

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): George M. Mavris 179471 George M. Mavris 1 Point Saint George Place Crescent City, CA 95531 TELEPHONE NO.: (707) 464-1418 FAX NO. (Optional): (707) 464-3364 E-MAIL ADDRESS (Optional): gmavris@yahoo.com ATTORNEY FOR (Name): Fashion Blacksmith, Inc.	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Del Norte</b> STREET ADDRESS: 450 H. Street MAILING ADDRESS: 450 H. Street CITY AND ZIP CODE: Crescent City, CA 95531 BRANCH NAME:	
PETITIONER: Fashion Blacksmith, Inc. RESPONDENT: Crescent City Harbor District	
PETITION TO <input checked="" type="checkbox"/> CONFIRM <input type="checkbox"/> CORRECT <input type="checkbox"/> VACATE <b>CONTRACTUAL ARBITRATION AWARD</b>	
Jurisdiction (check all that apply): <input type="checkbox"/> Action is a limited civil case Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> Action is an unlimited civil case (exceeds \$25,000)	CASE NUMBER:
<b>NOTICE: You may use this form to request that the court confirm, correct, or vacate an award in an arbitration conducted pursuant to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq. and that does not involve an attorney-client fee dispute. If you are requesting court action after an attorney-client fee arbitration award, please read Alternative Dispute Resolution form ADR-105, Information Regarding Rights After Attorney-Client Fee Arbitration.</b>	

1. **Petitioner and respondent.** Petitioner (name each):  
 Fashion Blacksmith, Inc.

alleges and requests relief against respondent (name each):  
 Crescent City Harbor District

2. **Contractual arbitration.** This petition requests the court to confirm, correct, or vacate an award in an arbitration conducted according to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq.

3. **Pending or new action.**

a.  A court case is already pending, and this is a petition filed in that action. (If so, proceed to item 4.)

b.  This petition commences a new action. (If so, complete items 3b(1) through 3b(4).)

(1) **Petitioner's capacity.** Each petitioner named in item 1 is an individual,  
 except petitioner (state name and complete one or more of the following): Fashion Blacksmith, Inc.

(a)  is a corporation qualified to do business in California.

(b)  is an unincorporated entity (specify):

(c)  is a representative (specify):

(d)  is (specify other capacity):

(2) **Respondent's capacity.** Each respondent named in item 1 is an individual,  
 except respondent (state name and complete one or more of the following): Crescent City Harbor Dist.

(a)  is a business organization, form unknown.

(b)  is a corporation.

(c)  is an unincorporated entity (specify):

(d)  is a representative (specify):

(e)  is (specify other capacity): Governmental Entity

PETITIONER: Fashion Blacksmith, Inc.	CASE NUMBER:
RESPONDENT: Crescent City Harbor District	

- 3.b. (3) **Amount or property in dispute.** This petition involves a dispute over (check and complete all that apply):
- (a)  the following amount of money (specify amount): \$ 1,298,545.00
- (b)  property (if the dispute involves property, complete both of the following):
- (i) consisting of (identify property in dispute): Leased Space incl under Syncrolift
- (ii) having a value of (specify value of property in dispute): \$ 1,000,000.00
- (4)  **Venue.** This court is the proper court because (complete (a) or (b)):
- (a)  this is the court in the county in which the arbitration was held.
- (b)  the arbitration was not held exclusively in any county of California, or was held outside of California, and (check one or more of the following):
- (i)  this is the court in the county where the agreement was made.
- (ii)  this is the court in the county where the agreement is to be performed.
- (iii)  the agreement does not specify a county where it is to be performed and was not made in any county in California, and the following party resides or has a place of business in this county (name of party):
- (iv)  the agreement does not specify a county where it is to be performed and was not made in any county in California, and no party to this action resides or has a place of business in California.
4. **Agreement to arbitrate.**
- a. **Date.** Petitioner and respondent entered into a written agreement on or about (date): January 1, 1980
- b.  **Attachment.** A copy of the agreement is submitted as Attachment 4(b) and incorporated herein by this reference.
- c. **Arbitration provision.** Paragraph 12.07 of the agreement provides for arbitration of disputes arising out of the agreement as follows (either copy the arbitration provision in full or summarize the provision):  
See Attachment 4(b) at 12.07.
5. **Dispute subject to arbitration.** A dispute arose between petitioner and respondent concerning the following matter covered by the agreement to arbitrate (summarize the dispute):  
Petitioner argued that CCHD failed to maintain design depth under its mechanical boat lift (Syncrolift) and failed to maintain his boat repair shop as required under the lease.
6. **Arbitrator.** The following person was duly selected or appointed as arbitrator (name of each arbitrator):  
Matthew Vafidis, Esq.  
Hon. William Cahill, Judge (Retired)  
Forest Booth, Esq.
7. **Arbitration hearing.** The arbitration hearing was conducted as follows (complete both of the following):
- a. **Date (each date of arbitration):** 3/20-3/23
- b. **Location (city and state where arbitration was conducted):** Crescent City, California
8. **Arbitration award.**
- a. **Date of award.** The arbitration award was made on (date): June 5, 2023
- b. **Terms of award.** The arbitration award (check one or more of the following):
- (1)  requires  petitioner  respondent to pay the other party this amount: \$ 1,298,545.00
- (2)  requires neither party to pay the other anything.
- (3)  is different as to different petitioners and respondents.
- (4)  provides (specify other terms or check item 8(c) and attach a copy of the award):  
See Attachment 8(c)
- c.  **Attachment of Award.** A copy of the award is submitted as Attachment 8(c).
9. **Service of award.**
- a. The signed award or an accompanying document indicates that the award was served on petitioner on (date):
- b.  Petitioner alleges that a signed copy of the award was actually served on (date): June 7, 2023

10. Petitioner requests that the court (check all that apply):

- a.  Confirm the award, and enter judgment according to it.
- b.  Correct the award and enter judgment according to the corrected award, as follows:
  - (1) The award should be corrected because (check all that apply):
    - (a)  the amount of the award was not calculated correctly, or a person, thing, or property was not described correctly.
    - (b)  the arbitrator exceeded his or her authority.
    - (c)  the award is imperfect as a matter of form.
  - (2) The facts supporting the grounds for correcting the award alleged in item 10b(1) are as follows (if additional space is required, check here  and submit facts on an attachment labeled 10b(2)):
  - (3) The award should be corrected as follows (if additional space is required, check here  and describe requested correction on an attachment labeled 10b(3)):
- c.  Vacate (cancel) the award.
  - (1) The award should be vacated because (check all that apply):
    - (a)  the award was obtained by corruption, fraud, or other unfair means.
    - (b)  an arbitrator was corrupt.
    - (c)  the misconduct of a neutral arbitrator substantially prejudiced petitioner's rights.
    - (d)  the arbitrator exceeded his or her authority, and the award cannot be fairly corrected.
    - (e)  the arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute.
    - (f)  an arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.
    - (g)  an arbitrator should have disqualified himself or herself after petitioner made a demand to do so.
  - (2) The facts supporting the grounds for vacating the award alleged in item 10c(1) are as follows (if additional space is required, check here  and submit facts on an attachment labeled 10c(2)):
  - (3) Petitioner  does  does not request a new arbitration hearing.
- d.  Award petitioner interest from (date): April 20, 2023
  - (1)  at the statutory rate.
  - (2)  at rate of 7% per year.
- e.  Award petitioner costs of suit:
  - (1)  in the amount of: \$ 134,927.03
  - (2)  according to proof.
- f.  Award petitioner attorney fees incurred in this action (check only if attorney fees are recoverable in this action according to statute or the parties' agreement):
  - (1)  in the amount of: \$ 418,925.00
  - (2)  according to proof.
- g.  Award petitioner the following other relief (describe relief requested; if additional space is required, check here  and describe relief on an attachment labeled 10g):  
 Final Arbitration Award (Attachment 8(c)) required Respondent to repair Fashion Blacksmith, Inc. Boat Repair building by September 15, 2023 and dredge to design depth under the Syncrolift by 10/31/2023. It also required rent paid from January 4, 2021, to be refunded to Petitioner (\$87,780.54).

11. Pages and attachments. Number of pages attached: 56

Date: 06/13/2023

George M. Mavris \_\_\_\_\_  
 (TYPE OR PRINT NAME)

  
 \_\_\_\_\_  
 (SIGNATURE OF PETITIONER OR ATTORNEY)

**ATTACHMENT 4(b)**

To: FASHION BLACKSMITH

JAN 1 1980

DEC 31 1995  
15 YRS

CRESCENT CITY HARBOR DISTRICT  
LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "this Lease Agreement" or as "this Lease"), is made by and between the following corporation entities or persons, who constitute the LESSOR and the LESSEE:

ARTICLE I

PARTIES TO LEASE AGREEMENT

SECTION 1.01. NAMES OF LESSOR AND LESSEE:

LESSOR: CRESCENT CITY HARBOR DISTRICT,  
A Public Agency,  
County of Del Norte, State of California

LESSEE: FASHION BLACKSMITH, INC.,  
A California Corporation

The above-named parties to this Lease Agreement are referred to hereinafter as "LESSOR" and "LESSEE" respectively, without regard to number or gender.

ARTICLE II

DESCRIPTION OF PREMISES

SECTION 2.01. LEASED PREMISES: The LESSOR hereby leases to LESSEE, and the LESSEE hereby takes, hires and leases from the LESSOR, the boat construction and boat repair building and facilities located within the property owned by and under the jurisdiction of the CRESCENT CITY HARBOR DISTRICT in Del Norte County, California, which said leased premises are shown on EXHIBIT "A" attached hereto and made a part hereof, and are more particularly described in EXHIBIT "B" attached hereto and incorporated herein by reference and made a part hereof.

SECTION 2.02. AIRSPACE RIGHTS EXCLUDED: This Lease Agreement confers no rights on or in LESSEE either with regard to the subsurface of the land more than five (5) feet below the ground level of the leased Premises or with regard to airspace above the top of the roof of the building of which the Leased Premises is a part.

SECTION 2.03. LESSEE'S ACCEPTANCE OF PREMISES: The execution of this Lease Agreement and the opening by LESSEE of LESSEE'S business in the Leased Premises shall constitute an acknowledgment by LESSEE that the Leased Premises are then in the condition called for by this Lease Agreement and that the Leased Premises are suitable and acceptable to the LESSEE.

DUPLICATE  
ORIGINAL

**ARTICLE III**

**PURPOSE OF RENTAL; BUSINESS USE;  
RESTRICTIONS ON USE**

**SECTION 3.01. BUSINESS USE OF LEASED PREMISES:** The premises and area referred to herein and described in EXHIBIT "A" are leased to the LESSEE only for the purpose of permitting LESSEE to haul boats from the water, clean, weld, paint and repair, and launch such boats into the water, and for construction and sale of boats and for other purposes consistent therewith.

**SECTION 3.02. LIMITS ON USE:**

(a) LESSEE shall not use, or permit said leased premises and area, or any part thereof, to be used, for any purpose or purposes other than the purpose or purposes for which the said premises and area are hereby leased, without the prior written consent of LESSOR.

(b) LESSEE shall not use or occupy nor permit the leased premises or area, or any part thereof, to be used or occupied for any unlawful business, use or purpose. In that connection, LESSEE agrees to conduct its business and operations upon the leased area and premises and to use all necessary equipment so as to reduce to the minimum that is reasonably practicable the emanation from LESSEE'S facilities and operations of fumes and odors and to take all necessary precautions to avoid oil and gas spills and other forms of pollution.

(c) LESSEE shall not perform any acts or carry on any business or operations that may injure or damage the leased premises or be a nuisance or menace to other tenants or users of the Crescent City Harbor.

(d) At all times LESSEE shall keep the leased area and premises, the dock space connected with LESSEE'S operations, the ramp, and any platforms, service areas, and the like allocated for the use of the LESSEE, clean and free from rubbish, trash and debris.

(1) In the event LESSEE shall fail to keep said premises and the leased area clean and free from rubbish, trash and debris, LESSOR reserves the right to give written notice to LESSEE of such obligation; and upon failure of LESSEE, within seven (7) days of such written notice, to so clean the leased area, premises, ramp, service areas, and the like allocated for the use of LESSEE, LESSOR may, at its option, engage Harbor District personnel to clean the area and bill LESSEE for all such work.

**SECTION 3.03. INDEMNITY FOR VIOLATION OF LAW:** LESSEE covenants and agrees to indemnify and save LESSOR harmless from any penalties, damages, or charges imposed for any violation of any and all laws, ordinances, and regulations applicable to the use and occupancy of the leased premises whether occasioned by neglect, omission, or willful act of LESSEE or any person upon the leased premises by

license or invitation of LESSEE or holding or occupying the same or any part thereof under or by right of LESSEE.

**SECTION 3.04. CONTEST OF VALIDITY OF LAW:** LESSEE shall have the right to contest by appropriate legal proceedings, without cost or expense to LESSOR, the validity of any law, ordinance, or regulation of the nature herein referred to, if, by the terms of such law, ordinance, or regulation compliance therewith may be legally held in abeyance without subjecting LESSOR to any liability for the failure so to comply therewith, in which event compliance therewith may be postponed until the final determination of any such proceeding. LESSEE, upon commencing such contest, shall furnish to LESSOR a document guaranteeing that LESSOR and the LESSOR'S interest in the leased premises shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

**SECTION 3.05. SIGNS - LESSOR'S APPROVAL REQUIRED:** LESSEE shall not construct nor maintain upon the outside of any improvements on the leased premises, or elsewhere on LESSOR'S land, any billboards or advertising signs except those approved in writing by the LESSOR.

**SECTION 3.06. USE OF EQUIPMENT:** All machinery and equipment to be placed or installed by LESSEE in connection with the hauling of boats from the water, cleaning, welding, painting, repairing, constructing and launching of said boats into the water shall be placed, installed and operated at LESSEE'S sole cost and expense at such place or places as approved by LESSOR.

**SECTION 3.07. OPERATION OF BUSINESS:** LESSEE shall, to the extent reasonably and practicably possible, continuously and uninterruptedly occupy and use the leased area and premises for the purposes specified herein and conduct the operations of LESSEE'S business thereon in accordance with the usual and customary practices of comparable facilities and businesses. In general, LESSEE agrees to use its best judgment, efforts and abilities to use the leased premises and operate the aforesaid business in a manner calculated to produce the maximum gross income.

#### ARTICLE IV

##### TERM OF LEASE

**SECTION 4.01. COMMENCEMENT AND ENDING DATE OF LEASE:** The term of this Lease shall be for a period of ~~FIFTEEN~~ FIFTEEN (15) YEARS, commencing on the 1st day of January, 1980, and expiring, unless sooner terminated pursuant to the provisions of this Lease, at midnight on the 31st day of December, 1995; subject, however, to earlier termination as hereinafter provided.

