AGENDA
SPECIAL MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOUR, RECREATION AND CONSERVATION DISTRICT

DATE: October 12, 2017
TIME: Executive Closed Session – 10:30 AM
       Regular Session – 11:00 AM
PLACE: Woodley Island Marina Meeting Room

The Meeting Room is wheelchair accessible. Accommodations and access to Harbor District meetings for people with other handicaps must be requested of the Director of Administrative Services at 443-0801 at least 24 hours in advance of the meeting.

1. Call to Order at 10:30 a.m.
   a. Move to Executive Closed Session pursuant to the provisions of the California Government Code Section 54956.8 (Conference with Real Property Negotiators)
      1) Conference with Real Property Negotiators
         Agency Negotiator: Board President, Executive Director and District Counsel
         Under Negotiation: (a) Subtidal 1A lease - Starbird Mariculture (b) Intertidal lease renewal Humboldt Bay Oyster Company.

2. Adjourn Executive Closed Session

3. Call to Order Regular Session at 11:00 A.M. and Roll Call

4. Pledge of Allegiance

5. Report on Executive Closed Session

6. Public Comment
   Note: This portion of the Agenda allows the public to speak to the Board on the various issues not itemized on this Agenda. A member of the public may also request that a matter appearing on the Consent Calendar be pulled and discussed separately. Pursuant to the Brown Act, the Board may not take action on any item that does not appear on the Agenda. Each speaker is limited to speak for a period of three (3) minutes regarding each item on the Agenda. Each speaker is limited to speak for a period of three (3) minutes during the PUBLIC COMMENT portion of the Agenda regarding items of special interest to the public not appearing on the Agenda that are within the subject matter jurisdiction of the Board of Commissioners. The three (3) minute time limit may not be transferred to other speakers. The three (3) minute time limit for each speaker may be extended by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District. The three (3) minute time limit for each speaker may be enforced by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District.

7. Consent Calendar

8. Communications and Reports

9. Unfinished Business
   a. Consideration of acceptance of final report for the Coordinated Regional Sediment Management Plan (CRSMP) for the Eureka Littoral Cell.
   b. Consideration of approval of Subtidal tideland lease with Starbird Mariculture.

10. New Business
    a. Consideration of approval to pay Carl Kjer and Sons $22,200 for clearing of the Samoa Lagoons.

11. Administrative and Emergency Permits

12. Adjournment
STARBIRD MARICULTURE
SUBTIDAL LEASE

This Lease is made and entered into as of the 1st day of November, 2017 by and between the HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT (hereinafter referred to as "Lessor"), a California public entity acting pursuant to Harbors and Navigation Code Appendix II, and Starbird Mariculture, a California corporation (hereinafter referred to as "Lessee").

1. Description of Lease Premises

1.1 Lessor hereby leases to Lessee and Lessee leases from Lessor, on the terms, covenants and conditions set forth herein, those certain subtidal areas (1A) located in Humboldt County, California, and more particularly described in Exhibit A attached hereto, hereinafter referred to as the "Lease Premises." Lessee retains the right to expand within Exhibit A subject to amendment of existing permit attached as Exhibit B and section 2.8 below, Right of First Refusal.

1.2 Lessee will have access to the Lessor’s Red Tank dock to accommodate Lessee’s operation and may install utilities on the dock after approval is given by Lessor. The Red Tank dock is a common area for Lessor’s tenants and lessee’s operation may not interfere with other tenant use. Any damage to the Red Dock caused by Lessee’s use will be lessee’s responsibility.

2. Term

2.1 The original term of this Lease shall commence as of November 1, 2017 (the "Commencement Date"), and end on October 31, 2022, unless sooner terminated pursuant to any provision hereof. This lease is subject to the California Environmental Quality Act (CEQA), and conditional upon compliance with the CEQA process. This lease is further conditioned upon Lessor obtaining the necessary permits and authorizations from other agencies, including but not limited to the California Coastal Commission and U.S. Army Corps of Engineers. If the CEQA compliance process or obtaining the necessary permits and authorizations from other agencies is completed after the anticipated commencement for the term of this Lease, the parties will adjust the term of the lease accordingly.

