

NINETY-NINE YEAR LEASE

THIS INDENTURE, made this 1st day of November, 1960, by and between KENNETH CULLODEN and CLIFFORD CULLODEN, the Lessor (which expression shall include his heirs, executors, administrators and assigns when the context so admits), and YACHT HARBOR MAROR, INC., a Florida corporation having its principal place of business in Naples, Collier County, Florida, the Lessee (which expression shall include its successors and assigns when the context so admits), evidences the grants, covenants and agreements now made by and between the parties with reference to the following described premises, to wit:

Lot 3, Block 15, THE MOORINGS, UNIT NO. 5, a Subdivision in Collier County, Florida, according to the Plat thereof recorded in Plat Book 6, Pages 4 and 5, of the Public Records of Collier County, Florida.

1. ON BEHALF OF THE LESSOR:

**GRANT.** That being the owner in fee of said premises, said Lessor does hereby demise and lease the same to the Lessee for a term of ninety-nine (99) years from and after the first day of November, 1960. In connection with such demise the Lessor covenants with the Lessee that conditioned upon its performance and observance of the Lessee's covenants herein, the Lessee shall have the quiet and peaceable possession of said premises during said term. In the event of the sale or transfer of said premises by the Lessor, he shall be relieved of all obligations of the Lessor hereunder, which obligations shall be binding on the grantee or transferee thereafter, who may have from time to time acquired title to said premises.

2. ON BEHALF OF THE LESSEE IN CONSIDERATION OF SUCH DEMISE:

**RENTS.** (a) That the LESSEE will pay the LESSOR at his office at Kenneth Culloden's, Naples, Florida, or at such place in the city of Naples as said Lessor may from time to time designate in writing, in equal annual installments in advance from the beginning of said term, the sum of Ten Thousand Dollars (\$10,000.00) per annum, during the term of this lease.

**TAXES.** (b) That the Lessee will pay all taxes and assessments levied or assessed against the leased property during the term of this lease. Receipts for the payment thereof, or other evidence of payment approved by Lessor, shall be furnished to Lessor not less than forty-five (45) days prior to the date on which such taxes or assessments would become delinquent if not paid, except that for the last year of the term shall be furnished prior to the Fifteenth of the last month. Provided, however, that Lessee may make a bond filed contest of the amount or the validity of any tax or special assessment by furnishing Lessor, not less than forty-five (45) days prior to the time such taxes or assessments would become delinquent if not paid, with a surety bond in double the amount of the taxes or assessments contested, or with a cash bond in the amount of 125% of the amount of the taxes or assessments contested; and further provided that under no circumstances will Lessee allow tax sale certificates or other evidences of such liens to be sold or issued or made of record against the leased property.

**MAINTENANCE.** (c) That the Lessee will keep all improvements now and hereafter situate or erected upon the leased premises in good repair and condition, subject only to ordinary wear and depreciation.

**INSURANCE. (d)1. CASUALTY.** That during the term of this lease the Lessee will keep all improvements now or hereafter located upon the leased premises insured at Lessee's expense in favor of Lessor and Lessee as their respective interests may appear against loss or damage by fire and windstorm and extended coverage in such amounts that the insured will not be co-insurers thereof in excess of the minimum amount of deductible clauses required in policies available at a reasonable cost in the county which the leased premises are located. The policies or certificates thereof shall be delivered to Lessor and will be renewed from time to time so that at all times such insurance protection shall continuously exist during the term of this lease. Evidence of payment of premiums thereon shall be furnished to Lessor not less than ten (10) days prior to the due dates thereof.

**INSURANCE. (d)2. LIABILITY.** That during the term of this lease the Lessee will carry at Lessee's cost Public Liability Insurance insuring the Lessor for a coverage of not less than \$100,000.00 for one person and with a coverage of not less than \$300,000.00 for more than one person for a single occurrence, and for \$5,000.00 property damage. The policies or certificates thereof shall be delivered to Lessor and will be renewed from time to time so

that at all times such insurance protection shall continuously exist during the term of this lease. Evidence of payment of premiums thereon shall be furnished to Lessor not less than ten (10) days prior to the due dates thereof.

