# MARINA SUBLEASE

THIS MARINA SUBLEASE ("Marina Sublease") is entered into as of this 27TH day of JUNE, 1984 ("Effective Date") by and between SOUTHERN CALIFORNIA SAVINGS AND LOAN ASSOCIATION ("Sublessor") and BEAUCHAMP ENTERPRISES MARINE DIVISION, a general partnership ("Sublessee").

## R E C I T A L S

A. Pursuant to a ground lease ("Ground Lease") dated June 10, 1982, the City of Benicia ("City") leased to Old Capitol Marina, Ltd., a partnership ("OCM"), a certain parcel of land and water situated in the Benicia Marina in the City of Benicia, County of Solano, State of California, all as more particularly described in a Short Form Memorandum of said Lease dated August 31, 1982, recorded December 29, 1982, as Instrument No. 4871, Official Records, Solano County, California ("Overall Property").

B. Pursuant to a written sublease agreement dated June 10, 1982 ("Sublease"), OCM sublet the Overall Property to Sublessor for a term commencing on June 10, 1982, and ending on June 9, 2042. A Short Form Memorandum of the Sublease dated August 31, 1982, was recorded on December 29, 1982, as Instrument No. 4872, Official Records, Solano County, California.

C. Pursuant to the Ground Lease and Sublease, Sublessor is now the owner of the leasehold estate in the Overall Property. Sublessor has developed a portion of the Overall Property into phases for residential units and has constructed a recreational boat marina over and upon certain portions of the land and water constituting this leasehold estate which portions are hereinafter described in Exhibit "A" attached hereto and incorporated herein by this reference ("Marina").

D. Pursuant to the Ground Lease, Sublessor is authorized to further sublease portions of the Overall Property for commercial purposes. Pursuant to this Marina Sublease, Sublessee intends to assume and discharge Sublessor's obligations with respect to the Marina portion of the Overall Property pursuant to the Ground Lease, all on the terms and conditions more particularly described herein.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Sublessor and Sublessee now hereby covenant and agree as follows:

1. Sublease. Sublessor does hereby sublease and demise unto Sublessee the Marina portion of the Overall Property, as more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein.

2. Term. The term of this Marina Sublease shall commence on the Effective Date and shall continue to and expire on the 9th day of June, 2042 ("Term").

3. Sublessee's Obligations. Concurrently with the Effective Date, Sublessor (as Seller) sold and Sublessee (as Buyer) purchased an interest in the Marina in accordance with the terms and conditions of an Agreement of Purchase and Sale and Joint Escrow Instructions ("Purchase Agreement"). Pursuant to the terms and conditions of the Purchase Agreement, Sublessor is responsible for constructing and delivering a completed marina to Sublessee. Notwithstanding any other provision of this Marina Sublease to the contrary, all obligations to construct a Marina and related facilities pursuant to the Ground Lease and the Purchase Agreement shall be the sole responsibility of Sublessor. Further, Sublessor covenants and agrees to perform all the duties and obligations required to be performed by Sublessor under the Ground Lease with respect to construction of the Marina and

related facilities and with respect to the Overall Property. Sublessor hereby indemnifies Sublessee from any claims, liabilities, loss, damage, cost or expense (including attorneys' fees) which Sublessee may suffer or incur in the event Sublessor fails to honor said covenants and agreements.

Sublessor represents and warrants to Sublessee that the Marina portion of the Overall Property consists of 603,306 square feet of water area and 194,277.60 square feet of the land area. Except for the construction obligations of Sublessor referenced above, it is the intent of Sublessor and Sublessee that the Sublessee assume and discharge that portion of the Ground Lease that relates directly to the Marina portion of the Overall Property and in furtherance of this intention, to the extent the obligations of Lessee pursuant to the Ground Lease are susceptible to a monetary allocation, the following methods of allocation shall be utilized in the following order:

3.1 To the extent that monetary obligation relates directly to the Marina portion of the Overall Property (and not to the Overall Property), such monetary obligation shall be that amount directly related to the Marina;

3.2 To the extent a monetary obligation relates to the Overall Property, and no specific amount is directly apportioned to the Marina under the Ground Lease, then the ratio of the square feet contained within the Marina to the total square feet contained within the Overall Property shall be utilized as the amount to be allocated to Sublessee's obligation.

All non-monetary obligations and covenants contained within the Ground Lease that relate directly to the Marina shall be performed by Sublessee and all other obligations contained within the Ground Lease shall be performed by Sublessor.

Without limiting the generality of the foregoing, the following items shall control Sublessee's sole obligations pursuant to each of the referenced paragraph numbers within the Ground Lease:

3.1 Sublessor shall be solely responsible for all of the covenants and obligations contained within Paragraph 5 of the Ground Lease;

3.2 Sublessor shall be solely responsible for the covenants and obligations described in Paragraph 6 of the Ground Lease;

3.3 Sublessor shall be solely responsible for performance of the covenants and obligations described in Paragraph 8 of the Ground Lease;

3.4 Sublessee's sole obligation with respect to Paragraphs 11, 12 and 13 of the Ground Lease shall be as follows:

3.4.1 Minimum Annual Rental. The minimum annual rental with respect to each portion of the Marina, as outlined below, shall be payable by Sublessee in 12 equal monthly installments commencing on the date one month after the later of (i) the date a certificate of completion with respect to the portions of the Marina referenced below is issued, (ii) the date a certificate of occupancy with respect to the portions of the Marina referred below is issued, (iii) the date the specific portion of the Marina is completed (temporary facilities or improvements shall not be construed as constituting a completed portion of the Marina) in accordance with the Construction Contract between Sublessor and Sublessee of even date herewith, or (iv) the closing of the purchase by Sublessee from Sublessor of the particular portion of the Marina and continuing thereafter on the same date of each month during the Term. Such amounts shall be payable to "Sublessor" ("Collection Agent"), which

such Collection Agent shall deliver, immediately after its receipt, such amounts to the City, as Lessor under the Ground Lease, to be applied against rentals to paid to the City. The description of the portions of the Marina, the applicable square footage (as represented by Sublessor to Sublessee as being accurate), the annual rental rate and the minimum annual rental are as follows:

| Description | Square Footage | Annual Rental Rate | Minimum Annual Rental |
|---|---|---|---|
| Portion Related to Slips ("Slips") as follows: | | | |
| L2,L3, L4, L5, L7 and L6 (with respect to the Land Area) | 102,366* | $0.269 | $27,536.45 |
| L1 (Phase I Water Area) | 357,192 | $0.051 | $18,216.79 |
| L6 (Phase II Water Area) | 216,057 | $0.051 | $11,018.94 |
| Total Slips | | | $56,772.18 |
| Other Portions of the Marina: | | | |
| M2 (Boater Services Land Area) | 86,248.80 | $0.269 | $23,200.93 |
| E1 (Harbormaster Building Land) | 5,662.80 | $0.269 | 1,523.29 |
| E2 (Fuel Dock Water Area) | 25,700.4 | $0.051 | 1,310.72 |
| M1 (Boater Services Water Area) | 4,356 | $0.051 | 222.16 |
| Total Other Area | | | $ 26,257.10 |

*See Exhibit "A" for breakdown of footages among each portion.

Should the actual square footages be less than the square footages referenced above, then the minimum annual rental payable pursuant to this Subparagraph 3.4.1 shall be reduced accordingly.

3.4.2 Percentage Rentals. The minimum annual rental payable pursuant to Paragraph 3.4.1 hereof shall be the minimum payable by Sublessee pursuant to this Marina Sublease. Sublessee shall pay to Collection Agent (and Collection Agent shall immediately pay to the City, as Lessor under the Ground Lease) the percentage rentals provided for in Paragraph 12 of the Ground Lease arising directly from the activities occurring upon the Marina portion of the Overall Property. The obligation to pay percentage rentals with respect to portions of the Marina shall commence with respect to a particular portion of the Marina upon the later of (i) the date a certificate of completion with respect to the portions of the Marina (as those portions are broken down in Paragraph 3.4.1 above) is issued, (ii) the date a certificate of occupancy with respect to the portions of the Marina is issued, (iii) the date the specific portion of the Marina is completed in accordance with the Construction Contract between Sublessor and Sublessee of even date herewith, or (iv) the closing of the purchase by Sublessee from Sublessor of the particular portion of the Marina and continuing thereafter during the Term. Sublessee shall be entitled to a credit against the percentage rentals described in this Paragraph 3.4.2 in the amount of the minimum annual rental payments paid by Sublessee pursuant to Paragraph 3.4.1 above. The percentage rentals shall be calculated and payable in accordance with the terms and conditions described in Paragraph 12 of the Ground Lease, but only as to those portions of the Marina as Sublessee is obligated to make payments pursuant to this Paragraph 3.4.2.

3.4.3 Rental Subsidy. Notwithstanding Subparagraphs 3.4.1 and 3.4.2 to the contrary, the total rentals payable by Sublessee pursuant to Subparagraphs 3.4.1 and 3.4.2

with respect to the Slips shall not exceed the following during the following periods:

3.4.3.1 During the first 12 months after Sublessee's obligation to pay rent with respect to the Slips commences, the total annual rental with respect to the Slips shall not exceed $25,000 (pro rated among the portions of the property comprising the Slips on the basis of the relative minimum annual rental listed in Subparagraph 3.4.1);

3.4.3.2 During the second and third year after Sublessee's obligation to pay rent with respect to the Slips commences, the total annual rental shall not exceed $50,000 per year (pro rated among the portions of the property comprising the Slips on the basis of the relative minimum annual rental listed in Subparagraph 3.4.1); and,

3.4.3.3 During the fourth and fifth year after Sublessee's obligation to pay rent with respect to the Slips' portion commences, the total annual rental shall not exceed $75,000 per year (pro rated among the portions of the property comprising the Slips on the basis of the relative minimum annual rental listed in Subparagraph 3.4.1).

3.4.4 Rental Renegotiation and Appraisal.

3.4.4.1 Revision of Minimum Annual Rental. Pursuant to the terms and conditions of Paragraph 13A of the Ground Lease, the revisions to the minimum annual rental shall apply to Sublessee by utilizing the same allocations that have been utilized pursuant to Subparagraph 3.4.1 of the initial minimum annual rental with respect to the adjustment commencing at the end of the ninth accounting year through the 20th accounting year. With respect to the adjustment to be made effective the 20th accounting year and every 10th accounting year thereafter, the minimum annual rental specified above shall be

automatically adjusted to equal 75% of the average annual rent paid by Sublessee (including percentage rentals) for the preceding ten accounting years.

3.4.4.2 Revision of Percentage Rentals. Sublessee shall have full and complete authority to negotiate with the City or the City's successor-in-interest under the Ground Lease, with respect to the revisions of percentage rentals relating to the Marina portion of the Overall Property as described in Paragraph 13B of the Ground Lease.

3.5 For purposes of determining fair and reasonable rentals with respect to the Marina portion, that provision of Paragraph 14 of the Ground Lease that refers to the "Lessee" being entitled to a fair and reasonable return upon his investment pursuant to the Ground Lease shall refer to and be construed as meaning Sublessee with respect to the Marina portion.

3.6 The Lessee's right to receive any and all proceeds which are attributable to the taking in eminent domain of business installations, improvements, structures, docks and buildings belonging to Lessee, shall be construed to mean the Sublessee with respect to the Marina. The obligation of Lessee, pursuant to Paragraph 16 of the Ground Lease to remove at the sole cost and expense of Lessee all structures, buildings, docks and improvements, etc., shall obligate Sublessee as to that portion directly located upon the Marina.

3.7 The events of default described in Paragraph 19A of the Ground Lease shall be construed with respect to the Sublessee to refer solely to a default by Sublessee pursuant to the terms and conditions of this Marina Sublease.

3.8 The rights of the City for forfeiture and cancellation as set forth in Paragraph 19C of the Ground Lease shall not affect Sublessee in any manner, except upon default by

Sublessee pursuant to the terms and conditions of this Marina Sublease.

3.9 The performance of Sublessee hereunder is secured by a Deed of Trust encumbering the leasehold estate demised hereunder. Accordingly, Paragraph 19D of the Ground Lease with respect to other rights or remedies shall have no force or effect with respect to Sublessee, and the sole remedy against Sublessee for default hereunder shall be limited to resort to the security of the Deed of Trust and no money judgment shall be available against Sublessee.

3.10 Sublessee shall not be required to obtain the consent or approval of Sublessor to any sublease, assignment or encumbrance as described in Paragraph 20 of the Ground Lease; provided, however, that Sublessee shall comply with the terms and conditions described in Paragraph 20 of the Ground Lease with respect to the City as such provisions relate directly to the Marina.

3.11 Sublessee, at Sublessee's option, may obtain the property insurance referenced in Paragraph 23 of the Ground Lease as it relates to the Marina portion or pay to Sublessor its allocable portion of the property insurance referenced in Paragraph 23 of the Ground Lease. For purposes hereof, the allocable portion of the property insurance shall be based upon the relative amounts of insurance relating to the Marina portion as compared to the Overall Property.

3.12 With respect to Paragraph 24 of the Ground Lease, the indemnification described therein shall, with respect to the Sublessee, relate only to claims relating directly to the Marina portion. Further, Sublessee, at Sublessee's option, shall have the right to maintain the insurance described in Paragraph 24 of the Ground Lease with respect to activities relating to the Marina or pay to Sublessor its allocable portion of such insurance. Such allocation shall be based upon the relative number of

square feet contained within the Marina as related to the entire number of square feet contained within the Overall Property.

3.13 With respect to Paragraph 27 of the Ground Lease, Sublessee shall be responsible for only that portion of the taxes that relate directly to the Marina and which are separately assessed against the Marina. To the extent that such taxes are not separate assessed against the Marina, such taxes shall be apportioned based upon the relative assessed values of the Marina and the Overall Property without the Marina, as determined by the mutual agreement of Sublessor and Sublessee. Should Sublessor and Sublessee fail to agree upon a method of valuation, such dispute shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

3.14 With respect to Paragraph 30 of the Ground Lease, Sublessee shall not be responsible for any cost of audit provided that Sublessee makes available its original records and books of account in accordance with Paragraph 30 of the Ground Lease.