2.2 If Lessor, after all reasonable efforts, is unable to secure all necessary permits and authorizations from other agencies required to commence the uses described in Paragraph 5.1 within one (1) year of the Commencement Date, it shall have the option to terminate this Lease, without any additional payment of rent or other penalty or remedy permitted pursuant to Paragraph 11.

2.3 Should the Lease Premises become impaired as a shellfish growing area as evidenced by the loss of or the imposition of a limitation on the ability to grow shellfish based upon a determination by the California Department of Food and Agriculture, California Department of Fish and Wildlife, California Fish and Game Commission, or any other state or
federal agency with such regulatory authority that the Lease Premises are not suitable for shellfish cultivation, harvesting, or growing, and, further, should such determination result from actions or agencies beyond the control of Lessee, the obligations of the parties under this Lease shall be subject to termination at the option of the Lessee, upon thirty (30) days' written notice to Lessor, without any additional payment of rent or other penalty or remedy permitted pursuant to Paragraph 11.

**Option to Renew**

24 **Option.** Lessee is hereby granted one (1) options to extend this Lease for a term of five (5) years from and after the expiration of the original term or upon the expiration of any extensions exercised pursuant to this Section 3, upon the same terms and conditions of the original Lease except for the establishment of a new rent for the additional five-year period, using the guidelines set forth in Paragraph 4.2 of this Lease.

25 **Lessee's Exercise of Option.** To exercise the option to renew, Lessee shall give written notice to Lessor of Lessee's exercise of the option no later than twelve (12) months prior to the expiration of the original Lease term.

26 **Extension Subject to Terms of Lease.** The extension of this Lease for any of the five (5) year renewal periods is subject to all covenants, terms, conditions, reservations, restrictions, time limitations, and other provisions of this Lease, including the new rental amount. If Lessee is in material breach of this Agreement as defined in Section 11 hereafter, at the time of exercising the option to renew or at the commencement of the extended term, Lessee's right to exercise the option to renew shall be waived and forfeited and the Lease shall terminate as of the termination date of the original term or any extended term, and Lessee shall no longer have the right to renew this Lease for an additional five (5) year term.

27 **Lease Deemed Renewed Upon Notice.** The parties agree that upon Lessee giving written notice of exercise of its written option to renew the original Lease for an additional five (5) year period, this Lease shall be deemed renewed and the rent established for the additional five (5) year period, pursuant to the provisions of Paragraph 4.2.

28 **Right of First Refusal.** The parties acknowledge that Lessee may desire to expand its operation in the future, and may seek to lease subtidal area 1B to accommodate expanded operations consistent with this Lease, as shown in Exhibit A (Expanded Lease Area). Lessee shall have a right of first refusal to occupy, rent, and use any proposed lease of the Expanded Lease Area. Lessor shall provide written notice at least thirty (30) days prior to any proposed lease of the Expanded Lease Area, and Lessee shall have ten (10) days to exercise its right of first refusal to rent such area. In the event that Lessee elects not to exercise its right of first and the Expanded Lease Area is leased to a third party, it does not waive its right of first refusal should the Expanded Lease Area become available upon termination or expiration of the third party's lease. Lease shall notify Lessee in the event that such lease is terminated or expires.

3. **Rent**
3.1 **Payment of Rent.** Subject to Paragraph 5.2.1, Lessee agrees to pay to Lessor at such place as Lessor may designate in writing and without deduction, offset, prior notice, or demand, as rent for the Lease Premises during the first year, the sum of $3,000 per year in lawful money of the United States of America, payable in advance on or before the first business day of each year during the term hereof commencing July 1, 2017. Lessee may make arrangements with Lessor to pay annual payment monthly or quarterly.

3.2 **Utilities.** Lessee will be responsible for their own utilities at the site which will be separately metered and billed monthly.

3.3 **Adjustments of Rent.** Each year of this Lease, including during any extension term, the rent shall be adjusted for the next year by difference in the change of the U.S. Department of Labor Consumer Price Index, All Urban Consumers, West Urban Area. The most recent 12 months available in the Index 30 days prior to the start of the lease year will be used to calculate the increase. If there is a reduction in the index over the applicable period, there will be no increase or decrease in the rental amount for the next year.

