

LEASE AGREEMENT

BY AND BETWEEN

Marin County Flood Control and Water Conservation District

A political subdivision of the State of California
As Lessor

And

Patricia A. Herman and Mireille Agajan, Trustees

Of the Duquesne Family Trust dated July 10, 1992
As Lessee

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LEASE AGREEMENT

THIS LEASE is entered into this ____ day of _____ 2010 by and between **MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a Public District of the State of California, hereinafter called "Lessor" and **PATRICIA A. HERMAN AND MIREILLE AGAJAN**, Trustees of the Duquesne Family Trust dated July 10, 1992, hereinafter called "Lessee."

WITNESSETH

Lessor, for and in consideration of the rents, covenants, and promises contained herein, does hereby lease unto Lessee and Lessee hereby hires from Lessor, that certain real property hereinafter called "Premises" and further described below, located in unincorporated Marin County, California, for parking, outdoor access, and dining patio purposes.

Lessee owns property adjacent to the Premises and leases it for the benefit of a restaurant known as the Dipsea Café. Lessee, under a previous lease with Lessor, made improvements to the Premises for the restaurant use. This lease, entered into with the Lessee is for the benefit of restaurant use only and may be terminated if the adjacent property ceases to be used for restaurant purposes.

This Lease is made upon the following terms, covenants and conditions to which the parties hereby agree:

1. ADMINISTRATION

This lease shall be administered on behalf of Lessor by the Real Estate Division, Department of Public Works, whose mailing address is:

Marin County Department of Public Works
Real Estate Division
P.O. Box 4186
San Rafael, CA 94913-4186
Attn: Chief Real Property Agent
415-499-6578

and a copy to:

Marin County Flood Control and Water Conservation District
P.O. Box 4186
San Rafael, Ca 94913-4186
Attn: FCZ #3, Zone Coordinator
415-499-6528

and on behalf of Lessee by and whose mailing address is:

Patricia Herman, Trustee
Mireille Agajan, Trustee
29 Bellevue Avenue
San Rafael, CA 94901

Any notice or notices provided by this Lease, or required by law to be given or served upon Lessor or Lessee, shall be in writing and addressed as set forth herein, or to such other addresses as either party may by written notice advise the other party, may be given or served by depositing the same in the United States Mail, postage prepaid, addressed as set out in this clause.

2. DESCRIPTION OF PREMISES

The Premises herein leased are more particularly described as 11,098 square feet of land which is a portion of a commercially-zoned area known as Assessor's Parcels 052-052-27, 29, 37, and 42, in Mill Valley, California, and depicted on a survey made by DeBolt Civil Engineering dated November 5, 2008 shown as Exhibit "A", attached hereto and incorporated herein by reference. Lessor acquired the Premises and adjacent property along Coyote Creek for flooding thereon and for construction, maintenance and operation of flood control facilities, which uses shall remain paramount to this lease.

Lessee's current improvements on the Premises consist of a parking lot, patio, additions to the Lessor's flood wall (including concrete, glass, and wood), and lighting on the flood wall, parking lot and portions of the patio (See Section 10 for a more complete description).

3. TERM

The term of this Lease shall be for fifteen (15) commencing **June 1, 2010** and terminating, **May 31, 2025**.

Although this Lease is for a fifteen (15) year period, Lessee acknowledges that

this tenancy is temporary due to the fact that Lessor has acquired said premises for flood control purposes, and Lessee further agrees to vacate said premises at any time within one (1) year after receipt of a written notice to do so from Lessor. Failure to vacate as herein provided shall constitute authorization for Lessor, or its authorized agents, to enter upon said property and remove Lessee's property, if any, therefrom.

4. RENT

Lessee shall pay to Lessor in advance, quarterly rent in the amount of TWO THOUSAND SIX HUNDRED TWENTY FIVE DOLLARS (\$2,625.00) for the Premises. The rent check shall be made payable to the "*Marin County Flood Control and Water Conservation District*" with reference to FCZ# 3, 200 Shoreline Hwy, and sent to the address listed in Section 1.

On June 1, 2011 and on every June 1 thereafter during the term hereof, the rent shall be increased by a fixed rate of three percent (3%) and the annual rent schedule shall be as follows:

Rental payable hereunder for any period of time less than one month shall be determined by prorating the monthly rental herein specified based on the actual number of days in the month.

