

RECORDING REQUESTED BY AND )  
WHEN RECORDED MAIL TO: )  
 )  
State of California )  
Fish and Game Commission )  
1416 Ninth Street, Rm 1320 )  
Sacramento, CA 95811 )  
P.O. Box 944209 )  
Sacramento, CA 94244-2090 )

Space Above Line for Recorder's Use Only

**LEASE GRANTING THE EXCLUSIVE PRIVILEGE  
OF CONDUCTING AQUACULTURE AT  
STATE WATER BOTTOM NO. M-000-00**

THIS LEASE GRANTING THE EXCLUSIVE PRIVILEGE OF CONDUCTING AQUACULTURE AT STATE WATER BOTTOM NO. M-000-00 ("Lease") is made and entered into as of [DATE], by and between [NAME], ("Tenant") and the California Fish and Game Commission ("State") with reference to the following facts:

**RECITALS**

Tenant wishes to lease a State Water Bottom for the purpose of propagating, cultivating, maintaining and harvesting aquatic plants and/or animals in marine waters of the state.

Fish and Game Code section 15400 authorizes the State to lease to any person the exclusive privilege to conduct aquaculture in any designated State Water Bottom if it determines that such lease is in the public interest.

[New lease]: On [DATE] the State awarded the lease for State Water Bottom No. M- 000-00 to Tenant.

[Renewal]: On [DATE(s)] the State authorized renewal of the Lease for State Water Bottom No. M-000-00 to Tenant.

[Other]: On [DATE] [Note here any other significant events concerning the lease, e.g. amendment, assignment or designation of successor-in-interest.]

**TERMS AND CONDITIONS**

**1. LEASE.** The State hereby grants to Tenant the exclusive privilege to conduct aquaculture upon State Water Bottom No. M-000-00, subject to the terms and conditions of this Lease.

**2. DESCRIPTION.** This Lease covers that area comprising approximately 000.00 acres designated as State Water Bottom No. M-000-00 and shown on the Map and Description attached as **Exhibit A**, which is made a part of this Lease by this reference.

**3. TERM.** This Lease is for a period of [FIFTEEN (15)] years commencing on [START DATE] and ending on [END DATE], unless renewed or sooner terminated in accordance with its terms.

**4. ANNUAL RENT.** The base rent for the Lease area is \$000.00 per acre, calculated to recover Tenant's share of the State's operational costs of the aquaculture bottom leasing program attributable to shellfish cultivation. The base rent shall be annually adjusted in the following manner:

The Department of Fish and Wildlife shall determine the change in the "Implicit Price Deflator for State and Local government Purchases of Goods and Services," as published by the U.S. Department of Commerce, for the quarter ending March 31 of the current year compared to the quarter ending March 31 of the previous year. The relative amount of the change shall be multiplied by the amount of the annual rent.

No more frequently than at five-year intervals, the State, in its sole discretion, may recalculate the productivity classification by which the annual rent is calculated for Tenant to reflect changes in the State's operational costs of the aquaculture bottom leasing program attributable to shellfish cultivation. The 10-year average oyster production values fall into three productivity classifications:

- High productivity = >100,000 oysters/acre = \$150.00 per acre/year
- Moderate productivity = >20,000-99,000 oysters/acre = \$100.00 per acre/year
- Low productivity = >2,000-19,999 oysters/acre = \$50.00 per acre/year

Whenever such formula is updated, the annual rent first charged Tenant thereafter shall become the new base rent, subject to the foregoing adjustments for inflation thereafter.

Notice of the annual adjusted rent for the upcoming calendar year shall be given to Tenant by December 1. Until the notice of the annual adjustment is provided, Tenant remains obligated to pay rent at the previous rate. Pursuant to Fish and Game Code section 15407, the annual rent shall be paid within 30 days of the commencement date in Section 3, and within 30 days of each anniversary. Tenant shall remit such rent to: Department of Fish and Wildlife, Fiscal and Administrative Services Branch, 1416 Ninth Street, 12<sup>th</sup> Floor, Sacramento, California 95814 RE: State Water Bottom Lease No. M-000-00.

Payment shall be made to the State in lawful money of the United States, provided that, if any payment made by a check, draft or money order is returned to The State due to insufficient funds or otherwise, the State shall have the right, upon written notice to Tenant, to require Tenant to make all subsequent payments in cash, or by cashier's or certified check.