(a) This Lease shall terminate and become null and void without further notice upon the expiration of the term specified, and any holding over by LESSEE after the expiration of said term shall not constitute a renewal hereof or give LESSEE any rights hereunder in or to the leased premises or any part thereof.

#### ARTICLE V

##### RENTS AND RELATED CHARGES

**SECTION 5.01. FIXED MINIMUM ANNUAL RENT:** LESSEE shall pay to LESSOR at the office of LESSOR, or at such other place designated by LESSOR, as fixed minimum annual rent, without deduction, setoff, prior notice,

or demand, the sum of THIRTY THOUSAND DOLLARS (\$30,000.00) per year during the term of this lease, payable in equal fixed installments of \$2,500.00 per month.

(a) Fixed rent shall be paid monthly in advance, on the first (1st) day of each calendar month during the term of this Lease.

**SECTION 5.02. PERCENTAGE RENT:**

(a) In addition to the fixed minimum monthly rent required to be paid by LESSEE to LESSOR, LESSEE covenants and agrees to and shall pay to LESSOR in the manner and upon the conditions and at the time hereinafter set forth, and as percentage rent hereunder, a sum of money based on a percentage of LESSEE'S cumulative "gross sales and business transacted" as hereinafter defined ("percentage rent"), during each year of the lease term, less the aforesaid fixed minimum annual rent paid, as follows:

- (1) For all gross sales and business transacted by LESSEE with respect to all repair and related services and sales, including sales of parts - - - - - an amount equal to Five Percent (5%) as Percentage Rent;
- (2) For all gross sales and business transacted by LESSEE with respect to all new construction of boats - - - - - an amount equal to Two And One-Half Percent (2-1/2%) as Percentage Rent.

**SECTION 5.03. PAYMENT OF PERCENTAGE RENT:** For each and every year of the term of this Lease, LESSEE shall pay to LESSOR as such additional percentage rent on or before thirty (30) days after termination of each lease year, a sum of money determined by deducting the amount of the minimum fixed annual rental payable hereunder for said lease year, from the percentage rent payable for such lease year under SECTION 5.02 hereinabove.

**SECTION 5.04. DEFINITION OF GROSS SALES AND BUSINESS TRANSACTED:**

(a) "Gross Sales and Business Transacted" shall include:

- (1) All gross receipts from any business carried on in whole or in part in, at, upon, or from the leased premises, and the entire amount of the price charged, whether wholly or partly for cash or credit, or otherwise, for all goods, wares and merchandise sold, leased, licensed or delivered and all charges for services sold or performed in, at, upon, or from any part of or through the substantial use of, the premises by LESSEE or any other person, firm or corporation;
- (2) All gross income of LESSEE or any other person, firm or corporation from any operations in, at, upon, or from the leased premises which are neither included in nor excluded from gross sales by other provisions of this Lease, but without any duplication;
- (3) Without limitation, all deposits received and not refunded to the purchaser in connection with any transaction;
- (4) All orders secured or received in the premises by telephone, mail, house-to-house or other canvassing by personnel operating from, reporting to, or under the supervision of any employee, agent or



representative located at or operating out of the premises of which LESSEE, in the normal and customary course of its operations, would credit or attribute to its business in the premises, or by other means, whether or not filled elsewhere;

(5) Proceeds from all automatic vending, weighing and other machines owned by LESSEE or operated in or on the leased premises; and commissions received by LESSEE from such automatic machines not owned by LESSEE but operated in or on the leased premises;

"Gross sales and business transacted" shall not include, or if included, there shall be deducted (but only to the extent they have been included), as the case may be, the amount of any City, County, State, or Federal sales, luxury, or excise taxes on sales from the premises where such taxes are both added to the selling price (or absorbed therein) and paid to the taxing authorities by LESSEE (but not by any vendor of LESSEE).

**SECTION 5.05. STATEMENT OF GROSS SALES:** LESSEE shall furnish to LESSOR a Statement of LESSEE'S gross sales and business transacted within fifteen (15) days after the end of each monthly rental period, and an annual Statement of gross sales and business transacted within twenty (20) days after the end of each lease year. Each Statement shall be signed and certified to be correct by LESSEE or LESSEE'S authorized representative, and if LESSEE is a corporation, the Statement shall be signed and certified to be correct by an officer of LESSEE.

If it is determined by audit or otherwise that any Statement previously delivered by LESSEE to LESSOR was inaccurate, there shall be such an adjustment that the correct amount of percentage and fixed rent will have been paid.

**SECTION 5.06. LESSEE'S RECORDS AND ACCOUNTS:**

(a) LESSEE shall keep in the leased premises true and complete records and accounts of all gross sales and business transacted, including records of daily bank deposits, and shall give LESSOR access, during reasonable hours, to such records and accounts.

(b) LESSEE shall keep and preserve for at least two (2) years after the end of each lease year all sales slips, cash register tape readings, sales books or duplicate deposit slips, books of account, and other evidence of gross sales and business transacted for such year.

(c) LESSOR shall have the right at any time and from time to time to audit all of the books of account, bank statements, documents, records, returns, papers, and files of LESSEE relating to gross sales and business transacted, and on request of LESSOR, LESSEE shall make all such matters available for examination at the premises. If LESSOR should have an audit made for any lease year and the gross sales and business transacted shown by LESSEE'S Statement for such year should be found to be understated by more than Three Hundred Dollars (\$300.00), LESSEE shall immediately pay to LESSOR the cost of such audit as well as the additional rent payable by LESSEE to LESSOR; otherwise, the cost of such audit shall be paid by LESSOR.

(d) Any information obtained by LESSOR pursuant to the provisions of this Lease with respect to the determination of the percentage rent payments or with respect to the gross sales or business transacted

shall be treated as confidential, except in all litigation or arbitration proceedings between the parties, and except further that LESSOR may divulge such information to a prospective purchaser or encumbrancer of the LESSOR or of the stock or assets of LESSOR.

**SECTION 5.07. SUB-RENTAL:** In the event LESSOR approves of any sub-rental or sub-lease by LESSEE of any part of the leased premises (or any part of the LESSEE'S building situated on the leased premises) then and in such event the LESSEE shall be responsible for filing with LESSOR all necessary information and data required by LESSOR in determining the additional rent payable to LESSOR by reason of any such sub-rental or sub-lease by LESSEE.

**SECTION 5.08. UTILITIES:** LESSEE shall pay all charges for electricity, gas, heat, air cooling, telephone, water, and other utility services provided or used on the leased premises, during the lease term. LESSOR shall cause necessary meters to be installed so as to determine the amount of power, gas, water or other utilities used by LESSEE. In the event LESSOR, for any reason, should pay any of said utilities, LESSOR shall cause a separate statement to be furnished to LESSEE, indicating the amount paid by LESSOR for such power, gas, water or other utilities and LESSEE shall pay the same to LESSOR within ten (10) days after receipt of said statement.

(a) LESSEE shall determine the availability of and shall, at LESSEE'S sole cost and expense, cause to be installed in, on, or about the leased premises all facilities necessary to supply all sewage, gas, electricity, telephone, and other like services required in LESSEE'S operations, and during the lease term, LESSEE agrees to pay all charges and expenses in connection therewith. LESSEE shall not enter into any contract or agreement with any city, county, or other governmental agency or public utility with reference to sewer lines or connections, water lines or connections, street improvements, including but not limited to curbs, gutters, street lighting, or utility connections, lines, or easements, without the prior written consent of LESSOR.

**SECTION 5.09. LESSEE TO PAY ALL TAXES:** In addition to the rental hereinabove provided to be paid, LESSEE further covenants and agrees to pay and discharge all taxes and assessments, of any name, nature and kind whatsoever, which may be fixed, charged, levied, assessed, or otherwise imposed upon the leased premises or upon the leasehold interest of LESSEE therein, and upon any possessory right which LESSEE may have in or to the leased premises, and upon all of LESSEE'S personal property, fixtures, and any and all other property owned, used or placed by LESSEE in, on, or about the leased premises, including, among other things, LESSEE'S equipment, machinery, inventory, supplies, merchandise and the like. LESSEE shall exhibit or deliver to LESSOR, as and when required so to do, copies of receipts showing the payment of the aforesaid taxes, assessments, and levies.

(a) LESSEE shall protect and hold harmless LESSOR and the leased premises and all improvements in, on, or about the same from all liability for any and all such taxes, assessments, and charges, together with any interest, penalties, or other sums thereby imposed, and from any sales or other proceeding to enforce payment thereof.

(b) During the Lease term, LESSEE shall cause all taxes, assessments, and other charges levied upon or imposed upon any personal property and building situated in, on, or about the leased premises to be levied or assessed separately from the leased premises and not as a lien thereon.

ARTICLE VI

REPAIRS, ALTERATIONS, AND IMPROVEMENTS

**SECTION 6.01. LESSOR'S OBLIGATIONS:** LESSOR shall keep in good order, condition and repair the exterior walls (except for the interior faces), and the roof of the LESSOR'S Boat Repair and Boat Construction building except for any damage caused by any negligent act or omission of LESSEE or its employees, agents, customers, or contractors. LESSOR shall not be obligated to make any repairs until after the expiration of ten (10) days written notice from LESSEE to LESSOR stating the need for repairs.

**SECTION 6.02. LESSEE'S OBLIGATIONS:**

(a) LESSEE shall keep and maintain in good order, condition, and repair, the fixtures, interior walls, floors, ceilings, and facilities that are within the LESSOR'S Boat Repair and Boat Construction building, including without limitation, all plumbing and sewage facilities, and all interior building appliances and similar equipment.

(b) LESSOR has heretofore authorized LESSEE to re-paint the Syncrolift at a cost not to exceed \$8,118.07. LESSEE has agreed to forthwith proceed to complete the re-painting of said Syncrolift. At the end of five (5) years following the completion of the re-painting of said Syncrolift, and if it is then mutually agreed between LESSOR and LESSEE that the re-painting was successful (recognizing that a reasonable amount of paint is expected to be lost or worn off during the five year period) then LESSEE shall further keep and maintain in good order, condition and repair the Syncrolift equipment and facilities, at LESSEE'S cost and in accordance with the manual and instructions pertaining thereto as have been previously furnished to LESSEE by LESSOR.

If LESSOR deems any repairs required to be made by LESSEE necessary, it may demand that LESSEE make them immediately, and if LESSEE refuses or neglects to commence such repairs and to complete them within reasonable dispatch, LESSOR may make or cause such repairs to be made. If LESSOR makes or causes repairs to be made, LESSOR shall not be responsible to LESSEE for any loss or damage that may occur to LESSEE'S property or business by reason of the repair work, and LESSEE shall, on demand, immediately pay to LESSOR the cost of the repairs, together with interest at ten percent (10%) per annum.

(c) Without first obtaining LESSOR'S consent, LESSEE, its employees, agents, licensees, or contractors shall not make or install any alterations, improvements, additions, or fixtures that affect the exterior of the Premises or any structural, mechanical, or electrical component of the Premises.

(d) All alterations, improvements, additions, or fixtures, other than trade fixtures not permanently affixed to realty, that may be made or installed upon the Premises by either of the parties and that in any manner are attached to the floors, walls, or ceilings, shall be the property of the LESSOR, and, at the termination of this Lease shall remain upon and be surrendered with the Premises as a part of the Premises, without disturbance, molestation, or injury. Any floor covering that may be cemented or otherwise affixed to the floor of the Premises shall be and become the property of LESSOR.

(e) LESSEE shall pay, when due, all sums of money that may become due or purportedly due for any labor, services, materials, supplies, or equipment alleged to have been furnished or to be furnished to or for LESSEE in, at, or about the Premises.

(f) LESSEE shall, at its own cost and expense, promptly and properly observe, comply with, and execute (but not to the extent of making structural or extraordinary repairs, improvements, and alterations not arising out of the use and occupation of the Premises by LESSEE), all present and future orders, regulations, directions, rules, laws, ordinances, and requirements of all governmental authorities (including, but not limited to, State, Municipal, County and Federal Governments and their departments, bureaus, boards, and officials), and the Board of Fire Underwriters, and any other board or organization exercising similar functions, arising from the use or occupancy of, or applicable to the Premises, or privileges appurtenant to, or connected with the enjoyment of the Premises. LESSEE shall have the right to contest or review, by legal procedure or in any such manner as LESSEE may deem suitable, at its own expense, any such order, regulation, direction, rule, law, ordinance, or requirement and if able, may have the same canceled, removed, revoked, or modified, provided that LESSOR is not subjected to a criminal prosecution, and that LESSOR'S title to the Premises is not subjected to forfeiture, and LESSEE hereby agrees to indemnify and hold LESSOR harmless from and against any civil liability as a result of any such contest or review. Any such proceeding shall be conducted promptly and shall include, if LESSEE so decides appropriate, appeals. Whenever requirements become absolute after a contest, LESSEE shall diligently comply with the same or so much thereof as shall have been judicially sustained.

**SECTION 6.03. EXEMPTION OF LESSOR FROM LIABILITY:** LESSOR shall not be liable to LESSEE or to any other person whatsoever for any damage occasioned by plumbing, gas, water, steam, sprinkler, or other pipe and sewage system, or by the bursting, running, or leaking of any tank, or other pipes, in or about the Premises or the building of which they are a part, or for any damage occasioned by water being upon or coming through the roof, vent, or otherwise, or for any damage arising from any acts or neglect of other occupants of adjacent property, or the public. LESSOR shall not be liable in damages or otherwise for any failure to furnish, or any interruption of service of any water, gas, electricity, heated water, steam, or chilled water, caused by fire, accident, riot, strike, labor disputes, acts of God, the making of any repairs or improvements, or other causes beyond the control of LESSOR.

**SECTION 6.04. INDEMNIFICATION BY LESSEE:** LESSEE agrees to indemnify and save LESSOR harmless from and against any and all claims arising from any act, omission, or negligence of LESSEE, or its contractors, licensees, agents, servants, or employees, or arising from any accident, injury or damage whatsoever caused to any person or property occurring in, on, or about the leased Premises or any part of them, and any loading area used by LESSEE, and from and against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon.

## ARTICLE VII

### DAMAGE OR DESTRUCTION

**SECTION 7.01. LESSOR'S OBLIGATION TO REPAIR OR REBUILD:** In case the leased Premises shall be partially or totally destroyed by fire or other casualty insurable under full standard extended risk insurance so as to become partially or totally untenable, the same shall be repaired or rebuilt as speedily as possible at the expense of LESSOR, unless LESSOR shall elect not to repair or rebuild, and, should there be a substantial interference with LESSEE'S business, a just and proportionate part of the fixed rent shall be abated until the Premises

are repaired or rebuilt. If LESSOR elects to repair or rebuild the building, LESSOR shall, within thirty (30) days after such damage or destruction, give LESSEE notice of LESSOR'S intention to make the repairs or to rebuild. Unless LESSOR elects to terminate this Lease, the Lease shall remain in full force and effect and the parties waive the provisions of any law to the contrary.