Premises: 11,098 RSF (Rentable Square Foot)

Applicable Portion of Lease Term		Quarterly Base Rent	Annual Base Rent (Quarterly x 4)
Beginning first day of	Ending last day of		
June	May		
2010	2011	\$2,625.00	\$10,500.00
2011	2012	\$2,703.75	\$10,815.00
2012	2013	\$2,784.86	\$11,139.45
2013	2014	\$2,868.41	\$11,473.63
2014	2015	\$2,954.46	\$11,817.84
2015	2016	\$3,049.10	\$12,172.38
2016	2017	\$3,134.39	\$12,537.55
2017	2018	\$3,228.42	\$12,913.68

2018	2019	\$3,325.27	\$13,301.09
2019	2020	\$3,425.03	\$13,700.12
2020	2021	\$3,527.70	\$14,111.12
2021	2022	\$3,633.59	\$14,534.36
2022	2023	\$3,742.62	\$14,970.49
2023	2024	\$3,854.90	\$15,419.60
2024	2025	\$3,970.55	\$15,882.19

Rent shall not be abated unless the loss of use of the premises exceeds 30 days and any abatement will be at the sole discretion of the Lessor.

5. USE

The leased Premises shall be used primarily for restaurant parking, outdoor access and patio dining purposes for the operation of a restaurant at 200 Shoreline Highway, Mill Valley. Lessor retains the right to cancel this lease if the use of the adjacent property changes from restaurant use.

In the event that Lessor requires the Premises for a temporary period of time (for example during the rainy season or the construction of a project that will not require the termination of this lease) Lessee shall clear the area of parked vehicles when requested by Lessor and shall keep the area free from parked vehicles for as long as required by Lessor. Lessor shall attempt, when practicable, to give Lessee at least 24 hours notice of its requirement to have the area cleared of vehicles. Any necessary posting of "no parking" signs shall be accomplished by Lessee at Lessee's expense in order to comply with Lessor's need to have the area cleared. (Also see Section 16. ENTRY BY LESSOR)

Lessor retains the right to allow flooding, operate and maintain drainage and flood control facilities as necessary, and to flood said lands with runoff waters from the Coyote Creek watershed either by natural or artificial means to minimize upstream flooding during periods of prolonged rainfall. Lessor shall make every effort to keep Lessee informed of any plans for construction of major new facilities or significant modification of existing facilities that will affect the Premises. However, it is understood and agreed that regardless of any notification or the lack thereof, Lessee shall vacate and discontinue use of all or any part of the leased property as required by Lessor within

said 24 hours of written notice to vacate (not to be confused with the 1-year notice to quit referenced in Section 3. TERM).

6. MAINTENANCE OF PREMISES

Lessee shall pay all costs associated with and have full responsibility for the operation and maintenance of its existing improvements, including trash removal services on the Premises, except for the concrete portion of the flood wall. The leased Premises shall not be enlarged, filled-in or changed in any way without prior written consent of Lessor and Lessee may request said written consent by notification per Section 1. Administration. Such operation and maintenance services shall be provided at a level necessary to maintain the Premises in a clean and orderly condition.

7. INSURANCE

Lessee shall, throughout the Lease Term, at its own expense, keep and maintain in full force and effect the following policies, each of which shall be endorsed as needed to provide that the insurance afforded by these policies is primary and that all insurance carried by Lessor is strictly excess and secondary and shall not contribute with Lessee's liability insurance:

(a) A policy of commercial general liability insurance, including a contractual liability endorsement covering Lessee's obligations under the paragraph captioned "Indemnification", insuring against claims of bodily injury and death or property damage or loss with a combined single limit at the commencement date of this Lease of not less than Two Million Dollars (\$2,000,000.00), which limit shall be reasonably increased during the Lease Term at Lessor's request to reflect both increases in liability exposure arising from inflation as well as from changing use of the Premises or changing legal liability standards, which policy shall be payable on an "occurrence" rather than a "claims made" basis, and which policy names Lessor, as additional insured;

(b) "Special Form" property insurance (which is commonly called "all risk") covering Lessee improvements, Lessee alterations (including telecommunication facilities), and any and all furniture, fixtures, equipment, inventory, improvements and other property in or about the Premises which is not owned by Lessor, for one hundred percent (100%) of the then current replacement cost of such property;

(c) Business interruption insurance in an amount sufficient to cover costs, damages, lost income, expenses, Base Rent, and all other sums payable under this Lease, should any or all of the Premises not be usable for a period of up to twelve (12) months;

(d) A policy of workers' compensation insurance as required by applicable law and employer's liability insurance with limits of no less than One Million Dollars (\$1,000,000.00); and

(e) A policy of comprehensive automobile liability insurance, including loading and unloading, and covering owned, non-owned and hired vehicles, with limits of no less than One Million Dollars (\$1,000,000.00) per occurrence.