**5. LATE PAYMENT.** Annual payment of rent is due and payable on the commencement date of this Lease or any anniversary thereafter, and is timely if received by the State within thirty (30) days of such commencement date or anniversary. Any annual payment not received by the State within thirty (30) days of the Lease commencement date or anniversary thereof, regardless of whether the 30th day falls on a Saturday, Sunday or holiday, will be subject to a late penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment. The parties agree that the late charge represents a fair and reasonable estimate of the costs the State will incur because of late payment. Acceptance of the late charge by the State shall not constitute a waiver of Tenant's default for the overdue amount, nor prevent the State from exercising other rights and

remedies granted under this Lease. Tenant shall pay the late charge as additional rent within 30 days of the due date of the original payment.

Any annual payment not received by the State within ninety (90) days of the commencement date of the Lease or within ninety (90) days of any anniversary thereof shall constitute a breach of Lease, giving rise to the State's remedies as set forth herein.

Annual rent due to the State, if not received by the State within ninety (90) days following the due date, will bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate legally permitted. Interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that legally permitted. Payment of interest shall not excuse nor cure any default by Tenant.

Upon written request by Tenant to the State, demonstrating unusual or extenuating circumstances causing the late payment, the State, in its sole discretion, may waive the late charge.

**6. INSURANCE.** Tenant shall furnish to the State certificate(s) of insurance stating that Public Liability Insurance is presently in effect for the Tenant and will be in effect throughout the period of this Lease with a combined single liability limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, and shall insure against all liability of Tenant and its employees and agents arising out of or in connection with Tenant's use and occupancy of the leased Lease area. The certificate(s) of insurance shall:

(a) Be furnished to the State by the insurance companies, and no such policy shall be cancelable or subject to reduction of coverage or other modification except after 30 days prior written notice to the State.

(b) Include the State of California, its officers, agents, employees and servants are included as additional insured but only insofar as the operations under the Lease are concerned.

(c) Provide that the State shall not be responsible for any premiums or assessments on any policy of insurance hereunder.

(d) Comply with those standards as determined by the State of California, Department of General Services, Office of Risk and Insurance Management.

Tenant agrees that the insurance required herein shall be in effect at all times during the term of this Lease, at the cost of Tenant. In the event said insurance, or any of it, expires or lapses at any time during the term of this Lease, the Tenant agrees to provide, no later than fifteen (15) days after said expiration or lapse, written evidence of required insurance coverage from the date of loss of the earlier insurance and continuing for not less than the remainder of the term of the Lease. Tenant's failure to keep in effect at all times all insurance required by this Lease shall be grounds for termination of the Lease, in addition to any other remedies available to the State.

Where Tenant has any employees, a program of workers' compensation insurance, in an amount and form to meet all applicable requirements of the Labor Code of California,

shall be in place throughout the term of this Lease. Such insurance shall include employer's liability coverage of One Million Dollars (\$1,000,000.00) and shall specifically cover all persons providing services by or on behalf of Tenant and shall cover all risks to such persons under this Lease.

**7. INDEMNITY AND WAIVER. (For purposes of this Section 7, the term, "State", shall include the Department of Fish and Wildlife as well as the Fish and Game Commission.)** Tenant hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, or in any way connected with or incident to this Lease, except claims arising from, and only to the extent of the gross negligence or willful misconduct of the State, its officers, agents or employees. Tenant shall notify the Department of Fish and Wildlife Aquaculture Coordinator immediately in case of any serious accident, injury, or casualty on, or potentially related to, the Lease area.

Tenant shall protect, indemnify, hold harmless, and defend the State, its officers, agents or employees, against any and all claims, demands, damages, costs, expenses or liability costs arising out of the use by Tenant, including its employees and agents, of the Lease area, except for liability arising out of, and to the extent of, the gross negligence or willful misconduct of the State, its officers, agents or employees for which the State is found liable by a court of competent jurisdiction.

Should the State be named as a defendant in any claim or legal action arising out of the use by Tenant, including its employees and agents, of the Lease area, upon tender of the claim or action by the State to Tenant, the Tenant shall assume the State's defense and represent the State in such legal action at Tenant's expense, subject to the provisions herein.

