

C-5375



BALBOA YACHT BASIN
829 Harbor Island Drive
Newport Beach, CA 92660
949-644-3034/Fax 949-723-0589

APARTMENT RENTAL AGREEMENT

THIS APARTMENT RENTAL AGREEMENT ("Agreement") is made as of this 15th day of January, 2013 by and between the CITY OF NEWPORT BEACH ("City") and John C. Shaw and Ellen Shockro ("Lessee").

City hereby leases and Lessee hereby rents and takes those certain premises commonly known and described as Apartment Number 5 ("Premises") located at 829 Harbor Island Drive within the BALBOA YACHT BASIN ("Basin") for a tenancy from month-to-month, commencing on January 15, 2013, subject to each and every of the following terms and conditions:

1. LESSEE

Name(s): John ("Jack") C. Shaw and Ellen Shockro

Business Address: P.O. Box 3369, Newport Beach, CA 92659

Telephone: Home #: John Cell: 714-813-6593 Ellen Cell: 949-500-9554

Driver's License Information (John Shaw): State: CA Number: C3357220

Social Security #: John Shaw: 027-24-9429

Billing Address: P.O. Box 3369, Newport Beach, CA 92659

E-mail Address (John): bluelobster35@gmail.com

Emergency Contact Name: Jennifer Shockro (Ellen's Daughter) Emergency Phone #: 818-207-5756

2. NOTICE OF CHANGE OF LESSEE INFORMATION

Lessee agrees to give City written notice of any change in any of the above information within five (5) business days after the occurrence of any such change.

3. DEFINITION AND TERMS

Term: Month-to-Month, commencing on the 15 day of January, 2013 ("Commencement Date")

Monthly Rent: **\$2,500.00** ("Rent")

First Month Prorated Rent (if applicable): **\$1,290.32**

Security Deposit: **\$2,750.00** (\$2,500 + \$250) ("Security Deposit")
(Deposit equal to one month's rent plus Two Hundred Fifty Dollars (\$250.00) – Deposit requirement may be increased at any time at the discretion of Harbor Resources.)

4. CITY Notices to the City shall be sent to:

Harbor Resources Division
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658-8915.

5. TERM

This Agreement shall be for a term of one (1) month, plus any partial month if the Commencement Date is on a date other than the first day of a calendar month, and shall continue on a month-to-month basis until the termination of this Agreement. City may terminate this Agreement without cause and in City's absolute discretion, by providing thirty (30) days prior written notice to Lessee.

6. PAYMENT OF RENT

Lessee agrees to pay the Rent of **\$2,500.00** per month to the City's Finance Office at 3300 Newport Blvd., P.O. Box 1768, Newport Beach, CA, or at any such other place as may from time to time be designated by City in writing. The Rent for the first full or partial calendar month of the Term shall be paid to City by Lessee concurrently with the execution of this Agreement. All Rent amounts are payable in advance and all fees and charges are due by the first (1st) of the month and delinquent on the fifteenth (15th) of the month. Upon not less than sixty (60) days' prior written notice to Lessee, City may alter, at any time, the amount of Rent, Late Fee, Returned Check Fees, Key Deposit, and/or Security Deposit payable under this Agreement.

7. LATE PAYMENTS

Any Rent or other sum due under this Agreement that is not paid to City when due shall be charged ten percent (10%) interest per month as a late fee, from the date due until fully paid ("Late Fee"). In addition, Lessee acknowledges that such late payment will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult and impracticable to ascertain. If an account is processed for collection or lien due to late payments, an additional charge of thirty percent (30%) of the amount due will be assessed against Lessee. If Lessee does not pay the Rent when due two (2) or more times during the term of this Agreement, City may, at City's sole discretion, require Lessee to enroll in City's Automatic Payment Processing ("APP") program to ensure Lessee's timely payment. If Lessee refuses to enroll in City's APP program, City may, at City's sole discretion, immediately terminate this Agreement.