7.1 All insurance policies required under this paragraph shall be with companies licensed to do business in the State of California and with general policy holder's rating of at least A and financial rating of VII or better as rated by A.M. Best's Insurance reports and each policy shall provide that it is not subject to cancellation, lapse or reduction in coverage except after thirty (30) days' written notice to Lessor. Lessee shall deliver to Lessor prior to the Commencement Date and from time to time thereafter, certificates evidencing the existence and amounts of all such policies.

7.2 If Lessee fails to acquire or maintain any insurance or provide any certificate required by this paragraph, Lessor may, but shall not be required to, obtain such insurance or certificates and the costs associated with obtaining such insurance or certificates shall be payable by Lessee to Lessor on demand.

8. POSSESSORY INTEREST

Lessee acknowledges that they have been informed that under Section 107 of the Revenue and Taxation Code of the State of California, the Marin County Assessor is required to place a value on all possessory interests. Possessory interest is defined as the right of a private taxable person or entity to use property owned by a tax-exempt agency for private purposes. A possessory interest tax will, therefore, be levied by the County Assessor on this property against the Lessee as of the lien date, which is March 1 of each year. Lessee has the right to challenge the Assessor's value through the Assessor's appeal process. Lessee's failure to pay said tax will be considered a default to be cured per Section 19.

9. ALTERATIONS AND IMPROVEMENTS

Prior to this lease, Lessee has made some improvements to the Premises that have narrowed the flood plane. *Lessor takes no responsibility for any effect that flooding may have upon the Premises or to Lessee's adjacent restaurant facilities due to these improvements. Lessor, by entering into this lease neither accepts nor condones the prior unauthorized improvements to the Premises under this lease.* Lessee's current improvements consist of a parking lot, patio, additions to the Lessor's flood wall (including concrete, glass, and wood), and lighting on the flood wall, parking lot and portions of the patio (See photos, Exhibit B). Upon the end of the term or the early termination of this lease, Lessee has 90 days to remove all said improvements except for the surface of the parking lot and the concrete portion of the flood wall. (See Section 32, Removal of Property)

No Lessee improvements or alterations to the Premises shall be made without Lessor's prior written approval. Lessee shall submit plans of any proposed improvements or alterations to Lessor for review and possible approval. Lessor will attempt to respond within thirty (30) days; however no guarantee can be given if Lessor must first obtain the approval(s) and/or review(s) of other agencies, such as the U.S. Army Corps of Engineers. In such a case, the Lessor will not be responsible to meet any Lessee timeline. In no event shall any permanent improvements or alterations be made or approved that in any way interfere with the District's use of its property.

10. COVENANT FOR MECHANIC'S LIENS

Lessee will save Lessor free and harmless, and indemnify it against any and all claims for labor and materials in connection with any improvements, repairs, or alterations to the Premises made by Lessee and also the cost of defending against any and all such claims including reasonable attorneys' fees and court costs.

11. WASTE, QUIET CONDUCT

Lessee shall not dispose of, or store, any waste, including but not limited to hazardous waste, upon said Premises, nor commit, or suffer to be committed any nuisance, or other act or thing which may disturb the quiet enjoyment of others. Likewise, Lessee, by paying said rent and performing the conditions and agreements under this Lease, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the Premises according to the terms and conditions set forth in this Agreement.

12. ABANDONMENT OF PREMISES

Lessee shall not vacate or abandon the Premises at any time during the term; and if Lessee shall abandon, vacate or surrender said Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned at the option of Lessor and removed per Section 32.

13. ACCEPTANCE OF PREMISES AS IS. SURRENDER AT END OF TERM

By entry hereunder, Lessee accepts the Premises "as is" and being in good and sanitary order, condition and repair and agrees on the last day of said term, or upon sooner termination of this Lease, to surrender unto Lessor said Premises in the same condition as when received, reasonable use and wear thereof, Act of God or by the elements excepted. Said acceptance is with the full understanding of any consequence of Lessee's prior improvements, which narrowed the flood plane and other improvements and shall be removed as set out in Section 32.