3.15 With respect to Paragraph 41 of the Ground Lease relating to eminent domain, the Sublessor shall not have the power of the terminate the Lease with respect to the Marina portion without Sublessee's written consent and any award to the Lessee thereunder shall be apportioned between Sublessee and the other persons or entities entitled to the award based upon the relative fair market value of the Marina to the Overall Property, as determined by the mutual agreement of Sublessee and the other persons or entities. In absence of such Agreement, the parties shall submit such dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

3.16 Paragraph 52 of the Ground Lease is deleted and not applicable to the Sublessee in any manner. Sublessor

represents and warrants that Paragraph 52 has been deleted from the Ground Lease.

3.17 Sublessor shall be solely responsible for all covenants and conditions described in Paragraph 53 of the Ground Lease and represents and warrants that all covenants of Lessee pursuant to Paragraph 53 of the Ground Lease have been performed.

3.18 Sublessor represents and warrants that Sublessor has performed all obligations to be performed pursuant to the Paragraph 54 of the Ground Lease and Sublessor shall be solely responsible for the matters described therein.

3.19 Sublessor shall be solely responsible for all covenants and obligations described in Paragraph 55 of the Ground Lease.

3.20 Sublessor shall be solely responsible for all of the provisions described in Paragraph 57 of the Ground Lease.

3.21 Except as otherwise provided in the Marina Sublease, all obligations of "Lessee" pursuant to the Ground Lease shall be performed by Sublessor and Sublessor shall indemnify Sublessee from any loss, damage, claim or expense (including reasonable attorneys' fees) should Sublessor breach its obligations hereunder. Sublessee shall have the right, but not the obligation, to discharge any obligations of Sublessor to perform the Lessee's obligations under the Ground Lease should Sublessor fail to timely perform such obligations; in such event, Sublessor shall immediately reimburse Sublessee for any costs or expenses associated therewith.

4. Representations and Warranties. Sublessor represents and warrants that the Marina and the improvements installed therein were constructed and will be constructed pursuant to an authorization granted to the City by the San Francisco Bay

Conservation and Development Commission ("BCDC") pursuant to the terms of a certain permit dated June 16, 1977, being Permit BCDC No. 5-77 ("Permit"). Sublessor acknowledges that any violation of the terms, restrictions or provisions of the Permit could subject the City, OCM, Sublessor and Sublessee or any other person violating the terms and provisions of the Permit, to suit as provided by the provisions of McAteer-Petris Act (Government Code Section 66600, et seq.). Accordingly, in addition to all of Sublessor's other agreements and covenants contained herein, Sublessor covenants and agrees to construct and deliver the Marina to Sublessee strictly in accordance with all of the terms and conditions and restrictions contained in the Permit, and that any default by Sublessor under the terms of the Permit could damage Sublessee. Sublessee agrees to operate and maintain the Marina in accordance with the terms and conditions of the Permit, provided, however, that Sublessee shall have no monetary obligations under the Permit, except as such monetary obligations are expressly provided for in this Marina Sublease.

5. Binding. This Marina Sublease shall be binding upon and inure to the benefit of the parties and their successors and assigns, to the extent otherwise transferable or assignable as described in this Marina Sublease.

6. Invalidity of Provisions. If any provision of this Marina Sublease as applied to either party or to any circumstance, shall be adjudged by a court to be void or unenforceable, the same shall in no way affect:

6.1 Any other provision in this Marina Sublease;

6.2 The application of such provision in any other circumstances; or

6.3 The validity or enforceability of the Marina Sublease as a whole.

7. Notices. All notices permitted or required under this Marina Sublease shall be deemed given upon personal delivery or 24 hours after having been:

7.1 Dispatched by telegram; or

7.2 Deposited in the United States Mail, certified, postage prepaid, return receipt requested; and

7.3 Addressed to the respective parties as follows:

Sublessor: _____

_____

_____

Sublessee: 4000 MacArthur Boulevard
Suite 700
Newport Beach, California 92660

8. Modification. This Marina Sublease shall not be modified by either party by oral representation made before or after the execution of this Marina Sublease. All modifications must be in writing and signed by the parties.

9. Counterparts. This Marina Sublease may be executed in multiple counterparts, each of which shall be deemed an original Marina Sublease, and all of which shall constitute one Marina Sublease to be effective as of the Effective Date.

10. Time of the Essence. Time is of the essence for the performance of each and every covenant and the satisfaction of each and every condition contained in this Marina Sublease.

11. Attorneys' Fees. Should suit be brought to enforce or interpret any part of this Marina Sublease, the "prevailing party" shall be entitled to recover, as an element of costs of suit and not as damages, reasonable attorneys' fees to

be fixed by the court. The "prevailing party" shall be the party entitled to recover his costs of suit, regardless of whether such suit proceeds to final judgment. A party not entitled to recover his costs shall not be entitled to recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for the purposes of determining if a party is entitled to recover costs or attorneys' fees.

12. Agreement to Perform Necessary Acts. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Marina Sublease.

13. Construction and Performance. This Marina Sublease shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Marina Sublease and in accordance with the laws of the State of California. This Marina Sublease is entered into and is to be performed in Orange County, California.

14. Exhibits. All Exhibits attached hereto are incorporated herein by this reference.

15. Miscellaneous. All negotiations are merged into this Marina Sublease. This Marina Sublease constitutes the final, complete and exclusive statement of the terms of the Marina Sublease. There are no oral or other written agreements between the parties concerning the subject matter of this Marina Sublease. This Marina Sublease shall constitute a binding obligation between the parties and the obligations of this Marina Sublease shall be applicable beyond the term of this Marina Sublease.

IN WITNESS WHEREOF, the parties hereto have executed this Marina Sublease as of the Effective Date.

Sublessor:

SOUTHERN CALIFORNIA SAVINGS AND LOAN ASSOCIATION

By: _____

Its: _____

Sublessee:

BEAUCHAMP ENTERPRISES MARINE DIVISION

By: _____

Its: Partner

PARCEL E1

PORTION OF PARCEL "A", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29), LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHERN POINT OF LOT 3 AS DESIGNATED ON BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES (PM 42-50); THENCE SOUTH 85° 50'00" EAST, 35.00 FEET; SOUTH 4°10'00" WEST, 117.39 FEET; NORTH 85°50'00" WEST, 68.52 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE WEST, WITH A RADIUS OF 38.50 FEET THROUGH WHICH A RADIAL LINE BEARS NORTH 83°53'54" WEST, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53°48'49" AN ARC LENGTH OF 36.16 FEET; THENCE RADIAL NORTH 42°17'27" EAST, 30.30 FEET; NORTH 45°10'00" EAST, 45.00 FEET; NORTH 4°10'00" EAST, 28.00 FEET TO THE POINT OF BEGINNING.

PARCEL E2

PORTION OF PARCEL "A", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHERN POINT OF LOT 3 AS DESIGNATED ON BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES (PM 42-50); THENCE SOUTH 85°50'00" EAST, 35.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 4°10'00" EAST, 95.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 49.00 FEET, THROUGH A CENTRAL ANGLE OF 38°10'00", AN ARC LENGTH OF 32.64 FEET; THENCE NORTH 56°00'00" EAST, 15.00 FEET; NORTH 86°30'00" EAST, 80.00 FEET; SOUTH 4° 00'00" EAST, 129.39 FEET; SOUTH 7°30'00" WEST, 154.49 FEET; NORTH 85° 50'00" WEST, 90.00 FEET; NORTH 4° 10'00" EAST, 137.09 FEET TO POINT OF BEGINNING.

PARCEL L1

PORTION OF PARCEL "B" AND "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PRCPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS AT THE MOST SOUTHERN CORNER OF THE PARCEL SHOWN AS "BENICIA YACHT CLUB" ON MAP DESIGNATED AS "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" (PM 42-50); THENCE ALONG NORTHERN PROPERTY LINE OF "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" SOUTH 60° 00'11" EAST, 12.38 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PROPERTY LINE NORTH 29°59'49" EAST, 11.46 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 117.81 FEET; THENCE SOUTH 60°00'11"EAST, 259.00 FEET; NORTH 29° 59'49" EAST, 190.00 FEET; SOUTH 60°00'11" EAST, 910.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH 117.81 FEET; THENCE SOUTH 29°59'49" WEST, 107.22 FEET; NORTH 60°00'11" WEST, 130.00 FEET; NORTH 29°59'49" EAST, 28.44 FEET; NORTH 74°25'52" WEST, 807.47 FEET; SOUTH 29° 59'49" WEST, 199.03 FEET; NORTH 60°00'11" WEST, 46.00 FEET; NORTH 29°59'49" EAST, 78.50 FEET; NORTH 60° 00'11" WEST, 360.97 FEET; THENCE THROUGH A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, WITH A RADIUS OF 60.00 FEET THROUGH WHICH A RADIAL LINE BEARS SOUTH 62°11'10" EAST, SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 61°49'34", AN ARC LENGTH OF 64.74 FEET; THENCE SOUTH 34°00'00" EAST, 159.92 FEET; SOUTH 56° 00'00" WEST, 15.00 FEET; NORTH 34°00'00" WEST, 159.92 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 62°15'02", AN ARC LENGTH OF 81.49 FEET; THENCE NORTH 29°59'49" EAST, 196.75 FEET TO TRUE POINT OF BEGINNING.

PARCEL L2

PORTION OF PARCEL A, BENICIA MARINA (PM-75), AND PARCEL 1 (PM-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHERLY CORNER OF LOT 2 ON MAP DESIGNATED AS "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" (PM 42-50); THENCE ALONG SAID WESTERLY PROPERTY LINE SOUTH 29°59'49" WEST, 80.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 60°00'11" EAST, 108.00 FEET; NORTH 29°59'49" EAST, 42.00 FEET; NORTH 60° 00'11" WEST, 9.00 FEET; NORTH 29°59'49" EAST, 18.00 FEET; NORTH 60° 00'11" WEST, 99.00 FEET; SOUTH 29°59'49" WEST, 60.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL L3

PORTION OF PARCEL B, BENICIA MARINA (PM-75), AND PARCEL I (PM-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHERLY CORNER OF LOT 2 ON MAP DESIGNATED AS "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" (PM 42-50); THENCE NORTH 29° 59'49" EAST, 135.15 FEET TO TRUE POINT OF BEGINNING; THENCE SOUTH 60°00'11" EAST, 187.00 FEET; NORTH 29°59'49" EAST, 60.00 FEET; NORTH 60°00'11" WEST, 187.00 FEET; SOUTH 29°59'49" WEST, 60.00 FEET TO TRUE POINT OF BEGINNING.

PARCEL L4 & L5

TWO PARCEL OF LAND MEASURING 60.00 FEET BY 112.00 FEET LOCATED ON THE NORTH SIDE OF PARCEL A. EXACT LOCATION TO BE DESCRIBED AFTER COMPLETION OF BENICIA MARINA PHASE II & III CONDOMINIUMS.

PARCEL L7

PORTION OF PARCEL "B" AND "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING FROM THE EASTERN END OF LINE DESIGNATED IN PARCEL A AS "SOUTH 60°00'11" EAST, 88.00 FEET"; THENCE NORTH 89° 56'41" EAST, 116.69 FEET TO TRUE POINT OF BEGINNING; THENCE NORTH 29°59'49" EAST, 88.00 FEET; SOUTH 60° 00'11" EAST, 100.97 FEET; NORTH 29°59'49" EAST, 71.00 FEET; SOUTH 60° 00'11" EAST, 18.00 FEET; SOUTH 29°59'49" WEST, 132.00 FEET; SOUTH 72°45'18" WEST, 36.77 FEET; NORTH 60° 00'11" WEST, 94.00 FEET TO TRUE POINT OF BEGINNING.

PARCEL M1

PORTION OF PARCEL "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST SOUTHWESTERN CORNER OF PARCEL C AS DESIGNATED ON "BENICIA MARINA" (PM 18-75); THENCE ALONG BOUNDARY LINE BETWEEN PARCEL B & C SOUTH 86° 41'48" EAST, 83.96 FEET; THENCE LEAVING SAID BOUNDARY LINE THROUGH A TANGENT CURVE TO THE LEFT, WHICH A RADIAL LINE BEARS NORTH 3°18'13" EAST, WITH A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 63°18'24", AN ARC LENGTH OF 110.49 FEET; THENCE NORTH 29°59'49" EAST, 92.15 FEET TO TRUE POINT OF BEGINNING; THENCE NORTH 60°00'11" WEST, 88.00 FEET; SOUTH 29° 59'49" WEST, 61.00 FEET; NORTH 60°00'11" WEST, 44.00 FEET; NORTH 29°59'49" EAST, 49.48 FEET; SOUTH 74° 25'52" EAST, 2.06 FEET; NORTH 29°59'49" EAST, 49.00 FEET; SOUTH 60°00'11" EAST, 130.00 FEET; SOUTH 29°59'49" WEST, 38.00 FEET TO THE POINT OF BEGINNING.

PARCEL M2

PORTION OF PARCEL "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHEASTERN CORNER OF PARCEL C AS DESIGNATED ON "BENICIA MARINA" (PM 18-75); THENCE ALONG BOUNDARY LINE SOUTH 29°59'49" WEST, 205.27 FEET; NORTH 86°41'48" WEST, 384.70 FEET; THENCE THROUGH A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 150.00 FEET A CENTRAL ANGLE OF 45°00'00", AN ARC LENGTH OF 117.81 FEET; SOUTH 48° 18'12" WEST, 28.60 FEET; NORTH 85°34'55" WEST, 18.26 FEET; NORTH 86° 41'48" WEST, 31.82 FEET; THENCE LEAVING SAID BOUNDARY LINE THROUGH A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, WHICH A RADIAL LINE BEARS NORTH 31° 38'42" WEST, WITH A RADIUS OF 122.00 FEET, THROUGH A CENTRAL ANGLE 28° 21'29", AN ARC LENGTH OF 60.38 FEET; THENCE NORTH 29°59'49" EAST, 130.15 FEET; SOUTH 60°00'11" EAST, 36.00 FEET; NORTH 29° 59'49" EAST, 20.44 FEET; SOUTH 60°00'11" EAST, 137.00 FEET; NORTH 72°45'18" EAST, 36.77 FEET; NORTH 29° 59'49" EAST, 206.78 FEET; SOUTH 60°00'11" EAST, 49.00 FEET; NORTH 29°59'49" EAST, 72.00 FEET; SOUTH 60°00'11" EAST, 211.00 FEET TO POINT OF BEGINNING.