8. RETURNED CHECKS

A Twenty-Five and 00/100 Dollar (\$25.00) fee shall be assessed against Lessee for the first (1st) returned check. Any additional returned checks in the same calendar year shall be assessed a Thirty-Five and 00/100 Dollar (\$35.00) fee (collectively, "Returned Check Fees").

9. SECURITY DEPOSIT

Upon execution hereof, Lessee shall also pay to City a Security Deposit as security for the faithful performance of Lessee's obligations hereunder. Said Security Deposit shall be equal to one month's rent plus Two Hundred Fifty Dollars (\$250.00): **\$2,750.00**. City may, at its option, claim from the Security Deposit such amounts as are reasonably necessary to remedy Lessee's monetary defaults in the payment of Rent and other charges, to repair damages to the Premises or the Basin caused by Lessee, exclusive to normal wear and tear, or to clean the Premises, if necessary, upon termination of this Agreement. In the event this Security Deposit or any portion thereof shall be applied as provided herein, Lessee agrees to deposit with City within ten (10) days after written demand from City an amount

sufficient to restore said Security Deposit to its original amount, and failure to do so shall constitute a breach of this Agreement. City shall have the right to commingle the Security Deposit with other funds of the City and no interest shall accrue or be paid with respect to the Security Deposit. Within thirty (30) days after Lessee vacates the Premises and all keys to the Basin have been returned to the City, City shall furnish Lessee with an itemized written statement of the basis for and the amount of any amounts applied in accordance with this Agreement, and City shall return any remaining portion of such Security Deposit, without interest, to Lessee.

10. KEY DEPOSIT

In addition to the Security Deposit, Lessee shall also deliver to City, upon execution hereof, a Key Deposit in the initial amount set forth in Section 3 above, which shall be held by City as security for the key/access card to the Basin provided to Lessee. The Key Deposit shall be refundable to Lessee when such access device is returned to City upon termination of this Agreement. The Key Deposit shall be permanently retained by City in the event the access device is lost or damaged by Lessee, in which event Lessee shall be required to deliver to City an additional key deposit in the amount then-currently charged by City for a replacement access device.

11. USE

The Premises shall be used only for residential purposes, and no business or commercial activity shall be conducted on the Premises. Lessee agrees not to do anything that will constitute waste, nuisance, or unreasonable annoyance. No activity shall be permitted which requires the issuance of a business license or permit by any governmental agency, or which is inconsistent with community zoning and conditional use permits, which would increase the risk of harm to the management or to any other person or property, increase noise, dust, vibration, odors or fumes, smoke, or any other condition offensive to the senses or which causes reasonable complaint, breaches the covenant of quiet enjoyment or reduces property values; which would increase foot or vehicular traffic, results in deliveries and delivery trucks, require storage of any thing outside the Premises or affect parking. Permitted occupants are:

- (a) Lessee;
- (b) An additional person if Lessee is living alone;
- (c) Short term guests. The term "short term guest" shall mean any person who does not stay with Lessee for more than a total of twenty (20) consecutive days or a total of thirty (30) days in any calendar year. Other persons may not occupy the Premises with the prior written consent of City.

12. CONDITION OF USE

Lessee shall perform and abide by each and every condition of use contained in this Agreement and the attached Rules and Regulations. At all times, Lessee shall comply with all laws, rules and regulations of federal, state, and local entities, including, but not limited to, municipal codes, environmental laws and regulations and all regulations of the U.S. Coast Guard. Lessee shall not cause or allow the Premises to be used for any purpose other than for those uses described this Agreement.

(a) Discharge of Waste/Hazardous Waste.

- (1) No Hazardous Material (as defined below), explosives, corrosives, flammable liquids, solvents, gasoline, paint, varnish, chemicals, combustibles or illegal substances may be stored in, at, or about the Premises. No substance or material of any kind shall be discharged into the waters of the Basin. Lessee shall not release or permit to be released into the water or upon the docks or land, by action or inaction, any waste or environmentally objectionable substances including, but not limited to, oil, paint or

gasoline. Lessee shall immediately report any release to all appropriate government agencies and to the Basin Manager, and shall immediately implement necessary clean up and disposal of any waste. Lessee shall be responsible for the prompt payment of all costs associated with clean up and disposal including costs of absorbent pads and booms, oversight by government agencies and Harbor Resources personnel, fines, penalties and legal fees. If City is not satisfied, at City's sole discretion, with Lessee's actions in reporting and cleaning up a release, City may take any and all action it deems appropriate. Lessee shall be liable for all costs and expenses associated with the City's actions which shall be payable to the City immediately upon receipt of an invoice from the City.