In lieu of tender to Tenant of the claim or action against the State, the State may elect to represent itself, in which event, the State shall bear its own litigation costs, expenses and attorney fees. Notwithstanding the foregoing, in the event the State is required to represent itself because of a conflict of interest by counsel representing Tenant, then Tenant, upon demand by the State, shall reimburse the State for the State's litigation costs, expenses and attorney fees. Costs shall include, without limitation, all attorney fees and costs, court costs, if any, costs of mediators or arbitrators, experts and consultants, and any other costs reasonably incurred in response to any claim.

In the event the State is found to be concurrently liable with Tenant by a court of competent jurisdiction for loss or damage to persons or property arising out of the use by Tenant, its employees and agents, of the Lease area, the State and Tenant shall cooperate and use their best efforts to seek and obtain an apportionment of liability from the court and neither party shall request a jury apportionment.

In the event the State is found to be liable for any other wrongful act, for which liability to another is determined by a court of competent jurisdiction for loss or damage to persons or property arising out of the use by Tenant, its employees and agents, of the Lease area, the State shall bear its own litigation costs, expenses and attorney fees. If Tenant has paid for any such costs which are the responsibility of the State under this provision, the State shall reimburse Tenant at Tenant's request. The State, in its sole discretion, may provide any reimbursement required in the form of a credit against any other money due the State under this Lease.

**8. RENEWAL.** Tenant may provide written notice to the Department of Fish and Wildlife Aquaculture Coordinator that it is exercising its right to seek renewal of this lease at least 120 days and not more than 364 days (one year) prior to the expiration date in Section 3 pursuant to Fish and Game Code section 15406. So long as Tenant, during the period specified herein, is still actively engaged in aquaculture, as determined by the State, Tenant shall have a prior right to renew for a period of [TEN (10)] years on terms to be agreed upon between the State, in consultation with the Department of Fish and Wildlife Aquaculture Coordinator, and Tenant. If Tenant fails to give such notice of its right to seek renewal during the period specified herein, the Lease, including any remaining right to seek renewal, shall terminate upon expiration of the then-current term. Moreover, if Tenant is in default on the date of giving such notice, the notice shall be ineffective; if Tenant cures the default and provides a new notice thereafter all within the period specified herein for giving notice, that new notice shall be sufficient to exercise Tenant's prior right to renew. Provided, further, that if on the date a renewal term is to commence Tenant is in default, the renewal term shall not commence and this Lease shall expire at the end of the current term. However, if the State continues negotiating renewal terms after the prior term expires, then the holdover provisions of Section 9 may apply. In no event shall the term of this Lease, or the term of any renewal thereof, extend beyond 25 years each.

**9. HOLDOVER.** If the Term in Section 3 expires and the Lease has not been renewed pursuant to Section 8, and Tenant remains in possession of the Lease area with State's express or implied permission, Tenant shall become a tenant from month to month only, subject to all the provisions of this Lease except Sections 3, 4 and 5. During this holdover tenancy, a monthly rent representing one-twelfth of the current adjusted annual rent shall be payable on or before the first day of each month. It is expressly understood that a holdover tenancy does not create any right of renewal beyond that provided by Fish and Game Code section 15406 as set forth in Section 8, and that the only purpose of a holdover tenancy is to allow continuity of use of the property while the State continues to negotiate renewal terms or undertakes to issue a new lease to the highest responsible bidder pursuant to Fish and Game Code section 15406, or to allow the holdover tenant time to terminate and remove the aquaculture operation consistent with Fish and Game Code section 15409(a). If either party desires to terminate such holdover tenancy, it shall give the other party not less than thirty days advance written notice of the date of termination.

**10. POSSESSORY INTEREST.** Tenant understands and acknowledges that, pursuant to Revenue and Taxation Code section 107.6(a), any possessory interest created by this Lease may be subject to the payment of property taxes levied on that possessory interest.

Tenant agrees to pay, before delinquency, all lawful taxes, assessments, license fees and any other charges of any type whatsoever which at any time may be levied by the State, County, City or any tax or assessment-levying body upon any interest in or created by this Lease, or any possessory right which Tenant may have in or to the Lease area covered hereby.

**11. USE.** Tenant shall use the Lease area only for the purpose stated in this Lease, and such use shall be continuous from commencement of the Lease term until its expiration or termination. Pursuant to Fish and Game Code section 15414, the State may require the Tenant to submit any periodic reports it deems necessary for the proper

administration of State Water Bottom M-000-00.