## EXHIBIT "B"

## DREDGING SPECIFICATIONS

The City of Benicia has assumed responsibility to maintain the Benicia Marina Channel in a safe navigable condition.

When the City is notified by the sub-lessee that the channel mean low, low water depth is at 6.5 feet or lower, the City shall take immediate steps to return the depth to a safe navigable condition, within 6 months.

The above specification is the minimum which should be maintained or the viability of the marina operation will be jeopardized.

City of Benicia

PEPE ARTEAGA
MAYOR PRO TEM
ERNEST F. CIARROCCHI
ERNEST J. POOLE
GARY WINSTON

CITY HALL
250 EAST L STREET
BENICIA, CALIFORNIA
94510
AREA CODE (707) 745-0510

OFFICE OF

: and Recreation

RECEIVED NOV 0 9 1983

November 3, 1983

Larry Williams
Old Capitol Marina Ltd.
17870 Sky Park Circle, Suite 108
Irvine, Calif. 92714

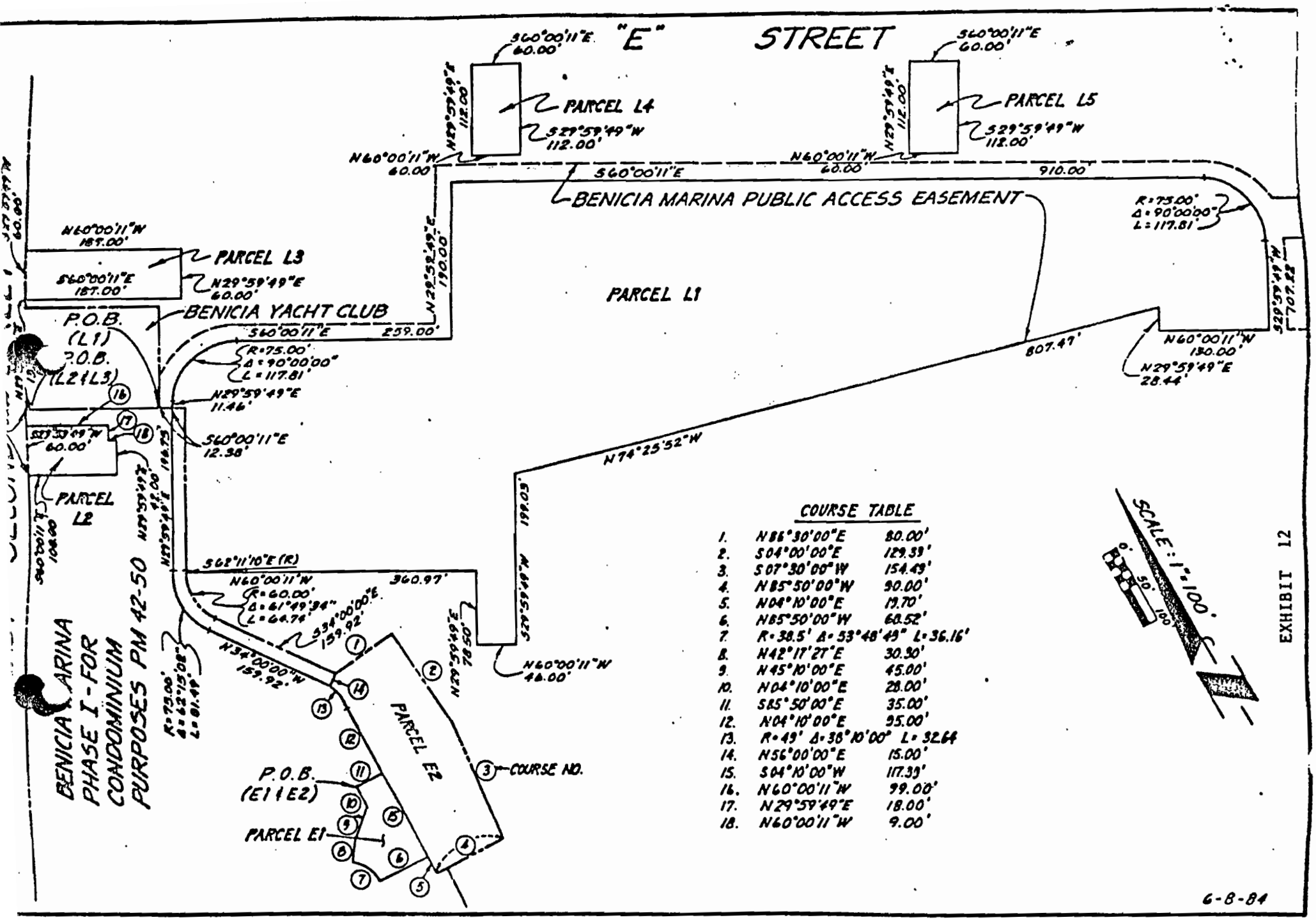
Larry, as we had discussed, I am providing a map describing the area that we are responsible for maintenance dredging. The areas are outlined in red and titled "Benicia Channel". The balance of the Marina basin is the responsibility of the lessee, Old Capitol Marina, for maintenance dredging. It has always been the intent of the City and Old Capitol Marina, in a cooperative manner, to maintain the Benicia Marina basin in a navigable condition.

If additional information regarding this subject matter is requested, please do not hesitate to contact my office at 707-745-0510, Ext. 23.

Sincerely,

Michael Alvarez
Director of Parks and Recreation

MA/cg
Attachment




## COURSE TABLE

| | | |
|---|---|---|
| 1. | N86°30'00"E | 80.00' |
| 2. | S04°00'00"E | 129.39' |
| 3. | S07°30'00"W | 154.49' |
| 4. | N85°50'00"W | 90.00' |
| 5. | N04°10'00"E | 19.70' |
| 6. | N85°50'00"W | 60.52' |
| 7. | R=38.5' Δ=53°48'49" L=36.16' | |
| 8. | N42°17'27"E | 30.30' |
| 9. | N45°10'00"E | 45.00' |
| 10. | N04°10'00"E | 28.00' |
| 11. | S85°50'00"E | 35.00' |
| 12. | N04°10'00"E | 95.00' |
| 13. | R=49' Δ=38°10'00" L=32.64 | |
| 14. | N56°00'00"E | 15.00' |
| 15. | S04°10'00"W | 117.39' |
| 16. | N60°00'11"W | 99.00' |
| 17. | N29°59'49"E | 18.00' |
| 18. | N60°00'11"W | 9.00' |

EXHIBIT 12

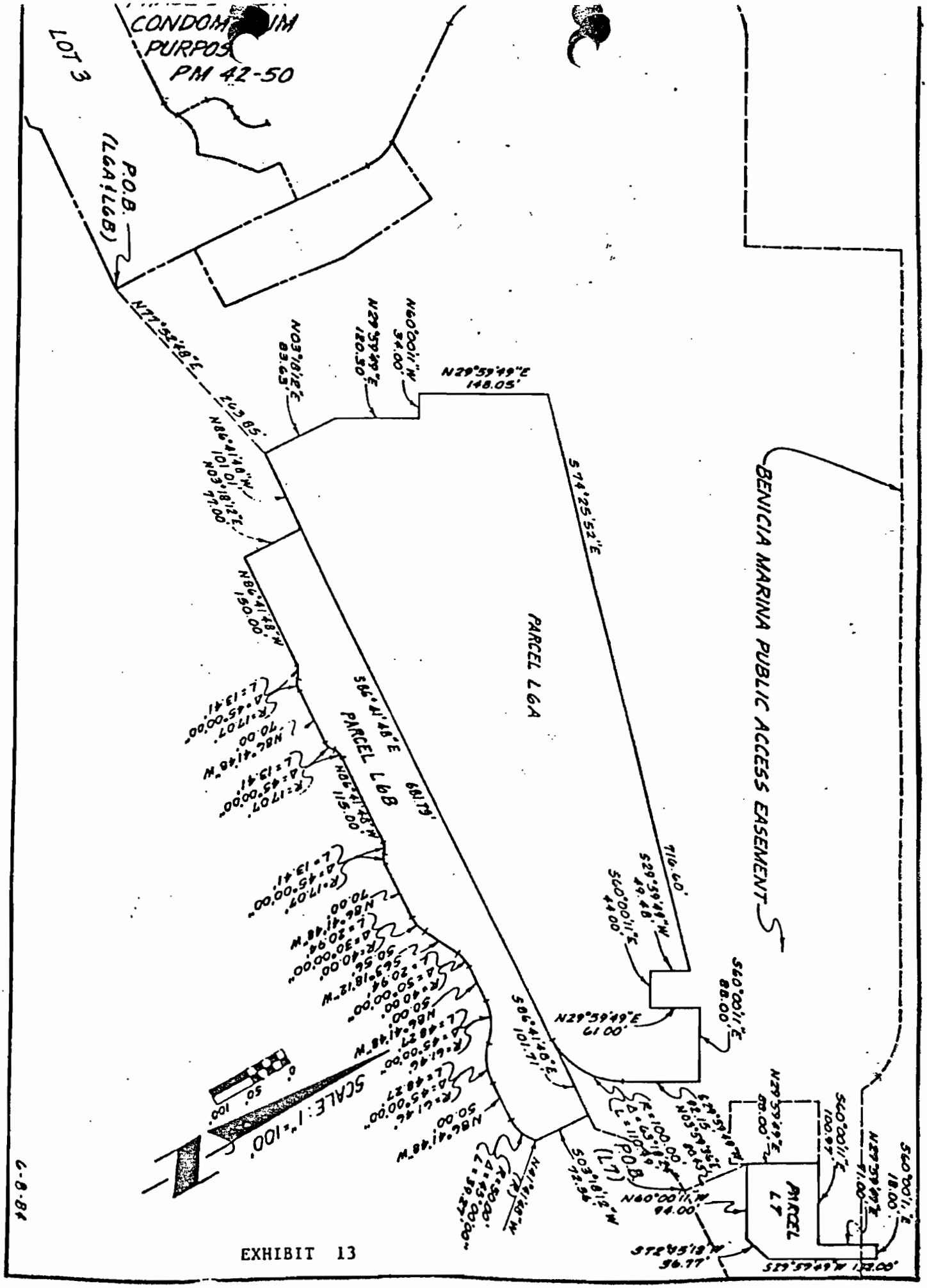

CONDOMINIUM PURPOSE
PM 42-50
LOT 3
P.O.B. (L6A & L6B)
N77°52'48"E
263.85'
N03°18'12"E 83.63'
N29°59'49"E 120.30'
N60°00'11"W 34.00'
N29°59'49"E 148.05'
S74°25'52"E
N86°41'48"W 101.01'
N03°18'12"E 77.00'
N86°41'48"W 150.00'
PARCEL L6A
S86°41'48"E
PARCEL L6B
681.79'
N86°41'48"W 115.00'
BENICIA MARINA PUBLIC ACCESS EASEMENT
716.60'
S29°59'49"W 49.48'
S60°00'11"E 44.00'
S60°00'11"E 88.00'
N29°59'49"E 61.00'
S86°41'48"E 101.71'
SCALE: 1"=100'
P.O.B. (L7)
S03°18'12"W 72.56'
N60°00'11"W 94.00'
PARCEL L7
S72°45'13"W 36.77'
S29°59'49"W 132.00'
S60°00'11"E 100.97'
S60°00'11"E 18.00'
N29°59'49"E 91.00'
6-8-84

EXHIBIT 13

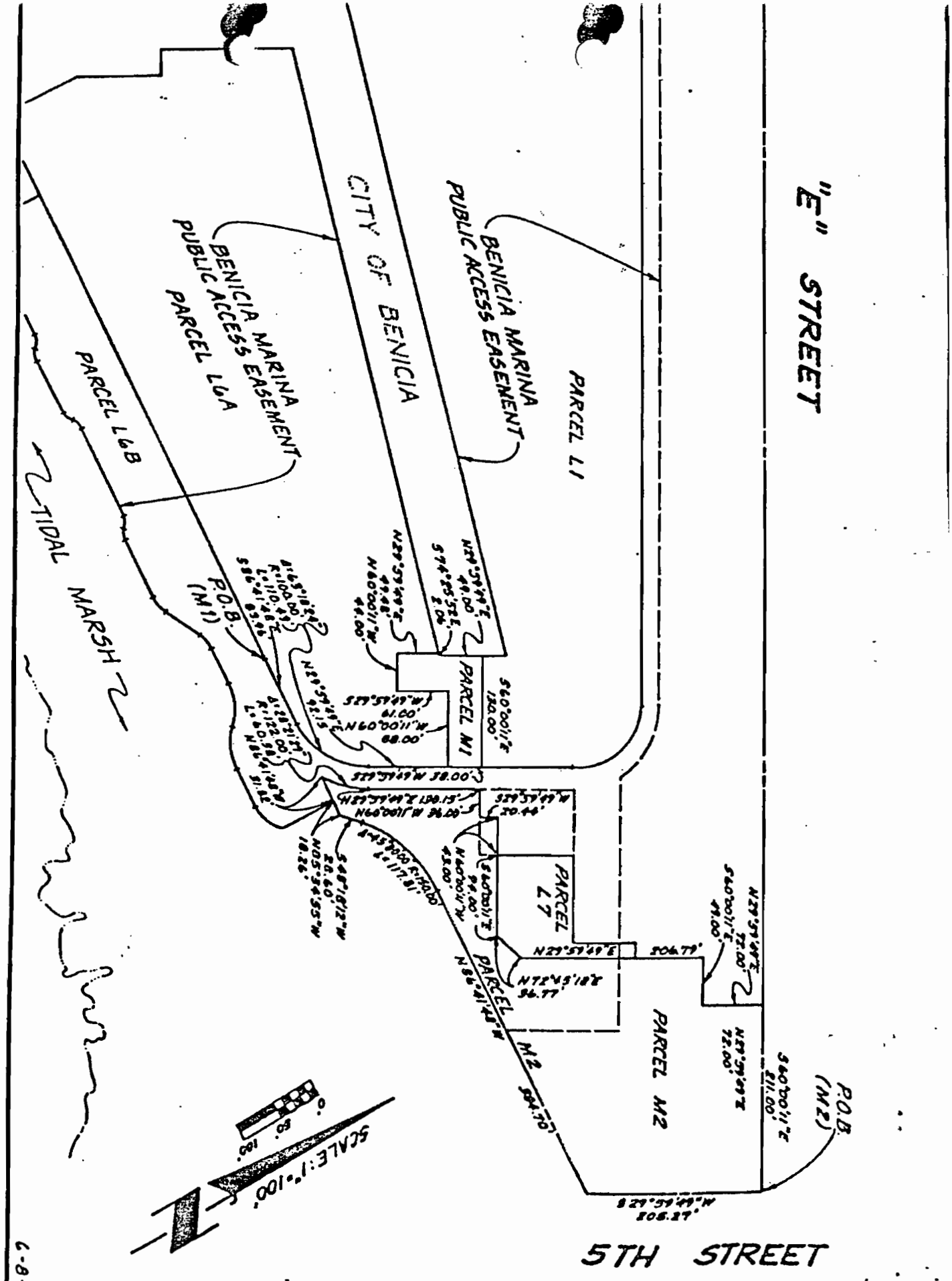

"E" STREET
CITY OF BENICIA
BENICIA MARINA PUBLIC ACCESS EASEMENT
BENICIA MARINA PUBLIC ACCESS EASEMENT
PARCEL L1
PARCEL L6A
PARCEL L6B
TIDAL MARSH
P.O.B. (M1)
PARCEL M1
PARCEL L7
PARCEL M2
PARCEL M2
P.O.B. (M2)
SCALE: 1"=100'
5TH STREET
6-8-84

EXHIBIT 14

EXHIBIT C

# CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT ("Agreement"), is entered into as of this 27th day of June, 1984 ("Effective Date"), by and between BEAUCHAMP ENTERPRISES MARINE DIVISION, a general partnership ("Owner"), and SOUTHERN CALIFORNIA SAVINGS AND LOAN ASSOCIATION ("Contractor"), with respect to construction work to be performed on the real property described in Exhibit "A" attached hereto ("Project").