- (2) Lessee shall not engage in any activity at or about the Basin that violates any Environmental Law (as defined below), and shall promptly, at Lessee's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly by Lessee. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Basin, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 et seq.; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq.; (iii) California Health and Safety Code Sections 25100 et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317 et seq.; (viii) California Water Code Section 1300 et seq.; and (ix) California Civil Code Section 3479 et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Lessee shall provide prompt written notice to City of the existence of Hazardous Materials maintained by Lessee at the Basin and all notices of violation of the Environmental Laws received by Lessee.
- (b) Maintenance. Lessee agrees to maintain the interior of the Premises during the term hereof in good and clean condition and, at the end of the term, to return the Premises to Lessor in as good condition as upon commencement of the term, reasonable wear and tear excepted.
- (c) Signs. No signs for the purpose of advertising or display, including but not limited to "For Sale" and brokerage signs, shall be placed on the Premises or anywhere in the Basin.
- (d) Condition of Premises. Lessee hereby acknowledges that Lessee has inspected the Premises, and knows the condition of the same, hereby accepts the same in its existing condition "As Is" and agrees that no statement, representation or warranty as to their condition has been made by the City.
- (e) Repairs, Alterations and Improvements. Lessee shall make no repairs or alterations or improvements to the Premises, except for routine cleaning and maintenance, without obtaining City's written consent in advance in each instance. All alterations and improvements to the

Premises made by Lessee shall become sole property of City upon expiration or termination of the Agreement.

- (f) Commercial Enterprise. Lessee will not conduct or allow the Premises to be used for any commercial enterprise, trade or business during the existence of this Agreement.
- (g) Guests. Lessee shall be responsible for the conduct and control of all guests, agents, contractors, employees, hired personnel and other invitees (collectively, "Guests") while at the Premises and Basin. City reserves the right to regulate entry into the Basin by yacht brokers, contractors and yacht service personnel, and City may require written authorization from Lessee.
- (h) Assignment and Subletting. Lessee shall have no right or power to assign this Agreement or sublet the Premises or any part thereof to any other person or party whatsoever. No attempted transfer or assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy, or otherwise, and no attempted subletting, shall be valid or effective, but shall automatically terminate this Agreement. Any assignment or subletting shall constitute an immediate breach of this Agreement, and City may, at its option, without waiving any other remedies it may have, immediately terminate this Agreement upon written notice to Lessee.
- (i) Balboa Yacht Basin Rules and Regulations. Lessee agrees to use the Premises and the Basin in accordance with City's Rules and Regulations, which, by this reference, is made a part hereof. In the event of a conflict between said Rules and Regulations and this Agreement, the terms of this Agreement shall apply. City reserves the right to modify its Rules and Regulations from time to time and Lessee agrees to comply with all such modified Rules and Regulations. Lessee further agrees to comply with all laws, ordinances, rules, regulations and orders of any government authority with respect to the Premises and the Basin. Should any fine be assessed against Lessee and/or City due to any failure by Lessee or its Guests to comply with the provisions of this Section, Lessee shall be solely responsible therefor and shall pay same within five (5) business days following demand.
- (j) Utilities. Lessee shall bear the cost of all utility services of whatever nature that may be provided to the Premises including without limitation electricity, gas, water, and telephone. Lessee shall notify the persons or companies furnishing utility services to discontinue them at such time as Lessee vacates the Premises.
- (k) Security of Premises. Lessee agrees to be solely responsible for securing access to the Premises.