#### ARTICLE VIII

##### MECHANIC'S LIENS

##### SECTION 8.01. PROHIBITION AGAINST MECHANICS' LIENS - INDEMNIFICATION OF LESSOR:

LESSEE shall not suffer or permit to be enforced against the leased premises, or any part thereof, any mechanic's, materialman's, contractor's, or subcontractor's liens arising from, or any claim or damage growing out of, the work of any construction, repair, restoration, replacement, or improvement, or any other claim or demand howsoever the same may arise, but LESSEE shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same, and LESSEE agrees to indemnify and hold LESSOR and the leased premises free and harmless from all liability for any and all such liens, claims, and demands, together with reasonable attorney's fees and all costs and expenses in connection therewith.

(a) Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of LESSOR, expressed or implied, by interference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the leased premises, any buildings or improvements thereof, or any part thereof.

#### ARTICLE IX

##### INSURANCE AND INDEMNIFICATION

SECTION 9.01. LESSEE'S COMPREHENSIVE LIABILITY INSURANCE: During the lease term, LESSEE shall, at its own cost and expense, maintain in full force and effect a policy or policies of comprehensive public liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of California, that will insure LESSEE and LESSEE'S agents and employees against liability for injury to persons and property and for death of any person or persons occurring in or about the leased area and premises or connected with LESSEE'S operations or business conducted thereon. The coverage under such insurance shall not be less than \$100,000.00 for any one person injured or killed, not less than \$300,000.00 for any one accident, and not less than \$100,000.00 for property damage. The insurance provided for in this paragraph may be covered by general policies covering all of LESSEE'S businesses and operations. LESSEE shall provide LESSOR with copies or certificates of all such policies, including in each instance an endorsement providing that such insurance shall not be canceled except after ten (10) days' written notice to LESSOR.

SECTION 9.02. WORKER'S COMPENSATION INSURANCE: LESSEE shall maintain in full force and effect during the term of this Lease, Worker's Compensation Insurance and other employee insurance consistent with good business practices with respect to LESSEE'S employees. Evidence of such insurance coverage shall be filed with LESSOR from time to time as requested.

**SECTION 9.03. INSURANCE ON PERSONAL PROPERTY, FACILITY AND EQUIPMENT, INC.:**

During the lease term, LESSEE shall maintain in full force and effect on LESSEE'S motor vehicles, mobile equipment, machinery, equipment, personal property and supplies a policy or policies of fire insurance with standard extended coverage endorsement, to the extent of at least eighty percent (80%) of their insurable value. As long as this lease is in effect, the proceeds from any such policy shall be used for the repair or replacement of the equipment, etc. so insured. LESSOR shall have no interest in the insurance upon LESSEE'S personal property, equipment and facilities or in the proceeds from any such insurance.

LESSOR'S officers, agents and employees including members of the Board of Harbor Commissioners of the CRESCENT CITY HARBOR DISTRICT shall be free from any and all liability or liabilities and claims for damages or suits for or by reason of any death or injury to any person or persons or damages to property of any kind whatsoever, whether the person or property of LESSEE, its agents or employees, licensees, customers, contractors, or third persons, from any cause or causes whatsoever (except as caused by the intentional act of LESSOR or its officers, agents or employees), while in or upon said leased area and premises or any part thereof, during the term of this Lease or occasioned by an occupancy or use of said area and premises or any activity or business carried on by LESSEE; and LESSEE hereby covenants and agrees to indemnify and to hold harmless the LESSOR, its officers, agents and employees, from all liabilities, charges, expenses, attorney fees, and costs on account of or by reason of any such death or injury to any person or persons, or damage to any property, or injuries, liabilities, claims, suits, or losses of any kind arising in any manner by reason of LESSEE'S use, occupancy or enjoyment of the leased area and premises or any part thereof, or from LESSEE'S business or operations conducted thereon, or any other activities of LESSEE connected therewith.

(a) LESSOR shall not be liable to LESSEE or to any other person whomsoever for any damage occasioned by the bursting, exploding or leaking of any vessel tank, or pipe or chamber in or about the leased area and premises or the LESSEE'S equipment or facilities, or for any damage arising from any acts or neglect of the public or other tenants, users, fishermen, or occupants of the CRESCENT CITY HARBOR DISTRICT area and property. LESSOR shall not be liable in damages or otherwise for any failure to furnish, or any interruption of service of, any water, gas, or other utility services, or damage caused by fire, flood, rising water, tidal wave, tsunami, accident, riot, strike, labor disputes, acts of God, or other acts, events, causes or conditions beyond the control of LESSOR.

In that connection, LESSEE expressly represents and agrees that LESSEE has thoroughly inspected and examined the site and area to be leased, used and occupied by LESSEE, and all risk of loss or damage to LESSEE'S equipment, machinery, personal property, supplies, and the like, shall be assumed by LESSEE.

ARTICLE X

PROHIBITION AGAINST ASSIGNMENT,  
SUBLETTING AND ENCUMBERING

**SECTION 10.01. ASSIGNMENT AND SUBLETTING:** LESSEE shall not transfer, encumber, or assign this Lease, or any interest therein, and shall not sublet the said leased premises or any part thereof, or any part of the building on the leased premises, or any right or privilege appurtenant thereto, or mortgage, or hypothecate this Lease, or any interest in this Lease, without the written consent of LESSOR first in hand and obtained, and a consent to one assignment, subletting, occupation, mortgage, hypothecation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, mortgage, hypothecation, or use by another person. Any such assignment or subletting or mortgage or hypothecation without such written consent of LESSOR shall be void, and shall, at the option of LESSOR, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of LESSOR. Any transfer of this Lease from LESSEE by merger, consolidation, or liquidation shall constitute an assignment for purposes of this Lease.

(a) LESSEE immediately and irrevocably assigns to LESSOR, as security for LESSEE'S obligations under this Lease, all rent from any subletting of all or a part of the leased premises as permitted by this Lease, and LESSOR, as assignee and as attorney-in-fact for LESSEE, or a receiver for LESSEE appointed on LESSOR'S application, may collect such rent and apply it toward LESSEE'S obligations under this Lease; except that, until the occurrence of an act of default by LESSEE, LESSEE shall have the right to collect such rent.

**SECTION 10.02. INVOLUNTARY ASSIGNMENT:** No interest of LESSEE in this Lease shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment:

(a) If LESSEE is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which LESSEE is the bankrupt; or, if LESSEE is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(b) If a writ of attachment or execution is levied on this Lease;

(c) If, in any proceeding or action to which LESSEE is a party, a receiver is appointed with authority to take possession of the leased premises.

An involuntary assignment shall constitute a default by LESSEE and LESSOR shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of LESSEE.

**SECTION 10.03. WRITTEN ASSUMPTION AGREEMENT:** In the event that LESSOR gives consent and approval to any transfer or assignment, then before such transfer or assignment becomes effective for any purpose, the transferees and assignees must, in writing, assume all the obligations of this Lease and agree to be bound by all terms of the Lease without in any way limiting, releasing, or discharging the original LESSEE from any liability under any provision of this Lease on account of such transfer or assignment.

**ARTICLE XI**

**DEFAULT OF LESSEE**

**SECTION 11.01. INSOLVENCY OF LESSEE:**

(a) This Lease shall be deemed repudiated and breached by LESSEE if, during the term of this Lease:

(1) A petition to have LESSEE adjudicated a bankrupt of a petition for reorganization or arrangement under any of the laws of the United States relating to bankruptcy be filed by LESSEE, or be filed against LESSEE, and if so filed against LESSEE not be dismissed within thirty (30) days from the date of such filing;

(2) The assets of LESSEE or the business conducted by LESSEE on the leased property be assumed by any Trustee or other person pursuant to any judicial proceedings;

(3) LESSEE becomes insolvent or makes an assignment for the benefit of creditors;

(4) LESSEE commits any act of bankruptcy; or

(5) LESSEE or any corporate assignee or successor in interest of LESSEE commences proceedings for winding up or dissolution.

(b) LESSEE agrees that the LESSOR may at its election terminate this Lease in the event of the occurrence of any of the contingencies hereinabove described by giving not less than ten (10) days written notice to LESSEE, and when so terminated, the LESSOR may re-enter the leased property, and the leasehold interest created by this Lease shall not be treated as an asset of LESSEE'S estate. It is further expressly understood and agreed that the LESSOR shall be entitled upon such re-entry, notwithstanding any other provisions of this Lease, to exercise such rights and remedies and to recover from LESSEE damages for loss resulting from any such breach.

**SECTION 11.02. DEFAULT OF LESSEE:** The LESSOR may, at its option and without limiting LESSOR in the exercise of any other right or remedy the LESSOR may have on account of a default or breach by LESSEE, exercise the rights and remedies specified in SECTION 11.03, if:



(1) The LESSEE defaults in the payment of any money agreed to be paid by LESSEE to the LESSOR for rent or to be paid by LESSEE for taxes and utilities or for any other purpose under this Lease, and if such default continues for ten (10) days after written notice by the LESSOR to the LESSEE;

(2) The LESSEE abandons the leased property for a period of sixty (60) days (a period of thirty (30) days absence while the LESSEE shall be in default in payment of rent shall be deemed an abandonment);

(3) The LESSEE defaults in the performance of any other of its agreements, conditions, or covenants under this Lease and such default continues for thirty (30) days, plus such period of delay as LESSEE may encounter in the performance of its agreements by reason of matters beyond the control of the LESSEE.

**SECTION 11.03. REMEDIES ON DEFAULT:** On any breach, default, or abandonment, the LESSOR may exercise any of the following rights after the period of times stated in the foregoing SECTION 11.02:

(1) Immediately re-enter and remove all persons and property from the leased property, storing the personal property of LESSEE in a public warehouse or elsewhere at the cost of, or the account of, and at the risk of the LESSEE. In the event of any such re-entry by the LESSOR, the building constructed by LESSEE on the leased premises shall, at LESSOR'S option become vested solely in LESSOR and LESSOR may make any repairs, additions, or improvements in, to or upon the leased property which may be necessary or convenient. No such re-entry or taking of possession of the leased premises by the LESSOR shall be construed as an election on the LESSOR'S part to terminate this Lease unless a written notice of such intention is given by the LESSOR to the LESSEE.

(2) To collect by suit or otherwise each installment of rent or other sum as it becomes due hereunder, or to enforce, by suit or otherwise, any other term or provision hereof on the part of the LESSEE required to be kept or performed, it being specifically agreed that all unpaid installments of rent or other sums shall bear interest at the highest legal rate from the due date thereof until paid.

(3) Terminate this Lease, in which event the LESSEE agrees to immediately surrender possession of the leased premises, and to pay to the LESSOR, in addition to any other remedy the LESSOR may have, all damages LESSOR may incur by reason of LESSEE'S defaults, including the cost of recovering the leased premises, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable value of the leased premises for the remainder of the stated term.

**SECTION 11.04. LESSOR'S OPTION TO TERMINATE OR RE-LEASE:**

(a) In the event the LESSOR elects to re-enter, or should the LESSOR take possession pursuant to legal proceedings or pursuant to the notice provided for by law, the LESSOR may either terminate this Lease, or re-lease said leased premises, or any part

thereof, for, and on account of the LESSEE, either in the LESSOR'S name or otherwise, upon such terms and conditions and for such period (whether longer than the balance of the term hereof or not) as the LESSOR may deem advisable, either with or without any equipment or fixtures that may be situated therein or thereon.

(b) The rents received on any such re-leasing during the balance of the term of this Lease or any part thereof shall be applied first to the expenses of re-leasing and collecting, including necessary repairs, renovation and alteration of the leased premises and reasonable attorney's fees, and, thereafter, toward payment of all sums due or to become due to the LESSOR hereunder.

(c) If a sufficient sum shall not be thus realized to pay such rent and other charges, the LESSEE shall pay to the LESSOR semi-annually any deficiency, and the LESSOR may sue therefor as each semi-annual deficiency shall arise.

**SECTION 11.05. NO WAIVER OF DEFAULT:** The LESSOR'S failure to take advantage of any default or breach of covenant or agreement on the part of LESSEE shall not be, or be construed as a waiver thereof, nor shall any custom or practice which may be established between the parties hereto in the course of administering this Lease be construed to waive or to lessen the right of the LESSOR to insist upon the performance by LESSEES of any term, covenant, or condition hereof, or to exercise any rights given LESSEE on account of any such default. A waiver of a particular breach, or default, shall not be deemed to be a waiver of any term, covenant, or condition of this Lease.

**SECTION 11.06. INTEREST ON UNPAID RENT:** Rent not paid when due shall bear interest at the rate of Ten percent (10%) per annum from the date due until paid.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

**SECTION 12.01. WAIVER OF STATUTE OF LIMITATIONS BY LESSEE:** The LESSEE does further waive the benefit of any statute of limitations to which LESSEE might be entitled.

**SECTION 12.02. REMEDIES CUMULATIVE:** The rights, powers, elections, and remedies of the LESSOR contained in this Lease shall be construed as cumulative and no one of them is or shall be considered exclusive of the other or exclusive of any rights or remedies allowed by law, and the exercise of one or more rights, powers, elections, or remedies shall not impair the LESSOR'S right to exercise the other.

**SECTION 12.03. SURRENDER OF POSSESSION:** Upon the expiration of the term of this Lease or any earlier termination thereof, LESSEE shall surrender to LESSOR possession of the leased premises.

**SECTION 12.04. REMOVAL OF LESSEE'S PERSONAL PROPERTY:** If LESSEE shall not then be in default under any of the covenants and conditions hereof, LESSEE may remove or cause to be removed all movable trade fixtures, machinery, building, equipment and other personal

property placed or installed on LESSOR'S premises. Any of said personal property that is not removed from said premises within sixty (60) days after the date of any termination of this Lease therein-after shall belong to LESSOR without the payment of any consideration.

**SECTION 12.05. AFFIRMATIVE DUTY TO PROTECT ENVIRONMENT:** In addition to all other duties and obligations imposed upon LESSEE by this Lease with respect to care and maintenance of the leased premises, and the conduct of LESSEE'S business thereon, LESSEE, by signing this LEASE AGREEMENT further expressly covenants and agrees to comply with all applicable provisions of and amendments to:

- (1) The National Environmental Policy Act of 1969;
- (2) The Air Quality Act of 1967;
- (3) The California Porter-Cologne Act (California Water Code Section 13000-13951); and
- (4) The California Environmental Quality Act of 1970.