R E C I T A L S:

Owner is the owner of certain real property, the legal description of which is attached hereto as Exhibit "A" ("Property").

In consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. Scope of Work. Contractor shall furnish all labor, material, services, installation, tools, equipment, supplies, insurance and any other facilities necessary for the prompt and efficient performance and completion of the work hereinafter described ("Work") in a good and workmanlike manner, within the limits of the Property in strict accordance with the "Contract Documents" as described in Exhibit "B" attached hereto, which include, but are not limited to, the Schedule of Work ("Schedule") attached hereto as Exhibit "C," if applicable, and all federal, state, county and city ordinances and regulations applicable thereto and in accordance with the Bay Area Conservation and Development Commission ("BCDC") permits and authority. This Agreement shall be the controlling Contract Document.

2. Consideration. The Work and all other covenants of Contractor hereunder are an integral part and a portion of the Property and the Project to be delivered by Contractor to Owner pursuant to the terms and conditions of that certain Agreement of Purchase and Sale and Joint Escrow Instructions ("Purchase Agreement") by and between Owner (as buyer) and Contractor (as Seller) whereby Contractor is obligated to deliver completed Work, all as more particularly described herein. All costs associated with the Work and performance under this Agreement shall be borne solely by Contractor.

3. Performance Agreement. Contractor's performance shall not be deemed completed unless and until Contractor has performed all covenants described herein and at such time as Owner has filed a notice of completion with respect to the Work and Owner has received the following:

3.1 All as-built drawings, records and related data;

3.2 All guarantees and warranties to which Owner is entitled;

3.3 All permits, licenses, approvals, certificates and authorizations required by any appropriate governmental authority;

3.4 A general release and waiver of any and all mechanic's liens, stocks, notices and other rights and remedies under the mechanic's lien law in the State of California and related and similar laws for all labor and materials supplied to the Project and satisfactory proof that all obligations and claims arising from the Work in the Project have been released or satisfied;

3.5 Consent of any sureties to final payment.

4. Investigation by Contractor. Contractor has satisfied itself, by independent investigation and research, regarding all conditions affecting the Work, including, but not limited to, all matters described in the Contract Documents. Contractor has entered into this Agreement on the basis of such investigation and all information or estimates have been prepared and furnished by Contractor. No conversation or verbal agreements with any representative of Owner or any other parties or information furnished thereby, either before or after the execution of this Agreement, shall affect any of the provisions of this Agreement.

5. Licenses and Permits. Contractor hereby warrants that it or its agents are properly licensed by all applicable governmental authorities and that Contractor or its agents shall remain so licensed during the course of the Work. Contractor shall obtain, at Contractor's own expense, (i) all permits and (ii) all licenses to comply with all requirements of applicable governmental authorities.

6. Title to Materials. Title to all material and Work shall vest in Owner, but this provision shall not be construed as relieving Contractor from the sole responsibility for all materials and Work. Contractor shall promptly pay all bills and charges for material, labor or otherwise, and shall hold the Property and Owner free and harmless from any loss, liability or liens for labor and/or materials. Should any lien be filed against the Property or should Owner receive notice of any unpaid bill or charge, Owner shall have the right, at its option, of paying such bill or charge and offsetting such amounts against any amounts due to Contractor pursuant to the Purchase Agreement.

7. Work Progress. Contractor has commenced the Work prior to the Effective Date and shall complete such Work as is necessary to receive final governmental approvals and a certificates of occupancy on or before the dates listed in the Schedule. Contractor, if so directed, shall furnish on a prescribed form, a schedule of expected progress of the Work, showing approximately the dates on which each part of the Work is expected to be begun and finished. Contractor shall also forward to Owner, if so directed, reports every two weeks of the progress of the Work. Time is of the essence of this entire Agreement, and Contractor shall hold Owner free and harmless from all loss or liability caused by delays.

8. Delays. Except for the Phase II Docks, should performance of the Work be delayed for any reason including, but not limited to, those enumerated in Paragraph 22 hereof, then the Owner may offset against any amounts payable to Contractor under the Purchase Agreement such damages Owner may suffer as a result thereof. Should the Phase II docks, for any reason, excluding those reasons enumerated in Paragraph 22 hereof (i) fail to be completed and (ii) a certificate of completion and occupancy not be issued by September 15, 1984, then Owner may offset against any amount payable to Contractor under the Purchase Agreement such damages Owner may suffer as a result thereof.

9. Materials and Workmanship. Contractor shall perform all Work in a good and workmanlike manner in conformance with the best of modern trade practice and in strict conformance with the Contract Documents. All materials used shall be new, clean and of the most suitable grade for the purpose. Contractor shall assume full responsibility for the accuracy of all lines, levels and measurements and their relation to bench marks, property lines, reference lines and the work of others.

10. Superintendents and Employees.

10.1 Contractor shall have a competent foreman or superintendent satisfactory to Owner at all times during progress, with authority to act for Contractor.

10.2 Contractor shall provide adequate workers classified as skilled in the type of work engaged, and shall immediately remove any employee whom Owner deems objectionable.

10.3 Contractor shall provide Owner with a list of all subcontractors and materialmen of Contractor.

11. Inspection and Tests. Owner, all applicable governmental authorities, title company, and all representatives of each shall at all times have access to the Work for inspection and test. Should Owner desire to inspect any portion of the Work which has been covered, Contractor shall uncover such Work. Should such Work have been covered contrary to the request of Owner or the requirements of the Contract Documents, such uncovering shall end. Replacement shall be at the cost of Contractor. The cost of uncovering and replacement of all other Work shall be borne by Owner; provided, however, that should such uncovered Work not be in

accordance with the Contract Documents, Contractor shall pay the costs of uncovering, replacement and repair.

12. Cleanup. Contractor shall at all times keep the Property free from accumulations of rubbish, and upon completion of the Work and at each stage thereof, Contractor shall remove all surplus materials and shall leave Contractor's work "broom clean." Upon failure to perform, or dispute, Owner may remove the rubbish or surplus materials and charge the cost to Contractor as Owner determines to be reasonable.

13. Condemned Work and Materials. Any materials or Work not constructed pursuant to plans and specifications and satisfactory to Owner shall promptly be corrected and rejected materials shall be removed and replaced, all by Contractor without expense to Owner. If Contractor does not remove and replace such Work and material within two weeks after notice, Owner may, at Owner's option, remove and replace the same at the expense of Contractor. If Owner deems it inexpedient to correct the Work not performed in accordance with this Agreement, Owner may deduct an equitable amount from any amounts due under the Purchase Agreement.

14. Protection of Work. Contractor shall protect the Work and be responsible under all circumstances for the condition thereof until completion and final acceptance. Any items stolen, not present or not in proper condition in conformance with the terms of this Agreement at the time of final inspection shall be replaced, restored and repaired by Contractor at Contractor's expense. Contractor stores all materials, equipment and any other articles at Contractor's own risk, but any such storage shall be subject to the direction and supervision of Owner. Contractors shall provide safety controls to protect the life and health of employees and other persons, to prevent damage to property, materials interruptions.

15. Other Work. Owner reserves the right to let other contracts in connection with the Work upon the Project. Contractor may afford to all other contractors reasonable opportunity for the introduction and storage of their material and the execution of their work and shall properly coordinate the Work of Contractor with all others. If any part of Contractor's Work depends for proper execution or results upon the Work of Owner, or of any other contractor, Contractor shall, prior to commencement of Contractor's Work utilizing such other work, inspect and promptly report to Owner in writing any defects in such work that renders it unsuitable. Failure to so inspect and report shall constitute an acceptance of such work as fit and proper for the reception of Contractor's Work and Contractor shall be conclusively presumed to have accepted the same.

16. Guarantees and Warranties.

16.1 In addition to any obligations of Contractor, as developer of the Project or otherwise, under applicable laws or court decisions, Contractor hereby guarantees against any loss, liability or damage arising from any defects due to faulty materials, equipment or workmanship furnished under this Agreement for a period of one year from the date of issuance of a valid certificate of occupancy for the entire Project, or for such longer period as may be provided by law. If the Contractor's right to proceed under this Agreement is terminated at any time in accordance with the provisions of this Agreement, Contractor hereby guarantees, on the same basis, all work and material which is in place at the time of termination. Acceptance by any public agency shall not be deemed acceptance by Owner.

16.2 All contractor's, manufacturer's or supplier's warranties and guarantees, express or implied, respecting any material or equipment used in or a part of the Work shall be deemed obtained by Contractor as the agent of Owner, and shall inure to Owner's benefit without the necessity of separate transfer or assignment; provided, that if directed by Owner, Contractor shall require such manufacturers or suppliers to execute such warranties and guarantees in writing to Owner.

17. Use of Owner's Equipment. Contractor agrees that the use by Contractor of any of Owner's equipment shall be with the understanding that Contractor uses said equipment or other items at its own risk and assumes all responsibility for and holds Owner free and harmless from any loss or

liability resulting therefrom. Cost of necessary repairs shall be charged to Contractor.

18. Changes and Extras.

18.1 Owner shall have the right to require changes in Contract Documents at any time and without any requirement of notice to sureties. Upon receipt of written orders from Owner authorizing such changes, Contractor shall promptly execute such changes. All such change orders shall become a part of this Contract and all terms and conditions of this Contract shall be binding thereon. No deviations, omissions or additions to the Contract Documents shall be made by Contractor without such specific written authorization from Owner. In the event Owner orders changes, but is unable to agree with Contractor to the proper charge or credit for such changes, then such changes shall be charged or credited at the actual direct cost of labor and materials. No claim for additions or extras shall be recognized unless Contractor, prior to the making of such claim for adjustment, is in receipt of an approved written order specifying the amount of such change.

18.2 All labor, materials and equipment furnished by Contractor shall be deemed to be included within the scope of labor, materials, and equipment, properly and necessarily required for the performance hereof even though said labor, materials and equipment are not specifically required or demanded in the Contract Documents.

19. Omitted.

20. Insurance. Contractor shall procure, maintain, and pay for, during the entire progress of the Work, insurance with limits not less than those described in Exhibit "D" attached hereto. Contractor shall furnish Owner with certificates of such insurance before commencing the Work which shall provide that the policies shall not be cancelled or reduced in coverage until 15 days after written notice to Owner. Such certificates shall establish Owner as the named insured and shall be subject to the approval of Owner as to the adequacy of coverage. If any injuries to persons or property arise which create potential claims at any time during the progress of the Work, any payments due Contractor may, at Owner's option, be deferred until such claims are settled or indemnity acceptable to Owner is provided.

21. Indemnification by Contractor.

21.1 Contractor shall indemnify and hold Owner harmless from loss or liability for claims or liens for labor performed or materials used.

21.2 Contractor shall indemnify and hold Owner harmless from and against all claims, damages, losses and expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the performance of the Work, including, but not limited to, any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or injury to or destruction of property, and any loss of use resulting therefrom, caused in whole or in part any by intentional or unintentional act or omission of Contractor, any subcontractor of Contractor, anyone directly or indirectly employed by either of them, or anyone for whose acts they or any of them may be responsible or liable, regardless of whether caused in part by Owner. The claim of any employee of Contractor, any subcontractor of Contractor, anyone directly or indirectly employed by either of them, or anyone for whose acts they or any of them may be responsible or liable, against Owner, for which indemnification may be sought by Owner against or from Contractor in accordance with this Paragraph, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor of Contractor under applicable workers compensation laws, disability benefit acts or other employee benefit acts.

22. Interruption of Work. Except for Phase II docks, any delay ("Delay") in the performance of the Work by Contractor, including, but not limited to Delays caused by weather, fire, war, earthquake, labor stoppage, shortage of materials, any governmental regulation or authority prohibiting, preventing or regulating the construction industry, or any

other cause beyond the control of Owner, shall not excuse Contractor's performance and shall subject Contractor to the offset provided for in Paragraph 8 hereof.

23. Patents. Contractor shall indemnify and hold Owner free and harmless from any loss or liability, for infringement of any patent arising out of the manufacture, delivery or use of supplies or out of constructions, alterations, modifications or repairs of real property.

24. Assignment.

24.1 Contractor may subcontract to others any portion of its obligations under this Agreement after written notice to Owner and provided that Owner reserves the right to disapprove any subcontractor on or before the date ten days after Contractor's notice to Owner of the identity of each subcontractor, which shall render any such assignment void.

