authority relating to police powers generally and in particular sanitation or public health, safety, or welfare.

3.14. Repairs. Lessee shall, at its sole cost and expense, keep and maintain the Marina and Leased Real Property in good, safe, clean, attractive and sanitary condition and repair, and shall repair all damage resulting from use of the Marina and Leased Real Property by

Lessee or Lessee's employees, agents, contractors, customers, guests or invitees. The cost to repair any damage or injury done to the Leased Real Property by Lessee or its employee, agent, contractor, customer, guest or invitee shall be paid by Lessee. Should Lessee fail or refuse to do so, YCWA shall have the option to declare a default hereunder and terminate the Agreement or to perform such maintenance or repair for the account of Lessee in which event Lessee agrees to promptly reimburse YCWA for the costs thereof as an additional fee hereunder, provided however, that YCWA shall first give Lessee 10 working days written notice of its intention to perform the maintenance or repair for the account of Lessee. During the 10 day notice period, Lessee may perform such maintenance or repair to the satisfaction of YCWA and be therefore relieved of the duties of repayment set forth in this paragraph. YCWA is not obligated to make any repairs or maintain any improvements and shall not be precluded from exercising any other remedy provided for herein. Lessee acquires no rights to, and hereby expressly waives any right to make any repairs at the expense of or for the benefit of YCWA.

3.15. Business Records. Lessee shall keep adequate business records in accordance with generally accepted accounting principles. During the term of this Agreement, Lessee shall provide the following to YCWA:

(A) Reasonable Access during Normal Business Hours. Reasonable access by YCWA and its staff, accountants and attorneys during normal business hours to and, if requested, copies (at YCWA's expense) of Lessee's books and records, whether located at the Marina premises or elsewhere, reflecting revenues on which the Fee calculations as described and provided in section 3.16 are based, including without limitation, sales logs, rental logs, cash register receipts, cash register tabulations, records of purchases, sales tax statements and records and such other documentary information as may be reasonably related to the calculation of the Fees and Lessee's operation of the Marina in compliance with this Agreement.

(B) Financial Statements for Prior Three Years for Review But Not for Copy. Upon request by YCWA, Lessee will have prepared by an independent certified public accountant ("CPA") (selected and paid by Lessee) and provide to YCWA a Limited Scope audited financial statements reflecting the revenues and other cost items on which the section 3.16 fee calculations are based and the Fee calculations for the prior 3 years. "Limited Scope" means just those items identified for audit by YCWA.

(C) Independent Review of Audits. YCWA may, at its expense, have any of the records and documents described in subsections (A) and (B) reviewed and audited by an independent CPA. If the YCWA CPA renders a non-confidential report to YCWA, the CPA report shall be provided to Lessee within 10 days of receipt. If that CPA's report concludes that Lessee has underpaid or overpaid by a significant amount to be solely determined by YCWA, the Parties shall attempt to resolve the difference by agreement within 30 days of the delivery of YCWA's written report to Lessee. If the Parties cannot so agree, then the two CPAs used by Lessee and YCWA shall select a third CPA to resolve the discrepancy within 30 days after selection. Within 30 days after the third CPA's written determination is delivered to the Parties, the amount determined to be owed, if any, shall be paid in accordance with the determination. The expense of the third CPA's written determination shall be paid by the Party whose selected CPA's report deviated from the third CPA's report by the greatest percentage.

3.16. Fees to be Paid by Lessee to YCWA. Pursuant to this Agreement and in accordance with its terms, Lessee shall pay to YCWA a monthly lease payment (the "Fee") for the right and privilege to operate, develop, use and maintain the Marina and Leased Real Property.

(A) Fee. The Fee shall be composed of three components. The first component of the Fee shall be a sum calculated based on seven and one-half percent (7.5%) of Lessee's Gross Income for the month on a cash receipt basis. As used herein, the "Gross Income" means the total of all cash receipts received by Lessee less: (a) any actual refunds paid by Lessee during the payment period; (b) payments for houseboat inspections paid to Lessee (see section 3.8(B)); and (c) income from fuel sales (which are covered by the third component of the Fee). The second component of the Fee shall be a charge for the delivery of water for use at the Marina, modular home and Marina portion of the warehouse as calculated pursuant to section 2.5. YCWA will read the meter and provide a bill to Lessee that includes the current and previous meter reads and dates. Lessee shall pay the monthly water bill as the second component of the Fee. The third component of the Fee shall be a charge for fuel sold at the Marina. The fee per gallon of fuel sold shall be five cents escalated at an annual rate of 3 percent, beginning 1 year after the Effective Date. Lessee shall pay the fuel charge to YCWA as the third component of the Fee.