13. RIGHT OF ENTRY

City may, at City's option, enter upon the Premises (a) in the event of an emergency, (b) to ensure compliance with the terms of this Agreement, or (c) at any other reasonable time to examine and/or make such repairs or perform such maintenance as City may deem necessary or desirable. Except in an emergency situation, the City will give you five (5) business days prior notice before entering the Premises.

14. NOTICE REQUIRED BY CIVIL CODE SECTION 2079.10(a)

The California Department of Justice, county sheriffs departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the California Penal Code. The database is updated on a quarterly basis and is a source of information about the presence of these individuals in any neighborhood. The Department of Justice maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information

about individuals they are checking. Information regarding neighborhoods is not available through this telephone service.

15. TAXES, LICENSES AND OTHER OBLIGATIONS

- (a) Payment of Taxes. Lessee acknowledges that this Agreement may create a possessory interest subject to taxation. Lessee shall pay, before delinquency, all taxes, assessments, license fees and other charges ("Taxes") that are levied or assessed upon Lessee's interest in this Agreement or any fixture, improvement, equipment and other property in and around the Premises. Lessee shall pay directly to the appropriate taxing authorities all Taxes at least ten (10) calendar days before delinquency and before any fine, interest or penalty is due or imposed by operation of law. At City's request, Lessee shall provide City with proof of payment of Taxes. Lessee shall not be required to pay any Taxes based on City's ownership interest in the Premises.
- (b) Payment of Obligations. Lessee shall promptly pay, when due, any and all bills, debts, liabilities and obligations incurred by or charged to Lessee in connection with Lessee's occupation and use of the Premises. However, the provisions of this Section shall not prevent Lessee from contesting the validity of any lien, claim or demand, provided that in such event, Lessee shall, at its expense, defend itself and City against the same and shall pay and satisfy any adverse judgment that may be rendered before enforcement against City or the Premises.
- (c) Challenge to Taxes. Lessee shall have the right in good faith, at its sole cost and expense, to contest the amount or legality of any Taxes including the right to apply for reduction. If Lessee contests payment of Taxes, Lessee's failure to pay the Taxes shall not constitute a default as long as Lessee complies with the provisions of this Section. City shall not be required to join in any proceeding or contest brought by Lessee unless the law requires joinder of the City and in that case City shall join in the proceeding, permit it to be brought in City's name and shall execute any necessary or appropriate document necessary so long as City is not required to bear any cost or liability for payment of Taxes. Lessee shall, on final determination of the proceeding or contest, immediately pay such disputed tax and also discharge any decision or judgment rendered, together with all related costs, charges, interest and penalties and provide City with proof of Lessee's payment. Lessee shall indemnify, defend and hold harmless the City and its officers and employees from and against any liability, claim, demand, penalty, cost or expense arising out of or in connection with any contest or proceeding prosecuted by Lessee pursuant to this Section.

16. ANTI-DISCRIMINATION

Lessee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through him, and this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, marital status, sex, religion, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises nor shall Lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy, of tenants, Lessee, sublease, subtenants, or vendees in the Premises herein.

17. INSURANCE

City does not carry public liability or property damage insurance to compensate Lessee, Guests or any other person from any loss, damage or injury except those resulting from situations where City would be legally liable for such loss, damage or injury. If Lessee desires such or similar insurance coverage, it

should be obtained by Lessee, insuring against loss and casualty by fire, earthquake, flooding, theft, other liability and casualty which relates to the Premises, other improvements and contents to full insurable value, personal liability and such other insurance as is necessary and appropriate. Lessee is advised to obtain a homeowner's policy in accordance with the guidelines and requirements specified by a lender, and if no lender, then in such sums and for such coverage as would be so required if so financed.

18. INDEMNIFICATION

To the fullest extent permitted by law, Lessee shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death, or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to this Agreement; the damage or destruction to the Premises, Basin, or any part thereof or any vessel in the Basin resulting from Lessee's (or its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, Guests, anyone employed directly or indirectly by any of them, or any person on the Premises or Basin claiming to be present through or under the permission or authority of Lessee or for whose acts they may be liable or any or all of them) breach of any term of this Agreement, negligence, willful acts, failure to comply with any law, rule and/or regulation of a federal, state, and/or local entity, failure to comply with any of the attached Rules and Regulations, and/or other acts or omissions including, but not limited to, Claims related to failure to turn off electrical, water or other utility appliances or lights when not in use, and/or littering of the Premises or adjoining water or common areas.