24.2 Owner reserves the right to transfer and assign this Agreement or any portion thereof.

25. Owner's Right to Stop Work. If the Contractor fails to correct defective Work as required herein or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of the Contractor.

26. Termination and Withhold.

26.1 Should any of the following occur, then Owner may, at Owner's option, without prejudice to any other right or remedy of Owner, upon 24 hours' written notice, terminate this Agreement without obligation or liability, and finish the Work by whatever method Owner may deem expedient, including, but not limited to, assumption of all subcontracts of Contractor for the Work. Owner shall have the right to demand immediate reimbursement and/or offset against any amounts due by Owner pursuant to the Purchase Agreement all costs and expenses, including attorneys' fees, in connection therewith. Such events are as follows:

26.1.1 Contractor fails to perform any provision of this Agreement or prosecute the Work properly and promptly;

26.1.2 Contractor has proceedings commenced under the bankruptcy act; or

26.1.3 Contractor makes a general assignment for the benefit of its creditors.

26.2 Owner may offset against amounts due by Owner under the Purchase Agreement deemed necessary by Owner in Owner's sole discretion to protect Owner from:

26.2.1 Defective work;

26.2.2 Claims filed or reasonable evidence indicating probable filing of claims;

26.2.3 Failure of Contractor to pay any obligation or liability;

26.2.4 A reasonable doubt that this Agreement can be completed by Contractor in accordance with this Agreement;

26.2.5 Contractor's damage to another contractor; or

26.2.6 Contractor's other failure of performance by Contractor pursuant to this Agreement, including maintenance obligations.

27. Arbitration.

27.1 All disputes relating to this Agreement ("Dispute") shall be submitted to arbitration in accordance with the rules adopted by the American Arbitration Association, as the same may be amended or succeeded from time to time, unless modified hereby or the parties mutually agree otherwise. Contractor shall not have the right to cease performance of the Work.

27.2 Arbitration may be initiated by any party giving written notice to the other demanding arbitration and specifying the matter to be arbitrated ("Arbitration Notice"). The arbitrators shall be bound by this Agreement and shall not have the power or authority to alter the terms and provisions hereof. No Partner shall have recourse to legal proceedings other than to enforce (i) this arbitration provision or (ii) any arbitration award pursuant hereto.

27.3 The costs of arbitration, including, but not limited to, attorneys' fees, shall be allocated among the parties as the arbitrators shall determine.

27.4 There shall be three arbitrators appointed as follows:

27.4.1 On or before the tenth day after the date of receipt of the Arbitration Notice, the giving the Arbitration Notice, and the party indicated in the Arbitration Notice as adverse parties shall each appoint one arbitrator who shall not have any financial interest in the Project and give notice of such appointment to the other party. The two adverse interests to a Dispute may hereinafter be referred to as an "Adverse Side."

27.4.2 The two arbitrators selected by the Adverse Sides to the Dispute shall select a third arbitrator, on or before the tenth day after the date of appointment of the second arbitrator.

27.4.3 Should one Adverse Side fail to appoint an arbitrator in a timely manner as required above, the arbitrator appointed by the other Adverse Side shall serve as the sole arbitrator. Should the two arbitrators appointed fail to select a third arbitrator within such ten-day period, upon the request of an Adverse Side after ten days' prior written notice to the other party, such appointment shall be made by the then presiding judge of the superior court for Orange County, acting in his individual and non-official capacity on the application of any Adverse Side. Should the presiding judge shall fail or refuse to act, then the parties may apply to any court having jurisdiction for such appointment.

28. Modification. No person on behalf of Owner has authority to make any representation or to modify this Agreement. All negotiations and agreements prior to the Effective Date are merged herein and there are no agreements, oral or otherwise, other than those contained herein. Additional or supplemental agreements shall be valid only in writing.

29. Waiver. In the event Owner shall waive a covenant or condition of this Agreement, Owner shall not be deemed to have consented to any further waiver, modification or breach.

30. Attorneys' Fees. Should suit be brought to enforce or interpret any part of this Agreement, the "prevailing party" shall be entitled to recover, as an element of costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party entitled to recover its costs of suit, regardless of whether such suit proceeds to final judgment. A party not entitled to recover its costs shall not be entitled to recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for the purposes of determining if a party is entitled to recover costs or attorneys' fees.

31. Paragraph Headings. The paragraph titles used in this Agreement are for convenience only and in no way purport to describe the provisions contained in any of said paragraphs.

32. Singular and Plural. Throughout this Agreement, the singular shall include the plural and the plural shall include the singular.

33. Notices. All notices permitted or required under this Agreement shall be deemed served upon personal delivery or 48 hours after having been:

33.1 Dispatched by telegram; or

33.2 Deposited in the United States mail, certified, postage prepaid, return receipt requested; and

33.3 Addressed to the respective parties as follows:

| | |
|---|---|
| Owner: | Beauchamp Enterprises Marine Division<br>4000 MacArthur Boulevard<br>Suite 700<br>Newport Beach, California 92660 |
| With Copy To: | Garwin & Wagner<br>18401 Von Karman Avenue, Suite 410<br>Irvine, California 92715<br>Attention: Timothy S. Wagner, Esq. |
| Contractor: | Southern California Savings and Loan Association<br>9100 Wilshire Boulevard<br>Beverly Hills, Calfiornia 90212 |

34. Heirs and Assigns. Subject to the provisions of Paragraph 23, this Agreement shall inure to the benefit of, and be binding upon the heirs, executors, administrators and successors of the respective parties hereto and the assigns of Owner.

35. Withholding. Contractor shall make or pay (i) all sales, use and similar taxes due on construction materials, (ii) transportation taxes, and (iii) all contributions and taxes for unemployment insurance and old age retirement benefits, annuities or pensions or similar taxes or contributions. Should Owner pay any such taxes or contributions, Contractor shall supply Owner with all records necessary to compute the same and reimburse Owner upon demand for the amount thereof,including penalties and interest. Owner shall have the right to deduct any amount so paid from any sums due Contractor hereunder.

36. Exhibits. All Exhibits attached hereto are incorporated herein by this reference.

37. Invalidity of Provisions. If any provision of this Agreement as applied to either party or to circumstance, shall be adjudged by a court to be void and unenforceable, the same shall in no way affect:

37.1 Any other provision in this Agreement;

37.2 The applicable of such provision in any other circumstances; or

37.3 The validity or enforceability of the Agreement as a whole.

38. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement to b effective as of the Effective Date.

39. Time of the Essence. Time is of the essence for the performance of each and every covenant and the satisfaction of each and every condition contained in this Agreement.

40. Construction. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement, and in accordance with the laws of the State of California.

41. Advertising. Owner shall have the right to limit or prohibit the use or display of advertising material upon or from the Project site.

42. Understanding of Agreement. Contractor hereby represents and acknowledges to Owner that it has received, read, understood and approved a complete executed copy of the Contract Documents, including, but not limited to, this Agreement and each and every provision contained herein.

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

OWNER:

BEAUCHAMP ENTERPRISES MARINE DIVISION
a General Partnership

By: _____
Its: _____

CONTRACTOR:

SOUTHERN CALIFORNIA SAVINGS AND LOAN ASSOCIATION

By: _____
Its: Vice President

(Legal Description of Property)

PARCEL E1

PORTION OF PARCEL "A", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29), LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHERN POINT OF LOT 3 AS DESIGNATED ON BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES (PM 42-50); THENCE SOUTH 85° 50'00" EAST, 35.00 FEET; SOUTH 4°10'00" WEST, 117.39 FEET; NORTH 85°50'00" WEST, 68.52 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE WEST, WITH A RADIUS OF 38.50 FEET THROUGH WHICH A RADIAL LINE BEARS NORTH 83°53'54" WEST, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53°48'49" AN ARC LENGTH OF 36.16 FEET; THENCE RADIAL NORTH 42°17'27" EAST, 30.30 FEET; NORTH 45°10'00" EAST, 45.00 FEET; NORTH 4°10'00" EAST, 28.00 FEET TO THE POINT OF BEGINNING.

PARCEL E2

PORTION OF PARCEL "A", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHERN POINT OF LOT 3 AS DESIGNATED ON BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES (PM 42-50); THENCE SOUTH 85°50'00" EAST, 35.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 4°10'00" EAST, 95.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 49.00 FEET, THROUGH A CENTRAL ANGLE OF 38°10'00", AN ARC LENGTH OF 32.64 FEET; THENCE NORTH 56°00'00" EAST, 15.00 FEET; NORTH 86°30'00" EAST, 80.00 FEET; SOUTH 4° 00'00" EAST, 129.39 FEET; SOUTH 7°30'00" WEST, 154.49 FEET; NORTH 85° 50'00" WEST, 90.00 FEET; NORTH 4° 10'00" EAST, 137.09 FEET TO POINT OF BEGINNING.

PARCEL L1

PORTION OF PARCEL "B" AND "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS AT THE MOST SOUTHERN CORNER OF THE PARCEL SHOWN AS "BENICIA YACHT CLUB" ON MAP DESIGNATED AS "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" (PM 42-50); THENCE ALONG NORTHERN PROPERTY LINE OF "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" SOUTH 60° 00'11" EAST, 12.38 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PROPERTY LINE NORTH 29°59'49" EAST, 11.46 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 117.81 FEET; THENCE SOUTH 60°00'11"EAST, 259.00 FEET; NORTH 29° 59'49" EAST, 190.00 FEET; SOUTH 60°00'11" EAST, 910.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH 117.81 FEET; THENCE SOUTH 29°59'49" WEST, 107.22 FEET; NORTH 60°00'11" WEST, 130.00 FEET; NORTH 29°59'49" EAST, 28.44 FEET; NORTH 74°25'52" WEST, 807.47 FEET; SOUTH 29° 59'49" WEST, 199.03 FEET; NORTH 60°00'11" WEST, 46.00 FEET; NORTH 29°59'49" EAST, 78.50 FEET; NORTH 60° 00'11" WEST, 360.97 FEET; THENCE THROUGH A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, WITH A RADIUS OF 60.00 FEET THROUGH WHICH A RADIAL LINE BEARS SOUTH 62°11'10" EAST, SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 61°49'34", AN ARC LENGTH OF 64.74 FEET; THENCE SOUTH 34°00'00" EAST, 159.92 FEET; SOUTH 56° 00'00" WEST, 15.00 FEET; NORTH 34°00'00" WEST, 159.92 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 62°15'02", AN ARC LENGTH OF 81.49 FEET; THENCE NORTH 29°59'49" EAST, 196.75 FEET TO TRUE POINT OF BEGINNING.

PARCEL L2

PORTION OF PARCEL A, BENICIA MARINA (PM-75), AND PARCEL 1 (PM-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHERLY CORNER OF LOT 2 ON MAP DESIGNATED AS "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" (PM 42-50); THENCE ALONG SAID WESTERLY PROPERTY LINE SOUTH 29°59'49" WEST, 80.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 60°00'11" EAST, 108.00 FEET; NORTH 29°59'49" EAST, 42.00 FEET; NORTH 60° 00'11" WEST, 9.00 FEET; NORTH 29°59'49" EAST, 18.00 FEET; NORTH 60° 00'11" WEST, 99.00 FEET; SOUTH 29°59'49" WEST, 60.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL L3

PORTION OF PARCEL B, BENICIA MARINA (PM-75), AND PARCEL 1 (PM-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHERLY CORNER OF LOT 2 ON MAP DESIGNATED AS "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" (PM 42-50); THENCE NORTH 29° 59'49" EAST, 135.15 FEET TO TRUE POINT OF BEGINNING; THENCE SOUTH 60°00'11" EAST, 187.00 FEET; NORTH 29°59'49" EAST, 60.00 FEET; NORTH 60°00'11" WEST, 187.00 FEET; SOUTH 29°59'49" WEST, 60.00 FEET TO TRUE POINT OF BEGINNING.

PARCEL L4 & L5

TWO PARCEL OF LAND MEASURING 60.00 FEET BY 112.00 FEET LOCATED ON THE NORTH SIDE OF PARCEL A. EXACT LOCATION TO BE DESCRIBED AFTER COMPLETION OF BENICIA MARINA PHASE II & III CONDOMINIUMS.

EXHIBIT A-6

## PARCEL L7

PORTION OF PARCEL "B" AND "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING FROM THE EASTERN END OF LINE DESIGNATED IN PARCEL A AS "SOUTH 60°00'11" EAST, 88.00 FEET"; THENCE NORTH 89° 56'41" EAST, 116.69 FEET TO TRUE POINT OF BEGINNING; THENCE NORTH 29°59'49" EAST, 88.00 FEET; SOUTH 60° 00'11" EAST, 100.97 FEET; NORTH 29°59'49" EAST, 71.00 FEET; SOUTH 60° 00'11" EAST, 18.00 FEET; SOUTH 29°59'49" WEST, 132.00 FEET; SOUTH 72°45'18" WEST, 36.77 FEET; NORTH 60° 00'11" WEST, 94.00 FEET TO TRUE POINT OF BEGINNING.

PARCEL M1

PORTION OF PARCEL "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST SOUTHWESTERN CORNER OF PARCEL C AS DESIGNATED ON "BENICIA MARINA" (PM 18-75); THENCE ALONG BOUNDARY LINE BETWEEN PARCEL B & C SOUTH 86° 41'48" EAST, 83.96 FEET; THENCE LEAVING SAID BOUNDARY LINE THROUGH A TANGENT CURVE TO THE LEFT, WHICH A RADIAL LINE BEARS NORTH 3°18'13" EAST, WITH A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 63°18'24", AN ARC LENGTH OF 110.49 FEET; THENCE NORTH 29°59'49" EAST, 92.15 FEET TO TRUE POINT OF BEGINNING; THENCE NORTH 60°00'11" WEST, 88.00 FEET; SOUTH 29° 59'49" WEST, 61.00 FEET; NORTH 60°00'11" WEST, 44.00 FEET; NORTH 29°59'49" EAST, 49.48 FEET; SOUTH 74° 25'52" EAST, 2.06 FEET; NORTH 29°59'49" EAST, 49.00 FEET; SOUTH 60°00'11" EAST, 130.00 FEET; SOUTH 29°59'49" WEST, 38.00 FEET TO THE POINT OF BEGINNING.