(B) Fee Schedule and Form. All Fees shall be paid and a written monthly accounting documenting the gross income cash receipts, with fuel, refunds, houseboat inspection fees received, and YCWA water bill each as separate line items, upon which the Fee is calculated, shall be delivered to YCWA by the Due Date, which is defined below. The written accounting may be transmitted electronically, but all Fees shall be paid by means of checks payable and sent by first class U.S. mail to YCWA, 1220 F Street, Marysville, California 95901, or to such other location as may from time to time be designated by YCWA.

(C) Due Date. Unless otherwise agreed to by YCWA, payments shall be received by YCWA no later than the 30<sup>th</sup> of each month for Marina and Leased Real Property activities for the entire previous month (monthly due dates are individually referred to as the "Due Date"). Any late payment will be subject to a late payment penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent of the amount of the late payment or portion thereof. The Parties agree that the late charge represents a fair and reasonable estimate of the costs YCWA will incur because of the late payment. Acceptance of the late charge by YCWA shall not constitute a waiver of Lessee's default, nor prevent YCWA from exercising the other rights and remedies granted under this Agreement. Lessee shall pay the late charge as additional payment with the next monthly permit fee payment.

(D) Interest Charges on Late Payments. Any amount due to YCWA, not paid within ten (10) days following the Due Date will bear interest from the Due Date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Lessee, nor on any amounts on which late charges are paid by Lessee, to the extent this interest would cause the total interest to be in excess of that legally permitted.

3.17. Local Hiring Preference. Unless otherwise prohibited by an applicable federal or state law or regulation, Lessee will make a good-faith effort to employ qualified individuals who are residents of Yuba County. Lessee will prepare, keep and provide to YCWA on an annual basis an accurate record documenting its good-faith efforts to comply with this

county resident employment preference, including a listing by name and address of all local recruitment sources contacted or utilized by Lessee, the date of the local recruitment effort, and (if applicable) the identity of the person contacted, the number and name of county residents employed to work at the Marina, and the total number of persons employed to work at the Marina.

**4. INDEMNIFICATION AND INSURANCE.**

4.1. General Indemnity. Lessee shall indemnify, defend, protect and hold harmless YCWA and its officers, employees, and agents from and against any and all liability, loss, damage, expense, penalties and costs (including attorney fees, investigation costs and litigation costs from the first notice of any claim or demand) of every nature arising out of or in connection with: (a) Lessee's use and possession of the Leased Real Property; (b) the death or injury of any person or persons, or the damage to or destruction of any personal or real property, and caused or allegedly caused by either the condition of the Leased Real Property, or some act or omission of Lessee or of some employee, agent, contractor, customer, guest or invitee of Lessee; (c) any work performed on the Leased Real Property or materials furnished to the Property at the request of Lessee or of any employee, agent, contractor, customer, guest or invitee of Lessee, including, but not limited to, any liability relating to the use, handling or storage of any Hazardous Material (as defined below); and (d) Lessee's failure to perform or otherwise comply with any provision of this agreement. This indemnification provision shall not apply to any loss or damage caused by the sole negligence or willful misconduct of YCWA. This indemnification provision shall survive the termination of this Agreement for any occurrence or event occurring prior to the termination.

4.2. Insurance. Lessee at its sole cost and expense shall procure and maintain for the duration of its occupancy of the Leased Real Property the following types and limits of insurance or self-insurance:

Type	Limits	Scope
Commercial general liability	\$2,000,000 per occurrence & \$4,000,000 aggregate	at least as broad as ISO CG 0001, and including host liquor liability,
Automobile liability	\$1,000,000 per accident	at least as broad as ISO CA 0001, code 1 (any auto)
Watercraft liability, including pollution liability coverage	\$1,000,000 per occurrence	--
Workers' compensation	statutory limits	--
Employers' liability	\$1,000,000 per accident	--
Property insurance covering Marina improvements and other Lessee equipment, furnishings and improvements	full replacement cost	generally accepted broad form coverage, including business interruption coverage

(A) The general liability policy shall be endorsed to name YCWA, its officers, employees, and agents as additional insureds regarding liability arising out of this Agreement. Lessee's coverage shall be primary and apply separately to each insurer against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. YCWA's insurance or self-insurance, if any, shall be excess and shall not contribute with Lessee's insurance. Each insurance policy shall be endorsed to state that coverage shall not be canceled, except after 30 days' prior written notice to YCWA. Insurance is to be placed with insurers with a current A.M. Best's rating of A:VII or better unless otherwise acceptable to YCWA.