**SECTION 12.06. NONDISCRIMINATION AND AFFIRMATIVE ACTION:**

(a) LESSEE covenants and agrees for itself and for its successors and assigns, that in the use and occupancy of the leased property it shall not enter into any agreement which would restrict the leased property, or any part thereof, or the leasehold interest therein, upon the basis of race, religion, color, sex, creed, national origin, or ancestry in the use and occupancy of the leased property.

(b) LESSEE further covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, sex, creed, national origin, or ancestry in the use, occupancy, tenure, or enjoyment of the leased property; nor in the operation of LESSEE'S business thereon; nor shall the LESSEE itself or any person claiming under or through the LESSEE, establish or permit any such practice or practices of discrimination or segregation with reference to the selection of LESSEE'S employees with respect to the use, occupancy and enjoyment of the leased property, or in the conduct and operation of LESSEE'S business on the leased property.

(c) LESSEE further covenants and agrees to take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin.

(d) LESSEE further agrees that the leased property shall be open, to the extent the leased property is open to the public, to all persons without discrimination on the basis of race, color, sex, creed, or national origin, and there shall be no discrimination in public access and use of the leased property.

**SECTION 12.07. APPOINTMENT OF ARBITRATORS:** Any question, dispute, controversy, or misunderstanding arising under or in connection with this lease, other than disputes with respect to the payment of rent, and in the event the LESSOR and the LESSEES cannot agree, then such

question, dispute, controversy, or misunderstanding, shall be determined by three arbitrators to be appointed for the purposes as follows:

(a) Within five (5) days after notice by either party to the other requesting arbitration, one arbitrator shall be appointed by each party. Notice of such appointment, when made, shall be given by each party to the other.

(b) The two arbitrators shall forthwith choose a third arbitrator to act with them. If they fail to select a third arbitrator within ten (10) days of their appointment, upon application by either party the third arbitrator shall be promptly appointed by the then presiding Judge of the Superior Court of the State of California, in and for the County of Del Norte, acting in his individual and not official capacity. The party making such application to such Judge shall give the other party to this Lease five (5) days notice of his application.

(c) The arbitrators shall proceed with due dispatch. The decision of any two of the three arbitrators shall be binding, final, and conclusive on the parties to this Lease. Such decision shall be in writing and delivered to the parties, and shall be in such form that a judgment may be entered on the decision in the Superior Court of the State of California, in and for the County of Del Norte.

(d) If either party fails to appoint an arbitrator as provided by this SECTION 12.07, then such arbitrator not so appointed shall be appointed as provided in subsection (b) hereof.

(e) The expense of any such arbitration shall be borne as the arbitrators direct.

(f) In the event the subject matter of the arbitration involves any payments by LESSEE then such payments shall be paid by LESSEE when due but LESSEE shall have the right to have such dispute or question resolved by arbitration pursuant to the foregoing provisions of this SECTION 12.07.

(g) LESSOR does not waive any legal immunities granted to it by law and nothing herein to the contrary shall be so construed.

**SECTION 12.08. LESSOR'S ACCESS:** The duly authorized officers or representatives of LESSOR shall have the right to enter the leased area and premises at all reasonable hours, and in emergencies at all times,

- (1) to inspect the area and premises;
- (2) for any other lawful purpose.

**SECTION 12.09. CONDITIONS AND COVENANTS:** All of the provisions of this Lease shall be deemed as running with the land and construed to be "conditions" as well as "covenants" as though the words specifically, expressly or imparting covenants and conditions were used in each separate provision.

**SECTION 12.10. NO WAIVER OF BREACH:** No failure by either LESSOR or LESSEE to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term

or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

**SECTION 12.11. TIME OF ESSENCE:** Time is of the essence of this Lease, and each provision.

**SECTION 12.12. COMPUTATION OF TIME:** The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday, and then it is also excluded. The term "holiday" shall mean all holidays specified in the Government Code of the State of California.

**SECTION 12.13. NOTICES:** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Lease by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by Certified Mail, Return Receipt Requested, postage prepaid, and addressed as follows:

To LESSEE, addressed to the last known post office address of LESSEE or to the premises;

To LESSOR, addressed to LESSOR, at P.O. Box 606, Crescent City, California 95531; or to such other place as LESSOR may from time to time designate by notice to LESSEE.

**SECTION 12.14. AGENT FOR SERVICE OF PROCESS:** It is expressly agreed and understood that if LESSEE is not a resident of this State, or is an association or partnership without a member or partner resident of this State, or is a foreign corporation, then in any such event LESSEE shall file with LESSOR a designation of a natural person residing in the County of Del Norte, State of California, giving his name, residence and business address as his or its agent for the purpose of service of process in any court action between him or it and LESSOR arising out of or based upon this Lease, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such LESSEE, and it is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event LESSEE may be personally served with such process out of this State, and that such service will constitute valid service upon such LESSEE; and it is further expressly agreed that LESSEE is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

**SECTION 12.15. WAIVER OF CLAIMS:** LESSEE hereby waives any claim against the LESSOR, the State and their officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Lease, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Lease null, void or voidable, or delaying the same, or any part thereof, from being carried out.

**SECTION 12.16. SUCCESSORS IN INTEREST:** Each and all of the covenants, conditions and restrictions in this Lease shall inure to the benefit of and shall be binding upon LESSOR and LESSEE and the successors in interest of LESSOR, and subject to the restrictions of SECTIONS 10.01 and 10.02, the authorized assignees, transferees, subtenants, licensees, and other successors in interest of LESSEE.

**SECTION 12.17. ENTIRE AGREEMENT:** This Lease contains the entire agreement of the parties hereto with respect to the matters covered by this Lease, and no other agreement, statement, or promise made by any party, or to any employee, officer, or agent or representative of any part, which is not contained in this Lease shall be binding or valid.

**SECTION 12.18. PARTIAL INVALIDITY:** If any term, covenant, condition, or provision of this Lease is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

**SECTION 12.19. RELATIONSHIP OF THE LESSOR AND LESSEE:** Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between the LESSOR and the LESSEE, and neither the method of computation of rent nor any other provision contained in this Lease nor any acts of the parties shall be deemed to create any relationship between the LESSOR and LESSEE, other than the relationship of LESSOR and LESSEE.

**SECTION 12.20. INTERPRETATION AND DEFINITIONS:**

(a) The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against LESSOR or LESSEE. Unless otherwise provided in this Lease, or unless the context otherwise requires, the following definitions and rules of construction shall apply to this Lease.

(b) Number and Gender - In this Lease the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the word "person" includes corporation, partnership, firm, or association wherever the context so requires.

(c) Mandatory and Permissive - "Shall", "will", and "agrees" are mandatory; "may" is permissive.

(d) Captions - Captions of the Paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Lease.

(e) Term Includes Extensions - All references to the term of this Lease or the Lease Term shall include any extensions of such Term.

(f) Parties - Parties shall include the LESSOR and LESSEE named in this Lease.

(g) Sublessee - As used herein, the word "sublessee" shall mean and include in addition to a sublessee and subtenant, a licensee, concessionaire, or other occupant or user of any portion of the leased premises or buildings or improvements thereon.

**SECTION 12.21. ATTORNEY'S FEES:** In the event of the bringing of any action by either party hereto as against the other hereon or hereunder, or by reason of the breach of any covenant or condition on the part of the other party, or arising out of this Lease, then and in that event

the party in whose favor final judgment shall be entered shall be entitled to have and recover of and from the other reasonable attorney's fees to be fixed by the Court wherein such Judgment shall be entered.

**SECTION 12.22. MODIFICATION:** This Lease may be modified only by written agreement by the LESSOR and LESSEE.

**SECTION 12.23. HOLDING OVER:** Should LESSEE hold over the leased property after the termination of this Lease, in any manner, such holding over shall be deemed merely a tenancy from month to month and at a rental to be fixed by the LESSOR.

**SECTION 12.24. NOTICE TO LESSEE:** A POSSESSORY INTEREST IS CREATED BY THIS LEASE; SUCH INTEREST MAY BE SUBJECT TO PROPERTY TAXATION; AND YOU AS LESSEE IN WHOM SUCH INTEREST IS VESTED MAY BE SUBJECT TO PAYMENT OR PROPERTY TAXES LEVIED ON SUCH POSSESSORY INTEREST.

**SECTION 12.25. INDEMNITY FOR VIOLATION OF LAW:** LESSEE covenants and agrees to indemnify and save LESSOR harmless from any penalties, damages or charges imposed for any violation of any and all laws, ordinances, and regulations applicable to the use and occupancy of the leased premises whether occasioned by neglect, omission, or willful act of LESSEE or any person upon the leased premises by license or invitation of LESSEE or holding or occupying the same or any part thereof under or by right of LESSEE.

**SECTION 12.26. COUNTERPARTS:** This Lease, consisting of nineteen (19) pages, plus EXHIBIT "A" and EXHIBIT "B", has been executed by the parties in several counterparts, each of which shall be deemed to be an original copy.

**SECTION 12.27. EXECUTION:** This Lease Agreement has been executed by LESSOR and by LESSEE as of the 1st day of January, 1980.

**SECTION 12.28. OPTION TO RENEW LEASE:** LESSEE is hereby granted an option to extend this Lease for a further period of fifteen (15) years from and after the expiration of the original term upon the same terms and conditions as herein contained. Written notice of LESSEE'S intention to extend this Lease shall be given to LESSOR ninety (90) days prior to the expiration of the original term of this Lease.

**LESSOR**

**LESSEE**

CRESCENT CITY HARBOR DISTRICT

FASHION BLACKSMITH, INC.  
A California Corporation

By   
F.E. FINEY, President  
Board of Harbor Commissioners

By   
DALE F. LONG, President

By   
ROY C. ANDERSON, Secretary  
Board of Harbor Commissioners

By   
ROGER C. LONG, Secretary

(SEAL)



**RICHARD B. DAVIS, L.S.**

SURVEYING & AERIAL MAPPING  
CALIFORNIA & OREGON

711 'H' Street, Crescent City, California 95531 (707) 464-4442

May 22, 1975

**PROPERTY DESCRIPTION**

**SMALL BOAT SERVICE FACILITY AREA  
CRESCENT CITY HARBOR DISTRICT**

That real property in the County of Del Norte, State of California, bounded and described as follows:

BEGINNING at a point marked by a 1" steel "T" bar marked "Survey Point - Do Not Distrub - LS 3340," said point being 1068.80 feet South and 587.26 feet West from the centerline intersection of Citizens Dock Road and U.S. Highway 101 in section 28, Township 16 North, Range 1 West, Humboldt Meridian, and running:

- (1) Thence North 33°34' East 169.84 feet;
- (2) Thence South 56°26' East 58.75 feet;
- (3) Thence North 33°34' East 308.22 feet;
- (4) Thence South 46°38'06" East 247.32 feet;
- (5) Thence South 37°53' West 206.72 feet;
- (6) Thence North 56°26' West 60.91 feet;
- (7) Thence South 33°34' West 245 feet, more or less, to Crescent City Harbor;
- (8) Thence North 56°26' West along said Harbor 226.0 feet to a point from which the point of beginning bears North 33°34' East;
- (9) Thence North 33°34' East .15 feet, more or less, to the point of beginning.

CONTAINING 2.42 acres.

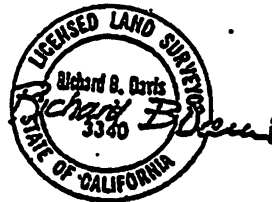


EXHIBIT "A"



**EXTENSION AND MODIFICATION OF  
LEASE AGREEMENT**



**FASHION BLACKSMITH, INC.**

This extension and modification of lease agreement is made by and between Crescent City Harbor District, a public agency (as "Lessor") and Fashion Blacksmith, Inc., a California corporation (hereinafter "Lessee") cognizant of the following:

**RECITALS**

- A. Crescent City Harbor District is a public agency that owns real property located in the County of Del Norte.
- B. Fashion Blacksmith, Inc., is a California corporation doing business in Del Norte County, California.
- C. Lessor and Lessee entered into a lease agreement, dated effective January 1, 1980, for real property described on Exhibit "A" to the lease agreement. Under the terms of the lease, the Lessee was to conduct a boat repair facility on the premises.
- D. The term of the lease was for fifteen (15) years to expire the end of December, 1995. The lease contained an option to renew the lease for another fifteen (15) years.
- E. Rather than have Lessee exercise its option, the parties wish to provide for the extension of the lease on terms as modified herein.

**AGREEMENT**

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

1. Section 4.01 of the lease is hereby amended to provide:

"The lease term is hereby extended for a period of five (5) years through December 31, 2000."

**2. Section 12.28 is hereby modified to read as follows:**

- "(a) Lessee is hereby granted three (3) consecutive options to extend this lease, (each hereinafter referred to as the "option term") for a term of five (5) years each from and after expiration of the extended term set forth in section 4.01 or the prior Option Term, as the case may be, upon the same terms and conditions as contained in this lease except as provided below.**
- (b) To exercise an option, Lessee shall give written notice (hereinafter referred to as the "Option Notice") to Lessor no later than one hundred eighty (180) days before expiration of the prior extended term, or the prior Option Term. If Lessee fails to give the Option Notice, Lessee shall have relinquished and forfeited all further rights under this section to any further options. Termination of the lease shall also result in relinquishing and forfeiting any further rights or options under this section.**
- (c) (1) If Lessee exercises one or more of its options herein, then as of the first day of each new Option Term the fixed minimum annual rent set forth in Section 5.01 (as amended) shall be adjusted to reflect increases in the cost-of-living.**
- (2) The basis for computing the adjustment is the Consumer Price Index, published by the United States Department of Labor, Bureau of Labor Statistics for all urban consumers for the San Francisco-Oakland Bay Area ("Index"), which is published for the month of January 1996 ("Beginning Index"): If the Index published nearest the adjustment date ("Extension Index") has increased over the Beginning Index, the fixed minimum annual rent for the remainder of the Option Term (until the next rent adjustment) shall be set by multiplying the fixed minimum annual rent set forth in Section 5.01 by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. In no case shall the fixed minimum annual rent be less than the fixed minimum annual rent set forth in Section 5.01. On adjustment of the fixed minimum annual rent as provided in this lease, the parties shall immediately execute an amendment to the lease stating the new fixed minimum annual rent at the request of either party. The adjusted fixed minimum annual rent shall be payable in twelve (12) equal monthly installments as provided in Section 5.01.**

**If the Index is changed or the base year differs from that used in January 1996, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised**

during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would have been obtained if the Index had not been discontinued or revised.