PARCEL M2

PORTION OF PARCEL "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST NORTHEASTERN CORNER OF PARCEL C AS DESIGNATED ON "BENICIA MARINA" (PM 18-75); THENCE ALONG BOUNDARY LINE SOUTH 29°59′49" WEST, 205.27 FEET; NORTH 86°41′48" WEST, 384.70 FEET; THENCE THROUGH A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 150.00 FEET A CENTRAL ANGLE OF 45°00′00", AN ARC LENGTH OF 117.81 FEET; SOUTH 48° 18′12" WEST, 28.60 FEET; NORTH 85°34′55" WEST, 18.26 FEET; NORTH 86° 41′48" WEST, 31.82 FEET; THENCE LEAVING SAID BOUNDARY LINE THROUGH A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, WHICH A RADIAL LINE BEARS NORTH 31° 38′42" WEST, WITH A RADIUS OF 122.00 FEET, THROUGH A CENTRAL ANGLE 28° 21′29", AN ARC LENGTH OF 60.38 FEET; THENCE NORTH 29°59′49" EAST, 130.15 FEET; SOUTH 60°00′11" EAST, 36.00 FEET; NORTH 29° 59′49" EAST, 20.44 FEET; SOUTH 60°00′11" EAST, 137.00 FEET; NORTH 72°45′18" EAST, 36.77 FEET; NORTH 29° 59′49" EAST, 206.78 FEET; SOUTH 60°00′11" EAST, 49.00 FEET; NORTH 29°59′49" EAST, 72.00 FEET; SOUTH 60°00′11" EAST, 211.00 FEET TO POINT OF BEGINNING.

PARCEL 1.6B

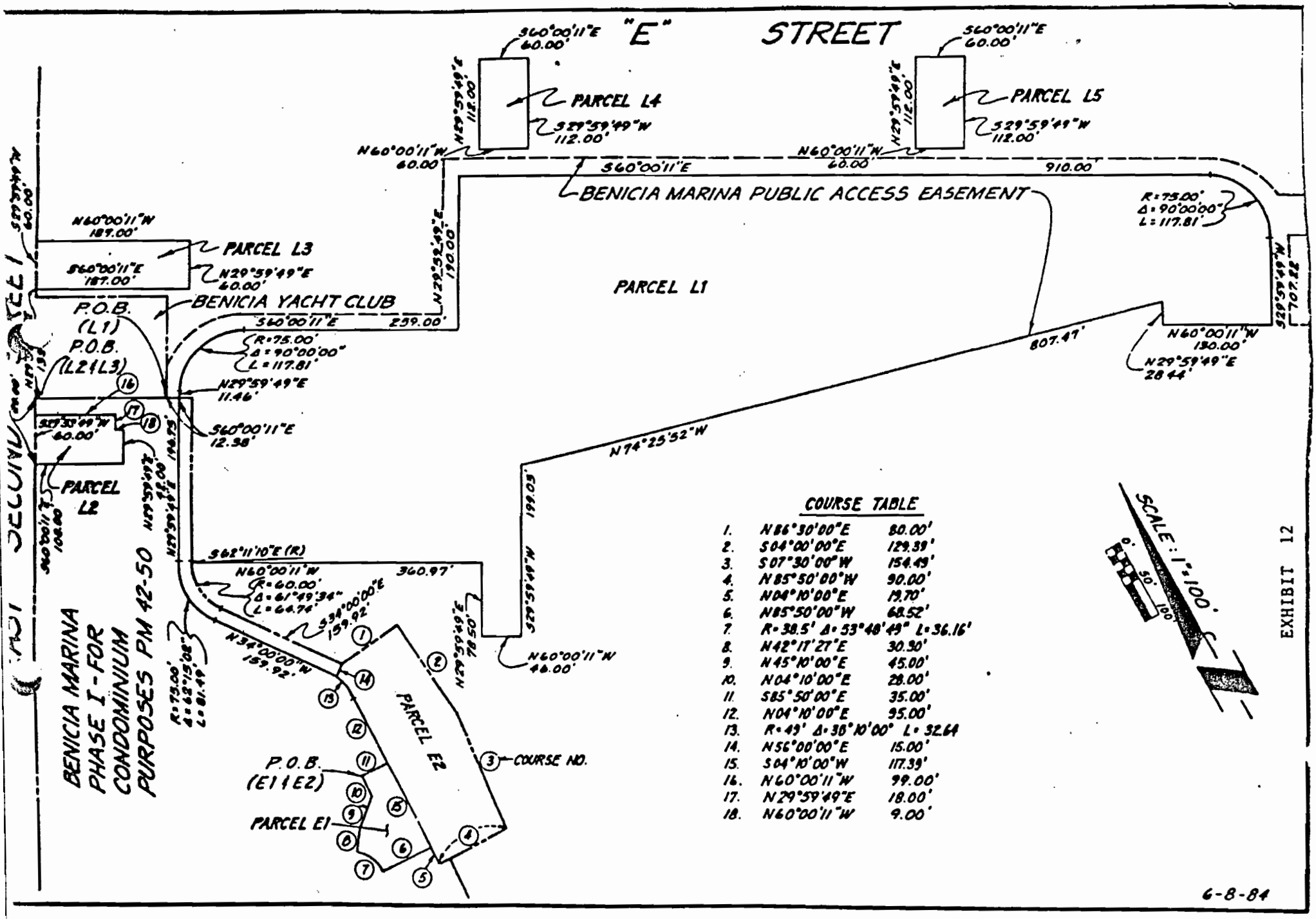
PORTION OF PARCEL "B" AND "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST SOUTHERN CORNER OF LOT 3 AS DESIGNATED ON "BENICIA MARINA - PHASE I FOR CONDOMINUM PURPOSES" (PM 42-50); THENCE NORTH 77°52'48" EAST, 263.85 FEET; SOUTH 86°41'48" EAST, 101.01 FEET TO TRUE POINT OF BEGINNING; THENCE SOUTH 86°41'48" EAST, 783.50 FEET; SOUTH 3°18'12" WEST, 72.36 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH, WITH A RADIUS OF 50.00 FEET THROUGH WHICH A RADIAL LINE BEARS NORTH 41° 41'48" WEST, WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE 45°00'00", AN ARC LENGTH OF 39.27 FEET; THENCE NORTH 86°41'48" WEST, 50.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 61.46 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC LENGTH OF 48.27 FEET; TO A POINT OF REVERSE CURVATURE; THENCE THROUGH A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 61.46 FEET, THROUGH A CENTRAL ANGLE OF 45° 00'00", AN ARC LENGTH OF 48.27 FEET; NORTH 86°41'48" WEST, 50.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 40.00 FEET, THROUGH A CENTRAL ANGLE OF 30°00'00", AN ARC LENGTH OF 20.94 FEET; SOUTH 63°18'12" WEST, 50.56 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 40.00 FEET, THROUGH A CENTAL ANGLE OF 30°00'00", AN ARC LENGTH OF 20.94 FEET; NORTH 86°41'48" WEST, 70.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 17.07 FEET, THROUGH A CENTRAL ANGLE 45°00'00", AN ARC LENGTH OF 13.41 FEET TO A POINT OF REVERSE CURVATURE; THENCE THROUGH A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 17.07 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC LENGTH OF 13.41 FEET; NORTH 86°41'48" WEST, 115.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 17.07 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC LENGTH OF 13.41 FEET TO A POINT OF REVERSE CURVATURE; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 17.07 FEET, A CENTRAL ANGLE OF 45°00'00", AN ARC LENGTH OF 13.41 ; NORTH 86°41'48" WEST, 70.00 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 17.07 FEET, A CENTRAL ANGLE OF 45°00'00", AN ARC LENGTH OF 13.41 FEET TO A POINT OF REVERSE CURVATURE; THENCE THROUGH A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 17.07 FEET, A CENTRAL ANGLE OF 45°00'00", AN ARC LENGTH OF 13.41 FEET; THENCE NORTH 86°41'48" WEST, 150.00 FEET; NORTH 3° 18'12" EAST, 77.00 FEET TO TRUE POINT OF BEGINNING.

PARCEL L6A

PORTION OF PARCEL "B" AND "C", BENICIA MARINA (PM 18-75), AND PARCEL 1 (PM 3-29), AND THE PROPERTY SHOWN AS S.P. CO. (67 DEEDS 3), (PM 3-29) LOCATED IN THE CITY OF BENICIA, SOLANO COUNTY, CALIFORNIA.

COMMENCING AT A POINT THAT IS THE MOST SOUTHERN CORNER OF LOT 3 AS DESIGNATED ON "BENICIA MARINA - PHASE I FOR CONDOMINIUM PURPOSES" (PM 42-50); THENCE NORTH 77°52'48" EAST, 263.85 FEET TO TRUE POINT OF BEGINNING; THENCE NORTH 3°18'12" EAST, 83.63 FEET; NORTH 29°59'49" EAST, 120.30 FEET; NORTH 60° 00'11" WEST, 34.00 FEET; NORTH 29°59'49" EAST, 148.05 FEET; SOUTH 74°25'52" EAST, 716.60 FEET; SOUTH 29°59'49" WEST, 49.48 FEET; SOUTH 60°00'11" EAST, 44.00 FEET; NORTH 29° 59'49" EAST, 61.00 FEET; SOUTH 60°00'11" EAST, 88.00 FEET; SOUTH 29°59'49" WEST, 92.15 FEET; THENCE THROUGH A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 63°18'24", AN ARC LENGTH OF 110.49 FEET; NORTH 86°41'48" WEST, 782.79 FEET TO TRUE POINT OF BEGINNING.




COURSE TABLE

| | | |
|---|---|---|
| 1. | N86°30'00"E | 80.00' |
| 2. | S04°00'00"E | 129.39' |
| 3. | S07°30'00"W | 154.49' |
| 4. | N85°50'00"W | 90.00' |
| 5. | N04°10'00"E | 19.70' |
| 6. | N85°50'00"W | 68.52' |
| 7. | R=38.5' Δ=53°48'49" L=36.16' | |
| 8. | N42°17'27"E | 30.30' |
| 9. | N45°10'00"E | 45.00' |
| 10. | N04°10'00"E | 28.00' |
| 11. | S85°50'00"E | 35.00' |
| 12. | N04°10'00"E | 95.00' |
| 13. | R=49' Δ=38°10'00" L=32.64 | |
| 14. | N56°00'00"E | 15.00' |
| 15. | S04°10'00"W | 117.39' |
| 16. | N60°00'11"W | 99.00' |
| 17. | N29°59'49"E | 18.00' |
| 18. | N60°00'11"W | 9.00' |

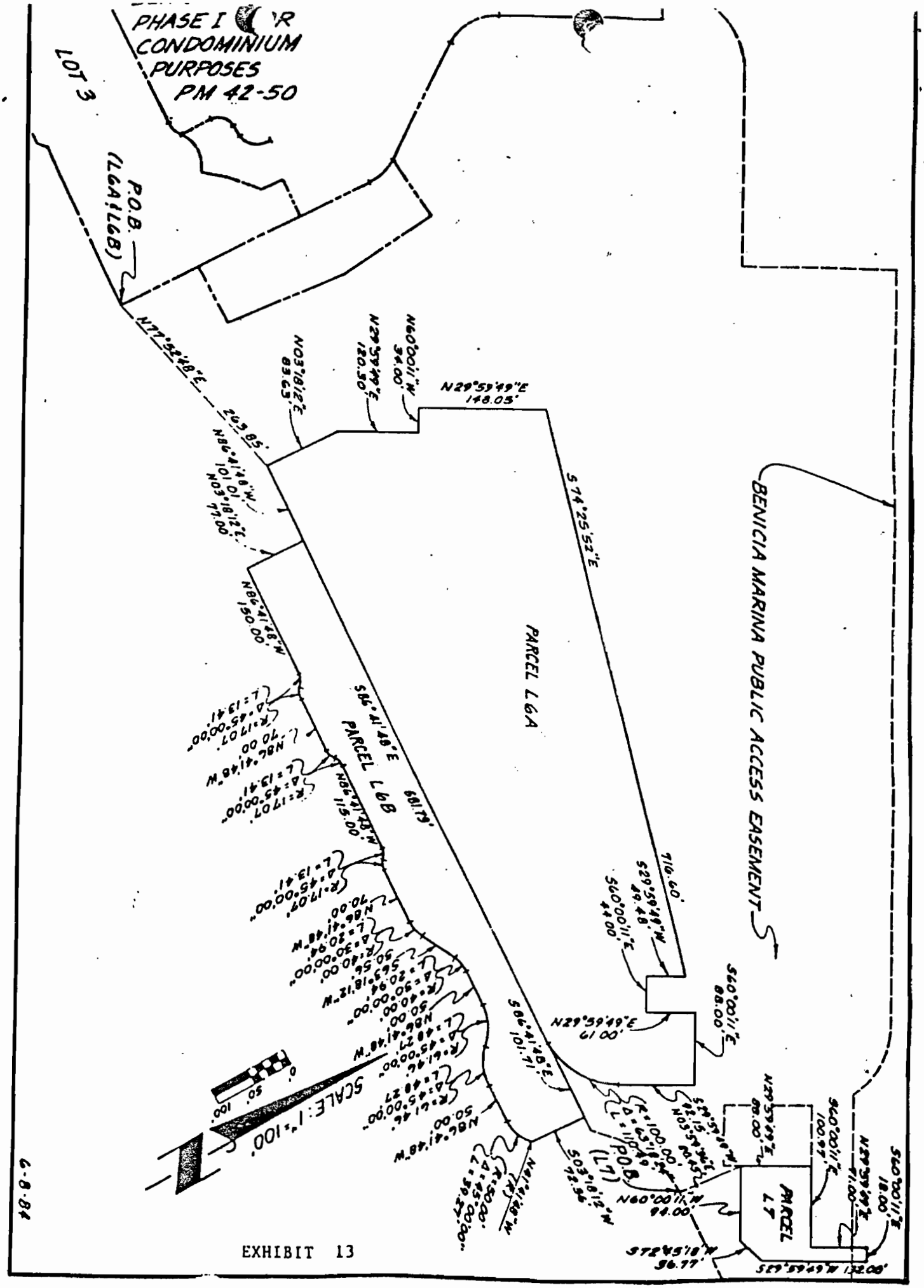

PHASE I
CONDOMINIUM
PURPOSES
PM 42-50
LOT 3
P.O.B.
(L6A & L6B)
N77°52'48"E
263.85'
N03°18'12"E
83.63'
N29°59'49"E
120.30'
N60°00'11"W
34.00'
N29°59'49"E
148.05'
S74°25'52"E
BENICIA MARINA PUBLIC ACCESS EASEMENT
PARCEL L6A
PARCEL L6B
S86°41'48"E
681.79'
N86°41'48"W
150.00'
N86°41'48"W
115.00'
716.60'
S29°59'49"W
49.48'
S60°00'11"E
44.00'
S60°00'11"E
88.00'
N29°59'49"E
61.00'
S86°41'48"E
101.71'
SCALE: 1"=100'
P.O.B.
(L7)
S03°18'12"W
72.56'
N60°00'11"W
94.00'
PARCEL L7
S72°45'18"W
36.77'
S29°59'49"W 132.00'
S60°00'11"E
18.00'
6-8-84