**RECONSTRUCTION AND REPAIR.** (e) In the case of loss or damage to the building or other improvements upon the leased premises, Lessee will repair or rebuild the same in such manner that the improvements shall be of the same general character and at least equal in value to the improvements before the casualty. If any insurance proceeds are payable on account of such casualty the cost of such restoration or repair shall be paid from the insurance proceeds collected for the casualty by Lessor and Lessee and any costs in excess of such proceeds shall be borne by Lessee. The proceeds of such insurance shall be paid over to the First National Bank of Naples, Naples, Florida, as Trustee, or to such other trustee as the Lessor and Lessee may from time to time designate in writing. Disbursements from such fund shall be made by the Trustee from time to time as such work of reconstruction or repairs shall progress whenever such payment is approved by the certificate of an architect or engineer qualified to practice in Florida, showing application of the amount paid to such repair or reconstruction, or in lieu thereof the approval of the Lessor and Lessee; provided, however, that before any funds are so disbursed the Trustee shall be satisfied that the funds deposited with it are sufficient to complete the reconstruction or repair, and if the insurance proceeds are not sufficient, then Lessee shall deposit any additional funds required. In the event there shall remain any excess funds after the completion of such reconstruction or repair to a condition equal to that prior to the casualty, as to which completion the Trustee may rely upon the certificate of said architect or engineer, and if there be at that time no default on the part of the Lessee in the performance of the conditions and covenants of this lease, then such excess funds shall be paid by the Trustee to the Lessee. Lessee shall begin reconstruction or repair of casualty within ninety (90) days after the payment of insurance proceeds therefor, or within six (6) months after the casualty, whichever is sooner, and shall diligently pursue the same until completed; and failure of the Lessee to do so shall constitute a breach of this lease. Any of the insurance proceeds remaining in the hands of the Trustee in the event of default by the Lessee shall be considered as a part of the leased premises and shall be paid by the Trustee to Lessor upon Lessor's repossession of the leased premises. The Trustee's charges for handling and disbursing the insurance proceeds shall be charged against and paid therefrom.

**PROTECTION OF LESSOR.** (f) That the Lessee will pay all costs and expenditures incurred for or on account of the leased premises during the term of the lease and to save the Lessor harmless therefrom, including among others, but not limited to, the following:

(a) The cost of services rendered to or on behalf of leased premises, and all improvements made to or on behalf of leased premises.

(b) All claims and causes of action for personal injury, loss of life or damage to property sustained in or about the leased premises or the improvements thereon and the appurtenances thereto, and from all costs and reasonable attorney's fees in connection therewith.

(c) All expenses and reasonable attorney's fees incurred on account of any default by the Lessee in the performance of the terms of this lease, whether or not such default is remedied or cured by the Lessee or no legal action or proceeding is taken by the Lessor on account thereof.

(d) All expenses and reasonable attorney's fees incurred if the Lessor, without fault on his part, is made party to any litigation commenced by or against the Lessee.

**LIENS.** (g) That the Lessee will not incur any indebtedness giving right to a lien on the premises or the Lessor's right therein, and the existence of any claim or lien of record for a period in excess of thirty days (30) after written notice thereof to Lessee or thirty (30) days after knowledge thereof by Lessee, shall constitute a material breach of this lease. The Lessee will make no further contract for the improvement of the leased premises without requiring contractor to furnish Lessor and Lessee a performance bond issued by a company qualified to do business in Florida in at least the amount of the original contract price conditioned to pay all laborers, subcontractors and material men; and to make no changes involving additional costs in such contract for further improvement without requiring a further performance bond with the same conditions in the amount of such further costs.

**RESTRICTIONS UPON USE.** (h) That the Lessee will make no unlawful, improper or offensive use thereof; and shall comply with all laws and regulations of all public authorities and governmental bodies having jurisdiction thereof.