14. LESSOR TO BE HELD HARMLESS

Lessee shall indemnify and hold harmless Lessor against and from any and all claims arising from Lessee's use of Premises for the conduct of its business or from any activity, work, or other thing done, permitted or suffered by the Lessee in or about the Premises, and shall further indemnify and hold harmless Lessor against and from any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or negligence of the Lessee, or any officer, agent, employee, guest or invitee of Lessee, and from all and against all cost, attorney's fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon, and, in any case, should action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor. Lessee as a material part of the consideration to Lessor hereby assumes all risk of damage to property or

injury to persons, in, upon or about the Premises, from any cause other than Lessor's negligence.

Lessor or its agents shall not be liable for any damage to property entrusted to its employees, nor for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from flood, fire, explosion, steam, gas, electricity, water or rain which may leak into any part of the Premises or from the street or subsurface or from any other place resulting from any cause whatsoever, unless caused by or due to the negligence of Lessor, its agents, servants or employees. Lessee shall give prompt notice to Lessor in case of fire or accidents on the Premises.

15. CONDEMNATION

If all or any part of the Premises shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with such public or quasi-public use, either party hereto shall have the right at its option exercisable within thirty (30) days of receipt of notice of such taking to terminate this Lease as of the date possession is taken by the condemning authority, provided, however, that before Lessee may terminate this lease by reason of taking or appropriation as provided hereinabove, such taking or appropriation shall be of such an extent and nature as to substantially handicap, impede, or impair Lessee's use of the Premises. If any part of the Premises shall be so taken or appropriated, Lessor shall have the right at its option to terminate this Lease. No award for any or entire taking shall be apportioned, and Lessee hereby assigns to Lessor any award which may be made in such taking or condemnation, together with any and all rights of Lessee now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Lessor any interest in or to require Lessee to assign to Lessor any award made to Lessee for the taking of personal property and fixtures belonging to Lessee and/or for the interruption of or damage to Lessee's improvements or for Lessee's unamortized cost of leasehold improvements. In the event of a partial taking, which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of the Premises so made unusable bears to the rented area of the Premises immediately prior to the taking. No temporary taking of the Premises and/or of Lessee's rights therein or under this Lease shall terminate this Lease or give Lessee any right to any abatement of rent hereunder; any award made to Lessee by reason of any such temporary taking shall belong entirely to Lessee and Lessor shall not be entitled to share

therein.

16. ENTRY BY LESSOR

Lessee shall permit Lessor and Lessor's Agents to enter onto the Premises at any time on at least one (1) Business Day's notice (except in case of emergency in which case no notice shall be required) for the purpose of repairing, altering or improving the Premises and maintaining the Premises and its adjacent lands for all flood control purposes. Nothing contained in this paragraph shall be deemed to impose any obligation upon Lessor not expressly stated elsewhere in this Lease. When reasonably necessary, Lessor may temporarily close the Premises without liability to Lessee by reason of such closure and without such action by Lessor being construed as an eviction of Lessee or as relieving Lessee from the duty of observing or performing any of the provisions of this Lease; provided that Lessor uses good faith effort to minimize disruption to Lessee's adjacent restaurant business operated by Lessee's tenant and provide continued access to said business from the Premises. However, Lessor shall have the right to enter upon and inspect the parking lot and the flood wall at any time without prior notice to Lessee or its tenant's adjacent restaurant business.

17. ASSIGNMENT OR SUBLETTING

Lessee shall not assign this Lease or sublet the Premises or any part thereof without the prior written consent of Lessor. If an assignment is subject to obtaining a Use Permit through the County, the Lessee shall notify the Lessor in advance of applying for the permit and provide a report to Lessor of the impact of the proposed transferee's use upon the Premises, including the parking lot and the terrace space plus the impact, if any, on the adjacent remaining Lessor's land.

No assignment or subletting shall release Lessee or change Lessee's primary liability to pay the rent and to perform all other obligations of Lessee under this Lease. Lessor's acceptance of rent from any other person is not a waiver of any provision of this Paragraph. Consent to one assignment/subletting is not consent to any subsequent transfers. If Lessee's transferee defaults under this Lease, Lessor may proceed directly against Lessee without pursuing remedies against the transferee.