EXHIBIT 13

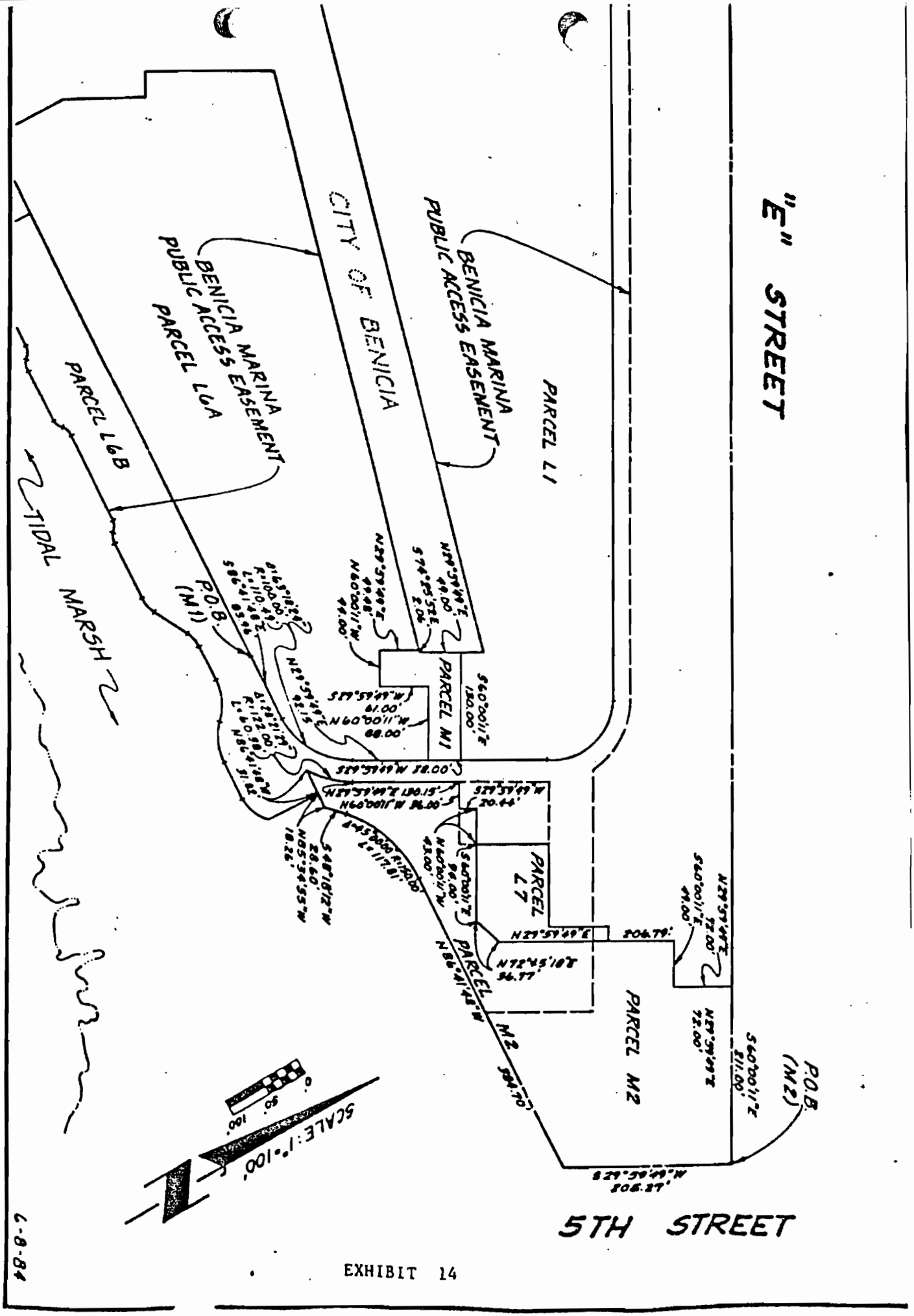

"E" STREET
5TH STREET
CITY OF BENICIA
BENICIA MARINA PUBLIC ACCESS EASEMENT
BENICIA MARINA PUBLIC ACCESS EASEMENT PARCEL L6A
PARCEL L1
PARCEL L6B
TIDAL MARSH
PARCEL M1
PARCEL L7
PARCEL M2
P.O.B. (M1)
P.O.B. (M2)
SCALE: 1"=100'
6-8-84

EXHIBIT 14

EXHIBIT "B"

[Contract Documents]

| | | |
|---|---|---|
| Shop Drawings - Old Capitol Marina II | 9/29/83 | Job 8318 - 3 sheets |
| Shop Drawings - Old Capitol Marina | 1/11/82 | Drawings 1/3, 2/3, & 3/3 |
| Benicia Harbor Master Bldg. | 12/16/82 | 7 sheets |
| Plans for Floating Docks - Phase II | 11/15/82 | 15 sheets |

Sheet 1 - Key map & index
2 - Slip & piling layout
3 - Cleat & bumper layout
4 - Pier details
5 - Pier miscellaneous
6 - 4' x 30' gangway
7 - Pier & gangway steel
8-P - Utility layout
9-E - Electrical layout
10-E - One line diagram
11-U - Utility connections at gangway
12-U - Utility installation details
13-U - Fire hose cabinet
14-U - Utility stands
15-T - Telephone conduit layout

| | | |
|---|---|---|
| Second Floor Deck Addition | 10/8/82 | 3 sheets |
| Floor Plan | 10/8/82 | 3 sheets |

Sheet 1 - Floor/foundation plan
2 - Section A & B
3 - Front/rear elev.

| | | |
|---|---|---|
| Old Capitol Marina | 5/15/82 | 24 sheets |

Sheet 1 - Key map & index
2 - Slip & piling layout
3 - Slip & piling layout
4 - Cleat & bumper layout
5 - Cleat & bumper layout
6 - Floatation systems minimum requirements
7 - Pile guides
8 - Pier details
8A - Pier details
9 - Pier miscellaneous
10 - 4' x 30' gangway
11 - 3' x 26' gangway
12 - Pier & gangway steel
13-P - Utility layout
14-P - Utility layout
15-E - Electrical layout
16-E - Electrical layout
17-E - One line diagrams
18-U - Utility connections at gangway
19-U - Utility installation details
20-U - Fire hose cabinet
21-U - Utility stands
22-T - Telephone conduit layouts
23-T - Telephone conduit layouts

EXHIBIT "B"

Phase I Improvement Plan — 4/8 — Job C-1001, 2 sheets

Sheet C-8 - Second street
C-9 - Fifth street

**Phase I** — 4/82 — Job C-1001, 9 sheets

Sheet C-1 - Index sheet
C-2 - Grading plan
C-3 - Grading plan
C-4 - Grading plan & utility layout
C-5 - Utility layout & demolition plan
C-6 - Utility layout & demolition plan
C-10 - Launch ramp & pier
C-11 - West Bank walk & deck plans & sections
C-12 - North Bank utility & abutment plan

Phase I - Boater Services — 8/9/82 — 2 sheets

Sheet L-8 - Planting plan
L-9 - Irrigation plan

Phase II - South Bank Improvements — 12/19/83 — No number

Benicia Marina — 2/29/84 — 4 sheets

Phase I - for condominium purposes PM 42-50 (2 sheets)
Lease map - sheet 1/1
Map of leasable area (1 sheet)

West Bank Overhang — 3/7/84 — Job C-1001, sheet 1 1

Toilet Facility & Community Room — No date — No number

Harbor Master Bldg.- reduced — 12/16/82 — 7 sheets

Benicia - reduced — 4/21/83 — 3 sheets

Sheet 1 - Floor/foundation plan
2 - Section A & B
3 - Front/rear elev.

Plans For Floating Docks - reduced — 5/15/82 — 24 sheets

Plans For Floating Dock - Phase II - reduced — 9/16/83 — 15 sheets

Sheet 1 - Key map & index
2 - Slip & piling layout
3 - Cleat & bumper layout
4 - Pier details
5 - Pier miscellaneous
6 - 4' x 30' gangway
7 - Pier & gangway steel
8-P - Utility layout
9-E - Electrical layout
10-E - One line diagram
11-U - Utility connections at gangway
12-U - Utility installation details
13-U - Fire hose cabinet
14-U - Utility stands
15-T - Telephone conduit layout

EXHIBIT "C"

[Schedule of Work]

| | Completion Dates |
|---|---|
| **Harbormaster Building:** | |
| New Decking on east side of building - railings around this deck: | Done |
| Deck is being installed now, railings to be painted and installed | 4-10-84 |
| Wood base for office area, painted and installed prior to carpet | 4-10-84 |
| Screens for windows (in attic) | Done |
| All shrubbery, plants and trees should be checked against landscape plans and any corrections made; all sprinkler heads and irrigation systems should be checked for pressure and coverage: Jack and Jim will walk this item on | 4-5-84 |
| All Harbormaster Building work completed, Certificate of Completion and Occupancy Certificate shall be issued to Beauchamp Enterprises Marine Division. | Final Insp. has been passed: Cert. of Occup. to be issued at Close of Escrow of Phase I |
| Lattice | 4-17-84 |
| **Fuel Dock:** | |
| Cover for vent pipes (from underground storage tanks): | Done |
| Metal Flashing installed (no paint) | Done |
| This is a turn-key operation. Underground storage tanks are now filled with water. Don, of Incas Petroleum will pump out the water and bleed all lines when operator is ready to place fuel in the tanks. He will check all pumps and lines to make sure they are in working order. Tanks are filled with water to prevent them floating out of the ground. Certificate of Completion and Certificate of Occupancy to be issued to Beauchamp Enterprises Marine Division. | Installation ready to place in operation upon request of Beauchamp Enterprises Marine Division |
| Easement granted to Beauchamp Enterprises Marine Division for maintenance, repair and refueling of three underground storage tanks. Easement to be delineated on map and recorded. Easement to be completed by engineer, content of easement shall be subject to Beauchamp Enterprises Marine Division approval and no amounts shall be payable by them for use of the easement. | ~~Statement for~~ maintenance and repair of fuel pump not in Lease Area and access to Community, Marina & Restroom areas. Conmass to indicate on ~~plan as Exhibit~~. Prior to Phase I closing. |

Parking Lots - Dates for Completion
(Completion meaning striped, lighting in, landscaped and ready for use)

| | |
|---|---|
| Parcel L-2 (South side of Benicia Yacht Club) Need to patch a portion of lot during hot weather. | As requested by Beauchamp Enterp. Marine Div. |
| Striped, lighting in, concrete approach completed | Done |
| Landscaping and installation of trash enclosure completed | 5-1-84 |
| Certificate of Completion & Occupancy issued (Jim will ask City for Letter of Compliance) | Done |

Parcel L-3 (North side of Benicia Yacht Club)

| | |
|---|---|
| Cleaning and striping of this lot to be completed and surrounding area to be graded to create a bank on the perimeter of this lot to prevent persons driving over edge. | Done |
| Add heavy rope and 6" poles between trailers. | 4-30-84 |
| Asphalt is in place at present. An additional 1" of asphalt to be put over the existing surface. This area is temporary. No landscaping or wheel stops for autos. Temporary lighting in place. | Done |
| All temporary parking shall be made permanent: ie. lighting, landscaping, resurfacing, and striping. Contractor shall maintain all temporary facilities. If temporary parking is not completed by the dates referenced herein, Beauchamp Enterprises Marine Division shall have the right to complete the parking lots and demand immediate reimbursement or offset against any amounts payable by them to Southern California Savings and Loan Association whether under Notes or Sublease or otherwise (all at Beauchamp Enterprises Marine Division's election). (Jim will get Letter of Compliance from City or Occupancy and Completion Certificates) | Earlier of (i) Completion of Phase II condos or (ii) 7/85 |

Parcels L-4 and L-5 (North Perimeter of Project)

| | |
|---|---|
| A temporary parking lot now exists between these two areas with a temporary restroom facility. Six or eight inch wood bullards approximately three to four feet high will be placed in this area for a traffic barrier. Parking Lot shall be washed, patched and re-striped. Contractor shall maintain these temporary facilities. | 4-30-84 |

| | Completion Dates |
|---|---|
| Temporary restroom facility on this lot shall be completed (concrete stoops to be poured in front of each entrance door [two]) | Done |
| Permanent parking lots for L-4 and L-5: Must be completed and Letter of Compliance issued (City does not issue Occupancy Permits on Parking Lots) | 7/86 |
| Considering the importance of this parking lot, Contractor shall cause this parking lot to remain intact at all times during the construction period on the north side of the project and until permanent parking lots and restrooms have been completed, Contractor shall cause this area to be a safe, well-lit parking lot and restroom facility during this construction period. | |
| ccess from the top of the gangway to temporary parking lots - | |
| 3/8" of gravel will be installed on this area for safe walking surface. | Done |
| rea from Yacht Club to launch ramp directly adjacent to water - | |
| 50 foot wide strip will be grubbed and graded from the top to the reverted slope and will place enough gravel on this roadway to make it safe. | 4-7 -84 |
| ater Services Building Area | |
| Sidewalks in front of building (from store fronts to curb) | Done |
| Stoops in front of all shop doors in rear and ramp for overhead door. | Done |
| All contractor tools and equipment shall be removed from this building, all interior drywall patched and painted, exterior paint touched up and wood repaired where damaged. | 4-30-84 |
| nced-in Storage Yard - | |
| All contractor tools and equipment shall be removed, gravel shall be raked smooth, all trash and debris shall be removed, chain link fence repaired where needed, irrigation system shall be repaired and checked for flow, new conduit shall be installed where needed, all planting shall be checked against landscaping plans for size of plants and amounts shall be made to conform. | 4-19-84 |
| uance of Certificate of Compliance or Completion and upancy for Boater Services Area (except Sea Scout ition) | Done |