**INSPECTION.** (i) That the Lessee will allow the Lessor to inspect the premises upon request and at reasonable intervals.

**DEFAULT.** (j) That if the Lessee during the term of this lease shall make default in fulfilling any of the covenants or agreements of this lease, Lessor may give to Lessee notice of any such default, and if at the expiration of thirty (30) days after the service of such notice the default shall continue to exist, or without further possibility of appeal or review,

- (I) Lessee is adjudicated as bankrupt or insolvent, or
- (II) a receiver is appointed for all or substantially all of Lessee's property or assets on the ground of Lessee's insolvency, or
- (III) a trustee is appointed for Lessee after a petition has been filed for Tenant's reorganization under the Bankruptcy Act of the United States having the same general purpose, or
- (IV) Lessee shall make an assignment for the benefit of its creditors.

then, the Lessor may, at Lessor's option, terminate this lease and re-enter upon the property, whereupon the term hereby granted and all right, title and interest under it shall end and the Lessee shall become tenant at sufferance; or else Lessor may, at its option, under such circumstances elect to declare the entire rent for the balance of the term, or any part thereof, computed on the annual minimum net fixed rent then in effect, due and payable forthwith and Lessee hereby covenants to pay the same. Lessor may proceed to collect such rent by distress or otherwise. Should Lessee be prevented from curing any default other than the payment of money within the period of thirty (30) days after notice thereof as herein provided, and such shall be due to valid governmental restrictions or acts of God, then no default shall exist unless the Lessee shall fail to remedy the default within thirty days after such cause shall have been removed. These remedies shall be cumulative to and shall not preclude the rights and remedies of Lessor as provided by law.

**LESSOR MAY CURE CERTAIN DEFAULTS OF LESSEE.** (k) That in case of any default on the part of the Lessee in the payment of any amount or amounts herein required to be paid by him other than amounts payable as rent, so called, or in case of any default in the procuring of insurance as herein provided, the Lessor may make any payment or payments proper and necessary to procure such insurance or to cure any default which may be relieved against by the payment of money, and the Lessee will thereupon on demand reimburse and pay to the Lessor the amount so paid or expended, with interest thereon at the rate of six per cent (6%) per annum from the date of any payment made, and a like rate of interest shall be payable upon all arrearages of rent herein provided to be paid. Any amount so payable by the Lessee shall be deemed additional rent. Payment by the Lessor as aforesaid shall not be deemed a waiver or estop the Lessor from any rights or remedies herein provided by reason of the default by the Lessee.

**LIEN OF LESSOR UPON LEASEHOLD ESTATE.** (l) That for the payment of all rents hereby reserved and all amounts becoming at any time due hereunder by reason of any engagement of the Lessee, the Lessor shall have a valid and first lien upon all buildings and improvements upon the leased premises and upon the leasehold estate hereby created in favor of the Lessee therein. No act done or suffered by the Lessee shall in any manner affect the reversionary estate of the Lessor in the demised premises or his lien hereby created, and nothing herein contained shall authorize the Lessee on his behalf to perform any act which may in any way encumber or change the title of his said interest in the premises.

### 3. MUTUAL COVENANTS

**WAIVER.** (m) No waiver by Lessor of any breach of any covenant, condition or stipulation hereunder shall be taken to be a waiver of any succeeding or continuing breach of the same covenant, condition or stipulation; and no waiver shall be asserted against Lessor unless same be in writing and signed by Lessor or his duly authorized agent.

LEASE NOT EXTINGUISHED BY DESTRUCTION OF BUILDING. (b) That no damage to or destruction of any building or buildings on the premises by fire or other casualties shall entitle the Lessee to surrender possession of the demised premises or terminate this lease.