3.4 **Failure to Timely Pay Rent.** If Lessee fails to pay the rent specified in this Lease by the fifteenth day of the month Lessee shall pay to Lessor a late charge of forty-five dollars ($45) in addition to the accrued and unpaid rental, and, in addition to such charge, Lessee shall pay to Lessor interest at the rate of five sixths of 1 percent (0.8335%) per month upon the sum due from the date on which such rental becomes due and payable to and including the date of payment in full. The Lessor shall apply any monies received from Lessee first to any penalty and interest charges and then to any rental or other sums then due. The penalty and interest charges provided by this paragraph are in addition to all other remedies that Lessor may have that are provided by this Lease or otherwise by law, to enforce payment of any rental or other sum that has become due and has not been paid.

3.5 **Damage or Destruction of Premises.** It is specifically agreed that in the event of the termination of this Lease by Lessor due to an uncured material default, prior to the expiration date of this original term, or prior to the expiration date of any renewal period, no portion of the rent paid in advance shall be refundable. It is specifically agreed that in the event the Lease Premises shall be damaged or destroyed by fire, the elements or an act of God such as an earthquake or tsunami that renders the Lease Premises substantially unusable by Lessee for the purposes for which the Lease Premises are devoted, Lessee shall have the right to terminate this Lease upon written notice to Lessor within thirty (30) days after the date of such fire, the elements or act of God such as an earthquake or tsunami that renders the Lease Premises substantially unusable by Lessee for the purposes for which the Lease Premises are devoted, and be entitled to a pro rata refund of the annual rental paid in advance from the date of such termination.

4. **Land Use**

4.1 **Use by Lessee.** Improvements Authorized. Lessee agrees to use the Lease Premises as a mariculture facility and related uses as detailed more fully in Lessee's approved Harbor District Permit, (Exhibit B), as described in the Coastal Development Permit application filed with the California Coastal Commission on May
26, 2016 ("Approved Uses"). Lessee is hereby authorized to install mariculture equipment and associated improvements on the Lease Premises so long as such equipment and improvements are consistent with all required regulatory permissions and approvals (See Section 5.4 below). Lessee agrees to give reasonable notice to Lessor regarding construction and improvement activities to be undertaken at the Lease Premises, and will coordinate such activities with the Lessor and adjacent users of Lessor's property.

4.2 Improvements at Lessee's Expense. Subject to Paragraph 5.2.1, Lessee shall, at its own expense, maintain and keep the Lease Premises and all improvements in good order and repair and sound condition. All approved equipment and other personal property brought, placed or erected on the Lease Premises by Lessee shall be and remain the property of Lessee.

4.3 Alteration of Lease Premises. No alteration of the Lease Premises shall be undertaken during the term of this Lease and any renewal term thereof without prior written permission from Lessor, with the exception of the alterations as specified in the Approved Uses.

4.4 Regulatory Permission and Approvals. The Lease Premises are subject to regulation by a variety of government agencies, including but not limited to the County of Humboldt, the Coastal Commission, the Regional Water Quality Control Board, the Harbor District, and the U.S. Army Corps of Engineers. Approval of this Lease does not authorize any activities or improvements on the Lease Premises that have not received all required regulatory permissions and approvals. Approval of this Lease by the Harbor District is separate from the issuance of a Harbor District Use Permit. Lessee shall be responsible for all necessary permits and compliance with all applicable requirements and regulations.

4.5 Access, Compatible Use of Surrounding Areas. Lessee acknowledges that the surrounding premises may be leased by Lessor to other parties for other uses, and Lessor agrees that such uses will be compatible and will not interfere with Lessee's use of the Lease Premises.

4.6 Non-Discrimination. Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, national origin, sex, age or physical disability.

4.7 Residential Structures. Improvements on the Lease Premises shall not be used as a residence or for the purpose of mooring a floating residence.