Parking lot and boater launch ramp -

| | |
|---|---|
| Concrete floats are in process of being removed. They are being relocated to south side of the road which services the launch ramp. Parking lot shall be striped. | Done |

Hoist -

| | |
|---|---|
| Work dock (by hoist pier) shall be in and gangway installed. | 4-30-84 |
| Sea Scout Addition (Completion of Dock) | 5-10-84 (subject to rain) |
| Issuance of Certificate of Completion and Occupancy for Sea Scout addition. | 5-10-84 |

Overlooks on Perimeter Walks (Phase I)

| | |
|---|---|
| Piling will be driven by 4/30/84. Completion of piling, wood decks and final inspection by City of Benicia | 5-31-84 |

Community Building

| | |
|---|---|
| Completion of building: final inspection and Certificate of Completion and Occupancy issued. | Completion of Phase II Condos or 8/1/85 ~~85~~ |
| This building shall be completed and a final inspection and Certificate of Completion and Occupancy issued upon earlier of completion of Phase II Condominiums or August 1, 1985, or Beauchamp Enterprises Marine Division shall have the right to complete and deduct all costs from any payment due pursuant to the Purchase Agreement between them and Southern California Savings & Loan. Easement for public access, maintenance for restrooms and laundry room per BCDC procedures. | Five (5) months after issuance of all permits, whichever is later |

Trash Enclosures (Three locations)

| | |
|---|---|
| One is in the northeast corner of project and one is in temporary parking lot location - Beauchamp Enterprises Marine Division shall determine the location of the third. Completion of all three facilities by: | 4-23-84 |

Docks

Phase II Docks (Parcel L-6) Land and Water:

| | |
|---|---|
| Completion of docks, final inspection and and Certificate of Completion and Occupancy issued from City & BCDC; completion of mean landside facilities, parking lots and lighting all in and ready for use and piling repaired where needed. | Sept 84 or five months after issuance of all permits, whichever is later, but in no event later than 28 February 1985. |

Phase I of Docks:

| | |
|---|---|
| All docks completed per plans, Certificate of Completion and Occupancy. | 4-10-84 (Note: extension to 4-19 necessary) |

Completion of each of the docks in Phase I and Phase II includes, but is not limited to, the following:

All gangway surfaces repainted with non-skid paint; all water lines, telephone and electrical lines secured at top and bottom of gangways; all telephone lines pulled into dock boxes; all telephone connecting blocks installed; all dock electrical and lighting will be operational and working; all main walkways and fingers will be leveled; all nails flush or countersunk; all cleats properly secured and installed as per plans; all hosebibs will be tightly secured to face of dock box; all electrical panels will be painted white; all exterior surfaces of electrical transformers will be primed and painted with an approved marine grade paint; all rubrail will be installed securely; and, rubrail will be placed in those areas where designated on plans; all conditions to use of each dock area under BCDC Permit met.

Other

| | |
|---|---|
| Other than as provided for above, all other improvements contained within the plans and specifications and all improvements described in the Benicia Marina Lease Agreement and BCDC Permit relating to the Marina shall be completed and all Final Inspections and Certificate of Completion and Occupancy issued. | 4-25-84 |

General Note:

All costs associated with or relating directly or indirectly to the Work and the items described in this schedule shall be borne solely by Southern California Savings and Loan Association.



Revised: 12 April 1984

EXHIBIT "D"

[Insurance]

1. Workers Compensation Insurance. As required by applicable law, an employers liability insurance for at least $500,000.

2. Comprehensive General Liability Insurance. With direct liability insurance for Contractor's own operation contingent liability insurance for the operations of subcontractors and contractural liability insurance to specifically insure indemnifying portions of this Agreement with the combined single limit of at least $5,000,000 for bodily injury or death resulting therefrom or property damage arising out of any occurrence and to include coverage for:

(i) Completed operations for five years after the expiration of the policy;

(ii) Broad form blanket contractual liability insurance;

(iii) Employees as additional insureds;

(iv) XCU coverage;

(v) Broad form property damage;

(vi) Personal injury or death with the employee and contractural exclusions removed;

(vii) Comprehensive automobile liability insurance and a combined single limit of at least $3,000,000 for bodily injury, and death resulting therefrom and property damage arising out of any occurrence.

EXHIBIT D

THE CITY OF BENICIA CALIFORNIA

CITY HALL · 250 EAST L STREET · BENICIA, CA. 94510 · (707) 745-0510

Nov - 1 1985

October 29, 1985

Beauchamp Enterprises Marine Division
c/o Paul H. Parilla, Esq.
Holzwarth, Powell, Stein & Parilla
4000MacArthur Boulevard, Suite 6000, West Tower
Newport Beach, CA 92660

Gentlemen:

NOTICE IS HEREBY GIVEN that the claim which you presented to the City Council on September 5, 1985 was REJECTED by operation of the law on October 21, 1985.

WARNING

Subject to certain exceptions, you have only six (6) months from the date that this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Please also be advised that, pursuant to Sections 128.5 and 1038 of the California Code of Civil Procedure, the City will seek to recover all costs of defense in the event an action is filed in the matter and it is determined that the action was not brought in good faith and with reasonable cause.

Very truly yours,

Frances D. Greco
City Clerk

FDG/lh

cc: George Hills Company, Inc.
Scott Daniels, City Attorney
John Silva, City Manager

MARILYN CITRON O'ROURKE, *Mayor*
*Members of the City Council*
MICHAEL ROETZER, *Mayor Pro Tem* • ERNEST F. CIARROCCHI • BENNETT W. FULLER, JR. • ERNEST J. POOLE

JOHN SILVA, *City Manager*
PHYLLIS GARRIGUES, *City Treasurer*
FRANCES GRECO, *City Clerk*

EXHIBIT E

ND ESTOPPEL CERTIFICATE

THIS CERTIFICATE of consent and acknowledgement (the "Certificate") is made as of June 28, 1984, by the CITY OF BENICIA, a political subdivision of the State of California, ("City"), in favor of BEAUCHAMP ENTERPRISES, MARINE DIVISION, a California a general partnershi ("Sublessee").

- R E C I T A L S -

A. City is the Lessor under that certain Lease dated June 10, 1982 between the City and Old Capitol Marina, Limited (the "Master Lease"). The property subject to the Master Lease is the parcel or parcels of land or water, consisting of a total of 625,833 square feet situated in the Benicia Marina of the City of Benicia, State of California, more particularly described in Exhibit "A" to the Master Lease (the "Property").

B. In accordance with the terms of the Master Lease, Old Capitol Marina, Limited, subleased the Property to Southern California Savings and Loan Association, a California corporation, ("Original Sublessee").

C. Original Sublessee has subleased a portion of the porperty to Sublessee, such Sublease being attached to this Certificate as Exhibit "A" and incorporated herein by this reference (the "Sublease"). The portion of the property subject to the Sublease is more particularly described in Exhibit "A" of the Sublease and is hereinafter referred to as the "Marina".

D. Pursuant to the terms of the Master Lease, the City intends by this Certificate to consent to the terms of the Sublease and to represent to sublessee the status of performance under the Master Lease.

In consideration of the Sublease the mutual covenants contained herein and other good and valuable consideration, the value and sufficiency of which are hereby acknowledged, the City consents, certifies and represents as follows:

1. Consent to Sublease. Pursuant to Paragraph 20 of the Master Lease, the City hereby consents to the Sublease of the Marina to the Sublessee. City hereby acknowledges that the form of Sublease conforms with the provisions of the Master Lease and the execution thereof by the parties does not in any way constitute a default under the Master Lease.

2. Integration. The Master Lease contains all of the terms and provisions of the agreement between the City and Old Capitol Marina, Limited, with regard to the leasing of the property, except to the extent that the Master Lease refers to documents or instruments not a-part thereof. The Master Lease is unmodified, is in full force and effect, and expresses the entire agreement pertaining to the property created by the Master Lease.

3. No Default. The rental and all monetary obligations owing to the City under the Master Lease have been paid through March 1, 1984. To the best knowledge of the City, there is no default on the part of Old Capitol Marina, Limited in the performance of any of the terms, covenants and conditions of the Master Lease required to be performed on the part of Old Capitol Marina as lessee.

4. Status of Master Lease and Permits. To the best knowledge of the City, City is not in default under the terms of the Master Lease. Further, to the best knowledge of City, the City as permittee under Bay

Conservation and Development Commission Permit No. 5-77 as amended ("Permit"), has performed all conditions required under the Permit and that there exists no facts that would justify the revocation, full or partial, of the Permit or other development permits issued with regard to the development of the Marina.

5. Consent to Original Sublease. City acknowledges that no consent was necessary for the original sublease from the City to Old Capitol Marina. Ltd.

6. Commercial Sublease. City acknowledges that the Sublease is a "Commercial Sublease" as defined in paragraph 20.A (1) of the Master Lease.

7. Hypothecation. City acknowledges that Paragraph 20.B is in full force and effect and the City agrees that upon hypothecation of the Marina by deed of trust executed by Sublessee, the City shall execute any reasonable form of consent to such hypothecation, requested by the subject lending institution for so long as the terms of such hypothecation comply with the provisions of the Master Lease.

8. Under Construction. City acknowledges and represents that all slip improvements completed to date, within the Marina have been performed in compliance with the provisions of the Master Lease, including but not limited to, Paragraph 4 of Exhibit "A" to the Master Lease, and any change orders made pursuant thereto.

Any future slip improvements will be completed in conformity with approved plans, specifications and change orders filed and approved in accordance with Paragraph 4 of Exhibit "A" of the Master Lease.

9. Participation in Proceeds. City acknowledges that Paragraph 52 of the Master Lease with regard to the City's participation in the proceeds from the sale of all or a portion of the property is no longer of any force or effect and that the City is no longer entitled to share in the consideration received by any party upon any assignment, sale or sublease of the property or any portion thereof.

10. Attornment. City acknowledges that Paragraph 59 of the Master Lease remains in full force and effect and that Sublessee is entitled to all the rights and privileges described in such Paragraph. Specifically, City acknowledges that in the event of a default by Old Capitol Marina, Limited or the original Sublessee, City shall nevertheless recognize the Sublease and shall not disturb the Sublessee's possession of the Marina under the Sublease so long as Sublessee is not in default under the terms of the sublease, and that the Sublessee shall attorn to the City under the terms of the Sublease and that the Sublessee will pay the rent specified in the Sublease to the City from the date of such attornment, and that the City shall not be responsible to Sublessee under the Sublease except for obligations accruing subsequent to the date of such attornment. The City acknowledges that the attornment rights granted under the Master Lease and this Agreement shall also run to the Benefit of any lender taking title to the Sublease pursuant to any approved hypothecation of the Marina, whether such title is derived through foreclosure or any proceeding in lieu of foreclosure.

11. This consent is granted upon the following additional terms and conditions:

A. The City and Sublessee agree and acknowledge that the sole purpose of the Sublease is to permit Sublessee to run and operate the marina facilities within the subleased property, including renting to the public, boat slips, end ties and side ties. Sublessee's involvement with the Marina is also to include all related facilities, including, without limitation, operating the fuel dock, the Harbormaster Building and the boater services area.

B. The City shall, at its own cost, cause the main channel of the Marina to be dredged not less often than required to the specifications set forth in the attached Exhibit "B", all in accordance with that certain letter from Michael Alvarez of the City to Larry Williams of Old Capitol Marina, Ltd., dated November 3, 1983, the provisions of which are incorporate herein by reference. Sublessee shall have the right to offset against all amounts due for rental payments due to Sublessor and in turn to the City as Lessor under the Lease for any loss, damage, or expense incurred by Sublessee due to the City's breach of its covenants pursuant to this paragraph.

C. The City agrees that the Subleased Property has, in accordance with all relevant approvals heretofore issued by the City and by the San Francisco Bay Conservation and Development Commission ("BCDC"), been approved for the construction, without the necessity of any further permits from the City and/or BCDC, of 321 boat slips and 18 end ties. The City represents and warrants to Sublessee that it is the permittee under BCDC Permit No. 5-77, and that pursuant to such permit, 321 boat slips, 18 end ties and 20 side ties are authorized.

D. The City acknowledges that some or all of such 18 end ties so approved will encroach upon the area of the main channel within the Marina. The City further acknowledges that such end ties will be leased by Sublessee to members of the public and that so long as navigation through the main channel is not significantly impaired, City will not interfere with the use and operation of such 18 end ties.

E. Sublessee shall provide, during the terms of the lease, two boat slips or end ties as selected by the City, with the cooperation and coordination of the Sublessee, for the berthing and docking of boats for public purposes. Any user of such slip or end tie, shall be required to abide by the rules and regulations of the Marina.

F. In clarification of Paragraph 14 of the Lease, City and Sublessee agree and acknowledge that the rentals to be charged by Sublessee to members of the public for boat slips, end ties and side ties shall be "fair and reasonable" and that the standard set forth in the Lease regarding a "fair and reasonable return upon (the Lessee's) investment" shall be interpreted as meaning a fair and reasonable return upon the Sublessee's investment in the Subleased Property and related facilities, taking into account, among other things, market factors regardin comparable facilities, inflation, Sublessee's operating expenses and any increase therein, including all debt service for which Sublessee will be responsible in order to own and operate the facilities to be located upon the Subleased Property.

IN WITNESS WHEREOF, City has by order of its Council, caused the Certificate to be subscribed by its Mayor and attested by the Clerk thereof the same day and year first above written.

CITY OF BENICIA

BY Marilyn Citron Hawthe
MAYOR

APPROVED AS TO FORM:

Paul Coan
City Attorney

BY Paul Coan

Fran Greco
City Clerk

BY Lois E. Henderson
Deputy City Clerk