Notwithstanding the foregoing, nothing herein shall be construed to require Lessee to indemnify the Indemnified Parties from any Claim arising from the active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Lessee.

19. DAMAGE AND DESTRUCTION

- (a) Lessee's Obligation. Lessee hereby agrees to pay on demand all reasonable costs of repair or restoration resulting from any damage or destruction to the Premises, Basin and any part thereof, resulting from any act or omission of Lessee or any person at the Premises claiming to be present through or under the permission or authority of Lessee, including without limitation, failure to turn off electrical, water, or other utility appliances or lights when not in use, littering of the water and common areas.

City shall not be responsible for any damage to Lessee's personal property caused by, but not limited to, fire, flood, mildew, dust, water, or heat.

- (b) Effect of Damage or Destruction. In the event of damage to or destruction of the Basin or the Premises by fire, wind, flood, storm movement of water, accumulation of silt, earthquake, tidal wave or any other cause or causes, whether immediate or over a period of time, City shall have the option to:
- (1) Treat this Agreement as continuing and repair or restore the Basin or Premises to its condition before such damage or destruction occurred within thirty (30) days of the occurrence of the same or, if insured, within thirty (30) days after City received permission from the insurer to proceed with repair or restoration; or

- (2) Terminate this Agreement and all further obligations hereunder of either party by written notice to Lessee.

After the occurrence of such damage or destruction, Lessee's obligation to pay Rent hereunder may be abated in an amount which City, in its sole discretion, shall determine to be proportionate to the area of the Premises rendered unfit for use by Lessee during the period of repair or restoration. All repairs or restoration must be completed within thirty (30) days of the damage or destruction, must be approved by the City and must be completed in a manner acceptable to the City.

20. WASTE, QUIET ENJOYMENT

Lessee shall not commit or permit any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any vessel owner or person in or about the Basin. Violation of this provision shall be grounds for immediate termination of this Agreement at the option of City. Lessee shall not use in any wasteful, unreasonable or hazardous manner, any of the utilities furnished by the City.

21. LIMITATIONS ON CITY'S LIABILITY

- (a) RELEASE OF CITY'S LIABILITY. AS A FURTHER CONSIDERATION FOR THE USE AND OCCUPANCY OF THE PREMISES, LESSEE AGREES THAT CITY, ITS CITY COUNCIL, BOARDS, COMMISSIONS, DIRECTORS, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS, AND ASSIGNS SHALL NOT BE LIABLE TO LESSEE, ITS GUESTS, LICENSEES OR INVITEES FOR ANY LOSS OR DAMAGE, INJURY OR DEATH CAUSED TO THEM OR TO THEIR PROPERTY, AS THE RESULT OF THE USE AND OCCUPANCY OF THE PREMISES. IT IS FURTHER AGREED THAT ANY STORED PROPERTY IS PLACED IN THIS PREMISES AT LESSEE'S SOLE RISK, AND CITY, ITS CITY COUNCIL, BOARDS, COMMISSIONS, DIRECTORS, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS, AND ASSIGNS SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY LOSS OR DAMAGE TO SAID PROPERTY FROM ANY CAUSE WHATSOEVER. LESSEE ACKNOWLEDGES THAT CITY DOES NOT WARRANT OR REPRESENT THAT STORED PROPERTY WILL BE SAFELY KEPT, NOR THAT IT WILL BE SECURE AGAINST THEFT NOR THAT THE PREMISES ARE SECURE AGAINST HAZARDS CAUSED BY THEFT, MYSTERIOUS DISAPPEARANCE, PESTS, WATER, FIRE, FLOOD OR THE ELEMENTS OF WEATHER OR EARTHQUAKE. IT IS AGREED BY LESSEE THAT THIS RELEASE OF CITY'S LIABILITY IS A BARGAINED FOR CONDITION OF THE RENT SET FORTH HERE, AND THAT WERE CITY NOT RELEASED FROM LIABILITY AS SET FORTH HERE, A MUCH HIGHER RENT WOULD HAVE TO BE AGREED UPON. BY PLACING its INITIALS HERE, Jed X, LESSEE ACKNOWLEDGES THAT IT HAS READ, AND UNDERSTANDS AND AGREES TO THE TERMS OF PARAGRAPH 19 (a).