(B) Upon execution of this Agreement and annually thereafter, Lessee shall provide to YCWA the following proof of insurance: (a) certificate(s) of insurance evidencing this insurance; and (b) endorsement(s) on ISO Form CG 2010 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf the insurer(s), and certifying the additional insured coverage.

(C) The insurance types and coverages shall be reevaluated by YCWA and Lessee every 10 years to evaluate whether they remain commercially reasonable and standard for the lease and to negotiate whether any changes are appropriate.

#### 4.3. Hazardous Materials.

(A) Use of Hazardous Materials on the Marina. Lessee agrees that it shall not, and that it shall not permit any other person to, treat, use, store, dispose, release, handle or otherwise manage hazardous materials on the Marina or Leased Real Property, except in connection with any construction, operation, maintenance or repair or in the ordinary course of the Marina business, and that such conduct shall be done in compliance with all applicable federal, state and local laws and regulations.

(B) Notice and Remediation by Lessee. Lessee shall, within 5 days of such occurrence or immediately in cases of imminent threat of injury to life or property, notify YCWA of any release of any hazardous materials, or any notice, demand, claim or order received by Lessee from any governmental agency pertaining to hazardous materials that may affect the Marina or Leased Real Property.

(C) Environmental Indemnity. Lessee agrees to hold harmless, defend and indemnify YCWA and its officers, employees, and agents from and against any and all liability, loss, damage, expense, penalties and costs (including attorney fees, investigation costs and litigation costs from the first notice of any claim or demand) of every nature arising out of or in connection with (a) Lessee's breach or violation of any covenant, prohibition or warranty in this Agreement concerning hazardous materials, or (b) the activities, acts or omissions of Lessee, its employees, contractors or agents on or affecting the Marina or Leased Real Property or the reservoir and relating to the handling, storage use or release of any hazardous materials, whether such condition, liability, loss, damage, cost, penalty, fine and/or expense shall accrue or be discovered before or after the termination of this Agreement. This indemnification supplements and in no way limits the scope of the indemnification set forth in section 4.1. This indemnification provision shall survive the termination of this lease for any occurrence or event occurring prior to the termination.

(D) Release. Lessee waives, releases, acquits and forever discharges YCWA and its officers, employees, and agents, or any other person acting on behalf of YCWA, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation whatsoever including, but not limited to, all claims at common law, whether direct or indirect, known or unknown, foreseen or unforeseen, that Lessee may have on account of or in any way growing out of or in connection with any hazardous materials or other conditions on, in, under, from, or affecting the Marina or Leased Real Property.

(E) Definition. "Hazardous Materials" mean any substance or material defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "restricted hazardous waste", "toxic substances" or "known to cause cancer or reproductive toxicity" (or words of



similar import), petroleum products (including crude oil or any fraction thereof) or any chemical substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, or license regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health, safety, or the environment.

## 5. TERM AND TERMINATION.

5.1. Term. The term of this lease shall commence on the Effective Date and terminate on November 30, 2045, unless sooner terminated as provided in this Agreement. In the event Lessee holds over and continues in possession of the Leased Real Property after expiration of the term, Lessee's continued occupancy of the Leased Real Property will be considered a month-to-month tenancy subject to all of the terms and conditions of this Agreement. The Agreement may be extended upon mutual written consent, or as otherwise agreed to by the Parties in writing.

5.2. 2035 Reopener. In or about November 2035, the Parties will meet to review and discuss this Agreement, each Party's performance under the Agreement, desirable changes to the Agreement, changed circumstances affecting the Agreement, the need for an extension of the Agreement beyond 2045, and other issues and matters relating to the Agreement. Upon request by either Party, they will confer and negotiate in good faith over requested and appropriate amendments to the Agreement. If the negotiations do not result in mutually satisfactory amendments to the Agreement within 12 months after the request or a written extension of the negotiations period, the Agreement shall continue in full force and effect as it was immediately prior to the negotiations period until the expiration date in section 5.1.

5.3. Hardship Reopener and Termination. In light of the long-term nature of this lease, the Parties recognize the need to provide for the Agreement to be reopened as may be needed to address changed circumstances that result in a significant hardship for one of the Parties.

(A) A hardship exists when there have been changed circumstances, an event or occurrence, or a series of events or occurrences (collectively "Event") that fundamentally alters the equilibrium of the Agreement either because the cost of a Party's performance has increased significantly or because the value of the performance a Party receives has diminished significantly, and (a) the Event occurs after the Effective Date, (b) the Event could not reasonably have been taken into account by the disadvantaged Party when negotiating and drafting the Agreement, (c) the Event is beyond the control of the disadvantaged Party, and (d) the risk of the Event was not assumed by the disadvantaged Party.