3. Section 5.01 is hereby modified to provide that fixed minimum annual rent shall be Eighteen Thousand Dollars (\$18,000) per year, payable in equal fixed installments of One Thousand Five Hundred Dollars (\$1500) per month.
4. Section 5.03 is hereby amended to provide that the percentage rent shall be payable twice yearly beginning on August 1, 1996, for the period January 1, 1996, through June 30, 1996; and on February 1, 1996, for the period July 1, 1996, through December 31, 1996. Thereafter the semi-annual percentage rent payment shall be made on the same dates each year throughout the term and any extensions.
5. Section 12.05 is hereby amended to read as follows:

**"SECTION 12.05. ENVIRONMENTAL PROTECTION:** In addition to any other provision in this lease related to indemnification, insurance, or other matters, Lessee shall be liable to Lessor for any damage whatsoever caused by pollution or leakage or spillage of any fuel, petroleum products, or hazardous materials or waste from any tanks, lines, vehicles or other facilities maintained on the property by Lessee or any of Lessee's permissive users.

Lessee agrees not to allow any fuel, toxic materials, or any fumes or matters that could damage Lessor's property, public waters, or the environment to be released or spilled into the environment. Lessee will hold harmless Lessor, and its agents, from any damages or costs in any way resulting from such spill or release.

Lessee shall not be responsible for any obligation primarily arising from the presence of hazardous materials or contamination that lessee establishes was present prior to Lessee taking possession of the premises or was deposited by agents or agencies that Lessee had no control over.

6. Lessor shall maintain design depth under the Syncrolift platform as specified in the plans entitled "Crescent City Harbor District Small Boat Service Facility, Phase

Two," and Drawing No. S-1016-101, entitled "Pier & Piling Arrangement." The referenced drawings provide that the platform will descend twenty-five (25) feet from an extreme up or "transfer" position.

7. (a) If at any time a vessel with a draft of ten (10) feet, cannot safely navigate the entrance bar and proceed to the Syncrolift at an average half-tide due to channel depth, and such condition is not corrected within sixty (60) days after written notice from Lessee to Lessor, Lessee may terminate the lease on one hundred eighty (180) days written notice to Lessor.
  - (b) Lessee may terminate the lease upon one hundred eighty (180) days written notice to Lessor if (1) the cost of blast grit disposal to Lessee exceeds Lessee's cost of blast grit acquisition; or (2) notwithstanding the previous sentence, Lessee may not terminate under this subsection (b) unless prior to giving such notice of termination Lessee makes a good faith, reasonable determination that other alternatives are not available to make it economical to continue the business in a competitive manner in the marketplace. Without limitation, other alternatives to be explored shall include water jetting and raising rates if the market will bear.
8. (a) Notwithstanding any other provision of this Lease, Lessee shall not be responsible for environmental damages on that portion of the leased premises described herein as the "self-help area." The self-help area is a portion of the leased premises set aside for users of the Harbor District to do work on their own vessels and equipment. Users of the self-help area are generally customers of the Lessee and they use the travel lift; however, the Lessee has no control over such persons' use of the self-help area. Nevertheless, nothing herein shall exempt Lessee from environmental damages caused by activities or negligence of Lessee or its employees or agents.
  - (b) For purposes of this paragraph, the self-help area is that area of the leased premises described as follows:

Beginning at the most easterly end of the gate which is the northwesterly land access to the leased premises, then northerly 40 feet along the present fence line, then 100 feet easterly along the fence to the northeasterly corner of the fence, then southerly along the existing fence for 40 feet, then westerly to point of beginning. Said self-help area consists of approximately 4000 square feet (40' x 100').

9. Except as explicitly modified in this Extension and Modification of Lease Agreement, or as necessarily required by the amendments herein, the original lease between Lessor and Lessee shall remain in full force and effect as amended herein.

10. The effective date of this modification shall be January 1, 1996.

LESSOR  
CRESCENT CITY HARBOR DISTRICT,  
a public agency

Date: 2-2-96

By: David Allen  
DAVID ALLEN, President

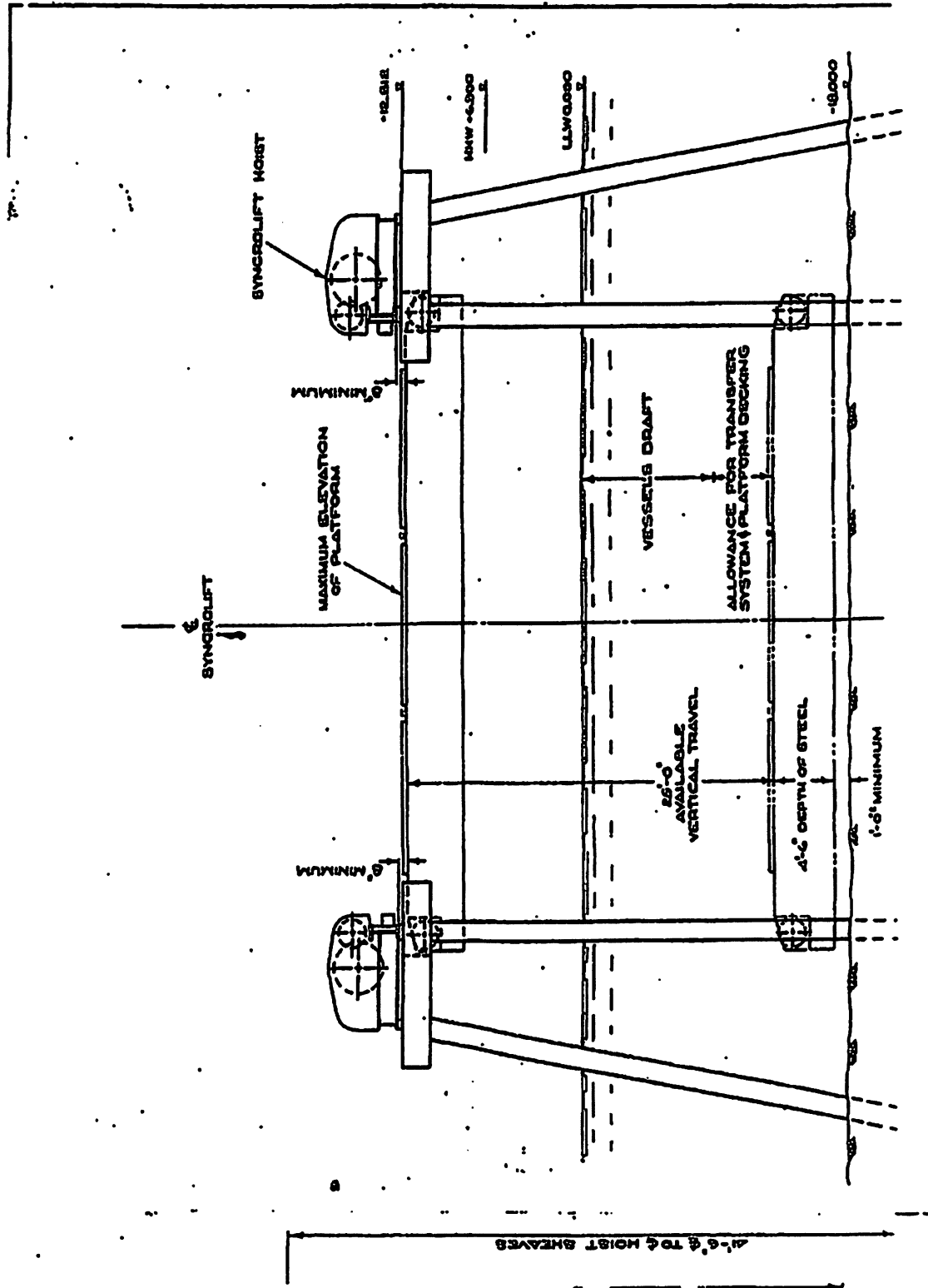
Date: 2-2-96

By: J.M. Chambers  
J.M. "Mike" CHAMBERS, Secretary

LESSEE  
FASHION BLACKSMITH, INC.,  
a California corporation

Date: 12-29-95

By: Dele Long



TRAVEL  
LIFT

**CRESCENT CITY HARBOR DISTRICT'S  
SECOND MODIFICATION OF LEASE AGREEMENT WITH  
FASHION BLACKSMITH, INC.**

This second modification of lease agreement is made by and between the Crescent City Harbor District, a public agency (as "Lessor" or "District"), and Fashion Blacksmith, Inc., a California corporation (hereinafter "Lessee" or "Fashion Blacksmith"), cognizant of the following:

**RECITALS**

A. Crescent City Harbor District is a public agency that owns real property located in the County of Del Norte.

B. Fashion Blacksmith, Inc., is a California corporation doing business in Del Norte County, California.

C. Lessor and Lessee entered into a lease agreement, dated effective January 1, 1980, for real property described on Exhibit "A" to the lease agreement. Under the terms of the lease, the Lessee was to conduct a boat repair facility on the premises.

D. Under a written "Extension and Modification of Lease Agreement," dated December 29, 1995, the lease term was extended through December 31, 2000, and Lessee was granted three (3) options to extend for additional terms of five (5) years each. In paragraph 8(b) of that Extension and Modification, a portion of the leased premises, consisting of approximately four thousand (4,000) square feet, was designated as "the self-help area."

E. Fashion Blacksmith has operated the Harbor District's travel lift to remove boats from the Harbor at the finger piers at the western edge of the leased premises and to transport the vessels to the self-help area. Vessel owners performed maintenance and repairs in the self-help area that could not readily be done while the vessel was still in the water. Users of the self-help area were often customers of Fashion Blacksmith.

F. Fashion Blacksmith no longer wishes to operate the travel lift nor to be responsible for the self-help area.

G. The parties now wish to modify the lease agreement to remove the self-help area from the leased premises and to make new arrangements for operation of the travel lift.

**AGREEMENT**

NOW, THEREFORE, intending to be legally bound, the parties hereby further modify the lease agreement as follows:

1. The self-help area as described in paragraph 8(b) of the "Extension and Modification of Lease Agreement," mentioned above, is hereby deleted from the leased premises as of the effective date of this agreement.

2. The District shall relocate the fence on the northerly edge of the leased premises so that the self-help <sup>area</sup> shall be north of the fence.
3. The District may operate the travel lift on the leased premises throughout the term. Without limitation, District personnel may remove and place vessels into the water at the finger piers and may transport vessels across the leased premises to a gate on the northerly edge of the leased premises where the vessels can be taken to and from the self-help area. The District may continue to store the travel lift on the leased premises at reasonable locations that Fashion Blacksmith may designate, from time to time, so as not to interfere with Fashion Blacksmith's activities.
4. Fashion Blacksmith will provide reasonable advice, upon request, on operation of the travel lift.
5. Harbor District shall name Fashion Blacksmith as an additional insured on the District's liability insurance policy for any activities related to the District's storage or operation of the travel lift on the leased premises.
6. This modification shall be effective on September 15, 1998.
7. Except as expressly provided herein, the lease, as previously modified shall remain in full force and effect.

**LESSOR**  
**CRESCENT CITY HARBOR DISTRICT,**  
a public agency

Date: 7-17-98

By: David Allen  
DAVID ALLEN, President

Date: 9-17-98

By: Beverly R. Noll  
BEVERLY R. NOLL, Secretary

**LESSEE**  
**FASHION BLACKSMITH, INC.,**  
a California corporation

Date: \_\_\_\_\_

By: Dale Long  
DALE LONG, President

Date: \_\_\_\_\_

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



**AMENDMENT TO  
COMMERCIAL LEASE AGREEMENT**

**BY AND BETWEEN**

**CRESCENT CITY HARBOR DISTRICT**  
A Special District of the State of California  
"LANDLORD"

**AND**

**FASHION BLACKSMITH, INC.**  
a California Corporation  
"TENANT"

**Leased Premises:**  
**121 Starfish Way**  
**Crescent City, California 95531**

## RECITALS

This Amendment to the Commercial Lease Agreement between the Crescent City Harbor District (District or Lessor) and Fashion Blacksmith, Inc. (Fashion or Lessee) is made in view of the following facts:

- A. The District and Fashion entered into a Lease Agreement dated January 1, 1980, under which Fashion leased the property owned by the District and described in Exhibit A to that lease for a period of 15 years; and
- B. That Lease Agreement contained a right of Fashion to extend the lease for an additional 15-year period; and
- C. Effective January 1, 1996, the lease was subject to an "Extension and Modification of Lease Agreement," in which the Lease was modified to include a new five-year term, followed by three five-year extension rights, which rights were exercised by Fashion; and
- D. The January 1, 1996, Modification contained additional terms which the parties wish to continue in force and effect; and
- E. By entering into this Amendment, the parties now wish to further extend the Lease and to make additional modifications; wherefore

## IT IS AGREED

1. This Amendment amends but continues in force and effect the original Lease dated January 1, 1980 and the Modification of Lease dated January 1, 1996.
2. Except as modified by this Amendment, the terms of the previous Lease and Modification continue unchanged.
3. Section 4.01 of the original Lease and Section 1 of the Modification are amended to read:

"The Lease term is from January 1, 2016 through December 31, 2020, with three additional options to extend the term by five years each. Any extension must be exercised according to the procedures stated in Section 2 of the January 1, 1996 Modification."
4. Section 5.02, subd. (a) of the Lease is amended to read:

"(a) In addition to the fixed minimum monthly rent required to be paid by Lessee to Lessor, Lessee covenants and agrees to and shall pay to Lessor in the manner and on the conditions and at the time hereinafter set forth, and as percentage rent hereunder, a sum of money in United States dollars equal to four percent (4%) of Lessee's cumulative "gross sales and business transacted" as hereafter defined ("percentage rent")."
5. Subdivisions 5.02(a)(1) and 5.02(a)(2) of the Lease are deleted.
6. The following second paragraph is added to Section 6.01. "Lessor's Obligations":

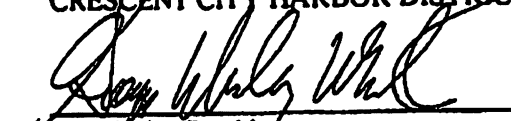
"To assist Lessor in budgeting for the maintenance and repairs called for in this Section, Lessor will set aside in a restricted line item in its annual budget, commencing with the 2016-2017 fiscal year, a sum equal to twenty percent (20%)

of the Lessee's lease payments during the prior fiscal year. These funds shall accumulate and carry forward from year to year until expended. If any funds remain unexpended at termination of the lease from whatever cause, the funds may be transferred to the general fund of the Lessor."

7. Regardless of the date(s) of execution, the effective date of this Amendment is July 1, 2015.

LESSOR  
CRESCENT CITY HARBOR DISTRICT

DATED: July 1, 2015

  
\_\_\_\_\_  
Wes White, President

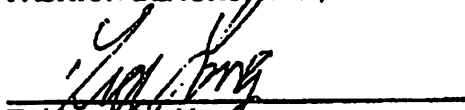
DATED: July 1, 2015

  
\_\_\_\_\_  
Scott R. J. Felger, Secretary

  
\_\_\_\_\_  
APPROVED AS TO FORM

LESSEE  
FASHION BLACKSMITH, INC.