- (b) Other Limitations. Lessee also agrees that City shall not be liable for, and this Agreement shall not be terminated by, any interruption or interference with services or accommodations due Lessee caused by strike, riot, orders or acts of public authorities, accident, the making of necessary repairs to the Basin, or any other cause beyond City's control.

22. DEFAULT

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee:

- (a) The vacating or abandonment of the Premises by Lessee;

- (b) Failure of Lessee to make any payment of Rent or any other payment required to be made by Lessee hereunder as and when due where such failure shall continue for a period of three (3) days after written notice thereof from City to Lessee;
- (c) Failure by Lessee to observe or perform any of the covenants, conditions and terms of this Agreement to be observed or performed by Lessee other than described in (b) immediately above, where such failure shall continue for a period of seven (7) days after written notice thereof from City to Lessee.

23. REMEDIES FOR DEFAULT

(a) Remedies.

If Lessee fails to pay Rent, cost of repair or restoration or other charges to be borne by Lessee or, in the event of any other default of this Agreement by Lessee, City may, at its option, regard this Agreement as continuing in force and recover from Lessee damages caused by Lessee's breach, including, without limitations, the right to recover the Rent due under this Agreement as the same shall accrue, and/or terminate Lessee's right to use the Premises.

In the event City proceeds with lien enforcement on Lessee's stored property, because actual damages for such lien enforcement are difficult to ascertain, Lessee agrees to pay, as liquidated damages, and as additional rent, Twenty-Five Dollars (\$25.00) plus actual costs for each lien or preliminary lien notice against Lessee. In the event Lessee fails to clear the lien on the stored property in the manner and within the time limits allowed by Chapter 10, commencing with Section 21700 of the California Business and Professions Code and the Premises reaches auction status, Lessee agrees to pay a standardized charge of One Hundred Dollars (\$100.00) to cover costs of inventory, advertising, and auctioning the liened goods.

If Lessee fails to perform any of the terms, conditions and promises as set forth in this Agreement, City may, at its option, without waiving any other remedies it may have, immediately terminate this Agreement upon written notice to Lessee.

In the event of Lessee's default or termination of this Agreement, City may suspend the right of Lessee to obtain access to the Basin and the Premises without the necessity of the initiation of any legal proceedings.

The remedies herein provided are not exclusive and City may pursue any one or more of such remedies or any other remedies provided by law.

- (b) No Waiver. The exercise or failure to exercise any remedy provided herein or by law, for any breach of this Agreement shall not be deemed as a waiver of City's rights. Failure by City to exercise any of its rights under this Agreement or City's acceptance of money payment after default shall not be considered or construed to waive any right of City or to affect any notice or legal proceedings given or commenced. Nothing herein shall constitute a waiver of the rights of the City.

24. TERMINATION

In addition to the other rights of termination set forth herein, the parties agree that this Agreement may be terminated at any time by either party upon thirty (30) days written notice.

Upon termination of this Agreement, Lessee shall immediately remove all personal property from the Premises and from the Basin, and surrender to City the Premises and all keys to the Basin.

25. DECLARATION REGARDING MILITARY SERVICES

Each subscribing Lessee hereby declares under penalty of perjury that he is not now in any military service and agrees to promptly notify the City in writing if he joins military service. Lessee hereby authorizes the City and any court otherwise having jurisdiction to rely upon the foregoing declaration as satisfying the requirements of the Soldiers' and Sailors' Civil Code Relief Act (50 U.S.C. Sec. 520) in rendering an otherwise proper default judgment against Lessee in an unlawful detainer proceeding. City hereby agrees and stipulates that any unlawful detainer proceeding may at any time thereafter be vacated and set aside upon proof, satisfactory to the court entering the judgment that at the time such default judgment was rendered was actually in military service.

26. NOTICE TO VACATE

Lessee agrees that in consideration of this Agreement, any notice required of the City by State Law, including the ninety (90) days notice which may be required by Government Code Section 7267.3 to vacate the subject property, is hereby waived by Lessee, and possession of the property shall be delivered to Lessor in accordance with the terms of this Agreement. It is further agreed and acknowledged by Lessee that this Agreement constitutes such notice to vacate as may be required by applicable Law.

27. NOTICES, DEMANDS, REQUESTS AND SERVICES OF PROCESS

(a) Notices, Demands and Requests. All notices, demands and requests which may be, or are required to be, given pursuant to the provisions of this Agreement may be delivered in person, by reputable courier, by overnight delivery service, or by depositing in the U.S. Mail, first class postage prepaid, and addressed as follows:

- (1) If to City, at its address designated in this Agreement or to such other person or to such other address as City may hereafter designate by written notice.
- (2) If to Lessee, to Lessee at the residence, billing address and/or other address designated in this Agreement or to such other address as Lessee may hereafter designate by written notice.

(b) Service of Process on City. All other legal notices, demands and services of process to be given to City may be served as provided by law upon the authorized agent of City at the designated address or upon such other person or at such other address as City may hereafter designate by written notice.

28. EMINENT DOMAIN

In the event the whole or part of the Premises is condemned by a public entity in the lawful exercise of the power or eminent domain, this Agreement shall cease as to the part condemned upon the date possession of that part is taken by the public entity.

If only a part is condemned and the taking of that part does not substantially impair the capacity of the remainder to be used for the purposes required in this Agreement, Lessee shall continue to be bound by the terms, covenants and conditions of this Agreement.

If only a part is condemned and the taking of that part substantially impairs the capacity of the remainder to be used for the purposes required in this Agreement, Lessee shall have the election of:

- (a) Terminating this Agreement and being absolved of obligations hereunder which have not accrued at the date possession is taken by the public entity; or

- (b) Continuing to occupy the remainder of the property and remaining bound by the terms, covenants and conditions of this Agreement.

Lessee shall give notice in writing of his election hereunder, within thirty (30) days of the date possession of the part is taken by the public entity.

City shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the Premises by exercise of eminent domain.

Lessee shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the improvements constructed by Lessee on the Premises by the exercise of eminent domain.

29. MISCELLANEOUS PROVISIONS

- (a) **Waiver:** A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a difference character.
- (b) **Integrated Agreement:** This Agreement represents the full and complete understanding of every kind or nature whatsoever between City and Lessee, and all preliminary negotiations and other agreements of any kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.
- (c) **Conflicts:** In the event there are any conflicts or inconsistencies between this Agreement and any attachments, the terms of this Agreement shall govern.
- (d) **Modification & Amendment:** This Agreement may be modified or amended only by a written document executed by both Lessee and City and approved as to form by the City Attorney.
- (e) **Severability:** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
- (f) **Controlling Law and Venue:** The laws of the State of California, and applicable Federal law, shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.
- (g) **Attorneys Fees:** The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, shall be entitled to recover its attorneys' fees.
- (h) **Lessee's Liability:** If more than one Lessee is a party to this Agreement, the obligation of all such Lessees shall be and is joint and several.
- (i) **Gender Neutral.** Whenever in this Agreement the context may so require, the masculine, feminine and neutral genders shall be each deemed to include the other and the singular and the plural shall refer to one another.

LESSEE REPRESENTS AND WARRANTS THAT ALL STATEMENTS HEREIN ARE FULL, TRUE AND CORRECT. LESSEE ACKNOWLEDGES THAT THE CITY HAS FULLY RELIED UPON THESE STATEMENTS IN EXECUTING THIS AGREEMENT.

THIS AGREEMENT SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT BETWEEN CITY AND LESSEE WITH REGARD TO THE PREMISES. ALL SUCH PRIOR AGREEMENTS ARE HEREBY TERMINATED AND SHALL HAVE NO FURTHER FORCE OR EFFECT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year here written.

I have received a copy of the Balboa Yacht Basin's Rules and Regulations, which bear the revision date July 5, 2005. Initial JCS

CITY OF NEWPORT BEACH

by: Mr. M. A. Chris Miller

Title: Harbor Resources Manager

Date: 1/15/13

LESSEE(S):

John C. Shaw Ellen K. Shockro

JOHN C. SHAW ELLEN K. SHOCKRO
Print Name

Date: 1/15/13

INSURANCE ADDENDUM

THIS INSURANCE ADDENDUM is attached to, incorporated into and made a part of the BALBOA YACHT BASIN APARTMENT RENTAL AGREEMENT dated January 15, 2013 ("Agreement") between the City of Newport Beach, a chartered municipal corporation ("City") and John C. Shaw and Ellen Shockro ("Lessee").

RECITALS

A. City has leased to Lessee that certain premises commonly known and described as Apartment Number 5 ("Premises") located at 829 Harbor Island Drive within the Balboa Yacht Basin ("Basin") in the City of Newport Beach.

C. The term of the Agreement is for a month-to-month tenancy which commenced on January 15, 2013, and shall continue until the termination of the Agreement, pursuant to Section 5 of the Agreement ("Term").

D. City desires to amend the Insurance requirements of the Agreement as more particularly set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants in the Agreement, the parties agree as follows:

1. INSURANCE

Section 17 of the Agreement is amended in its entirety as follows:

City does not carry public liability or property damage insurance to compensate Lessee, Guests or any other person from any loss, damage or injury except those resulting from situations where City would be legally liable for such loss, damage or injury. Lessee shall maintain at all times during the Term of this Agreement, at Lessee's sole expense, a standard type of tenant's or renter's homeowners insurance policy, or its equivalent, issued by a licensed insurance company. Such policy shall provide limits of liability of at least (i) \$100,000 personal liability, and (ii) the greater of \$10,000 or the full replacement value of Lessee's personal property. Lessee shall be responsible for determining if these levels of insurance coverage are adequate for Lessee and Lessee's possessions. Lessee hereby (a) releases City and its elected officials, officers, agents, authorized representatives and employees (collectively, "City's Agents") from any and all claims for damages or loss to Lessee's personal property (including any deductible and including loss caused by earthquake or other Damage Event) and from any and all claims for personal liability, damages or loss in, on or about the Premises that are caused by or result from risks that are or would be insured under Lessee's insurance coverage, including, but not limited to, damage or loss caused by fire, theft, rain, water

overflows and leakage, and (b) waives any and all rights of recovery and rights of subrogation against City's Agents in connection with any damage, claim or loss that is or would be covered by Lessee's insurance coverage.

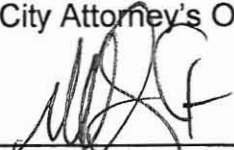
2. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

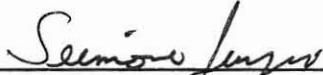
IN WITNESS WHEREOF, the parties hereto have executed this Insurance Addendum as dates written below. By signing below, City and Lessee acknowledge the above information to be true and correct.

APPROVED AS TO FORM:
City Attorney's Office

CITY: City of Newport Beach, a chartered municipal corporation



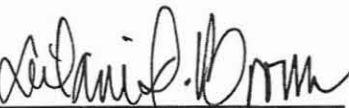
Aaron C. Harp, ^{VSA} 1/22
City Attorney
1/23/13
Date



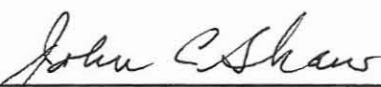
Seimone Jurjis,
Building Manager/Chief Building Official
1/16/2013
Date

ATTEST:

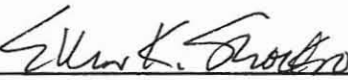
LESSEE:



Leilani Brown,
City Clerk
2/1/13
Date



John C. Shaw
1/15/13
Date



Ellen Shockro
1/15/13
Date