18. CONTINUATION OF LEASE AFTER BREACH

Should Lessee breach this lease, then it will be at Lessor's option to continue this lease or terminate Lessee's right to possession. Lessor may enforce all its rights and remedies under this Lease including the right to recover rent as it becomes due hereunder.

19. DEFAULT

In the event that Lessor or Lessee shall default in the performance of any term or condition of this Lease and shall fail to cure such default within 30 days following service upon the defaulting party of a written notice of such default specifying the default or defaults complained of, the complaining party may forthwith terminate this Lease by serving the defaulting party written notice (per Section 1, Administration) of such termination.

20. WAIVER

The failure by Lessor to enforce any condition or breach of any term or covenant herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant or condition contained herein. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

21. HOLDING OVER

There shall be no holding over without the express written consent of Lessor. Any holding over so granted after the term of this Lease shall be construed to be a tenancy from month to month, subject to the terms of this Lease so far as applicable except the rent shall be increased by five (5) percent, and paid monthly.

22. LESSOR' S LIABILITY

The term "Lessor" as used herein shall mean only the owner or owners of the fee title, at the time in question, and in the event of any transfer of such title, Lessor herein named (and in case of any subsequent transfers, the then Grantor) shall be relieved from and after the date of such transfer, of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the possession of Lessor or the then Grantor at the time of such transfer in which Lessor has an interest, shall be delivered to Grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assigns only during their respective periods of ownership.

23. INUREMENT

The terms, covenants and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

24. ORDINANCES AND STATUTES

Lessee shall comply with the requirements of all Municipal, County, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the said Premises, and shall faithfully observe in the use of the Premises all Municipal Ordinances and State and Federal Statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction or the admission of Lessee in any action or proceeding against Lessee whether Lessor is a party thereto or not, that Lessee has violated any such ordinance or statute in the use of the Premises, shall be conclusive of that fact as between Lessor and Lessee.

In addition to the above paragraph, Lessee agrees to abide by Marin County Codes, Chapter 23.19 (Integrated Pest Management Policy). If there is a conflict with another code or law then the more restrictive language will control.

25. AMERICANS WITH DISABILITIES ACT COMPLIANCE

Lessee agrees that accessible path(s) of travel on Premises are barrier free access routes without any abrupt level changes exceeding $\frac{1}{2}$ " if beveled at 1:2 maximum slope, or vertical level changes not exceeding $\frac{1}{4}$ " maximum, and at least 48" width. Surface is stable firm and slip resistant. Cross slope does not exceed 2% and slope in the direction of travel is less than 5%, unless otherwise indicated. Accessible

path(s) of travel shall be free of overhanging obstruction to 80" minimum and protruding objects shall be no more than 4" from wall and above 27" and less than 80". Lessee also agrees to comply with all applicable state and federal disability accessibility laws.

Lessee agrees it is committed to adhere to this paragraph but nothing in this paragraph precludes Lessee's right to apply for an exemption to these specific requirements.

26. SPECIAL CONDITIONS

Lessor and Lessee further agree to the following special conditions the respective occurrence or breach of which shall constitute a default:

- (a) That Lessee shall not interfere in any way with Lessor's use of Premises to maintain Coyote Creek, including lands of the adjoining floodplain.
- (b) Lessee shall obtain all necessary permits and approvals, which may be required, from governing agencies prior to any improvements, grading, construction, or any other activity requiring permits and approvals for work on the Premises.
- (c) That Lessee shall not mortgage or hypothecate any interest in this lease.
- (d) That Lessee shall not make any general assignment or general arrangement for the benefit of creditors.
- (e) The filing by or against Lessee of a petition in bankruptcy, including reorganization or arrangement, unless, in the case of a petition filed against Lessee, unless the same is dismissed within twenty (20) business days.
- (f) The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located on the Premises or of Lessee's interest in this lease.
- (g) Adjudication that the Lessee is bankrupt.

27. LESSOR'S RIGHT

It is further understood and agreed by Lessee that Lessor's rights to Premises are paramount to this Lease. Lessee shall in no way interfere, or permit or tolerate interference with Lessor's right to use, access or possess the Premises. It is the desire of both Lessor and Lessee to maintain the capability to construct, maintain and operate compatible parking and flood control facilities as necessary on the Premises.