5. Reservations and Encumbrances

5.1 Mineral Rights Reserved to the State of California. Lessor and Lessee acknowledge that all deposits of minerals, including oil and gas, on the Lease Premises have been reserved to the State of California pursuant to the Harbors and Navigation Code Appendix II, Section 78(g). Lessor furthermore expressly reserves all other natural resources in or on the Lease Premises, including but not limited to sand, gravel and inert earth. In no event shall any
minerals or other natural resources be removed from the Lease Premises without the prior consent of Lessor. No dredge spoils materials shall be removed from the Lease Premises without Lessor's written consent which shall not be unreasonably withheld.

52 Lessor's Right of Entry. Lessor shall have the right to go on the Lease Premises during normal business hours and in groups of not more than three people and upon not less than 24 hours' notice for purposes of inspecting the Lease Premises or showing the same to prospective lenders or lessees.

53 Lessor's Right to Encumber Lease Premises. Lessor expressly reserves the right to lease or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent nor incompatible with the rights and privileges of Lessee under this Lease and provided that such lease or encumbrance does not interfere with Lessee's right to use and quiet enjoyment of the Lease Premises. Prior to leasing or encumbering the Lease Premises in whole or in part consistent with this Paragraph 6.3, Lessor will give Lessee six (6) months' notice and provide Lessee an opportunity to comment on Lessor's proposed lease or encumbrance.

54 Lease Subject to Pre-Existing Contracts; No Warranty of Fitness. This Lease, may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and it is made without warranty by Lessor of condition of fitness of the land for the stated or intended use.

55 Lessee's Right to Exclude Persons from Lease Premises. Nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitute a material interference with Lessee's use and quiet enjoyment of the Lease Premises as provided under this Lease.

6. Rules, Regulations and Taxes

The Lessee is hereby notified by Lessor that the possessor interest created hereunder may be subject to a possessor interest tax or property taxation when created, pursuant to Sections 107 to 107.6 of the California Revenue and Taxation Code or other applicable law, and that Lessee and/or the party in whom the possessor interest is vested may be subject to the payment of property taxes levied on such interests. Lessee agrees and acknowledges that it has actual notice pursuant to Section 107.6 of the California Revenue and Taxation Code that it may be required to pay a possessor interest tax as a result of this Lease and the letting to Lessee of the Lease Premises. Lessee hereby acknowledges that it has actual knowledge of the possible existence of a possessor interest tax and has read the provisions of Sections 107 to 107.6 of the California Revenue and Taxation Code. Lessee shall pay all possessor interest taxes levied by any governmental agencies by reason of this Lease or Lessee's possession of the Lease Premises.

7. Indemnification
7.1 **Lessee's Indemnification of Lessor.** Lessor shall not be liable for and Lessee hereby agrees to indemnify, defend, hold harmless and to release Lessor, its Board of Commissioners, officers, agents and employees from and against any and all claims, demands, losses, fines, penalties, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including reasonable attorneys' fees) arising directly or indirectly, in whole or in part, or in any way connected with the breach of this Lease or Lessee's use of the Lease Premises. Nothing herein shall be construed as an assumption of liability by Lessee for pre-existing environmental conditions, known or unknown at execution of this Lease, caused by prior tenants or users of the Lease Premises or surrounding areas. Lessee does not assume nor does the Lessor assign to Lessee any liability or responsibility for environmental conditions that exist at the Lease Premises prior to the term of this Agreement, including but not limited to liability for Hazardous Substances, as that term is defined under relevant California State and Federal Law, that have come to be located at the Lease Premises.

7.2 **Lessor's Indemnification of Lessee.** Lessor shall not be liable for and Lessor hereby agrees to indemnify, defend and hold harmless and to release Lessee, its Board of Directors, officers, agents and employees from and against any and all claims, demands, losses, fines, penalties, liabilities, actions, lawsuits and other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees) caused by the gross negligence or intentional misconduct of Lessor or Board of Commissioners, officers, agents and employees. Lessor agrees to indemnify and hold harmless Lessee for pre-existing environmental conditions, known or unknown at the execution of this Lease, caused by prior tenants or users of the Lease Premises or surrounding areas.