(B) In case of an Event causing hardship, the disadvantaged Party may request to renegotiate the Agreement. The request shall be made without undue delay and shall indicate the grounds on which it is based. The request for renegotiation does not in itself entitle the disadvantaged Party to withhold performance. Upon receiving a hardship request, the parties agree to promptly meet, confer and negotiate in good faith on appropriate Agreement amendments that would address the hardship and restore equilibrium.

(C) If the Parties fail to reach agreement within a reasonable time, the disadvantaged Party may terminate this Agreement by giving 6-month prior written notice

of hardship termination to the other Party. If the other Party contends that there has not been an Event causing hardship as described above so as to justify termination by the disadvantaged Party, the other Party may pursue appropriate breach of contract, declaratory relief or other appropriate remedies in court.

5.4. Termination Audit. Upon termination of the Agreement, Lessee shall cause a Limited Scope financial audit to be performed by an independent CPA, who shall be selected by agreement between Lessee and YCWA within 5 days of termination. If the Parties cannot so agree, then two CPAs selected by Lessee and YCWA shall select a third CPA to perform this function. If Lessee does not select a CPA, then the audit shall be performed by the CPA of YCWA's choice at Lessee's expense. The audit will commence within 30 days after termination of this Agreement and shall be completed and reports delivered to the Parties within 45 days after commencement (or such other periods as may be agreed to by the Parties). Lessee agrees to pay to YCWA, at the time of delivery of this report, all monies due and owing to YCWA, if any, as confirmed by the audit.

5.5. Surrender of Property. On expiration or earlier termination of this Agreement, Lessee shall promptly surrender and deliver the Marina and Leased Real Property to YCWA in as good condition as it was in at the commencement of the lease. Any real property fixtures made, installed or placed on the Leased Real Property by Lessee or any other person during the term of the Agreement shall on expiration or earlier termination of this lease become the property of YCWA and remain on the Leased Real Property. YCWA shall have the option, however, on expiration or termination of this lease, of requiring Lessee, at Lessee's sole cost and expense, to remove any real property fixtures from the Leased Real Property.

5.6. YCWA's Right of Purchase Marina Facilities at Termination. If at the termination of the Agreement, Lessee is the owner or some or all of the Marina facilities, improvements, and equipment (but not including any real property fixtures which are addressed by Section 5.5), erected or placed at the Marina or on the Leased Real Property (collectively "Facility" or "Facilities"), YCWA shall have a right to purchase the Facility or Facilities. To establish the value of a Facility or group of Facilities, YCWA and Lessee shall jointly agree on the value of the Facility or group of Facilities within 90 days after the termination, or if the Parties cannot agree, the Parties shall select an independent appraiser who will appraise the Facilities or group of Facilities using a fair market value approach. The appraiser's fees shall be paid split evenly by YCWA and Lessee. YCWA shall have 2 months from the date of the Parties' agreement in writing on the value of the Facility or group of Facilities, or the date of the appraiser's report if an appraiser is used, to advise Lessee in writing that YCWA intends to exercise its option to purchase a Facility or group of Facilities. YCWA shall make payment, minus any outstanding Fees or other money owed by Lessee to YCWA, for the Facility or group of Facilities within 2 months of such notice. Boats, including houseboats, shall not be included in YCWA's right to purchase unless Lessee advises YCWA in writing that Lessee is including boats or houseboats. If YCWA declines to exercise its option to purchase the Facilities, then Lessee will remove all Facilities from the Leased Real Property within 60 days after YCWA's decision to decline its option.

## 6. GENERAL TERMS AND CONDITIONS.

6.1. Entire Agreement. The Parties intend this writing, including Attachments, to be the sole, final, complete, exclusive and integrated expression and statement of the terms of

their contract concerning the subject matter addressed in the Agreement. This Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Agreement, except those other documents that may be expressly referenced in this Agreement.

6.2. Construction and Interpretation. The Parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party will not apply in construing or interpreting this Agreement.

6.3. Waiver. The waiver at any time by any Party of its rights with respect to a default or other matter arising in connection with this Agreement will not be deemed a waiver with respect to any subsequent default or matter. No payment by Lessee to YCWA will be considered or construed to be an approval or acceptance of any work or a waiver of any breach or default.

6.4. Remedies Not Exclusive. The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. A Party's exercise of any remedy under this Agreement will not prejudice or affect the enforcement of any other remedy.