28. DAMAGE TO IMPROVEMENTS

It is also agreed that while using, maintaining and/or improving the Premises or adjoining lands (Coyote Creek) Lessor will take reasonable care to not damage any improvements which may be placed on the Premises by Lessee. However, if said improvements should become damaged either by an act of God or Lessor in its mitigation of flood impacts (e.g. dredging) or resulting from some emergency, then Lessor shall not be obligated in any way to repair or replace any of Lessee's improvements and it shall become the obligation of Lessee to make said repairs should it become necessary. Lessee may choose to not fix or repair said damages, except in the event ADA access is impaired, then Lessee must comply with Section 25.

29. NO RELOCATION BENEFITS

This Lease creates no rights under Government Code Sections 7260 to 7277 for Lessee to receive relocation assistance upon termination of this Lease.

30. QUIET ENJOYMENT

Lessor covenants (subject to the provisions within this lease) that Lessee shall at all times during the said term peaceably and quietly have, hold and enjoy the Premises without suit, trouble or hindrance from or on account of Lessor as long as Lessee fully performs hereunder.

31. SURRENDER OF PREMISES

On the last day of the said term, or sooner termination of this Lease, Lessee will peaceably and quietly leave and surrender to Lessor these Premises with their appurtenances and fixtures (except signs and fixtures referred to herein) in good order, condition and repair, reasonable use and wear thereof and damage by earthquake, fire, flood, public calamity, by the elements, by Act of God or by circumstances over which Lessee has no control excepted.

32. REMOVAL OF PROPERTY

Unless otherwise agreed to in writing by Lessor, Lessee agrees that there are and shall be no trade fixtures on the Premises owned by Lessee except as described in Section 9 above. Upon expiration or earlier termination of this Lease, Lessee shall remove its personal property and equipment immediately and repair all

damage caused by or resulting from such removal. All other property on the Premises and any Lessee Alterations (including the surface of the parking lot and the concrete portion of the flood wall) shall become the property of Lessor and shall remain upon and be surrendered with the Premises; provided, however, at Lessor's sole election, Lessee shall be obligated, at its sole cost and expense, to remove all (or such portion as Lessor shall designate) of the Lessee Alterations, including the terrace improvements but excluding all concrete and slate as mentioned prior in this paragraph, and repair any damages resulting from such removal and return the Premises to the same condition as existed prior to such Lessee Alterations. Lessee waives all rights to any payment or compensation for such Lessee Alterations. If Lessee shall fail to remove any of its property from the Premises at the expiration or earlier termination of this Lease or when Lessor has the right of re-entry, Lessor may, at its option, remove and store such property at Lessee's expense without liability for loss of or damage to such property, such storage to be for the account and at the expense of Lessee. Lessee shall pay all costs incurred by Lessor within five (5) Business Days after demand for such payment. If Lessee fails to pay the cost of storing any such property, Lessor may, at its option, after it has been stored for a period of twenty (20) Business Days or more, sell or permit to be sold, any or all such property at public or private sale (and Lessor may become a purchaser at such sale), in such manner and at such times and places as Lessor in its sole discretion may deem proper, without notice to Lessee, and Lessor shall apply the proceeds of such sale: *first*, to the cost and expense of such sale, including reasonable attorney's fees actually incurred; *second*, to the payment of the costs or charges for storing any such property; *third*, to the payment of any other sums of money which may then be or later become due Lessor from Lessee under this Lease; and, *fourth*, the balance, if any, to Lessee.

33. HAZARDOUS SUBSTANCES

33.1 Lessor represents to Lessee, to the best of its knowledge, that as of the commencement date of this lease there are no Hazardous Substances in, on, or about the Premises.

33.2 Neither Lessee, any of Lessee's Agents nor any other person shall store, place, generate, manufacture, refine, handle, or locate on, in, under or around the

Premises any Hazardous Substance, except for storage, handling and use of reasonable quantities and types of cleaning fluids and office supplies on the Premises in the ordinary course and the prudent conduct of Lessee's business on the Premises. Lessee agrees that (a) the storage, handling and use of such permitted Hazardous Substances must at all times conform to all Governmental Requirements and to applicable fire, safety and insurance requirements; (b) the types and quantities of permitted Hazardous Substances which are stored in the Premises must be reasonable and appropriate to the nature and size of Lessee's operation on the Premises and reasonable and appropriate for the same or similar use and in the same market area as the Premises; and (c) no Hazardous Substance shall be spilled or disposed of on, in, under or around the Premises or otherwise discharged from the Premises or any area adjacent to the Premises. In no event will Lessee be permitted to store, handle or use on, in, under or around the Premises any Hazardous Substance which will increase the rate of fire or extended coverage insurance on the Premises, nor any substance that could be discharged into the adjacent waterway unless: (1) such Hazardous Substance and the expected rate increase have been specifically disclosed in writing to Lessor; (2) Lessee has agreed in writing to pay any rate increase related to each such Hazardous Substance; and (3) Lessor has approved in writing each such Hazardous Substance, which approval shall be subject to Lessor's discretion.