NOTICES. (c) That all notices that may be proper or necessary for the parties hereto to serve upon each other shall be mailed by registered or certified mail, postage prepaid, addressed, if to the Lessor at 1810 Gulf Shore Boulevard, Naples, Florida, or such other address as the Lessor shall from time to time establish by notice to the Lessee, and if to the Lessee at Yacht Harbor Manor, Naples, Florida, or at such other address as the Lessee shall from time to time establish by notice to the Lessor. Any notice so mailed shall be deemed to have been received unless returned to sender by the Post Office.

DEMAND FOR RENT AFTER SAME PAYABLE (d) Any demand for rent or other payment made upon the Lessee after the same has become due and payable shall have the same effect as though made at the time of its becoming due and payable, and any previous demand therefor is hereby waived.

FIXING RIGHTS OF PARTIES IN LAND AND BUILDINGS AT END OF TERM. (e). During the first six (6) months of the last year of the term of this lease the parties hereto shall by agreement between them ascertain and fix the value of the premises hereby leased in connection with all buildings constructed thereon by the Lessee in like manner as if the same were all under single ownership and this lease extinguished, as well as the value of such building and land separately, that is, the amount which should be apportioned to each of them in making up such gross valuation and thereupon the Lessor shall have the first option and privilege of purchasing said buildings at the expiration of said term at the price so fixed as the value of the same, and in case of his failure or refusal so to make such purchase and pay such price for such building at or before the expiration of the term, the Lessee shall then immediately have the right and privilege of purchasing the land hereby leased exclusive of buildings and improvements, at the price so fixed upon the same, and in case the Lessee shall not exercise such privilege by written notice to the Lessor within a period of forty (40) days from and after the termination of this lease, then from such time forward the Lessor and the Lessee shall be taken to be the owners of the entire property, land and buildings, in the proportion of interest based upon such relative value of land and buildings as above provided for and each shall have all rights and remedies of owners in common of said entire property.

If the parties shall not before six (6) months prior to the expiration of of such term so agree upon and fix such valuation of land, buildings and entire property as above provided, then these determinations shall be made by arbitrators under the Arbitration Law of the State of Florida then in effect. In case such valuation shall not have been fixed by arbitration as above provided at or before the termination of this lease by limitation, the term of this lease shall in such case be extended, until the same by final determination be so fixed by arbitration, upon the same terms and provisions herein provided. Thereupon the Lessor shall have a period of ten (10) days for the option given to purchase such buildings and in case of his failure so to do the Lessee shall have the next succeeding ten (10) days for the option to so purchase the land hereby leased, and in case of its failure so to do the entire premises shall be held and owned in common as above provided.

RIGHTS OF PARTIES IN CASE OF APPROPRIATION TO PUBLIC USE. (g) If (prior to the exercise of the option of purchase herein provided for) any portion of the leased premises be taken by appropriation to public use, under right of eminent domain, such option of purchase shall thereafter apply to the remaining portion of the premises, except that there shall be an abatement of the amount of purchase price corresponding with the proportion which the value of the land so taken (exclusive of improvements) may bear to the value of the entire premises (exclusive of improvements) at the time of such taking of the same, and in case of any such taking at any time during the term of this lease there shall be a like proportionate abatement of the rent thereafter to be paid.

of the amount awarded for such taking of such portion of the leased premises (inclusive of improvements) the Lessor shall receive the then present worth of his reversionary estate in the portion of the land taken and the then present worth of the future rents covered by such abatement as his portion of the entire damages sustained from such appropriation and the remainder of the amount of such award shall be received by the Lessee as its portion of such damages.

If the entire premises be so taken during the term hereof, this lease shall thereupon be taken to be wholly terminated and the award received for the entire taking of the same (inclusive of improvements) shall be divided between the parties in like manner as above provided.

In case the parties shall not be able to agree upon such proportion of value of the premises so taken within a period of ten (10) days after the time of such taking, then such proportion of value shall be fixed in like manner as is herein provided under clause (e) of the covenants of this instrument.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this agreement of lease the day and year first written above.

Signed, Sealed and Delivered in Presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Kenneth Culloden

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Clifford Culloden

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

Corporate Seal