6.5. Severability. If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, so long as the rights and obligations of the Parties are not materially and adversely affected.

6.6. Relationship of Parties. This Agreement does not create and should not be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties.

6.7. No Third Party Beneficiaries. This Agreement does not create and should not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Parties, their respective successors and permitted transferees and assignees, and no other person or entity is be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

6.8. Further Assurances. In order to carry out and give full effect to this Agreement, each Party will use all reasonable efforts to provide such information, execute and deliver such further instruments and documents and take such actions as may be reasonably requested by the other Party, so long as not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from, in excess of, or in addition to those expressly provided for in this Agreement.

6.9. No Consequential Damages. In the event of a claim by one Party against the other Party arising out of or in connection with the performance or non-performance of the Party's obligations under this Agreement, whether such claim is based on contract, tort, negligence, warranty or other legal theory, the Party will not be liable to the claimant-Party or obligated in any manner to pay to the claimant-Party any special, incidental, consequential or punitive damages. This waiver of damages applies only to disputes and claims as between the Parties, and does not apply to or limit the scope of a Party's

indemnity obligation under section 4, which indemnity includes all claims by third parties irrespective of the nature of the claim or the scope of damages or relief sought by the claim.

6.10. Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved and executed by both Parties. Amendment by YCWA requires the approval of its Board of Directors at a noticed public Board meeting.

6.11. Governing Law and Venue. Except as otherwise required by law, this Agreement will be interpreted, governed by, and construed under the laws of the State of California. The County of Yuba will be venue for any state court litigation and the Eastern District of California will be venue for any federal court litigation concerning the enforcement or construction of this Agreement.

6.12. Force Majeure.

(A) "Force majeure" means an act, event, occurrence, or condition that (a) is beyond the reasonable control of the Party claiming force majeure, (b) materially interferes with or delays performing an obligation of the Party, and (c) the Party, by the exercise of due diligence, is unable to prevent or overcome. Subject to the foregoing, force majeure includes a labor dispute such as a strike or lockout (except a labor dispute involving the Party's employees), failure or refusal of any person or entity (other than a Party) to comply with an agreement to obtain or ship material or equipment, industrial disturbance, act of a public enemy, war, blockade, insurrection, riot, epidemic, civil disturbance, explosion, sabotage, threat of physical harm or damage resulting in the evacuation or shutdown of a party's facilities, landslide, lightning, earthquake, volcanic eruption, fire, flood, washout, other natural disaster (except weather conditions normal for the area), and restraint by court order or government agency (other than a party) having jurisdiction over the party. Force majeure does not include any act, event or condition that is the result of the Party's willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement.

(B) A Party is excused from an obligation under this Agreement in the event that the Party is rendered unable, wholly or in part, by force majeure to carry out the obligation. A Party's performance will be suspended only during the continuance of the force majeure condition and the Party will perform all other obligations not affected by the force majeure condition. Upon the occurrence of an event of force majeure, the Party claiming force majeure must give notice and full particulars of the force majeure in writing to the other Party and, to the extent reasonably practical, use its best efforts to promptly implement a plan to ensure the continued ability to perform its obligations and promptly bring to an end the force majeure condition.


6.13. Notices. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement must be in writing and delivered either (a) in person, (b) by prepaid, first class U.S. mail, (c) by facsimile transmission with delivery to the other Party confirmed by a successful-delivery confirmation receipt if the document also is sent within two days by prepaid, first class U.S. mail, or (d) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt. Such notices, etc. shall be addressed as follows:

<p>YCWA:</p> <p style="text-align: center;">Curt Aikens General Manager 1220 F Street Marysville, CA 95901</p>	<p>Emerald Code Marina, Inc.:</p> <p style="text-align: center;">Scott Robertson Emerald Cove Marina, Inc.</p> <p style="text-align: center;"><i>Physical Address:</i> 1103 Sutton Way Grass Valley, CA 95945</p> <p style="text-align: center;"><i>Mailing Address:</i> P.O. Box 480 Grass Valley, CA 95945-0480</p>
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Notice given as above will be deemed given (a) when delivered in person, (b) three days after deposited in prepaid, first class U.S. mail, (c) upon receipt of the facsimile machine successful-delivery confirmation, or (d) on the date of delivery as shown on the overnight courier service receipt. Any Party may change its contact information by notifying the other Party of the change in the manner provided above.

YUBA COUNTY WATER AGENCY

EMERALD COVE MARINA, INC.

By:   
Curt Aikens  
General Manager

By:   
Scott Robertson  
President