33.3 Lessee shall indemnify, defend and hold harmless Lessor and Lessor's Agents from and against any and all Claims arising out of any breach of any provision of this paragraph, which expenses shall also include laboratory testing fees, personal injury claims, clean-up costs and environmental consultants' fees. Lessee agrees that Lessor may be irreparably harmed by Lessee's breach of this paragraph and that a specific performance action may appropriately be brought by Lessor; provided that, Lessor's election to bring or not bring any such specific performance action shall in no way limit, waive, impair or hinder Lessor's other remedies against Lessee.

33.4 As of the execution date of this Lease, Lessee represents and warrants to Lessor that, except as otherwise disclosed by Lessee to Lessor, Lessee has no intent to bring any Hazardous Substances on, in or under the Premises except for the type and quantities authorized in subparagraph 33.2.

34. ATTORNEY'S FEES AND EXPENSES

In the event that (a) either party requires the services of an attorney in connection with enforcing the terms of this Lease, (b) suit is brought for the enforcement of this Lease or the exercise of rights and remedies afforded by this Lease or under law, or (c) proceedings are held in bankruptcy then each party shall look to their own attorney's, fees, expenses and court costs, including those relating to any appeal.

35. NO ACCORD AND SATISFACTION

No payment by Lessee or receipt by Lessor of an amount less than the Base Rent or Additional Rent or any other sum due and payable under this Lease shall be deemed to be other than a payment on account of the Base Rent, Additional Rent or other such sum, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, nor preclude Lessor's right to recover the balance of any amount payable or Lessor's right to pursue any other remedy provided in this Lease or at law.

36. SUCCESSORS; JOINT AND SEVERAL LIABILITY

Subject to Section 17, captioned "Assignment or Subletting", all of the covenants and conditions contained in this Lease shall apply to and be binding upon Lessor and Lessee and their respective heirs, executors, administrators, successors and assigns. In the event that more than one person, partnership, company, corporation or other entity (such as Trustee under a Trust Agreement) is included in the term "Lessee", then each such person, partnership, company, corporation or other entity shall be jointly and severally liable for all obligations of Lessee under this Lease.

37. CHOICE OF LAW

This Lease shall be construed and governed by the laws of the state of California. Lessee consents to Lessor's choice of venue for any legal proceeding brought by Lessor or Lessee to enforce the terms of this Lease.

38. NO WAIVER OF REMEDIES

The waiver by Lessor of any covenant or condition contained in this Lease shall not be deemed to be a waiver of any subsequent breach of such covenant or condition nor shall any custom or practice which may develop between the parties in the administration of this Lease be construed to waive or lessen the rights of Lessor to insist on the strict performance by Lessee of all of the covenants and conditions of this Lease. No act or thing done by Lessor or Lessor's Agents during the Lease Term shall be deemed an acceptance or a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless made in writing and signed by Lessor. The mention in this Lease of any particular remedy shall not preclude Lessor from any other remedy it might have, either under this Lease or at law, nor shall the waiver of or redress for any violation of any covenant or condition in this Lease prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Lessor of Base Rent, Additional Rent or any other sum payable under this Lease with knowledge of a breach of any covenant or condition in this Lease shall not be deemed a waiver of such breach. The failure of Lessor to enforce any of the conditions to this Lease against Lessee shall not be deemed a waiver. Any waiver by Lessor must be in writing and signed by Lessor to be effective.

39. OFFER TO LEASE

The submission of this Lease in a draft form to Lessee or its broker or other agent does not constitute an offer to Lessee to lease the Premises. This Lease shall have no force or effect until it is executed by both Lessee and Lessor.