8. **Insurance**

8.1 **Liability Insurance Required.** Lessee shall obtain, at its own expense and keep in full force and effect during the Lease term with an insurance company acceptable to Lessor, comprehensive, commercial general liability insurance providing bodily injury and property damage coverage, and shall include products liability and personal injury coverage with liability limits of not less than Two Million Dollars ($2,000,000.00) combined single limit insuring Lessee and Lessor and their authorized representatives, against any and all claims or liability, including but not limited to liability for injuries to persons and property, and for the death of any person or persons occurring in or about the Lease Premises, arising out of the use, occupancy, condition or maintenance of the Lease Premises and all improvements thereon. Lessee shall be the named insured. Lessee agrees that Lessor, its officers, agents and employees, including members of the Board of Commissioners of the Lessor, shall be named as an additional insured under such liability policy. Such insurance shall be primary to any insurance maintained by the Lessor.

8.2 **Provision of Certificate of Insurance.** Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The certificate evidencing such insurance shall be filed with the Lessor upon the commencement of the term of this Lease and said certificate shall provide that such insurance coverage shall not be cancelled or reduced without at least thirty (30) days' written notice to Lessor. Within thirty (30) days of the renewal of any such policy, Lessee shall provide to Lessor a certificate showing that such coverage has been renewed.
8.3 **Insurance in Effect at All Times.** The liability insurance coverage specified in this Lease shall be in effect at all times during the Lease term including any and all renewal periods and subsequently until all of the Lease Premises has been accepted by Lessor as restored after completion by Lessee of the dismantling and removal of the improvements thereon pursuant to Section 13 of this Lease.

8.4 **Adjustment of Insurance Coverage Upon Renewal.** The required amount of insurance coverage may be increased by Lessor at the beginning of any renewal term if the amount of the insurance required by this lease is no longer commercially reasonable.

8.5 **Performance of Indemnification Provision.** All public liability insurance, property damage insurance and products liability insurance required by this Section 9 shall insure performance of the indemnity provisions of Section 8 of this Lease of the Lease Premises and the policy shall contain cross-liability endorsements.

8.6 **Best Management Practices (BMP).** Lessor has establish BMP's (Exhibit C) that relate to equipment used by the Lessee to avoid the transmittal of diseases into Humboldt Bay. Violation of the Lessors BMP may constitute a default or breach of this Lease by Lessee.

9. **Assignment**

Lessee shall not either voluntarily or by operation of law assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, without the prior written approval of Lessor, which approval Lessor shall not unreasonably withhold. All assignments, transfers and subleases of this Lease, and each of them, shall be subject to all the covenants, terms, conditions, reservations, restrictions, time limitations and other provisions of this Lease.

10. **Default and Remedies**

10.1 The occurrence of any one or more of the following events shall constitute a default or breach of this Lease by Lessee:

(a) Lessee's failure to make any payment of rental or other consideration as required under this Lease, where such failure continues for three (3) days after written notice from Lessor to Lessee.

(b) Lessee's failure to obtain or maintain any liability insurance required under Paragraph 9.1.

(c) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease to be observed or performed by the Lessee when such failure
shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

10.2 Other Remedies. In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may, at any time and with or without notice in addition to every other remedy given Lessor by law or equity, do any one or more of the following:

(a) Continue this Lease in effect by not terminating Lessee's right to possession of said Lease Premises, in which event Lessor shall be entitled to enforce all Lessor's rights and remedies under this Lease including the right to recover the rent specified in this Lease as it becomes due under this Lease;

(b) Terminate this Lease and recover from Lessee:

(1) The worth at the time of award of the unpaid rent which has been earned at the time of termination of the Lease;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that Lessee proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Lessee proves could be reasonably avoided; and

(4) Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform its obligations under this Lease; or

(c) Terminate the Lease and, in addition to any recoveries Lessee may seek under subparagraph (b) of this Paragraph, bring an action to reenter and regain possession of said Lease Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

(d) Exercise any other rights or remedy which Lessor may have at law or in equity.