The Lease area shall be continuously used by Tenant to conduct aquaculture operations, as aquaculture is defined in Fish and Game Code section 17. Tenant shall not use or permit the Lease area to be used in whole or in part during the term of this Lease for any purpose, other than as set forth herein, without the prior written consent of the State.

The possessory interest herein given to the Tenant does not exclude the general public from the Lease area, and Tenant may not unreasonably impede public access to state waters for purpose of fishing, navigation, commerce or recreation or other public trust values. However, Tenant may limit public access to the extent necessary to avoid damage to the Lease area and the aquatic life culture therein. This Lease is not intended to confer third party beneficiary status to anyone benefiting from the terms of this Lease. The possessory interest is further subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title which may affect the Lease area.

This Lease provides a tenancy of a temporary nature. The parties to this Lease agree that no Relocation Payment or Relocation Advisory Assistance will be sought or provided in any form as a consequence of this tenancy.

This Lease is of no force or effect until signed by both parties and all approvals are secured. Tenant may not commence performance until such approval has been obtained. Any commencement of performance prior to Lease approval shall be done at the Tenant's own risk. Nothing in this Lease may be waived, modified, amended or discharged except by a writing signed by the State and Tenant and approved by the State in a public meeting.

## **12. SHELLFISH PRODUCTION IMPROVEMENTS.**

[Oyster Cultivation.

[(A) Bottom culture: leases must be improved at an average rate of at least two cases of seed-bearing shell (160 pounds of seed-bearing shell) or 30 bushels of shellfish one or more years of age per acre over the allotted acreage per year. Improvements by unattached, single seed (less than one year old) shall consist of planting an average rate of 10,000 single seed per acre per year over the allotted acreage. Term of improvement shall be four years for seed-bearing shell and three years for oysters one or more years of age.

[(B) Off-bottom culture: leases must be improved at an average rate of at least one case of seed-bearing shell (80 pounds of seed-bearing shell), or 15 bushels of oysters one or more years of age per acre over the allotted acreage per year. Improvement by unattached single seed (less than one year old) shall consist of planting an average rate of 5,000 single seed per acre per year over the allotted acreage. Term of improvement shall be four years for seed-bearing shell and three years for oysters one or more years of age.

[(C) Production requirements: the annual harvest rate shall be an average of 2,000 oysters per acre (over one year of age) over the allotted acreage effective three years after the effective date of the lease. Harvest reports shall be recorded in the form of a receipt in quadruplicate furnished by the Department of Fish and Wildlife. The triplicate

copy shall be delivered to the Department of Fish and Wildlife on or before the first and sixteenth day of each month.

[(2) Miscellaneous Aquatic Species.

[(A) A lease for the cultivation of species other than oysters will include minimum planting and harvesting requirements for the species to be cultivated to insure that water bottoms so encumbered will be used for the purpose intended.

[(B) Harvest amounts shall be recorded in the form of a receipt in quadruplicate furnished by the Department of Fish and Wildlife. The triplicate copy shall be delivered to the Department of Fish and Wildlife on or before the first and sixteenth day of each month.]

**13. NO WARRANTY.** This Lease is made without warranty of title, condition or fitness of State Water Bottom M-000-00 for the Tenant's intended purpose or use.

Tenant agrees to accept the Lease area in its presently existing condition, "As Is", and that the State shall not be obligated to make any alterations, additions or betterments thereto except as otherwise provided in the Lease.

**14. COMPLIANCE.** As a necessary condition for this Lease, Tenant must obtain and maintain all necessary registrations, permits and any other entitlements. Tenant shall comply with all applicable federal, state and local laws, including laws relating to public health and safety, zoning, resource conservation and environmental protection including, but not limited to, the Coastal Zone Act, the Porter-Cologne Water Quality Act, and the California Environmental Quality Act.

Tenant shall comply with all applicable resource management and preservation mandates in the conduct of all activities that impact cultural, natural, or scenic resources. These mandates include, but are not limited to, those found in Public Resources Code sections 5024 and 5097 and the United States Secretary of the Interior's Guidelines for Historic Preservation. Tenant's operations under this Lease shall ensure that the State's goals of ensuring historical preservation and proper cultural, scenic and natural resource management are continually achieved in a manner consistent with applicable law.