DATED: July 1, 2015

  
\_\_\_\_\_  
Ted Long, President

**ATTACHMENT 8(c)**

**STATE OF CALIFORNIA**  
**COUNTY OF DEL NORTE**  
**ARBITRATION**

**FASHION BLACKSMITH, INC.**

**Claimant,**

**vs.**

**CRESCENT CITY HARBOR DISTRICT,**

**Respondent.**

**Arbitrators:**

**Matthew Vafidis, Esq., Chairperson**  
**Forrest Booth, Esq.**  
**Hon. William Cahill (Ret.)**

**FINAL**  
**ARBITRATION AWARD**

On April 20, 2023, the arbitrators issued the Interim Arbitration Award. Following the submission of supplemental briefing by the Parties, on May 13, 2023, we issued the Amendment to Interim Arbitration Award, which, *inter alia*, permitted further briefing by the Parties regarding the request for attorneys’ fees by Claimant Fashion Blacksmith, Inc. (“Claimant.”) Having received and reviewed all the submissions of the Parties, including the further briefs submitted by Claimant and Crescent City Harbor District (“Respondent”) in accordance with the Amendment, we issue this Final Arbitration Award. This Final Arbitration Award incorporates the Interim Arbitration Award and the Amendment thereto.

I. **Preliminary Matters**

A. **Prevailing Party**

The arbitrators find that the Claimant is the prevailing party in this arbitration. We find that, as prevailing party, Claimant is entitled to recover from Respondent its reasonable costs, including its reasonable attorneys’ fees. Although, as stated in the Interim Arbitration Award, the arbitrators find in favor of Respondent on the Second, Third and Seventh Causes of Action, we do not reduce the Claimant’s entitlement to its costs and fees because of that finding. We find that the Claimant’s attorneys’ fees were necessary and reasonably incurred to put on all of Claimant’s case, and to rebut Respondent’s defenses thereto.

B. Power to Determine Amount of Fees and Costs

As provided in the Scheduling Order dated July 11, 2023, this arbitration is conducted pursuant to Section 12.07 of the Lease, Exh. 3, which provides for the arbitration of “[a]ny question, dispute, controversy, or misunderstanding arising under or in connection with” the Lease “other than disputes with respect to the payment of rent.” Section 12.07(e) of the Lease provides:

“(e) The expense of any such arbitration shall be borne as the arbitrators direct.”

The Parties do not dispute that the arbitrators have the power to award Claimant its costs in connection with the arbitration. Respondent argues, however, that the arbitrators do not have the power to determine the amount of Claimant’s reasonable attorneys’ fees. For this argument, Respondent relies upon Section 12.21, which provides that,

“[i]n the event of the bringing of any action by either party hereto as against the other hereon or hereunder, or by reason of the breach of any covenant or condition on the part of the other party, or arising out of this Lease, then and in that event the party in whose favor final judgment shall be entitled to have and recover of and from the other reasonable attorney’s fees to be fixed by the Court wherein such Judgment shall be entered.”

The arbitrators find that, by its terms, Section 12.21 applies to “an action” and sets forth the Parties’ agreement as to the power of the Court to award attorneys’ fees as part of its judgment in such an action. While the Lease is not entirely clear, especially in a case such as this where the arbitration proceedings were begun by the service of a Complaint, we believe that, on balance, Section 12.21 should not be interpreted as limiting the arbitrators’ powers in arbitration proceedings. Therefore, we find that the Lease provisions do not expressly limit the arbitrators’ power to award attorneys’ fees as part of the “expense of the arbitration”.

We therefore find that the arbitrators have the power to award attorneys’ fees and costs to the Claimant, as the prevailing party in this arbitration.

C. Claimant is Entitled to Interest

We reaffirm our finding that Claimant is entitled to recover interest on the damages awarded in the Interim Arbitration Award.

D. The 998 Offers

Respondent has represented that it served two offers pursuant to section 998 of the California Code of Civil Procedure. Based on Respondent’s representation, the amounts of these 998 offers were less than the damages awarded in the Interim Arbitration Award. They therefore have no bearing on the award of Claimant’s costs and attorneys’ fees.

II. Costs and Attorneys' Fees Award

A. Costs

The Claimant's submission of its costs, in the form of a Memorandum of Costs, does not completely match the figures and explanation set out in Mr. Mavris' Declaration. Moreover, in several instances, the invoices submitted do not total the amounts claimed.

However, based on the submissions of the Parties, the arbitrators find that Claimant is entitled to recover the following amounts in costs:

1.	Arbitrators' Fees	\$ 72,363.28
2.	Fee for Presentation of Exhibits	\$ 9,300.00
4.	Expert Witness costs (attending depositions)	\$ 6,740.00
5.	Deposition Costs	\$ 22,325.52
6.	Expert Witness fees	\$ 22,287.50
7.	Use of Lighthouse Inn	\$ 1,096.03
8.	Food, copying, postage	\$ 814.70
	Total	<b><u>\$ 134,927.03</u></b>

We do not allow the claim for "Jury food and lodging."

The arbitrators' fees are based on the actual invoices submitted; Claimant is entitled to be reimbursed any additional arbitrators' fees it pays.

There is no apparent supporting information for the claim for "witness fees" of \$ 21,237.50.

We disallow the cost of the model of the SynchroLift, since the arbitrators were able to view the Premises and the model was not necessary.

We find that the fees for the costs of Bitcounsel LLC for the presentation of exhibits to be overstated. The arbitrators find that the reasonable amount of these costs to be \$ 9,300.

The claim for court reporter fees is based on Respondent's submission.

B. Attorneys' Fees

The arbitrators have reviewed the submissions of both Parties. The arbitrators find that the hourly rates of Claimant's counsel Mr. Mavris and Mr. Van Hook are reasonable. We find that the time spent by the attorneys from the date of the submission of the Government claim, January 4, 2021, to the close of the arbitration to be reasonable.

We therefore award Claimant its attorneys' fees in the amount of **\$ 418,925.00**.

This amount is derived from the following invoices submitted by Claimant in support of its application for the award of attorneys' fees.

Mr. Mavris

Invoice 11/3/21	\$ 2,000.00
Invoice 12/8/21	\$ 600.00
Invoice 1/3/22	\$ 5,160.00
Invoice 2/6/22	\$ 400.00
Invoice 3/4/22	\$ 1,120.00
Invoice 3/31/22	\$ 3,280.00
Invoice 5/6/22	\$ 1,040.00
Invoice 6/4/22	\$ 720.00
Invoice 7/5/22	\$ 2,600.00
Invoice 7/31/22	\$ 4,960.00
Invoice 9/1/22	\$ 22,760.00
Invoice 10/4/22	\$ 2,120.00
Invoice 11/6/22	\$ 10,640.00
Invoice 12/9/22	\$ 6,920.00
Invoice 1/15/23	\$ 41,760.00
Invoice 4/10/23	<u>\$ 200,520.00</u>
Total	<u>\$ 306,600.00</u>

Mr. Van Hook

Invoice 9/22/21-12/13/21	\$ 4,287.50
Invoice 12/14/21-2/22/22	\$ 1,925.00
Invoice 2/25/22- 5/11/22	\$ 2,275.00
Invoice 6/5/22-9/8/22	\$ 7,262.50
Invoice 9/24/22-2/14/23	\$ 41,125.00
Invoice 2/21/23-3/24/23	<u>\$ 55,450.00</u>
Total	<u>\$ 112,325.00</u>



### III. Conclusion

The Final Arbitration Award is therefore as follows:

As to the First Cause of Action in the First Amended Complaint, for breach of contract, the arbitrators find in favor of Claimant as follows:

- a. The arbitrators award Claimant a total of \$ 1,298,545.00 in damages.
- b. The arbitrators order that, by the end of October 2023, Respondent complete the dredging necessary to maintain the design depth beneath the SynchroLift platform.
- c. The arbitrators find that, if Respondent does not complete the dredging by the end of October 2023 as so ordered, Respondent shall forego, and shall not be entitled to receive, rent otherwise due from Claimant under the Lease from November 1, 2023 until such time as Respondent completes the dredging required under section 6 of the 1996 Amendment.
- d. The arbitrators order that Respondent complete the repairs to the structural elements, wall sidings, gutters and siding on the machine shop no later than September 30, 2023.
- e. The arbitrators find that Respondent shall forego, and shall not be entitled to receive, rent otherwise due from Claimant under the Lease, for a period commencing on January 4, 2021, and continuing until such time as Respondent completes the repairs as specified above. Respondent shall reimburse Claimant for rent Claimant has already paid for this period.
- f. If the dredging is not completed by the end of October 2023 as ordered in para c. above, Claimant can reopen this arbitration and seek further damages for failure to dredge as ordered by this arbitration panel.

As to the Second Cause of Action in the First Amended Complaint, for fraud, the arbitrators find in favor of Respondent.

As to the Third Cause of Action in the First Amended Complaint, for intentional interference with prospective economic advantage, the arbitrators find in favor of Respondent.

As to the Fourth Cause of Action in the First Amended Complaint, for breach of the implied covenant of quiet enjoyment, the arbitrators find in favor of Claimant but decline to award any additional damages.

As to the Fifth Cause of Action in the First Amended Complaint, for nuisance, the arbitrators find in favor of Claimant, but decline to award any additional damages.

As to the Sixth Cause of Action in the First Amended Complaint, for unjust enrichment, the arbitrators find in favor of Claimant, but decline to award any additional damages.

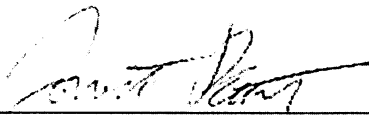
As to the Seventh Cause of Action in the First Amended Complaint, for breach of the covenant of good faith and air dealing, the arbitrators find in favor of Respondent.

Claimant shall be entitled to interest on the sums hereby awarded, from the date hereof until paid, at the rate of 7% per annum.

The arbitrators award Claimant its costs in the amount of \$ 134,927.03 and its attorneys' fees in the amount of \$ 418,925.00.

SO AWARDED.

Dated: June 5, 2023



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Forrest Booth, Esq.

Dated: , 2023

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Hon. William Cahill (Ret.)

Dated: May 31, 2023



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Matthew P. Vafidis,  
Chairperson

SO AWARDED.

Dated: June 5, 2023

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Forrest Booth, Esq.

Dated: 6/6, 2023

William Cahill  
Hon. William Cahill (Ret.)

Dated: May 31, 2023

Matthew P. Vafidis  
Matthew P. Vafidis,  
Chairperson

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FINAL ARBITRATION AWARD

**STATE OF CALIFORNIA**

**COUNTY OF DEL NORTE**

**ARBITRATION**

**FASHION BLACKSMITH, INC.**

**Claimant,**

**vs.**

**CRESCENT CITY HARBOR DISTRICT,**

**Respondent.**

**Arbitrators:**

**Matthew Vafidis, Esq., Chairperson**

**Forrest Booth, Esq.**

**Hon. William Cahill (Ret.)**

**INTERIM**

**ARBITRATION AWARD**

**Introduction**

Fashion Blacksmith, Inc. (“Claimant”) is a California corporation that operates a boat construction and repair business at Crescent City, California. Crescent City Harbor District (“Respondent”) is a public entity that holds title to the Crescent City Harbor.

For over 42 years, Respondent has leased to Claimant a building and small boat facility area at the Crescent City Harbor which consists of 2.42 acres extending from Starfish Way to the water’s edge (“the Premises”).<sup>1</sup> This arbitration involves claims arising under and related to the lease of the Premises, effective as of January 1, 1980, and its subsequent extensions, modifications and amendments (“the Lease”).<sup>2</sup>

The disputes at issue involve the Respondent’s alleged failure to dredge the harbor and failure to maintain the building at the Premises in good repair, the Respondent’s storage of dredge equipment on part of the Premises, the circumstances surrounding Claimant’s June 2020 exercise of its option to renew the Lease, and some alleged additional breaches of the Lease, including a breach of the covenant of quiet enjoyment and covenant of good faith and fair dealing. Respondent disputes the causes of action, the damages alleged and, upon statute of limitations as well as governmental immunity grounds, Claimant’s right to maintain its claims.

<sup>1</sup> See, Lease, Arbitration Exhibit (hereinafter “Exh.”) 3, Exhibit “A” thereto, and Aerial Photo, Exh. 4D.

<sup>2</sup> Exhs. 3, 4A (Extension and Modification dated February 2, 1996), 4B (Second Modification dated September 17, 1988), and 4C (Amendment dated July 1, 2015.)

## **Procedure**

These proceedings were commenced by Claimant's filing, on January 4, 2022, of a Notice of Claim against a Public Entity, as required by the Government Claims Act. Cal. Govt. Code §§ 810 *et seq.*<sup>3</sup> On February 9, 2022, Claimant filed a Complaint in the Superior Court for Del Norte County stating its claims and demanding arbitration under the Lease; that Complaint was amended on September 19, 2022.

Article XII, Section 12.07 of the Lease provides for the arbitration of "[a]ny question, dispute, controversy, or misunderstanding arising under or in connection with" the Lease "other than disputes with respect to payment of rent."

Following the appointment of the undersigned arbitrators, this arbitration was commenced on May 12, 2022. On March 20-23, 2023, after the submission of briefs by the parties, the arbitration hearing took place at Crescent City. At the hearing, 14 witnesses testified, in person or by zoom, a substantial number of documents were received into evidence by the arbitrators, and the arbitrators inspected the Premises.

The Parties entered into two stipulations relating to facts, witnesses and evidence<sup>4</sup>, and, upon the arbitrators' request, on March 30 and April 6, 2023, the Parties submitted additional statements of position regarding specific issues.

## **Findings**

The arbitrators have reviewed and duly considered all the evidence submitted in this matter, and all of the legal arguments made by the Parties. Based on that evidence and the applicable law, we make this Interim Award in favor of the Claimant, on the grounds and according to the findings set forth herein.

### **1. Statute of Limitations under the Government Claims Act**

Although the First Amended Complaint includes claims against Doe Defendants (¶3), the only claims presented at the arbitration are Claimant's claims against Respondent. The arbitrators find that, given that Respondent is a California public entity, Claimant must comply with the provisions of the Government Claims Act; specifically, all claims for money or damages against Respondent must be brought pursuant to the procedure under Cal. Govt. Code §§ 915, requiring a formal claim to be presented to Respondent. Under Government Code section 911.2, Claimant's claims against Respondent in this matter must be presented "not later than one year after the accrual of the cause of action." Under the statute, the date of the accrual of the cause of action is "the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto" were the claims presentation requirement not applied. Cal. Govt. Code §901.

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<sup>3</sup> Exh. 1.

<sup>4</sup> Exh. 2, dated July 29, 2022; Exh. 222, dated March 21, 2023.

Claimant's Notice of Claim dated January 4, 2022<sup>5</sup>, stated claims for breach of contract, fraud, breach of fiduciary duty, nuisance, interference with prospective economic relations, breach of the covenant of good faith and fair dealing, breach of the covenant of quiet enjoyment and unjust enrichment<sup>6</sup>. Claimant gave notice of claims for past and future damages, and punitive damages<sup>7</sup>. Under the circumstances, Claimant's claims are time-barred if and to the extent that they may be deemed to have accrued prior to January 4, 2021. However, Claimant alleges a number of continuing breaches, which, along with equitable tolling, may vitiate the time bar as to them.

## **2. Breach of Contract Claims**

Claimant advances five claims for breaches of the Lease<sup>8</sup>. First, that Respondent has failed to maintain the design depth under the Syncrolift platform in violation of section 6 of the Extension and Modification of the Lease effective January 1, 1996 ("the 1996 Amendment".) Second, that Respondent failed to set aside a sum equal to 20% of Claimant's lease payments in a restricted line item in its budget, as required by section 6 of the Amendment to the Lease dated July 1, 2015 (the "2015 Amendment.") Third, that Respondent has failed to repair the building on the Premises, in violation of section 6.01 of the Lease. Fourth, that Respondent's keeping of dredge equipment on the Premises until March 2022 constituted a breach of the implied covenant of quiet enjoyment in the Lease. Fifth, that the actions of Respondent amounted overall to a breach of the covenant of good faith and fair dealing in the Lease.

### **(a) Failure to Maintain the Design Depth of the Syncrolift**

#### **(i) The Lease Provision at Issue and its Interpretation**

Under the original Lease, executed by Respondent and Claimant as of January 1, 1980 and for an initial 15 year term, Respondent leased the Premises to Claimant "for the purpose of permitting [Claimant] to haul boats from the water, clean, weld, paint and repair, and launch such boats into the water, and for construction and sale of boats and for other purposes consistent therewith." *Lease*, Section 3.01. To "haul boats from the water", Fashion Blacksmith uses a "Syncrolift", a wooden platform that is lowered by hoists to the seabed. After a vessel is positioned over the platform and held in place using blocks, the Syncrolift raises the vessel to the level of the dock, where it can be moved to the building or area outside the building, using rails.

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<sup>5</sup> Respondent replied to the Notice of Claim by letter dated January 14, 2022, contending that the Notice of Claim was deficient and requesting further information as to the details of the allegations and damages sought. But by letter of February 7, 2022 (Exh. 220), Respondent notified Claimant that it had considered the claim and rejected it in its entirety. This suggests that the Notice of Claim disclosed sufficient details of the claim to Respondent. At the arbitration hearing and in its Memorandum re: Defenses Asserted, dated March 30, however, Respondent did not raise any issue as to the sufficiency of the Notice of Claim.

<sup>6</sup> Exh. 1.

<sup>7</sup> The punitive damages claims were withdrawn under the Parties' stipulation dated July 29, 2022, Exh. 2.

<sup>8</sup> These are set forth in the First and Seventh Causes of Action in the First Amended Complaint.

Section 6 of the 1996 Amendment, which extended the Lease through December 31, 2000, provides:

“Lessor [Respondent] shall maintain design depth under the Syncrolift platform as specified in the plans entitled “Crescent City Harbor District Small Boat Service Facility, Phase Two,” and Drawing No. S-1016-101, entitled “Pier & Piling Arrangement.” The referenced drawings provide that the platform will descend twenty-five (25) feet from an extreme up or “transfer” position.”

The 1996 Amendment attached a plan of the Syncrolift showing a distance of 18 feet from the low water line at the dock to the seabed. The plan shows a difference of almost 7 feet from the higher high-water to the lower low water lines.

The Parties disagree as to the meaning of section 6. Claimant contends that section 6 mandates that the Respondent do whatever is necessary to maintain an 18-foot design depth of the harbor beneath the Syncrolift, to allow 25 feet of vertical travel *i.e.*, by dredging the area of the harbor at issue or by some other procedure. Respondent contends that “maintain” in section 6 should be interpreted only as prohibiting the Respondent from interfering with Claimant’s “quiet use and enjoyment” of the Syncrolift, but not as requiring dredging.<sup>9</sup> Both sides introduced extrinsic evidence that they considered relevant to this issue of interpretation.

The arbitrators find that section 6 is clear, explicit and unambiguous. The arbitrators conclude that the plain meaning of the language used in section 6 of the 1996 Amendment is that Respondent is contractually bound to conduct whatever operations are required to maintain that the area of the harbor under the Syncrolift platform has a water depth of at least 18 feet<sup>10</sup>. In this case, the evidence showed that maintenance of the design depth of the Syncrolift effectively requires dredging in that area of the harbor. Given that the intent of the Lease was expressed as including “for the purpose of permitting [Claimant] to haul boats from the water ... and launch such boats into the water”, this interpretation is consistent with the Lease as a whole.

The arbitrators find that the interpretation offered by Respondent is unreasonable.

The extrinsic evidence offered by the Parties confirms that the Parties understood that the Respondent was contractually bound to dredge the area under the Syncrolift platform, as needed, and in fact did so for many years. But given our conclusion that the language of section 6 is unambiguous, it is not necessary for the arbitrators to consider that extrinsic evidence.

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<sup>9</sup> See, p. 11 of Respondent’s Arbitration Brief.

<sup>10</sup> If Respondent could find a way to maintain the design depth under the Syncrolift platform other than through dredging, doing so would comply with section 6. Nothing other than dredging has been suggested by the Parties.

(ii) Is the Claim for Breach of Section 6 Time-Barred?

Respondent contends that its obligation, under section 6 of the 1996 Amendment, is a singular contractual obligation and that Claimant's cause of action for breach of section 6 accrued on or before December 2020, when Respondent was placed on notice that the design depth under the Syncrolift platform was not being maintained. To support the latter allegation, Respondent points to evidence that there was an unsuccessful attempt to haul out the vessel *Warrior II* in April 2020<sup>11</sup>, that Claimant's own letter dated June 22, 2020 complained of "[I]ack of maintenance dredging"<sup>12</sup>, and that other evidence shows an awareness in the latter half of 2020 that the design depth was not maintained under the Syncrolift.

The arbitrators find that the claim for breach of section 6 is not time-barred under the Government Claims Act. This finding is based upon two independent grounds.

First, the arbitrators find that the nature of the obligation under section 6 is that it gives rise to a continuous accrual of claims; specifically, each time a vessel cannot be hauled out at the Premises because of the failure to maintain design depth under the Syncrolift platform, this constitutes another wrong or injury that triggers its own limitations period under the theory of continuous accrual. The claim for breach of section 6 is partially time-barred as to events older than January 4, 2021, but timely as to those since that date. *See, Aryeh v. Canon Business Solutions* (2013) 55 Cal. 4<sup>th</sup> 1185, 1199; *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal. 4<sup>th</sup> 809, 818-822; *Amador Valley Investors v. City of Livermore* (1974) 43 Cal. App. 3d 483.

Second, independently, the arbitrators find that the statute of limitations has been tolled in this case under the theory of equitable tolling. From April or mid-2020 onwards, Respondent was placed on notice that the design depth was not being maintained. Instead of making a claim, Claimant reasonably and in good faith chose to pursue an alternative remedy, *i.e.*, to rely on Respondent to complete the dredging by April 2021, as promised by Respondent. Under such circumstances, the one-year statute of limitations was equitably tolled between April 2020 and April 2021. *See, Aryeh v. Canon Business Solutions*, *supra*. at 1192.

(iii) Defenses and Conclusion as to Liability

In addition to this time bar defense, Respondent has asserted four other defenses to Claimant's claim for breach of section 6 of the 1996 Amendment. Each is unavailing.

First, Respondent invokes the immunity set forth in section 831.2 of the California Government Code, which states as follows: "Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach." The arbitrators find that this provision applies to claims for personal injury and death, not to a claim for damages for breach of contract. The term "injury" is defined in section 810.8 of the Government Code as "death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to

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<sup>11</sup> *See*, Exh. 71.

<sup>12</sup> *See*, Exhs. 6, 213 and 213A.



his person, reputation, character, feelings or estate, of such nature that it would be actionable if inflicted by a private person.” The arbitrators conclude that section 831.2 is not applicable to Claimant’s claim for breach of section 6 of the 1996 Amendment, which is not such an “injury”.

Second, Respondent argues that compliance with section 6 of the 1996 Amendment is impossible, because it is not possible to maintain the design depth of the Syncrolift to accommodate 25 feet of vertical travel. This contention contradicts the evidence given at the arbitration by two divers and the Claimant’s CEO, Ted Long, who testified that the area of the harbor under the Syncrolift platform has previously been successfully dredged. For instance, Vic Markytan, a diver, testified at the arbitration, that the area has been dredged to below design depth in 2004<sup>13</sup> and another diver, Ken Gray, testified that the area was dredged to below design depth in 2007<sup>14</sup>. While the evidence at the arbitration was unclear as to the exact depth upon completion of each of the past dredging operations, the evidence showed that the dredging was to a depth that enabled the Syncrolift to operate successfully. The arbitrators are satisfied that the evidence shows that maintaining the design water depth of 18 feet through dredging is possible.

Third, Respondent argues that “dredging to such a [design] depth would be illegal because [Respondent] was never permitted to dredge deeper than -15 feet.”<sup>15</sup> No such evidence of illegality was presented to the arbitrators<sup>16</sup>. To the contrary, the evidence presented at the arbitration by Harbor Commissioner Ricky Shepherd and the current CEO of the Harbor District, Tim Petrick, show, on balance, that permits for such dredging can be obtained and that such dredging can be successfully performed.

Fourth, Respondent argues that such dredging would be “financially impracticable.”<sup>17</sup> This latter contention is apparently based only on the contention that the cost of dredging and disposal of the spoils, for instance at HOODS<sup>18</sup>, would be disproportionate to the rent paid by Claimant and is higher than originally contemplated. The arbitrators conclude that, although it will be expensive to dredge the harbor area under the Syncrolift platform, as Respondent is contractually bound to do, such dredging not financially impractical, and is operationally possible. The arbitrators therefore find that this defense is unavailing. As was stated by the Court of Appeal in *Ellison v. City of Santa Buenaventura* (1975) 48 Cal. App. 3d 953 at 962: “It is elemental that a person may not escape a voluntarily assumed contractual obligation merely because performance would be more expensive than contemplated ... unless it arises to the point of impossibility ... The evidence here did not establish the existence of any condition or expense which could not reasonably have been anticipated. [the Port District's] past nonperformance therefore cannot be excused ....”

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<sup>13</sup> Exh. 19.

<sup>14</sup> Exh. 21.

<sup>15</sup> Respondent’s Memorandum re: Defenses Asserted, dated March 30, 2023, p. 4.

<sup>16</sup> See, Exhs. 24-26.

<sup>17</sup> Respondent’s Memorandum re: Defenses Asserted, dated March 30, 2023, p. 4.

<sup>18</sup> Humboldt Open Ocean Disposal Site.

(iv) Damages

Based on the evidence provided at the arbitration hearing, the arbitrators conclude that the earliest potential date for completion of the dredging of the harbor area beneath the Syncrolift platform is the end of October 2023. The arbitrators therefore find that Claimant is entitled to be awarded compensatory damages for breach of the Lease for the period from April 2021 through October 2023, specifically, damages consisting of Claimant's lost profits due to its inability to haul out boats at the Premises using the Syncrolift during this period because of Respondent's failure to maintain the design depth.

Claimant presented evidence at the arbitration, through testimony from vessel owners and Ted Long, the CEO of the Claimant's business, by stipulation<sup>19</sup>, and through testimony from Claimant's bookkeeper, Sandy Moreno. This evidence showed that Claimant lost revenue during the 2021-2023 period as a result of not being able to perform specific repairs and modifications to vessels because Claimant could not use the Syncrolift. The evidence from individual boat owners, including those referenced in the stipulation, confirms that they would have had work performed on their vessels at the Claimant's facility if the Syncrolift were available for use.

The arbitrators find that Claimant lost revenue (listed by reference to the vessel involved and revenue estimate) due to the inability to use the Syncrolift at the Premises, as follows:

1.	Kraken	\$ 850,000
2.	Nicole Lynn	\$ 750,000
3.	Darin Alan	\$ 22,000
4.	Fish Wish	\$ 250,000
5.	Sea Chase	<u>\$1,500,000</u>
	Total	\$3,372,000

In addition, Ms. Moreno and Mr. Long testified as to other projects during this period that were cancelled or not performed. These projects and the five shown above are set forth in an exhibit submitted by Claimant<sup>20</sup>, listed by reference to vessel, type of work, and projected net earnings from each project, and total over \$3.7 million.

Based on this evidence of the lost projects and Ms. Moreno's comparison of the net profits earned by Claimant during the 2021 and 2022 fiscal years, and projected in 2023, Claimant calculated its lost profits for the fiscal years 2021, 2022 and 2023 at \$1,293,685.00.

In response, Respondent offered evidence from an economic expert, David Weiner, based on his analysis of Claimant's accounts over a longer period, which he believed did not show any decrease in profits before 2022, and a valuation of Claimant's business performed in 2014.<sup>21</sup>

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<sup>19</sup> Exh. 222.

<sup>20</sup> Exh. 215.

<sup>21</sup> Exh. 205.

Respondent's expert stated that, in his opinion, Claimant's net profits during the period in question were either \$87,447 or \$148,818, depending on the method of calculation used<sup>22</sup>.

The arbitrators find the Claimant's claim for its lost profits is reasonable. At the arbitration, Sandy Moreno, Claimant's bookkeeper, testified that Claimant's average profit margin is 25%, and that the profit realized on the larger modification projects was generally higher. This was confirmed by the testimony of Ted Long, Claimant's CEO.

The arbitrators also find significant that Ted Long testified that approximately 30% of Claimant's revenue was allocated to materials costs. Moreover, Ted Long testified that, throughout the years 2021 through 2023, Claimant kept its full work force, confirming that the labor cost, or a substantial part thereof, was an incurred business expense during this period. It is reasonable therefore to conclude that, of the 70% balance of the revenue that would have been earned from the lost projects during this period, a large portion would have amounted to a net profit for the Claimant. Under the circumstances, the arbitrators believe that Claimant's claim for lost profits, \$1,293,685.00, is reasonable, and may even be a conservative estimate.

Therefore, the arbitrators find that Claimant has proved a claim for lost profits during the years 2021, 2022 and 2023 of \$1,293,685.00 due to Respondent's breach of section 6 of the 1996 Amendments.

(v) Claim for Injunctive Relief, Forbearance of Rent and Future Damages.

Claimant requests injunctive relief in the form of an Order requiring that Respondent complete the dredging of the harbor area beneath the Syncrolift platform by the end of October 2023. Claimant's CEO Ted Long testified that if the dredging is not completed in 2023, Claimant will be forced to cease doing business, which will result in losing \$3,500,000 in future lost profits. Claimant also seeks an order for cessation of rent for the period after October 2023, if dredging is not completed by that date.

Respondent took the position at the arbitration that it could complete the dredging by the end of October 2024. But Respondent is uncertain if it can complete the dredging required by October 2023.

The arbitrators find that, under section 6 of the 1996 Amendment, Respondent is under a clear, current duty to complete the dredging in order to maintain the design depth of the Syncrolift platform. The arbitrators find that Claimant cannot be adequately compensated in damages for future losses and that injunctive relief is appropriate.

The arbitrators therefore order that, by the end of October 2023, Respondent complete the dredging necessary to maintain the design water depth of 18 feet beneath the Syncrolift platform.

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<sup>22</sup> Respondent's Opposition to Claimant's Statement of Damages.

The arbitrators further order that, if Respondent does not complete the dredging as so ordered, Respondent shall forego, and shall not be entitled to receive, rent otherwise due from Claimant under the Lease. The period of such rent forbearance shall commence on November 1, 2023, when the order as stated above should be complied with, and shall continue until such time as Respondent completes the dredging required under section 6 of the 1996 Amendment. If the Claimant cannot maintain its business after November 2023, no more rent will be owed to Respondent.

With respect to the claim for future damages, the arbitrators find that, at this time, such a claim is too speculative to be the subject of an award. Specifically, despite the testimony at the arbitration given by Ted Long, the arbitrators are uncertain if Respondent's failure to dredge the harbor by the end of 2023 will necessarily result in Claimant ceasing to do business. However, if the Respondent does not complete the dredging by the end of October 2023, Claimant shall be entitled to bring a further claim against Respondent and is free to reopen this arbitration to make a further claim for damages from 2023 onwards. Such damages claim may include, if appropriate, a claim for punitive damages.

**(b) Failure to Set Aside Budget Item**

Respondent does not dispute that until March 9, 2022, it failed to set aside a sum equal to 20% of Claimant's lease payments in a restricted line item in its budget, as required by section 6 of the Amendment to the Lease dated July 1, 2015 (the "2015 Amendment.") Neither Party submitted evidence at the arbitration concerning this issue. The arbitrators find that, while Respondent's failure constituted a breach of section 6 of the 2015 Amendment, Claimant has not shown that it incurred any damages as a result of this breach.

**(c) Failure to Repair the Building**

**(i) The Claim**

Under section 6.01 of the Lease, Respondent is required "to keep in good order, condition and repair the exterior walls ... and the roof of the ... building [at the Premises] with the exception of damage caused by Claimant's negligent act or omission<sup>23</sup>. The arbitrators find that, based on the clear and undisputed evidence submitted at the arbitration<sup>24</sup>, Respondent has breached and is in continuing breach of section 6.01.

**(ii) Time Bar and Other Defense**

The arbitrators find that the nature of Respondent's failure to comply with section 6.01 of the Lease gives rise to a continuous accrual of claims; the claim for breach of section 6.01 is partially time-barred as to events older than January 4, 2021, but timely as to those since that date.

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<sup>23</sup> Exh. 3.

<sup>24</sup> See, for instance, Exhs. 55 ad 56.

(iii) Water Intrusion Defense

Respondent contends that it is not liable for water intrusion into the building, under the provisions of section 6.03 of the Lease, which exempt Respondent from liability for damages due to “water being upon or coming through the roof, vent or otherwise.” At this stage, Claimant is not seeking damages for water intrusion into the building, so this provision is not applicable to Claimant’s claims.

(iv) Damages and Injunctive Relief

At the arbitration, evidence was presented that the building requires: (1) repairs to its structural elements amounting to about \$406,975 plus additional costs; (2) repairs to the wall sidings amounting to about \$103,720; (3) repairs to the gutters amounting to \$18,440; and (4) repairs to the siding on the machine shop building amounting to about \$41,667. That the repairs are necessary and urgent is not in dispute. And Respondent’s own contractors estimate the repair costs to be between \$250,000 and \$400,000. Respondent took the position at the arbitration that it would complete the repairs within the next few months.

Claimant claims damages of \$569,802 for Respondent’s breach of section 6.01 of the Lease and states that such damages are “[t]o be used to repair building.”<sup>25</sup> The evidence presented at the arbitration, including the inspection of the Premises, demonstrated that Respondent’s failure to complete the repairs diminished the value of the Premises to Claimant, but Claimant did not establish a right to damages amounting to the cost of repairs.

However, the arbitrators find that Claimant is entitled to both injunctive and other relief.

The arbitrators therefore order that Respondent complete the repairs to the structural elements, wall sidings, gutters and siding on the machine shop no later than September 30, 2023.

The arbitrators further order that Respondent shall forego, and shall not receive, rent otherwise due from Claimant under the Lease. The period of such rent forbearance shall commence on January 4, 2021, and it shall continue until such time as Respondent completes the repairs as specified above. As to the months for which Claimant has already paid its rent – presumably, the months of January 2021 through the current date --, Respondent shall reimburse Claimant for such paid rent.

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<sup>25</sup> Claimant’s Statement of Damages, p.6.

**(d) Leaving the Dredge at the Premises**

It is not disputed that for a period of about 9 years, ending in March 2022, Respondent kept dredge equipment on an area of the Premises, without Claimant's permission. Based on the arbitration testimony of Claimant's CEO Ted Long, the arbitrators find that this action by Respondent was a breach of the implied covenant of quiet enjoyment under the Lease.

Claimant claims that it is entitled to damages equal to the storage fees that would have been incurred by Respondent for the period from January 2021 (one year before the Notice of Claim) to the date when the dredge was removed, calculated to be \$4,860.<sup>26</sup> The arbitrators find that Claimant is entitled to recover \$4,860 owing to this breach.

**(e) Breach of Implied Covenant of Good Faith and Fair Dealing**

Claimant contends that the breaches of the Lease, as set forth above, amounted to a breach of the implied covenant of good faith and fair dealing. The arbitrators find that Respondent's actions do not amount to the level of intentional interference with Claimant's right to the benefit of the Lease which would justify such a claim. The arbitrators conclude, therefore, that Claimant is not entitled to recover damages for this claim.<sup>27</sup>

**3. The Fraud Claim<sup>28</sup>**

Claimant claims that there have been three instances of fraud committed by Respondent: (1) when Respondent failed to acknowledge that Claimant had exercised its option to extend the Lease in June 2020; (2) when, despite agreeing to the 1996 Amendment, Respondent cancelled the planned dredging in April 2021; and (3) when Respondent promised, in October 2021, to perform the needed repairs to the building on the Premises.

In order to prove fraud, Claimant must show that Respondent's actions amounted to intentional misrepresentations on which Claimant relied to its detriment. The arbitrators are not persuaded that, on the balance of the evidence, Claimant has shown the required element of intentionality with respect to each of the three instances above.

The arbitrators find, however, that Respondent's actions in connection with the cancellation of the April 2021 planned dredging were questionable. Respondent failed to produce evidence showing that it was in a position to perform that promised dredging operation in April 2021, for instance, by applying for a permit. The arbitrators find that Respondent misled Claimant. Although the arbitrators did not find Respondent's actions rose to the level of an intentional misrepresentation, Respondent was negligent in misleading Claimant.

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<sup>26</sup> See, arbitration testimony of the CEO of the Harbor District, Tim Petrick, and Ted Long.

<sup>27</sup> This is the Seventh Cause of Action in the First Amended Complaint.

<sup>28</sup> This is the Second Cause of Action in the First Amended Complaint.

In addition, the arbitrators find that the claim relating to Respondent's failure to acknowledge the extension of the lease, which took place in June 2020, is time barred.

The arbitrators therefore find that Claimant is not entitled to recover on the claims advanced under the Second Cause of Action in the First Amended Complaint.

**4. Intentional Interference with Prospective Economic Advantage<sup>29</sup>**

Claimant also contends that Respondent's actions amounted to an intentional interference with its prospective economic advantage. The arbitrators are not persuaded that, on the balance of the evidence, Claimant has shown the required element of intentionality for this cause of action. The arbitrators therefore find that Claimant is not entitled to recover on the claims advanced under the Third Cause of Action in the First Amended Complaint.

**5. Breach of Implied Covenant of Quiet Enjoyment<sup>30</sup>**

The arbitrators find that, with one exception, this claim is duplicative of Claimant's claim for breach of the Lease and decline to award additional damages for this claim. The exception relates to Claimant's contention that it was required to incur expenses to oppose an alleged attempt by Respondent to install a trench on the Premises. Claimant's CEO, Ted Long, testified at the arbitration that Claimant incurred \$12,000 in legal fees in response to Respondent's actions.

The arbitrators find that the evidence at the arbitration was not sufficient to show that Respondent's attempt to install a trench was unreasonable or that it breached the implied covenant of quiet enjoyment. Moreover, although the arbitrators are persuaded that Claimant incurred the attorneys' fees claimed, the evidence offered was not adequate to explain the fees or their reasonableness. The arbitrators therefore do not award damages for this claim.

**6. Nuisance<sup>31</sup>**

The arbitrators find this claim to be duplicative of Claimant's claim for breach of the Lease and decline to award additional damages for this claim.

**7. Unjust Enrichment<sup>32</sup>**

The arbitrators find this claim to be duplicative of Claimant's claim for breach of the Lease and decline to award additional damages for this claim.

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<sup>29</sup> This is the Third Cause of Action in the First Amended Complaint.

<sup>30</sup> This is the Fourth Cause of Action in the First Amended Complaint.

<sup>31</sup> This is the Fifth Cause of Action in the First Amended Complaint.

<sup>32</sup> This is the Sixth Cause of Action in the First Amended Complaint.

### **Costs of the Arbitration and Attorneys' Fees**

Section 12.07(e) of the Lease provides that “[t]he expense of any ... arbitration shall be borne as the arbitrators direct.” The arbitrators direct that Respondent shall bear the expense of this arbitration. In order to make a specific award as to amount of the costs that Respondent must pay, the arbitrators order further briefing, as set forth below.

As Claimant is the prevailing party hereunder, the arbitrators hereby order that Respondent pay Claimant’s reasonable attorneys’ fees and expenses incurred in connection with preparing for and appearing at the arbitration hearing held on March 20 through March 24, and incurred in submitting the additional materials requested by the arbitrators. The arbitrators request further briefing from the Parties, as set forth below, as to whether the arbitrators have the power to determine the amount of the attorneys’ fees to be awarded to Claimant, or should, in accordance with section 12.21 of the Lease or otherwise, defer to the Superior Court in this matter for the determination of the amount of those fees to be awarded.

### **Further Briefing**

1. Within seven calendar days from the date of this Interim Award, Claimant is to submit its request for arbitration fees and costs permitted under C.C.P. §1033.5.
2. Within five calendar days, Respondent is to submit its opposition to Claimants requests for costs.
3. Within three calendar days, Claimant is to submit its reply, if any.
4. Within seven calendar days from the date of this Interim Award, Claimant and Respondent shall simultaneously submit briefing as to whether the arbitrators have the power to determine the amount of the attorneys’ fees to be awarded to Claimant.
5. Upon receiving all further briefing, the arbitrators shall take these matters under submission for decision, and issue a further award.



## **Conclusion**

As to the First Cause of Action in the First Amended Complaint, for breach of contract, the arbitrators find in favor of Claimant as follows:

- a. The arbitrators award Claimant a total of \$1,298,545.00 in damages.
- b. The arbitrators order that, by the end of October 2023, Respondent complete the dredging necessary to maintain the design depth beneath the Syncrolift platform.
- c. The arbitrators find that, if Respondent does not complete the dredging by the end of October 2023 as so ordered, Respondent shall forego, and shall not be entitled to receive, rent otherwise due from Claimant under the Lease from November 1, 2023 until such time as Respondent completes the dredging required under section 6 of the 1996 Amendment.
- d. The arbitrators order that Respondent complete the repairs to the structural elements, wall sidings, gutters and siding on the machine shop no later than September 30, 2023.
- e. The arbitrators find that Respondent shall forego, and shall not be entitled to receive, rent otherwise due from Claimant under the Lease, for a period commencing on January 4, 2021, and continuing until such time as Respondent completes the repairs as specified above. Respondent shall reimburse Claimant for rent Claimant has already paid for this period.
- f. If the dredging is not completed by the end of October 2023 as ordered in para c. above, Claimant can reopen this arbitration and seek further damages for failure to dredge as ordered by this arbitration panel.

As to the Second Cause of Action in the First Amended Complaint, for fraud, the arbitrators find in favor of Respondent.

As to the Third Cause of Action in the First Amended Complaint, for intentional interference with prospective economic advantage, the arbitrators find in favor of Respondent.

As to the Fourth Cause of Action in the First Amended Complaint, for breach of the implied covenant of quiet enjoyment, the arbitrators find in favor of Claimant but decline to award any additional damages.

As to the Fifth Cause of Action in the First Amended Complaint, for nuisance, the arbitrators find in favor of Claimant, but decline to award any additional damages.

As to the Sixth Cause of Action in the First Amended Complaint, for unjust enrichment, the arbitrators find in favor of Claimant, but decline to award any additional damages.

As to the Seventh Cause of Action in the First Amended Complaint, for breach of the covenant of good faith and air dealing, the arbitrators find in favor of Respondent.

Claimant shall be entitled to interest on the sums hereby awarded, from the date hereof until paid, at the C.C.P. §685.010(a) rate of 10% per annum.

SO AWARDED.

Dated: April 20, 2023



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Matthew P. Vafidis,  
Chairperson

For the Arbitration Panel

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PROOF OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to the above-entitled action. My business address is 1 Point Saint George Place, Crescent City, California 95531.

On this date, I served a copy of the following on the interested party(ies) listed below:

**PETITION TO CONFIRM, CORRECT, OR VACATE CONTRACTUAL  
ARBITRATION AWARD**

       **By U. S. Mail.** By mailing a true copy thereof to the party(ics) at the address(es) set forth above, with postage paid.

  X   **By Email.**

       **By Personal Service.** By personally delivering a copy thereof to the party(ies) at the address(es) set forth below.

       **By Courthouse Mailbox.** By placing a true copy thereof in the appropriate mail receptacle located in the Court House.

I declare under penalty of perjury under the laws of the State of the California that the foregoing is true and correct.

Executed **June 13, 2023**, at Crescent City, California, by

  
\_\_\_\_\_  
JENNIE COULSON

John Reilly  
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