

Lease of Portion of Tide or Submerged Lands

The Noyo Harbor District, hereinafter called "DISTRICT", as Lessor and _____
, hereinafter called LESSEE, as lessee,

DO HEREBY AGREE:

WHEREAS, DISTRICT administers certain tide and submerged lands granted to it by the State of California pursuant to Chapter 555, Statutes of 1961; and is required by the terms of that grant to establish reasonable rules, rates and regulations for the use of such lands; and

WHEREAS, DISTRICT did on October 9, 1975, adopt certain policies regarding the use of such lands, which such policies include leasing of portions of such lands at rates established in such policies; and

WHEREAS, the property leased herein is included in a grant from the State of California. In the event that it is later determined by the State that the area or any portion thereof is not within such grant, that portion shall be excluded from this Lease and the rental rate shall be appropriately adjusted.

NOW, THEREFORE, DISTRICT does hereby lease to LESSEE those portions of such lands hereafter described under the terms and conditions hereafter set forth:

1. RENT. LESSEE agrees to pay rent annually in advance based on the following basis:

a) _____ per linear foot for developed property, herein defined as buildings, wharfs, docks and marine railway facilities;

b) _____ per linear foot for floats, herein defined as those other than developed facilities;

c) This lease shall be reviewed at five-year intervals and rental charges shall be adjusted to conditions existing at that time. Rental rates shall be subject to increases at five-year intervals at a percentage to be determined by DISTRICT but not to exceed ten percent (10%) above the previous rental rate.

2. TERM. The term of this lease is ten (10) years, beginning _____, and ending _____.

3. AREA LEASED. The area which is leased hereby is that area as shown on the map entitled "Map Showing Encroachments of Improvements onto Noyo Harbor District Property" dated October, 1974, in four sheets, a copy of which is available for examination at the Noyo Harbor District Office, A portion of said map relating to LESSEE's property is attached as Exhibit "A" to this lease.

4. MODIFICATIONS. LESSEE agrees that before doing any work within the leased area described in Exhibit "A" hereto, tidelands grant area as described in Chapter 555, Statutes of 1961, whether such work is in addition to an existing facility or the installation of a new facility; LESSEE shall obtain written approval of DISTRICT for such work. In the event that the proposed work is outside the present lease area but contiguous to the LESSEE's adjacent land, an extension of the Lease may be granted by DISTRICT with appropriate increase in rate to cover this added facility. In the event the proposed work is an improvement to an existing facility by upgrading it to a higher use, such improved facility shall pay at the higher rate from the time of its construction.

Failure to obtain such approval shall result in LESSEE being charged for such work a rate equal to what would have been imposed if approved plus a surcharge of 25% of the amount which should have been paid. This is not intended to, and does not limit the DISTRICT from withholding approval or from taking any legal steps to prevent the work or to compel its removal.

5. PROHIBITED USES: The leased premises shall not be used or permitted to be used in whole or in part during the term of this Lease for any purpose or in violation of any law, regulation or ordinance applicable thereto, nor in any manner so as to constitute a nuisance.

6. REPAIRS and MAINTENANCE: Lessee covenants and agrees, at Lessee's own cost and expense, during the term of this lease, to maintain in good order the leased premises, and to leave the premises in a clean and neat condition at the end of the lease term.

7. ALTERATION OR MODIFICATION OF PREMISES: Lessee shall make no alterations of or modifications other than those appropriate for the use permitted under this lease.

8. INSURANCE: LESSEE agrees to keep and maintain, at the Lessee's own expense, during the term of this lease, a broad form public liability insurance with coverage to include a minimum of \$1,000,000 coverage per incident for bodily injury and death, and \$50,000 property damage, which policy shall name the NOYO HARBOR DISTRICT as an additional insured. In the event any vessel sinks within the leased area, LESSEE shall be solely responsible for the cost of raising and removing such vessel from the tidelands.

9. TRANSFER AND ASSIGNMENT: Lessee shall not assign or transfer this lease or sublet the leased premises in whole or in part without having first obtained Lessor's written consent.

10. RIGHT OF ENTRY: Lessor or Lessor's authorized agent or representative may enter the leased premises at any reasonable time during the term of this lease for the purpose of inspection of the premises to determine compliance with this lease or for any other purpose incidental to the rights of the Lessor.

11. SURRENDER OF PREMISES: Lessee agrees at the expiration of the term of this Lease, or upon earlier termination for any reason, to quit and surrender the leased premises to Lessor in as good a state and condition as said premises are in when possession thereof is given to Lessee, reasonable wear and tear excepted.

12. HOLD HARMLESS: This lease is made upon the express condition that Lessor shall not be liable for any damages or claims for damages by reason of any injury or death to any person or person while in, upon or in any way connected with said leased premises, during the occupancy thereof by Lessee. Lessee further agrees to indemnify, defend and hold Lessor harmless from any and all liability and damages or claims for damages, together with any and all cost, fees and expenses connected therewith, arising out of the injury to or death of any person or persons in or about, or in any way connected with the leased premises, during the term of this lease.

13. DESTRUCTION OF PREMISES: If, during the term of this lease, the premises are destroyed, rendering the premises unusable, this lease may be terminated by either party.

14. DEFAULT: Any of the following actions shall constitute a default under this Lease:

- a) Use of the leased premises for any purpose other than as authorized in the Lease;
- b) Default in the payment of rent;
- c) Abandonment of the leased premises by Lessee, either voluntarily or by operation of law;
- d) Filing by the Lessee of a voluntary petition in bankruptcy, or an involuntary bankruptcy petition being filed against Lessee; the appointment of a receiver of the business or asset of Lessee, except a receiver appointed at the instance and request of Lessor; the general or other assignment by Lessee for the benefit of Lessee's creditors;
- e) Default in the performance of any term, covenant or condition of this Lease.

In the event of a default under this Lease by Lessee, Lessor shall have the option to declare this Lease forfeited and the same shall thereupon entirely cease and terminate upon written notice to Lessee. Lessor shall have the right to reenter the leased premises and take possession of said premises and remove all persons and property therefrom. Lessor may, after further notice to Lessee, relet the leased premises, all without prejudice to Lessor of any remedies which might otherwise be used for the enforcement of the Lease.

15. COSTS OF SUIT AND ATTORNEYS FEES: if any action shall be brought by Lessor against Lessee for the recovery of any rent due under the terms of this lease or for the breach or enforcement of any of the conditions, covenants, or agreements herein set forth on the part of the Lessee to be kept and performed, or for the recovery of the leased premises, and Lessor shall prevail in any such action, Lessee agrees to pay to Lessor on demand, a reasonable attorney's fee, together with actual costs incurred.

16. MISCELLANEOUS

- (a) Time is of the essence in this Lease
- (b) This Lease shall be binding upon the parties hereto and their heirs, assigns, representative, and successors in interest, subject to the provisions of this Lease regarding assignment and subletting
- (c) No waiver by Lessor of any default by Lessee under this Lease shall constitute a waiver of a subsequent default.
- (d) This Lease shall be subordinate to any encumbrance now of record or recorded after the date of this Lease by Lessor.
- (e) No delay or omission to exercise any right or remedy by Lessor shall be construed as a waiver.
- (f) If Lessee, with Lessor's permission, remains in possession after expiration of this Lease, such possession shall be deemed to be a month-to-month tenancy, subject to all the terms of this Lease.
- (g) This Lease contains the entire agreement between the parties, and no supplement, amendment or modification will be binding unless in writing and signed by each party.
- (h) If any provision of this Lease should be determined to be invalid for any reason, the other provisions shall remain enforceable.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

Dated: _____

NOYO HARBOR DISTRICT, by

LESSOR

Dated: _____

LESSEE

Dated:

LESSEE