13. Removal of Improvements and Restoration of the Lease Premises Upon Expiration of Lease or Termination and Surrender of Lease Premises
13.1 Upon expiration or sooner termination of this Lease, Lessor may accept all or any portion of the Lease Premises; however, Lessee shall have the right to remove any improvements installed by Lessee or personal property owned by Lessee on the Lease Premises within thirty (30) days after such expiration or termination of this Lease. Lessor may also, in Lessor's absolute discretion, require Lessee to remove all or any portion of such improvements at Lessee's sole expense and risk, provided, however, that Lessee shall be required to remove only such improvements as Lessor shall identify in writing to Lessee no later than thirty (30) days after expiration or earlier termination date of this Lease and Lessee shall only be required to remove entire structures or all such portions of a structure as are located on the Lease Premises; or, if Lessee refuses, Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessor shall not be required to actually pay for removal in order to be entitled to recover from Lessee the reasonable cost of removal of the improvements.

13.2 Restoration of Premises. In removing any improvements, Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction, and shall complete all obligations of this Lease; provided that, nothing in the foregoing requirement shall be construed as expanding in any way the limitations of Lessee's indemnification obligations in Section 8 hereof. All such removal and restoration of the Lease Premises, required pursuant to this Section 13 of this Lease shall be commenced by Lessee no later than sixty (60) days and completed no later than one (1) year after the expiration or sooner termination of this Lease or any extension thereof. The deadlines for restoration of the premises shall be extended by the time that is required to obtain all necessary regulatory permits and approvals, provided that Lessee timely files applications for such permits and approvals. All such removal and restoration shall be to the reasonable satisfaction of Lessor.

13.3 Refusal to Timely Remove Improvements at end of Lease. If Lessee refuses or fails to timely dismantle and remove the improvements or portion of improvements designated by Lessor to be dismantled and removed from the Lease Premises and restore the Lease Premises as nearly as possible to its condition existing prior to the installation of the structures, buildings and facilities so placed thereon, Lessor may itself or may hire third parties to dismantle and remove such improvements and place the Lease Premises in a condition as near as possible to the condition of the Lease Premises existing prior to the installation of the structures, buildings and Facilities, thereon at Lessee's sole expense and Lessee shall reimburse Lessor for all costs and expenses thereof of the dismantling and removal of improvements and restoration of the Lease Premises by Lessor or such parties designated by Lessor. Nothing in this provision shall be interpreted to preclude Lessor from bringing legal action for breach of contract and seeking damages in the form of anticipated cost of removal, even if said improvements have not actually been removed prior to the legal process.

13.4 Permits Required. In removing all improvements Lessee will be required to obtain any permits or any other governmental approval as may then be required by lawful authority.

13.5 No Removal or Replacement of Fill. Lessee shall not be required to remove or replace nor shall Lessor be required to pay for any legally-placed fill remaining on this Lease
Premises.

13.6 **Surrender of Premises.** Lessee agrees that on the expiration or sooner termination of this Lease or any renewal thereof Lessee shall responsibly leave and surrender the Lease Premises to Lessor in a state of good order, condition, repair and restoration, as provided in and subject to the time periods in Paragraphs 13.1 through 13.2.

14. **Quitclaim**

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor, a good and sufficient quitclaim of all rights under this Lease, subject to Lessee’s right to occupy those portions of the Lease Premises necessary for removal of structures pursuant to Section 13. Should Lessee fail or refuse to deliver such a quitclaim, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee and all other claimants of the termination of this Lease and any rights or interests of Lessee in the Lease Premises and improvements thereon.

15. **Holding Over**

Any holding over by Lessee after the expiration of the Lease term, or any renewal term, with or without the express or implied consent to Lessor, shall constitute a tenancy from month-to-month and shall be on terms, covenants and conditions of this Lease with rental, royalty or other consideration payable in advance on the first day of each month at the monthly rental rate equal to 150 percent of the monthly rent immediately prior to the holdover. Upon expiration or sooner termination of the Lease, Lessee shall not be required to pay the full rent to Lessor during the period when Lessee occupies the required portion of the Lease Premises necessary for the purposes of removal of the improvements and restoration of the Premises, pursuant to the provisions of Section 13 of this Lease, except to the extent that Lessee’s continued occupancy interferes with the use of the Lessor or Lessor’s assignees, or otherwise restricts the Lessor’s ability to lease or rent the property. In no event shall the rent for this period be less than one-third of the last rental amount rate.