**15. RECORD KEEPING.** The State may require periodic reports from Tenant as the State deems necessary for the proper administration of the State's water bottoms.

Tenant agrees that the Fish and Game Commission, Department of Fish and Wildlife, and the Bureau of State Audits, or their designated representative, shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Lease. Tenant agrees to maintain such records for possible audit for a minimum of three years after final payment. Tenant agrees to allow the auditor(s) prompt access to such records during normal business hours and similarly to allow interviews of any employees who might reasonably have information related to such records. Tenant agrees to include a similar right of the State to audit records and to interview staff in any sublease or contract related to performance of this Lease.

**16. WAIVER AND CONSENT.** Unless expressly acknowledged by the State in writing, no term, covenant, or condition of this Lease and no default or breach is waived by the acceptance of a late or nonconforming performance. The State's consent for one

transaction or event under this Lease is not consent to any subsequent occurrence of the same or any other transaction or event.

**17. BREACH.** The occurrence of any one of the following shall constitute a breach of this Lease by Tenant: (1) Failure of Tenant to make any annual Lease payment within ninety (90) days of the commencement date of the Lease or within ninety (90) days of any anniversary thereof; (2) Failure of Tenant to make any other payment more than thirty (30) days after such payment is due; (3) abandonment of the Lease area determined after the State has followed the procedures set forth in Civil Code section 1951.3; or (4) any failure by Tenant to comply with laws applicable to the conduct of aquaculture.

Should a threat to public health or safety or to the environment be created or exist on the Lease area, the State may declare an emergency event and, unless an alternative arrangement is preferable in the State's discretion, may enter upon and take possession of the Lease area to remedy the emergency without prior notice and/or demand an assignment of the right to operate the Lease area. Upon entering the Lease area under this Section, the State shall provide immediate notice of such action by hand delivery or fax of its declaration to Tenant. The State may retain possession of the Lease area until the emergency event has been completely and adequately addressed to the State's satisfaction. Where a breach of this Lease has caused or exacerbated the emergency event, or where the Tenant is non-cooperative in allowing or addressing any remedial action necessary because of the emergency event, the State may terminate the Lease. The State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of the State's entry in the Lease area as provided herein, except damage resulting from the active negligence or willful misconduct of the State or its authorized representatives.

Any failure by Tenant to observe or perform another provision of this Lease where such failure continues for twenty (20) days after written notice thereof by the State to Tenant; any such notice shall be deemed to be the notice required under Code of Civil Procedure section 1161. However, if the nature of Tenant's breach is such that it cannot reasonably be cured within the twenty (20) day period, Tenant shall not be deemed to be in breach if Tenant shall commence such cure within the twenty (20) day period and thereafter diligently prosecutes such cure to completion.

Neither this Lease nor any interest of Tenant hereunder in the Lease area shall be subject to involuntary assignment or transfer by operation of law in any manner whatsoever, including, without limitation, the following: (a) transfer by testacy or intestacy; (b) assignments or arrangements for the benefit of creditors; (c) levy of a writ of attachment or execution on this Lease; (d) the appointment of a receiver with the authority to take possession of the Lease area in any proceeding or action in which the Tenant is a party; or (e) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy. Any such involuntary assignment or transfer by operation of law shall constitute a breach by Tenant and the State shall have the right to elect to take immediate possession of the Lease area, to terminate this Lease and/or invoke other appropriate remedies, in which case this Lease shall not be treated as an asset of Tenant.

Notices of breach shall specify the alleged breach and the applicable Lease provision



and shall demand that Tenant perform the provisions of this Lease within the applicable time period or quit the Lease area. No such notice shall be deemed a forfeiture or a termination of this Lease unless the State specifically so states in the notice.

**18. REMEDIES.** In the event of breach by Tenant, the State shall have the following remedies. These remedies are not exclusive; they are cumulative and are in addition to any other right or remedy of the State at law or in equity.

Collection of Rent: In any case where the State has a cause of action for damages, the State shall have the privilege of splitting the cause to permit the institution of a separate suit for rent due hereunder, and neither institution of any suit, nor the subsequent entry of judgment shall bar the State from bringing another suit for rent; it being the purpose of this provision to provide that the forbearance on the part of the State in any suit or entry of judgment for any part of the rent reserved under this Lease, to sue for, or to include in, any suit and judgment the rent then due, shall not serve as defense against, nor prejudice a subsequent action for, rent or other obligations due under the Lease. The claims for rent may be regarded by the State, if it so elects, as separate claims capable of being assigned separately.

Continued Performance: At the State's option, Tenant shall continue with its responsibilities under this Lease during any dispute.

Termination of Tenant's Right to Possession: Upon an event of breach of this Lease by Tenant, in addition to any other rights or remedies it may have, the State may give Tenant a three-day notice to cure the breach or quit the Lease area. If Tenant fails to do either, the State may bring a statutory proceeding in unlawful detainer to regain possession of the Lease area. Any notice give by the State pursuant to this Section does not constitute a termination of this Lease unless expressly so declared by the State in the notice. In the absence of written notice from the State, no act by the State, including, but not limited to, acts of maintenance, efforts to re-let and/or assign rights to possession of the Lease area, or the appointment of a receiver on the State's initiative to protect the State's interest under this Lease shall constitute an acceptance of Tenant's surrender of the Lease area, or constitute a termination of this Lease or of Tenant's right to possession of the Lease area. Upon such termination, the State has the right to recover from Tenant: (a) the worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease; (b) the worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of loss of rent that Tenant proves could have reasonably been avoided; (c) the worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and (d) any other amount necessary to compensate the State for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease, and costs of clearing the State's title of any interest of Tenant, commissions, attorneys' fees, and any other costs necessary or appropriate to make the Lease area operational by a new Tenant.

"The worth, at the time of the award," as used herein above shall be computed by allowing interest at the lesser of a rate of ten percent (10%) per annum or the maximum legal rate.

Receiver: If Tenant is in breach of this Lease, the State shall have the right to have a receiver appointed to collect rent and conduct Tenant's business or to avail itself of any other pre-judgment remedy. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by the State to terminate this Lease.

Right to Cure Tenant's Breach: At any time after Tenant commits a breach, the State can cure the breach at Tenant's cost. If the State, at any time by reason of Tenant's breach, pays any sum or does any act that requires the payment of any sum, the sum paid by the State shall be due immediately from Tenant to the State, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by the State until the State is reimbursed by Tenant.

Personal Property of Tenant: In the event any personal property or trade fixtures of Tenant remain at the Lease area after the State has regained possession, that property or those fixtures shall be dealt with in accordance with the provisions for Surrender of the Lease area provided below.

State's Obligations After Breach: The State shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed that accrues after the date of any breach by Tenant. Such nonperformance by the State shall not constitute a termination of Tenant's right to possession nor a constructive eviction.

No Right of Redemption: Tenant hereby waives its rights under California Code of Civil Procedure sections 1174 and 1179 or any present or future law that allows Tenant any right of redemption or relief from forfeiture in the event the State takes possession of the Lease area by reason of any breach by Tenant.

Other Relief: The State shall have such rights and remedies for failure to pay any and all monetary obligations under this Lease as the State would have if Tenant failed to pay rent due. The remedies provided in this Lease are in addition to any other remedies available to the State at law, in equity, by statute, or otherwise.

Attorney's Fees and Costs: Tenant shall reimburse the State on demand for all reasonable attorney fees and expenses incurred by the State as a result of a breach under this Lease, provided that, in any litigation between the parties to this Lease concerning it, the prevailing party shall be entitled to recover court costs, reasonable attorney fees, and other costs reasonably incurred to secure the remedy obtained in the action.

The State shall not be in breach of the performance of any obligation required of it under this Lease unless and until it has failed to perform such obligation for more than thirty (30) days after written notice by Tenant to the State specifying the alleged breach and the applicable Lease provision giving rise to the obligation. However, if the nature of the State's obligation is such that more than thirty (30) days is required for its performance, then the State shall not be deemed in breach if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion.

**19. ASSIGNMENT AND SUBLEASES.** Pursuant to Fish and Game Code section 15412, this Lease may not be assigned, in whole or in part, by Tenant, either voluntarily or by operation of law, and no subleases or other rights may be granted under it by Tenant without the prior written approval of the State, subject to the conditions that it

prescribes. At the election of the State, any attempted assignment or subletting without such prior approval of the State shall terminate this Lease.

**20. TERMINATION.** In the event the Lease area becomes unsuitable for the practical cultivation or harvest of shellfish, or in the event the Tenant becomes unable to continue operating the Lease for aquaculture for reasons beyond Tenant's ability to control, Tenant may terminate the Lease after thirty (30) days written notice to the State. Tenant may terminate the Lease for any other reason through a written request presented to and approved by the State at a public hearing held for purposes of consideration of Tenant's termination request. Such termination shall be effective thirty (30) days after State approval.

On expiration of or within thirty (30) days after earlier termination of the Lease, Tenant shall surrender the Lease area to the State. Tenant shall remove all of its personal property as well as all man-made material deposited during Tenant's occupancy within the above stated time unless otherwise agreed to in writing.

If Tenant fails to surrender the Lease area to the State on the expiration, or within thirty (30) days after earlier termination of the term as provided by this Section, Tenant shall hold the State harmless for all damages resulting from Tenant's failure to surrender the Lease area.

**21. QUITCLAIM.** Tenant shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute, acknowledge and deliver to the State in a recordable form provided by the State a release of all rights under this Lease. Should Tenant fail or refuse to deliver such a release, a written notice by the State reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Tenant of the expiration or termination of this Lease.

**22. TIME OF THE ESSENCE.** Time is of the essence of this Lease and any term, covenant or condition in which performance is a factor.

**23. CHANGES.** Nothing in this Lease may be waived, modified, amended, or discharged except by an instrument in writing signed by Tenant and the State, in consultation with the Department of Fish and Wildlife Aquaculture Coordinator. At its discretion, the Department of Fish and Wildlife may charge Tenant for any and all costs it incurs in any lease amendment requested by Tenant.

**24. SEVERABILITY.** If a court of competent jurisdiction determines that a Lease provision is legally invalid, illegal or unenforceable, and such decision becomes final, the provision shall be severed and deleted from the Lease and the remainder reasonably interpreted to achieve its intent. Tenant and the State agree to replace such void or unenforceable provision with a valid and enforceable provision that will achieve, to the extent possible, the purpose of the original provision.

**25. SITE CLEANUP.** Tenant shall provide to the State financial assurance sufficient to ensure that, upon termination or abandonment of this Lease, the Lease area is surrendered in a condition that is in accordance with Section 20, to the satisfaction of the State.

The financial assurance amount shall be calculated based on an analysis of the physical activities and materials necessary to surrender the site in the required condition; the unit

costs or costs for third party contracting, for each of the identified activities as applicable; the number of units of these activities; and a contingency amount not to exceed ten percent (10%) of the costs of the activities.

Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the State which it reasonably determines to be adequate to perform restoration of the site. Personal surety bonds cannot provide financial assurance under this requirement. The financial assurance shall be payable to the State and shall remain in effect throughout the duration of the tenancy under the Lease, and until the State accepts surrender of the Lease area or until replaced by an equivalent financial assurance.

The financial assurance shall be applied by the State to place the Lease area in the condition required for surrender under Section 20, whenever the Tenant fails or refuses to accomplish such activities, and to reimburse the State for all its costs of achieving that condition of the Lease area. Any assets remaining from the financial assurance after all costs to the State, including administrative costs to secure the funds, have been reimbursed therefrom, shall be returned to the Tenant.

**26. NON-DISCRIMINATION.** In its use of the Lease area, Tenant shall not discriminate against, harass, or allow harassment against any person or class of persons on the basis of race, color, creed, religion, national origin, ancestry, sex, sexual orientation, age, marital status, medical condition or disability. Tenant shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

Tenant shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.). Tenant shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Tenant shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this Lease.

Tenant shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 (P.L. 101-336, commencing at section 12101 of Title 42, United States Code and including Titles I, II and III), the Rehabilitation Act of 1973, and all related regulations, guidelines and amendments to both laws.

**27. DRUG-FREE WORKPLACE.** Tenant will comply with the requirements of the Drug-Free Workplace Act of 1990, as amended, and will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

(b) Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Tenant's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and, (4) penalties that may be imposed upon employees for drug abuse

violations.

(c) Provide that every employee who works on the Lease area will: (1) receive a copy of the Tenant's drug-free policy statement; and, (2) agree to abide by the terms of the Tenant's statement as a condition of employment on the Lease area.

Failure to comply with these requirements may result in suspension or termination of this Lease, and Tenant may be ineligible for award of any future State Water Bottom Leases if the State determines that any of the following has occurred: (1) the Tenant has made false certification, or (2) violated the certification by failing to carry out the requirements as noted above.

**28. ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties, and an agreement hereafter shall be ineffective to change, modify or discharge it in whole or in part, unless such agreement is in writing and contains the authorized signature of the party against whom enforcement of the change, modification or discharge is sought.

**29. CONSTRUCTION.** This Lease shall be governed by and construed in accordance with the laws of the State of California. The Section titles in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

Tenant shall maintain annual registration of its aquaculture facility in accordance with Fish and Game Code sections 15101 and 15103 and shall keep current with all fees and surcharges, including any penalties for late payment of same, required by those statutes.

**30. INCORPORATION BY REFERENCE.** The provisions of Chapters 1 through 8 of Division 12 of the Fish and Game Code (commencing with section 15000) and the provisions of Chapter 9 of Division 1 of Title 14, California Code of Regulations (commencing with section 235), as may be amended from time to time, are made part of this Lease by this reference. If there is a conflict between any term or condition of this Lease and any of the provisions incorporated by reference in it, the incorporated provisions shall control.

**31. CONFLICTS OF INTEREST.** Tenant warrants that no official, employee in the state civil service or other appointed state official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Lease; or (b) will be employed in the performance of this Lease without the immediate divulgence of such fact to the State. In the event the State determines that the employment of any such official, employee, associated person, or business entity is not compatible, Tenant shall terminate such employment immediately. For breaches or violations of this Section, the State shall have the right to annul this Lease without liability.

**32. EXPATRIATE CORPORATION.** Tenant hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation, within the meaning of Public Contract Code sections 10286 and 10286.1 and is eligible to contract with the State.

**33. NO AGENCY.** The Tenant, and the agents and employees of the Tenant in the

performance of the Lease, shall act in an independent capacity and not as officers or agents of the State of California.

**34. CLOSURE.** Neither the State nor the Department of Fish and Wildlife shall have any liability arising from a closure of waters by the Department of Fish and Wildlife Director pursuant to Fish and Game Code section 5654, where aquaculture operations are taking place.

**35. NOTICES.** Notices to the parties to this Lease shall be made in writing and may be given by delivery in person, by U.S. Mail with postage prepaid, or by receipt-confirmed facsimile to:

FISH AND GAME COMMISSION	[BUSINESS NAME]
Executive Director	[PERSON/TITLE]
1416 Ninth Street, 13 <sup>TH</sup> Floor	[ADDRESS]
Sacramento, CA 95814	[CITY/STATE/ZIP]
Telephone: (916) 653-4899	Telephone: (000) 000-0000
Facsimile: (916) 653-5040	Facsimile: (000) 000-0000

Notices shall be deemed given upon delivery to the addressee. Any notice given by facsimile shall also be given to the addressee by U.S. Mail, with postage prepaid. If a notice given by facsimile is delivered to the addressee after 5:00 p.m. Pacific time, or on a Saturday, Sunday or State of California or national holiday, the notice shall be deemed given on the next business day. Either party may change its address for notice purposes by giving written notice to the other party in the manner provided in this Section.

**36. SPECIAL CONDITIONS.** [THIS SPACE RESERVED FOR ANY SITE- SPECIFIC PROVISIONS OR EXCEPTIONS/MODIFICATIONS TO THE PRECEDING SECTIONS.]

**SIGNATURE PAGE**

This Lease and any amendment(s) may be executed in counterparts, each of which, when executed and delivered by the State and Tenant, shall be an original and together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

Each signatory attests he or she is duly authorized to execute this Lease on behalf of the principal he or she represents.

Where Tenant is a corporation, the signature of the Tenant on this Lease will be verifying that Tenant is currently qualified to do business in the State of California, as defined in Revenue and Taxation Code section 23101, in order to ensure that all obligations to the State are fulfilled. Both domestic and foreign corporations (those incorporated outside the State of California) must be in good standing in order to be qualified to do business in California.

STATE OF CALIFORNIA

TENANT

Fish and Game Commission

[Business Name]

By: \_\_\_\_\_  
[Name], Executive Director

By: \_\_\_\_\_  
[Name], [Title]

Date:

Date:

**EXHIBIT A**

Official Map and Description of State Water Bottom M-000-00