40. FORCE MAJEURE

In the event that either party shall be delayed, hindered in or prevented from the performance of any act or obligation required under this Lease by reason of acts of God, strikes, lockouts, labor troubles or disputes, inability to procure or shortage of materials or labor, failure of power or utilities, delay in transportation, fire, vandalism, accident, flood, severe weather, other casualty, Governmental Requirements, riot, insurrection, civil commotion, sabotage, explosion, war, natural or local emergency, acts or omissions of others, including the other party, or other reasons of a similar or dissimilar nature not solely the fault of, or under the exclusive control of, Lessor, then

performance of such act or obligation (other than Lessee's rental obligations under this Lease) shall be excused for the period of the delay and the period for the performance of any such act or obligation shall be extended for the period equivalent to the period of such delay.

41. SEVERABILITY; CAPTIONS

If any clause or provision of this Lease is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of this Lease shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. Headings or captions in this Lease are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Lease.

42. INTERPRETATION

Whenever a provision of this Lease uses the term (a) "include" or "including", that term shall not be limiting but shall be construed as illustrative, (b) "covenant", that term shall include any covenant, agreement, term or provision, (c) "at law", that term shall mean as specified in any applicable statute, ordinance or regulation having the force of law or as determined at law or in equity, or both, and (d) "day", that noncapitalized word shall mean a calendar day. This Lease shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one party or its counsel.

43. INCORPORATION OF PRIOR AGREEMENTS

This Lease contains all of the agreements of the parties to this Lease with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties to this Lease or their respective successors in interest.

44. AUTHORITY

If Lessee is a partnership, company, corporation or other entity, each individual executing this Lease on behalf of Lessee represents and warrants to Lessor that he or she is duly authorized to so execute and deliver this Lease and that all partnership, company, corporation or other entity actions and consents required for execution of this Lease have been given, granted or obtained. If Lessee is a Trust, a partnership, company, corporation or other business organization, it shall, within ten (10) Business Days after demand by Lessor, deliver to Lessor satisfactory evidence of the due authorization of this Lease and the authority of the person executing this Lease on its behalf.

45. TIME OF ESSENCE

Time is of the essence with respect to the performance of this Lease.

46. SURVIVAL OF OBLIGATIONS

Notwithstanding anything contained in this Lease to the contrary or the expiration or earlier termination of this Lease, any and all obligations of either party accruing prior to the expiration or termination of this Lease shall survive the expiration or earlier termination of this Lease, and either party shall promptly perform all such obligations whether or not this Lease has expired or terminated. Such obligations shall include any and all indemnity obligations set forth in this Lease.

47. CONSENT TO SERVICE

Lessee irrevocably consents to the service of process of any action or proceeding at the address referenced in Section 1. Nothing in this paragraph shall affect the right to serve process in any other manner permitted by law.

48. LESSOR'S AUTHORIZED AGENTS

Notwithstanding anything contained in the Lease to the contrary, The Lessor is the only entity authorized to amend, renew or terminate this Lease, to compromise any of Lessor's claims under this Lease, or to bind Lessor in any manner with respect to this

Lease. Neither the Chief Real Property Agent of the County of Marin nor any leasing agent or broker shall be considered an authorized agent of Lessor for such purposes.

49. LESSEE CERTIFICATION

Lessee certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named as a terrorist, "Specially Designated National and Blocked Person", or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control. Lessee is not entering this Lease, directly or indirectly on behalf of, or instigating or facilitating this Lease, directly or indirectly on behalf of, any such person, group, entity or nation.

50. ENTIRE AGREEMENT

This Lease contains the entire agreement between the parties hereto and no term or provision thereof may be changed, waived, discharged or terminated unless the same is in writing executed by both parties hereto.

51. NO PRESUMPTION REGARDING DRAFTER

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretation hereto, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

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

LESSOR:

**MARIN COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**


By: _____

Judy Arnold

President, Board of Supervisors

ATTEST _____

Approved as to form.

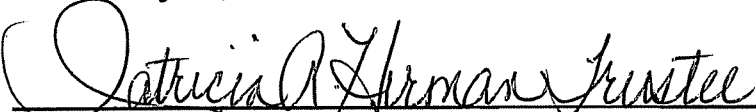



Deputy County Counsel

Deputy Clerk

LESSEE:

**Patricia A. Herman and Mireille Agajan,
Trustees of the Duquesne Family Trust
Dated July 10, 1992**

 Trustee May 1, 2010
Patricia A. Herman, Trustee Date

 Trustee May 1st, 2010
Mireille Agajan, Trustee Date