16. **Additional Provisions**

16.1 **No Waiver.** The failure to enforce any right hereunder, or the waiver by either party of any default or breach of any covenant, term, condition, restriction or time limitation herein shall not constitute a waiver of the future exercise of any such right or of any other default or breach, whether of the same or any other covenant, term, condition, restriction or time limitation herein regardless of such party’s knowledge of such other defaults or breaches. The subsequent acceptance of monies hereunder by Lessor shall not constitute a waiver of any preceding default or breach of any covenant, term, condition, restriction or time limitation, other than the failure of Lessee to pay the particular monies so accepted, regardless of Lessor’s knowledge of such preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of this Lease or revocation of any notice or other act by Lessor.
16.2  **Time is of the Essence.** Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

16.3  **Notice.** All notices, requests and communications required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery by messenger, overnight courier or telexcopier, or, if mailed, upon the first to occur of actual receipt of forty-eight (48) hours after being placed in the United States mail, postage prepaid, registered or certified mail, with return receipt requested, addressed to the parties as follows:

**Lessor:** Humboldt Bay Harbor, Recreation and Conservation District
Post Office Box 1030
Eureka, CA 95502-1030
Attn: Executive Director
Telephone: (707) 443-0801
Facsimile: (707) 443-0800

**Lessee:** Starbird Mariculture
Chris Starbird
P.O. Box 7
Dillion Beach, CA 94926

16.4  **Consent.** Where a party's consent is required under this Lease, its consent for one transaction or event shall not be deemed to be consent to any subsequent occurrence of the same or any other transaction event.

16.5  **Amendment, Termination.** This Lease may be terminated and its terms, covenants and conditions amended, revised or supplemented by written mutual agreement of the parties.

16.6  **Binding on Successors and Assigns.** The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties.

16.7  **Severability.** If any term, covenant or condition of this Lease is judicially determined to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

16.8  **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument. Faxed or scanned signatures shall be accepted as valid in lieu of originals.

16.9  **Jurisdiction.** Lessor and Lessee consent to and agree that in the event any disputes or legal actions are commenced and litigated between Lessor and Lessee regarding the terms,
conditions, rights, duties and obligations of the parties pursuant to the terms of this Lease, the Superior Court of California, County of Humboldt shall have exclusive jurisdiction of such disputes and/or legal actions. The parties further agree that this lease is entered into in Humboldt County, California, the place where the Lease Premises is located. This lease shall be construed and interpreted in accordance with the laws of the State of California.

16.10 Attorney's Fees and Costs. In the event of legal proceedings arising out of the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs of litigation.

16.11 Termination of Rights. Lessee agrees that on the expiration or termination of this Lease, Lessee shall responsibly leave and surrender the Lease Premises to Lessor in a state of good order, condition, repair upon removal by Lessee of the improvements thereon and restoration of the Lease Premises as provided for in Section 13 of this Lease. The exercise of any right of termination shall not release Lessee from liability for any unpaid but accrued rental or any other consideration which may be due under this Lease or from any other obligations still applicable under the Lease. No portion of any rental paid by Lessee in advance shall be refunded except as provided in Paragraph 4.3.

16.12 Survival. Notwithstanding anything to the contrary contained in this Lease, the provisions (including, but not limited to, covenants, agreements, representations, warranties, obligations and liabilities described herein) of this Lease which from their sense and context are intended to survive the expiration or earlier termination of this Lease (whether or not such provision expressly provides as such) shall survive such expiration or earlier termination of this Lease and continue to be binding upon the applicable party.

16.13 Entire Agreement. This Lease supersedes any prior understanding or written or oral agreements between the parties hereto respecting the within subject matter and contains the entire understanding between the parties with respect thereto.

16.14 Negation of Agency. Each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Lease. No partnership, joint venture or other association of any kind is formed by this Lease.

In witness whereof, the parties have executed this Lease at Eureka, Humboldt County, California, as of the date specified immediately adjacent to their respective signatures.

DATE: HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

By: