

LEASE AND MANAGEMENT AGREEMENT

PARCELS E, E-1, E-2, E-3 and E-4

THIS LEASE AND MANAGEMENT AGREEMENT is made and entered into by and between the SAN MATEO COUNTY HARBOR DISTRICT, a political subdivision of the State of California, hereinafter called "Lessor" or "District," and STEVE DUGUAY, an individual, and V.I.P. MARINE, INC., a California corporation, hereinafter collectively called "Lessee."

The parties agree that:

ARTICLE I - LEASE DOCUMENTS. This lease includes these specific provisions together with the attached 35 pages of General Conditions and the following documents, which are also attached hereto and all are made a part hereof:

A. Exhibits A through A-5: Legal descriptions and drawings of Parcels E, E-1, E-2, E-3 and E-4, respectively.

B. Exhibit B: The booklet entitled "Design Criteria for Construction by Lessees of the San Mateo County Harbor District - 1980."

C. Exhibit C: The booklet entitled "Oyster Point Marina Specific Plan" dated September, 1983, as approved by the City of South San Francisco on September 7, 1983.

ARTICLE II - PROPERTY LEASED. District hereby leases to Lessee and Lessee hereby rents from District the property located in the City of South San Francisco, County of San Mateo,

State of California, described as follows: The premises described in Exhibits A, A-1, A-2, A-3 and A-4 known respectively as Parcels E, E-1, E-2 (airspace above described parcel), E-3 and E-4, located at Oyster Point Marina/Park, South San Francisco, California, consisting of land or water or airspace of approximately 149,845 square feet of land (E), 84,947 square feet of land (E-1), airspace above 92,108.75 square feet of land (E-2), 74,551 square feet (land and water) (E-3), and 31,350 square feet of water (E-4).

ARTICLE III - TERM. The term of this lease shall be twenty-five (25) years, commencing July 1, 1986. However, Lessee has the option to renew or extend this lease for an additional twenty-five (25) years, exercisable at any time after execution of this Lease by District in accordance with Article IX herein.

ARTICLE IV - USES AND SERVICES. Lessee shall develop, construct, operate and maintain (or cause to be constructed, operated and maintained) business enterprises as follows:

- E - full service boat repair yard
- E-1 - full capacity boat storage yard (ground level and dry stack)
- E-2 - full capacity boat storage yard (ground level and dry stack)
- E-3 - full capacity boat launching and recovery facility including hoist, and guest berthing
- E-4 - full service marine fuel dock

A. A "full service" boat repair yard is defined to require a minimum of:

1. Twelve (12) work spaces for boats including a minimum of two (2) spaces for boats with an overall length of 50 feet and a beam of 18 feet.

2. Facilities and personnel to provide full boatyard services, including craftsmen skilled in the necessary areas of boat and engine repair and maintenance.

3. A retail commercial building with a minimum area of six thousand (6,000) square feet for boat and engine repairs, a chandlery store and office, with the following permitted uses:

- a. Marine-oriented retail sales.
- b. Marine surveyor.
- c. Marine architect.
- d. Sail making.
- e. Boat sales.
- f. Boat and insurance brokerage.

B. A "full capacity" boat storage yard is defined to require a minimum of:

1. Ground space for a minimum of one hundred and ninety (190) boats or trailers.

2. Eventual construction of dry stack storage for a minimum of four hundred fifty (450) boats, as specified in ARTICLE VI, subparagraph B.

C. A "full capacity" boat launching and recovery facility is defined to require a minimum of:

1. A hoist and all related equipment for launching and retrieval of boats up to fifty (50) feet and thirty (30) tons.

2. Eight hundred (800) lineal feet of floating docks for temporary tie up in boat repair and boat sales operations, or for rental as provided in paragraph E.8., below.

D. A "full service" marine fuel dock is defined to require a minimum of:

1. Complete facilities for dispensing fuel, including a minimum of four (4) pumps dispensing gasoline, diesel fuel and pre-mix.

2. One hundred (100) lineal feet of floating docks for said pumps and tie up facilities for boats using said facilities.

3. Two (2) ten thousand (10,000) gallon fuel tanks, and the necessary fuel lines to pier head.

4. A full-service pump-out station.

E. In addition to the uses as described above, Lessee may engage in any one or more of the following permitted uses:

1. Boat brokerage, including the use of in-the-water display of boats, and use of the fuel dock office as an adjunct boat brokerage office.

2. Sale of lubricating oils.

3. Sale of separate engine parts, lubricants, etc.

4. Chandlery sales suitable to the primary purpose of the parcel.

5. The limited sale of bait and tackle suitable to the primary purpose of the parcel.

6. Limited sale of food and non-alcoholic beverages in one or more vending machines, and/or in coolers.

7. With respect to parcel E only, the sale, for off-premise consumption, of beer and/or wine, under appropriate state licensing laws.

8. Boat slips (berths) in Parcel E-3 or E-4 may be rented on a standard month-to-month basis, even if it results in competition with District rented slips (berths), only when the District's berths at the Marina are 98% rented for a continuous period of at least sixty (60) days.

F. In addition thereto, Lessee may provide any use, or combination of uses, and any addition or modification of those uses, as agreed to between the parties in writing and allowed by the terms of the Oyster Point Marina Specific Plan as approved by the City of South San Francisco on September 7, 1983, attached hereto as Exhibit C.

G. Lessee shall provide on the leased premises all equipment required for the operation of said facilities.

H. No other uses are permitted except with the prior written consent of the District.

I. With respect to Parcel E-2, lessee's rights as a tenant apply only to the air-space above said already constructed boat storage yard, for the purposes of construction of stack-storage, at the percentage rent set forth herein. In consideration for this lease, and the right to build said

stack-storage, lessee agrees to maintain and operate, on behalf of the District, but in the lessee's own name (and with lessee solely responsible for all aspects of operation, including, but not limited to, insurance coverage and collection of all debts) the existing boat storage yard on Parcel E-2, without any further or separate maintenance fee or payment of any maintenance costs, charges or expenses by the District. In consideration of these terms, lessee agrees to return to the District its original storage fees from its construction, in the amount of \$5,250.00 per month. It is understood and agreed that for the first three months of the term of this lease, (July, August and September of 1986) lessee is only required to return to the District the actually collected storage fees if less than the \$5,250.00 amount. Thereafter, regardless of the actually collected storage fees, lessee shall return to the District under this Maintenance Agreement, the monthly \$5,250.00 described above. Any amount collected by lessee in excess of this amount, due to increased fees or an increased number of spaces, shall be included as part of gross receipts to be utilized in the computation of percentage rent. Rental for stack-storage spaces remains a part of the percentage rental scheme paid at 5% for the first five years and 10% thereafter.

ARTICLE V - OPERATING SCHEDULE AND CONTROLLED PRICES.

A. Operating Schedule. Except as otherwise approved by District in advance of execution of this Lease, and in writing, beginning on the date the facilities are first offered for use by the general public, all of the uses and services specified

in Article IV - USES AND SERVICES herein, shall be provided with full services on leased premises during regular business hours not less than six (6) days each week of the lease term. Lessee shall provide District with a schedule of operating hours.

B. Controlled Prices. Lessee shall, at all times, maintain a schedule of the prices charged for all goods or services or combinations thereof supplied to the public on or from the leased premises, whether the same are supplied by Lessee or by its sublessees, assignees, concessionaire, permittees, or licensees, and shall make said schedule available to District.

1. All rates and charges to patrons served on or from the leased premises shall be reasonable and consistent with the quality of services and facilities offered and shall be no more than rates and charges for comparable services and facilities in the Bay Area Counties of Marin, Contra Costa, Alameda, Santa Clara, San Mateo, and San Francisco.

2. Pursuant to the provisions of Section 72.2 of the California Harbors and Navigations Code, Lessor hereby reserves to itself the power to fix and determine the rates to be charged by the Lessee for the use by the public of any and all facilities developed by Lessee under this Lease.

ARTICLE VI - IMPROVEMENT AND INVESTMENTS.

A. Lessee shall cause to be designed, constructed and installed on the leased premises, at no cost to District, the buildings and other improvements in the manner and in the time approved by the District. Improvements shall include equipment and installation. With respect to the two (2) 10,000 gallon fuel

tanks and lines, and floats and decking already installed on Parcel E-4, and management use of the existing facilities on E-2, and as purchase for the leaseholds on the remaining property, Lessee agrees to pay District Two Hundred Sixty Thousand and No/100 Dollars (\$260,000.00), receipt of which is hereby acknowledged, and assume sole responsibility for the refundable deposits due to users of the E-2 boat storage yard, in an amount estimated to be approximately \$10,000.00.

B. Lessee shall complete the ground level dry-storage construction on Parcel E-1 when Parcel E-2's ground level storage is at least ninety percent (90%) full for at least ninety (90) days. When both lots are at least ninety percent (90%) full for ninety (90) days, lessee shall, within sixty (60) days, begin dry-stack storage on the lot of his choice. When dry-stack storage facilities on the first lot built is ninety percent (90%) full for ninety (90) days, within sixty (60) days thereafter, lessee shall begin construction of dry-stack storage facilities on the remaining lot. In each case wherein construction is required to begin, that construction must be completed within two hundred forty (240) days after the start of said construction.

C. In addition to maintenance and repairs required pursuant to the General Conditions of this Lease, the Lessee shall maintain the premises in accordance with standards imposed by the State of California Regional Water Quality Control Board.

D. All design and construction shall conform with the requirements and procedures as set forth in the Design Criteria booklet adopted by District, attached hereto as Exhibit B, and

all applicable codes and ordinances, including but not limited to, District, City, County, State and Federal. Construction shall be commenced within sixty (60) days after execution of this Lease and completed within two hundred forty (240) days after execution of this Lease, or as otherwise approved in writing by District. The construction schedule shall follow the requirements of the Design Criteria, Exhibit B. Construction costs on the balance of all necessary construction on all parcels shall not be less than One Million and No/100 Dollars (\$1,000,000.00, including the initial purchase price reflected in Article VI, subparagraph A.

ARTICLE VII - LEASE RENTS AND GROSS RECEIPTS. Lessee shall pay to District the minimum rents or the percentage rental as set forth herein and in Article V of the General Conditions of this Lease, whichever is greater.

A. Minimum Annual Rent. For the first five (5) years of the lease term, the minimum annual rent shall be in accordance with the following schedule (in addition to the required monthly return to the District of the first \$5,250 collected under the management agreement for Parcel E-2):

<u>Year</u>	<u>Rent</u>
1 8/27	\$ 6,450.00
2 2/12/28	\$12,900.00
3 8/29	\$25,800.00
4 10/12	\$25,800.00
5 8/9	\$25,800.00

After the fifth (5th) year of the lease term, the minimum annual rent shall be adjusted in accordance with the provisions of Article V of the General Conditions of this Lease.

B. Percentage of Additional Rent.

1. In addition to the minimum annual rent for all Parcels E, E-1, E-3 and E-4, Lessee shall pay the amount by which the total of the percentage of gross receipts for said parcels, as specified in San Mateo County Harbor District Ordinance Code §3.803 and as follows, exceed the minimum annual rent set forth herein for said parcels:

<u>Business</u>	<u>Percentage</u>
Sale of petroleum products.	1.5¢ per gallon
Sale of lubricating oils.	3%
Sale of separate parts, lubricants, etc.	3%
Chandlery sales.	3%
Sale of food, non-alcoholic and alcoholic beverages (machine vended or otherwise).	3%
Rental or other fees charged for use of boat slips, boat storage, anchorages, moorings, and such other facilities and services [see Ordinance Code §3.803(a)]	5% first 5 yrs. 10% thereafter
Commissions or other fees from boat brokerage or marine insurance [Ordinance Code §3.803(e)]	5%
All other sales.	5%

2. For the purpose of calculating percentage rent and gross receipts, the sale of "new or used boats" are excluded. "New or used boat" sales shall include customer

payment for the boat, engine, initial labor or preparation for use, future warranty labor performed without profit, initial gasoline and/or oil provided with the boat and any boat trailer or other equipment or parts sold with the boat in one package. For such sales Lessee shall pay District additional rent, over and above minimum rent or percentage rent, as follows:

- a. 1st year - \$5 per new or used boat sold
- b. 2nd year - \$6 per new or used boat sold
- c. 3rd year - \$8 per new or used boat sold
- d. 4th year - \$9 per new or used boat sold
- e. 5th year - \$10 per new or used boat sold

Thereafter, subject to the standard five-year rental renegotiations, the rent shall be \$10 per new or used boat sold.

3. Gross receipts are the gross income derived, received, or charged by any sublessee, subtenant, concessionaire, licensee, or any other person, firm or corporation (herein called "subtenant"), or by Lessee, for sales, charges for service, for the use of space made in or on the leased premises, or from any and all sources of income derived in whole or in part from any business transacted in, at or from the leased premises, whether from subtenants, customers, or otherwise, both for cash and on credit, and in cases of sales or charges on credit, whether or not payment is actually made.

Gross receipts shall include, without limitation, all:

- a. Deposits not refunded;

b. Orders taken on or from the leased premises to be filled or paid for elsewhere;

c. Sales or charges for all services performed, whether such sales are made or such services are rendered at or arranged through the occupied space at the leased premises by long distance communication and whether initiated, performed, or completed at another location;

d. Considerations received by Lessee for value directly from customers, and from subtenants, including subrents;

Each sale or charge for services or use of space on credit or in installments shall be treated as a sale or charge for the whole price for the calendar year in which the sale or charge is made whether or not any payments are made within that year.

3. The following matters only may be excluded or deducted from Gross Receipts at the time they are ascertained, and where not ascertainable during the period covered by a statement of Gross Receipts, then from the time of a subsequent statement when they are known:

a. Gratuities such as "tips" retained by employees of Lessee or subtenant for their personal benefit;

b. All sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law to be added to the total purchase price, whether now or hereafter in force, to be collected from customers and paid by Lessee or subtenant;

c. Merchandise transferred or exchanged between other stores or warehouses owned by or affiliated with Lessee or any subtenant, if such transfers or exchanges are made solely for the convenient operation of Lessee's or subtenant's business and not for the purpose of consummating a sale previously made at, on, or from the leased premises or for the purpose of depriving District from the percentage of Gross Receipts of a sale that otherwise would be made at, on, or from the leased premises;

d. Merchandise returned to shippers or manufacturers;

e. All refunds made on any sale or charge for service or use of space previously included as Gross Receipts;

f. All cash or credit received in settlement of any claims for loss or damage;

g. Gift certificates or like vouchers, if not issued for value, until the time they have been converted into a sale by redemption;

h. Bulk sales made by Lessee or subtenant not in the ordinary course of business and subject to prior written approval of District;

i. Any income or receipts, under generally accepted accounting principles, which are derived from the sale or disposal of any capital assets (excluding any assets normally sold in the course of business conducted on the leased premises) or from the retirement of any indebtedness, or from Lessee's or

subtenant's investments of any funds not invested in the leased premises or the operation of Lessee's or subtenant's business on the leased premises;

j. Percentage rent collected by Lessee from subtenants for District's benefit;

k. Sale of U. S. Marine over-the-counter engines where no profit is realized. Any profit realized on such sales shall be subject to percentage rent at the rate of 5%;

None of the above exclusions or deductions from Gross Receipts shall be excluded or deducted if in substance it is a typical sale, charge for service, or other source of gross income which is ordinarily the subject of percentage rent, but arranged only to avoid such rent, or if actually contracted for elsewhere on other premises such as typical sale, charge for service, or other source of gross income which is ordinarily the subject of percentage rent, and such sale, charge for service, or other gross income is for the Lessee's or subtenant's business benefit.

C. Payment of Rent.

1. Minimum Rent. Minimum annual rent (adjusted or unadjusted) shall be due and payable in advance in equal monthly installments on or before the first day of each month of the term of this Lease.

2. Percentage Rents. At the end of each quarter of the year (i.e., March 31st, June 30th, September 30th and December 31st), percentage rentals at the rates hereinabove described of gross receipts shall be computed for the prior quarter and the difference between the minimum annual rent for

said quarter and the percentage rent for said quarter shall be due and payable on the fifteenth (15th) day following the end of said quarter.

The percentage rent schedule based upon gross receipts shall be recomputed at the end of each year using the applicable percentages and the balance of rents as computed for each year shall be due and payable on or before March 30th of the following year. Any overpayment of rent shall be credited toward future rents.

ARTICLE VIII - NOTICES AND PAYMENTS. All notices and communications required under this Lease shall be in writing, and all notices and payments shall be made as follows:

A. All payments and notices to Lessee shall be given or mailed to:

Mr. Steve Duguay
V.I.P. Marine

_____, California 94080

B. All payments and notices to District shall be given or mailed to:

General Manager
San Mateo County Harbor District
#1 Johnson Pier
Half Moon Bay, California 94019

C. To Encumbrance Holder at such address and to such person as it shall designate to District in writing.

D. Any party may designate a different address by giving notice as set forth in this Article.

E. All notices and communications referred to herein shall be deemed given on the fifth (5th) day following mailing if given in accordance with this Article.

F. If Lessee is not a resident of the County of San Mateo or is an association or partnership without a member or partner resident of said County, or is a foreign corporation, Lessee shall file with District a designation of natural person residing in the County of San Mateo, State of California, giving his or her name, residence and business address as the agent of Lessee for the service of process in any court action between Lessee or Encumbrance Holder and District, arising out of or based on this lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

ARTICLE IX - OPTION TO RENEW. District grants Lessee the option to renew this lease for a further period of twenty-five (25) years from the expiration date of the original term, upon the same terms and conditions as set forth herein. Said option to renew this Lease shall be exercised in writing and provided to the District at any time between execution of this Lease by District and six (6) months prior to the expiration of the first term, and shall be effective when the notice of exercise of said option is received by the District.

ARTICLE X - APPROVAL BY DEPARTMENT OF BOATING AND WATERWAYS. Award of this Lease by District is subject to the final approval by the California Department of Boating and Waterways ("Cal-Boating") and award of this Lease by District

shall become final only after award has been approved by said Department. If the Lease is not ultimately approved after any necessary corrections, by Cal-Boating, through no fault of the Lessee, the purchase price shall be refunded in full to Lessee.

ARTICLE XI - APPROVAL BY CITY OF SOUTH SAN FRANCISCO AND ITS PARK AND RECREATION DISTRICT. Award of this lease by District is also subject to the final approval by the City Council of the City of South San Francisco, and if necessary by its continuing existence, by approval of the City Council of South San Francisco sitting as the governing body of the South San Francisco Park and Recreation District, that latter entity having been shown in previous title searches to remain on record as an owner of a part or all of the premises leased herein. If, for any reason, the City of South San Francisco or the Park and Recreation District refuse to or fail to award such approval of this lease, the term is hereby automatically amended such that the term of this lease will automatically expire when the Joint Powers Agreement between the District and the City of South San Francisco expires, which is November 11, 2026.

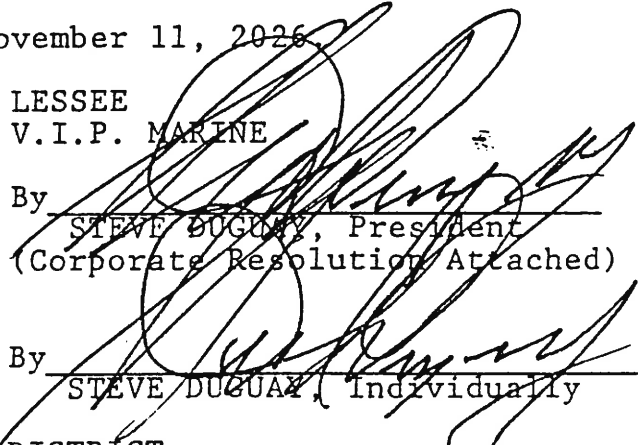
Dated:

April 14, 1987

LESSEE

V.I.P. MARINE

By


STEVE DUGUAY, President
(Corporate Resolution Attached)

Dated:

April 15, 1987

By


STEVE DUGUAY, Individually

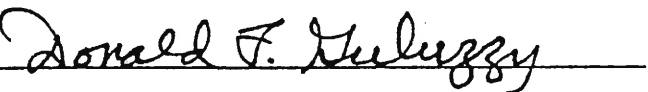
DISTRICT

SAN MATEO COUNTY HARBOR DISTRICT

Dated:

August 13, 1987

By


Donald F. Deluzzy

CITY OF SOUTH SAN FRANCISCO

Dated: 15 Dec 1989

By Jesus Quins

SOUTH SAN FRANCISCO PARK AND RECREATION DISTRICT

Dated: 15 Dec 1989

By Jesus Quins

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

On this _____ day of _____, 1986, before me
_____ Notary Public, personally
appeared _____, known to
me to be the _____ of the San Mateo
County Harbor District, a political subdivision of the State of
California, and known to me to be the person who executed the
within instrument on behalf of the said political subdivision,
and acknowledged to me that such political subdivision executed
the same.

SEAL

NOTARY PUBLIC

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

On this _____ day of _____, 1986, personally
appeared _____ known to me to be _____
_____ of the _____
that executed the within instrument, and the person who executed
the within instrument on behalf of the _____
named herein, and acknowledged to me that said _____
_____ executed the same.

SEAL

NOTARY PUBLIC