Shellfish Aquaculture Lease Agreement

This Agreement ("Agreement") is between the **County of Suffolk ("County"**), a municipal corporation of the State of New York, acting through its duly constituted **Department of Planning ("Department")**, located at 100 Veterans Memorial Highway, Hauppauge, New York 11788

and

Lease Holders Name ("Lessee"), having its principal place of business at Lease Holders Address

The Lessee desires to lease underwater lands in Peconic Bay and Gardiners Bay from the County for the purpose of conducting Shellfish Cultivation under the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay.

Term of Agreement: _____, 20___through_____, 20___, with one option to renew for an additional ten (10) years, from _____ through _____, in the discretion of the County and subject to the terms and conditions of the Suffolk County Shellfish Aquaculture Lease Program as it exists at the time of renewal.

Annual Rental Fee for Each Year of the Ten Year Lease Agreement: e.g.,$250.00

Terms and Conditions: Shall be as set forth in Exhibits A through D attached hereto and made a part hereof.

In Witness Whereof, the parties hereto have executed this Agreement as of the latest date written below.

Lease Holder

By: _____
Name
Title

Address

_____

_____

Date: _____

Approved as to Legality:

Christine Malafi, County Attorney

By: _____
Name:
Assistant County Attorney

Date: _____

County of Suffolk

By:_____
Name:
Director of Planning

Date: _____

UNIFORM CERTIFICATE OF ACKNOWLEDGEMENT
(Within New York State)

STATE OF NEW YORK}
COUNTY OF SUFFOLK} ss.:

On the ____ day of _____ in the year 2010 before me, the undersigned, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
(signature and office of individual taking acknowledgement)

UNIFORM CERTIFICATE OF ACKNOWLEDGEMENT
(Within New York State)

STATE OF NEW YORK}
COUNTY OF SUFFOLK} ss.:

On the ____ day of _____ in the year 2010 before me, the undersigned, personally appeared_____, *Director of Planning*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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EXHIBIT A Certified Survey Map with coordinates and legal description of Lease Site No. _____.

EXHIBIT B Suffolk County Legislative Requirements

EXHIBIT C Suffolk County Local Law No. 25-2009 (the "Local Law") (Chapter 298, Article II, of the Suffolk County Code), incorporated by reference.

EXHIBIT D Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay "Administrative Guidance," incorporated by reference. This document can be found in the Program Management Plan, as Attachment D. The Program Management Plan can be found on the Suffolk County website at http://www.suffolkcountyny.gov/upload/planning/pdfs2/alpac/2009_pdf/alpac_pmp_082009.pdf.

WHEREAS, the New York State Legislature ceded all rights, title and interest to certain underwater lands of Peconic and Gardiners Bays formerly owned by the People of the State of New York to the County for purposes of shellfish cultivation, according to Environmental Conservation Law ("ECL") §13-0302 ("2004 Leasing Law"); and

WHEREAS, since 1884, New York State has repeatedly attempted to establish a statutory framework whereby the business of cultivating shellfish could be fostered and managed; and

WHEREAS, in the 2004 Leasing Law, the N.Y.S. Legislature found that failure to undertake an aquaculture leasing program for these underwater lands in Gardiners and Peconic Bays had resulted in adverse economic impacts and the loss of economic opportunity for the region; and

WHEREAS, the 2004 Leasing Law was adopted in order to eliminate impediments, foster the establishment and obtain the economic benefits of a shellfish cultivation leasing program consistent with established conservation principles; and

WHEREAS, the County's Shellfish Aquaculture Lease Program will carry out the public benefits stated above, and also provide water quality, environmental, cultural and other public benefits to the County and its residents; and

WHEREAS, the County's Shellfish Aquaculture Lease Program was established by Suffolk County Local Law No. 25-2009 (the "Local Law") (Ex. C); and

WHEREAS, the County is leasing parcels of underwater lands for purposes of shellfish cultivation pursuant to the 2004 Leasing Law, the Local Law and other written County policies such as the Administrative Guidance (Ex. D); and

WHEREAS, the Lessee submitted a complete written application for the Lease in proper form to the Department on _____ ; and

WHEREAS, the Lessee meets all eligibility requirements for participation in the Suffolk County Aquaculture Lease Program; and

WHEREAS, notice of this Lease, when proposed, was published, posted and made available for inspection and copying in accordance with ECL §13-0302; and

WHEREAS, the Premises which are the subject of this Lease consist of a site, or sites, within the Suffolk County Shellfish Cultivation Zone Map as approved by the Suffolk County Legislature in Local Law No. 25-2009, and the Aquaculture Lease Sites Map, and both maps are on file at the Office of the Suffolk County Clerk; and

WHEREAS, the execution of this Lease complies with all statutory preconditions to granting Shellfish Cultivation leases under ECL §13-0302; and

_____

WHEREAS, on _____, the Aquaculture Lease Board determined that the Premises shall be available for leasing; and

_____

OR

WHEREAS, on _____ the Aquaculture Lease Board determined that the Premises would receive conditional approval; and

WHEREAS, upon further testing, the Department has determined that the Premises are suitable for leasing; and

_____

WHEREAS the purpose of this Lease is to provide the Lessee with a possessory interest in a certain site(s) for its purposes of Shellfish Cultivation as defined herein, and according to the conditions and for the Term of years as defined herein;

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions

"Additional Rent" shall mean all payments other than the Annual Rental Fee required to be made by Lessee under this Lease to the County, whether or not such payments shall be designated as Additional Rent.

"Administrative Guidance" shall mean the document entitled "Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay, Appendix D, Administrative Guidance," which is incorporated by reference and made a part hereof as Ex. D.

"Aquaculture" shall mean shellfish cultivation for human use, consumption, and resource restoration.

"Department" shall mean the Suffolk County Department of Planning.

"Environmentally and socio-economically sensitive area" shall mean an area described and mapped in Figure 2 of the Lease Program *Draft Generic Environmental Impact Statement*, as adopted in the *Final Generic Environmental Impact Statement*.

"Equipment" shall mean rakes, cages, traps, floats, racks, rafts, nets, gear buoys and any other goods, supplies, furnishings, apparatus, etc., used for and in support of Shellfish Cultivation. Buoys marking Lease boundaries are not included.

"Full application process" shall include payment of an application fee, publication and posting of the notice of application, a full public comment period and review by the Aquaculture Lease Board, unless otherwise stated.

"Local Law" shall mean Suffolk County Local Law No. 25-2009 (Chapter 298, Article II, of the Suffolk County Code), which is incorporated by reference and made a part hereof as Ex. C.

"Shellfish" shall mean oysters, scallops, and all kinds of clams and mussels as defined in ECL § 11-0103.9.

"Shellfish Aquaculture Lease Program" ("Lease Program") shall mean the Program established pursuant to the Local Law, and all written County policies, as amended, concerning the Program, including, without limitation, the Administrative Guidance, incorporated by reference as Ex. D., and any subsequent revisions thereto.

"Shellfish Cultivation" shall mean the controlled, or partially controlled, raising, breeding, growing, and containment of shellfish in any marine hatchery or through on-bottom or off-bottom culture as permitted by the County, State Fish and Wildlife Law (N.Y. Envtl. Conserv. Law Article 11) and any other applicable Federal, State, and local laws, ordinances, and regulations. Shellfish Cultivation is equivalent to shellfish aquaculture.

"Substantial Shellfish Aquaculture Activity" shall mean a good faith effort to prepare an aquaculture site; acquire financing, Equipment and/or seed, plant, cultivate, or harvest cultivated product; or show other shellfish aquaculture–related activity on a shellfish aquaculture lease.

2. Lease of Premises

a. In consideration of the terms, conditions and covenants herein contained, the County grants to Lessee, and Lessee hereby accepts from the County the lease of underwater lands, comprising e.g.,ten (10) acres, as identified by the certified Survey Map with coordinates and legal description of Lease Site No. _____, attached hereto, and made a part hereof as Exhibit A (the "Premises").

i. The Premises are located within the Shellfish Cultivation Zone Map, Misc. Map No. A-699, filed in the Office of the Clerk of the County of Suffolk on January 21, 2010.

ii. The Premises are designated as Lease Site No. ____ , on the Aquaculture Lease Sites Map, Misc. Map No. A-700, filed in the Office of the Suffolk County Clerk on January 21, 2010.

b. The Premises are leased to Lessee for the sole purpose of conducting Shellfish Cultivation, in accordance with the Lease, the 2004 Leasing Law, and the Lease Program. Lessee has examined these documents and all other documents constituting the Lease Program and is fully aware of the intended purpose thereof. Lessee's occupancy shall not be used for any other purpose without the County's prior written permission.

c. The Premises and anything on or under the surface, excluding naturally occurring fish and wildlife, shall be the sole property of the County at all times during the period of this Lease. Any equipment and shellfish placed in or on the Premises shall be property of the Lessee. Lessee's right to occupy the Premises shall continue only so long as the Lessee shall comply strictly and promptly with each and all of the undertakings, provisions, covenants, agreements, stipulations, and conditions contained herein.

3. Authority

a. The County is entering into this Lease under the authority of Chapter 298, Article II, of the Suffolk County Code, which is incorporated herein by reference.

b. In its sole discretion, the County reserves the right to amend or modify the documents and policies constituting the Lease Program at any time. Lessee shall comply with all such amendments or modifications.

4. Term

The term of this Lease (the "Term") shall commence as of _____ ("Commencement Date") and shall expire at midnight on _____ ("Expiration Date"), or on such earlier date that this Lease may terminate or expire as provided for herein.

5. Option to Renew

a. Upon written request of the Lessee, received by the County no less than ninety (90) days prior to the expiration of the current Term of this Lease, the County may, in its discretion, renew the Lease for an additional period of ten (10) years from the date upon which it would otherwise expire, or until (Insert Termination Date of Renewal). Lessee shall submit an application fee with the request to renew.

b. Any Lease Renewal shall conform to the Lease Program and applicable laws and resolutions as they exist at the time of renewal. The Lease Renewal shall impose the Annual Rental Fee and any other charges required by the Lease Program and applicable laws and resolutions as they exist at the time of renewal.

6. Relocation of Leasehold Interest/Expansion of Lease Acreage

a. Lessee may request a relocation of the Leasehold Interest or may terminate the Lease, in the event that the waters within the Premises have become unsuitable for shellfish cultivation by reason of government action or in the event that all or part of the Premises has been interfered with or taken by eminent domain. Under these circumstances, relocation shall be subject to a full application process, unless the Aquaculture Lease Board has previously approved the new location within one (1) calendar year prior to the request. No application fee shall be payable upon such relocation.

b. County may require that the Leasehold Interest be relocated based upon environmental or other public policy considerations. In such event, Lessee shall be given a period of time to harvest existing cultured shellfish or may terminate the Lease. The period of time shall be determined by the County in accordance with the Lease Program. Under these circumstances, relocation shall be subject to a full application process, unless the Aquaculture Lease Board has previously approved the new location within one (1) calendar year prior to the request. No application fee shall be payable upon such relocation.

c. Lessee may request relocation of the Leasehold Interest at its convenience for any reason up to two (2) times during the Term of the Lease, subject to a full application process and payment of an application fee. In such event, Lessee shall bear the cost of a survey (if required).

d. Relocation of the Leasehold Interest shall be subject to a new survey, unless the County possesses a current survey for the new boundaries.

e. Lessee may request an expansion of lease acreage to ten (10) acres by submitting a new Lease Application Form to the Department with Lessee's annual reporting form. Expansion of Lease acreage shall be subject to a full application process (including payment of an application fee). Expansion of Lease acreage shall be subject to a survey, unless the County possesses a current survey for the new boundaries. The cost of the survey shall be borne by Lessee.

7. Change in Cultivation Practices

Lessee shall notify the Department of changes in the type of shellfish cultivation (on or off-bottom), the species being cultivated, the gear type and amount and the source of the shellfish stock. All such changes shall be subject to appropriate permits and licenses, copies of which shall be submitted to the Department.

8. Annual Rental Fee; Additional Rent

a. Lessee shall pay to the County an Annual Rental Fee of e.g., $250.00. The Annual Rental Fee shall be due upon signing of the Lease by the applicant, and thereafter, thirty (30) days prior to the anniversary date of the Commencement Date for each year during the Term on the Lease.

b. All remittances required to be made to the County shall be paid by check or money order payable to the Suffolk County Treasurer.

c. Lessee shall pay "Rent," meaning Annual Rental Fee, Additional Rent, and any other additional fees or payments required to be paid to the County hereunder without abatement, offset, or deduction, except as specifically provided for herein.

d. Lessee shall pay the County, as "Additional Rent," all payments other than the Annual Rental Fee required to be made by Lessee under this Lease to the County, whether or not such payments shall be designated as Additional Rent. Unless otherwise provided, Additional Rent shall be due and payable 15 days after notice of demand by the County.

e. All payments due under the Lease are subject to audit by the Suffolk County Comptroller. If an audit discloses underpayments by the Lessee, within thirty (30) days after the issuance of an official audit report by the Comptroller, the Lessee shall pay the amount of such underpayment by check, or money order, payable to the Suffolk County Treasurer.

9. Taxes and Impositions

a. Lessee shall pay to the County the following charges, fees, taxes, or assessments ("Impositions") for periods falling within the Term, in the event that such Impositions are imposed upon the County:

i. All real property taxes or payments in lieu thereof due with respect to the Premises or any portion thereof; and

ii. Any other governmental charges, levies or assessments, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and penalties thereon), which at any time during or in respect of the Term may be assessed, levied, imposed on or in respect of or be a lien upon the Premises or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof.

b. County shall notify Lessee of any Impositions in writing, and Lessee's payment to the County shall be due thirty days after delivery of the Notice to Lessee.

c. Lessee shall, at the end of the Term, deposit with the County an amount sufficient to pay Lessee's pro rata share of all Impositions for the calendar year in which the Lease terminates. Payments for any partial period covered by this Lease shall be prorated.

d. Lessee shall indemnify, protect, and hold harmless the County and the Premises from any lien or liability with respect to any such Imposition or contest thereof, including all costs and expenses relating thereto.

e. The amount paid by the County under this provision shall be deemed Additional Rent and may be recovered from Lessee as such.

10. Termination by County for Cause; Event of Default

a. This Lease may be terminated by the County upon default by Lessee, without prejudice to any other remedies that the County may have against the other party.

b. The occurrence of any one of the following events shall constitute an "Event of Default" by Lessee, and shall be grounds for termination.

i. Lessee's failure to pay the Annual Rent Fee, Additional Rent, any other fee, assessment or tax related to the Premises or any other fee stipulated and agreed to be paid (or any installment thereof) within ten (10) days after the same shall be due and payable, whether or not Lessee shall have received notice of the same;

ii. The vacating, abandoning or discontinuance of the operation of the Premises for Substantial Shellfish Aquaculture Activity for a period of one year, unless excused by a hardship exemption (See Section 16. Substantial Shellfish Aquaculture Activity);

iii. Lessee's conduct of Shellfish Cultivation activities is contrary to the County's policies, as expressed in this Lease and the Lease Program;

iv. Lessee's Shellfish Cultivation activities have caused injury to the public, marine life and habitats, water quality, natural resources or other environmental conditions. The occurrence of this Event of Default shall be subject to immediate termination, at the County's option;

v. Emergency or other condition dangerous to life, health or the environment. The occurrence of this Event of Default shall be subject to immediate termination, at the County's option;

vi. The occurrence of any act which operates to deprive the Lessee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the Premises;

vii. If Lessee shall be a corporation and fails to remain in good standing in the State of incorporation;

viii. If Lessee is adjudicated bankrupt or insolvent in any proceeding, or if a trustee or receiver is appointed for all or substantially all of the Lessee's assets;

ix. Lessee's failure to comply with any Federal, State or local law or regulation, or failure to comply with any permit, license or authorization required for the activities hereunder. The occurrence of this Event of Default shall be subject to immediate termination, at the County's option;

x. Lessee's failure to observe or perform any of the other covenants, agreements, terms or conditions provided for in this Lease to be observed or performed by Lessee not involving the payment of money, and Lessee does not cure such failure within thirty (30) days after written notice thereof by or on behalf of County. If such failure is incapable of being cured with diligence within thirty (30) days, it shall be an Event of Default if Lessee does not commence to cure such failure within thirty (30) days, or to diligently prosecute such cure to completion within a reasonable period of time.

c. If any Event of Default occurs, then in addition to and without prejudice to any other right or remedy given hereunder or by law or in equity and notwithstanding any waiver of any former breach of covenant, the County may treat the occurrence of such Event of Default as a breach of this Lease, and the County may exercise the following remedies described herein. Reference in this Lease to any particular remedy shall not preclude the County from exercising any other remedy at law or in equity to which it may be entitled.

11. Remedies

a. Unless otherwise stated herein, the County may terminate this lease by giving to Lessee a Notice of Termination, specifying a termination date of this Lease no less than thirty (30) days after the date on which such Notice is given. After the giving of such Notice of Termination, at midnight as of the termination date specified therein, the Term of this Lease and all right, title, and interest of the Lessee hereunder shall expire as fully and completely on the day so specified as if that day were the date herein specifically fixed for the expiration of the Term.

b. From and after any date upon which the County gives a Notice of Termination, the County, without further notice, may enter upon, re-enter, possess and repossess itself of the Premises by force, summary proceedings, ejectment or otherwise, and may dispossess and remove Lessee and all other persons and property from the Premises, and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same. As used in this Lease, the words enter and re-enter are not restricted to their technical legal meanings. Upon and after such entry into possession, the County may, but shall have no obligation to re-let the Premises or any part thereof, for the account of Lessee.

c. Upon expiration or sooner termination as provided herein, the County may immediately thereafter evict the lessee from the Premises pursuant to N.Y. Environmental Conservation Law §13-0302 and the provisions of Article 7 of the N.Y. Real Property Actions and Proceedings Law.

d. In the event of a termination for cause, the County shall be entitled to any Rent, fines, assessments, and/or taxes owed at the time of termination; and the Lessee shall comply with Section 14. Removal of Equipment and Personal Property. Under these circumstances, the County reserves the option to exercise its rights and apply any portion or all of the remaining Rent Fee in its possession to monies due to the County relating to termination of this Lease.

e. Upon termination, the County may exercise the remedies described in New York Real Property Actions and Proceedings Law, and recover from Lessee the value of unpaid Rent.

f. If the County has not terminated Lessee's right to possession of the Premises, the County may exercise the remedies described in New York Real Property Actions and Proceedings Law to collect, by suit or otherwise, each installment of the Rent that becomes due hereunder, or to enforce by suit or otherwise, performance or observance of any agreement, covenant or condition hereof on the part of Lessee to be performed or observed.

g. If the County shall commence any proceeding for non-payment of Rent, or any other payment of any kind to which the County may be entitled or which it may claim hereunder, Lessee shall not interpose any counterclaim or set-off of whatever nature or description in any such proceeding.

h. The parties hereto specifically agree that Lessee's covenant to pay Rent or any other payments required hereunder are independent of all other covenants and agreements herein contained, provided, however, that this shall not be construed as a waiver of Lessee's right to assert such claim in any separate action brought by Lessee.

i. Unless and until this Lease has been terminated, Lessee shall remain fully liable and responsible to perform all of the covenants and to observe all the conditions of this Lease throughout the remainder of the Term, and, in addition, Lessee shall pay to the County, upon demand and as Additional Rent, the total sum of all costs, losses, damages and expenses, including reasonable attorneys fees, as the County incurs, directly or indirectly, because of the occurrence of any Event of Default.

12. Surrender

a. Upon termination or expiration of the Lease, Lessee shall immediately surrender the Premises to the County. Lessee shall remove all Equipment and vacate the premises.

b. If Lessee fails to so surrender, the County may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying such Premises or any part thereof without being liable for prosecution or any claim of damages therefore; and Lessee agrees to pay to the County on demand the amount of all loss and damage which the County may suffer by reason of such termination.

13. Holdover

Lessee may remain in possession of the Premises after the expiration of this Lease so long as an application for renewal of the Lease has been made and is currently pending.

14. Removal of Equipment and Personal Property

a. Equipment and any other personal property, including cultivated shellfish, owned by Lessee may be removed by Lessee at any time prior to the expiration or termination of this Lease.

b. In the event that Lessee seeks to terminate the Lease, prior to final execution of a Lease Termination document by the County, Lessee shall remove, at is sole cost and expense, all Equipment, personal property owned by Lessee, trash or other deleterious matter (as determined by the County) which has been attached to or placed in, on, over or under the Premises by the Lessee.

c. Upon expiration or sooner termination of this Lease, Lessee shall remove all such Equipment and personal property, trash or other deleterious matter. Such removal shall be conducted at Lessee's sole cost and expense and shall satisfy any requirements stated in this Lease and the Lease Program.

d. If Lessee shall fail to remove such property on or before the termination or expiration of the Lease, such property shall be deemed abandoned by Lessee and may be disposed of in any manner deemed appropriate by the County. The County may, but shall not be required to, remove such property to a public warehouse for deposit or retain the same in its own possession, all without insurance, and sell the same at public auction, the proceeds of which shall be applied first, to the expense of removal, storage and sale; second, to any sums owed by Lessee to the County, any balance remaining shall be the property of the County. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, Lessee shall pay such excess to the County upon demand.

e. The County shall not be liable to prosecution, or for any damages to, or loss of any personal property belonging to any party upon or occupying said Premises or any part thereof from any causes whatsoever by reason of such removal. Lessee expressly waives any and all claims for damages and loss against the County or its officers; employees and agents for or on account of any act done or caused to be done in exercising this right. The County shall bear no risk and have no liability for the condition of any equipment, personal property or shellfish remaining on the Premises after the termination or expiration of this Lease.

15. Termination by Lessee

a. Throughout the Term of the Lease, Lessee may request early termination of this Lease at anytime, at its convenience, in the manner prescribed, and on the proper County lease termination form, as defined in the Lease Program , subject to all notification and County approval requirements therein. The County shall be entitled to any Rent, fines, assessments and/or taxes owed at the time of termination. The County shall not refund any Rent paid by Lessee and reserves the option to apply any portion or all of the remaining Rent in its possession to costs due to the County relating to termination of this Lease. Lessee shall comply with Section 14. Removal of Equipment and Personal Property.

b. The Lease shall be terminated upon final execution of the County lease termination document by both parties. The County shall not execute such document unless all financial terms and other conditions of this Lease have been complied with.

16. Substantial Shellfish Aquaculture Activity

a. Throughout the Term of the Lease, Lessee agrees to conduct Substantial Shellfish Aquaculture Activity, as defined herein and in the Lease Program.

b. Failure to conduct Substantial Shellfish Aquaculture Activity may be excused by a hardship exemption. A Lessee who cannot demonstrate Substantial Shellfish Aquaculture Activity may be eligible for a hardship exemption, at the sole discretion of the Department. A hardship exemption may be granted upon written request by the Lessee, submitted to the County with appropriate evidence showing

why such activity has not been conducted on the lease site. The length of the hardship exemption shall be determined in the sole discretion of the County.

17. Noise and Lighting

Lessee shall conduct shellfish aquaculture activities in a manner that is respectful of other marine users and the environment. Lessee shall comply with requirements and restrictions in the Lease Program and applicable laws on generation of noise, use of lighting and night-time activities.

18. Annual Reporting/Operation Plan

Lessee shall be responsible for submitting an annual report of lease activities to the Department thirty (30) days before each lease anniversary date, prior to the approval of a lease renewal, assignment or sublease, and prior to termination or expiration, in the form specified by and with the information required by the Administrative Guidance Ex. D.

19. Buoys

a. Lessee is responsible for obtaining and complying with, at its sole expense, all necessary permits and licenses under federal and state law, including permits or licenses required by the U.S. Coast Guard and/or US Army Corps of Engineers for buoys, navigational aids and any other Equipment or structures installed by Lessee on the Premises. Prior to commencing Shellfish Cultivation on the Premises or installation of any Equipment, structures, buoys or navigational aids, Lessee shall submit to the Department proof of required licenses and permits.

b. Lessee shall install all buoys, navigational aids, and Equipment at Lessee's sole cost and expense. Lessee shall mark all buoys, navigational aids, structures and Equipment with the Lessee's name and lease site identification number as identified from the Aquaculture Lease Sites Map. Said markings must be maintained by Lessee.

c. Installation of gear buoys shall be at the discretion of the Lessee, except as required by the Lease Program or by any governmental authority.

20. Equipment

a. Lessee shall have the right to place Equipment in or on the Premises consistent with the purpose of shellfish cultivation. No permanent structures shall be placed upon the Premises.

b. All shellfish aquaculture Equipment and the contents thereof are the possessions of and responsibility of the Lessee. Lessee shall mark all shellfish aquaculture Equipment with the Lessee's name and lease site identification number as identified from the Aquaculture Lease Sites Map. Said markings must be maintained by Lessee.

21. Repair of Equipment or Buoy; Emergency Condition

a. Lessee shall repair, replace or remove a damaged buoy or other Equipment if such damaged buoy or Equipment constitutes a danger to the public or the environment.

b. County may, at its option, repair, replace or remove a damaged buoy or other Equipment, or remediate an emergency condition on the Premises, if, in the County's judgment, such damaged buoy or Equipment or condition constitutes a danger to the public or the environment. Except in case of an emergency (when no notice shall be given), before making or performing any such repair, replacement or removal, the County shall first give Lessee fifteen (15) days written notice thereof. In the event the County undertakes such work, the cost of any such work shall be Additional Rent. County's performance of any such work shall not be deemed a waiver of Lessee's obligation to perform such work in the future.

22. Alterations

Lessee shall not make any physical alterations to the property except those customarily associated with shellfish cultivation and permitted by the New York State Department of Environmental Conservation and/or other governmental agencies.

23. Warranties

a. Lessee acknowledges that Lessee has full knowledge of all matters pertaining to the Premises, including, but not limited to, the condition of title to the same and the physical condition of the same, and that Lessee is leasing the Property "AS IS."

b. The County makes no warranty of any kind or nature, express, implied or otherwise, or any representation or covenants of any kind or nature in connection with the title to or condition of the Property or any part thereof, and the County shall not be liable for any latent or patent defects therein or be obligated in any way whatsoever to correct or repair any such latent or patent defects. In the event that the Premises are subject to a title defect or other encumbrance affecting the County's ability to lease the Premises, Lessee's sole remedy is to terminate the lease or request relocation (Section 6. Relocation of Leasehold Interest/Expansion of Lease Acreage).

c. The County makes no warranty of any nature, express or implied, or otherwise, or any representations of any kind, regarding the suitability of the Premises for shellfish cultivation as determined by any other governmental agency. In the event that Lessee is unable to secure the necessary permits or other governmental approvals required for shellfish aquaculture, Lessee's sole remedy is to terminate the lease or request relocation (Section 6. Relocation of Leasehold Interest/Expansion of Lease Acreage).

24. Risk of Loss

The risk of loss or destruction from any peril to Equipment or other personal property of the Lessee shall be borne entirely by the Lessee. It is further understood that the Lessee waives any right to subrogation against the County for loss or destruction to the Equipment or other personal property of the Lessee while on the Premises.

25. Compliance with Law and Permits

a. Lessee shall comply with and its use of the Premises shall be subject to, all statutes, laws, ordinances, rules, regulations, and requirements of all governmental authorities having jurisdiction thereof, including, but not limited to, laws and regulations relating to:

i. Harvest, handling, tagging, storage, sale, sanitary control and aquaculture of shellfish.
ii. The transfer or relay of shellfish from uncertified waters to lease areas for natural cleansing.
iii. Harvest and possession of wild shellfish.
iv. Food storage, sanitation and handling to prevent contamination and decomposition of shellfish.
v. Navigation.

b. Prior to commencement of any shellfish aquaculture, Lessee shall, at its sole cost and expense, procure, maintain and comply with during the Term all permits, authorizations, and licenses necessary for Lessee's use or operation of Premises or any portion thereof, including, without limitation, any permits necessary for shellfish cultivation.

26. Hazardous Materials

a. This section is not intended and shall not be construed to prohibit the use and storage of hazardous materials, as defined herein, in amounts used in the customary, usual and ordinary course of Lessee's vessel operation or shellfish aquaculture activities, provided the same are handled, used, treated, stored, transported and disposed of in the manner required or recommended by the applicable government authorities and with due care. The Lessee shall not generate, treat, release, store, discharge, dispose of, transport, use, handle or permit hazardous materials, except such usual and customary types and quantities referred to above, on the Premises, nor shall Lessee permit its subtenants, guests, contractors or any other person to do any of the foregoing.

b. "Hazardous materials" shall include, but not be limited to, hazardous substances, pollutants, contaminants, hazardous materials or hazardous waste, flammable explosives, gasoline, petroleum products, polychlorinated biphenyl, radioactive materials, hazardous wastes, toxic substances, asbestos, or asbestos-containing material, or any other substance or material as defined by federal state or local environmental law, local law, ordinance, rule or regulation, including, but not limited to, the Solid Waste Disposal Act/Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, *et seq*., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act as amended, 42 U.S.C. 9601, *et seq.*, the Toxic Substances Control Act, as amended, 15 U.S.C. 2601, *et seq.*, the Federal Insecticide Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136, *et seq.*, and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f, *et seq*., the N.Y. Environmental Conservation Law, as amended, and the N.Y. Navigation Law, as amended.

c. In the event of any release of hazardous materials or hazardous substances, except releases in accordance with applicable permits and law, Lessee shall promptly report such release to the appropriate governmental authorities and to the County and shall provide to the Department copies of any reports required to be filed by any other governmental agency in connection with such release. At a minimum, such spill shall be reported immediately to the New York State Department of Environmental Conservation (tel. 631-444-0320, the Suffolk County Department of Health Services (tel. 631-854-2501) and the Suffolk County Department of Fire, Rescue and Emergency Services (tel. 631-852-4900).

d. Lessee shall exercise due care with respect to such release and shall comply with the directives and orders of the appropriate governmental authority.

e. Lessee shall indemnify, defend and save harmless the Department, the County/Licensor and its officers, officials, employees, servants, contractors, agents and invitees and other persons from and

against all liabilities, obligations, claims, damages, penalties, causes of actions, costs and expenses (including reasonable attorney's fees) whatsoever imposed upon or incurred by or asserted against the Department or County/Licensor and its officers, officials, employees, servants, contractors, agents, invitees and other persons, arising from the acts or omissions or negligence of Lessee's or Lessee's agents, officers, officials, members, employees, servants, subcontractors, sublessees, invitees, or other persons, if any, and any successors or assigns of one or more of the foregoing, by reason of:

i. the presence, disposal, escape, seepage, leakage, spillage, discharge**,** emission, release, or threatened release of any hazardous materials on, under, from or affecting the Premises or any other property;

ii. any personal injury (including wrongful death), property damage (real or personal) or natural resource damage arising out of or related to such hazardous materials:

iii. any lawsuit brought or threatened or settlement reached or governmental order relating to such hazardous materials (provided, however that Lessee will be given the opportunity, if available with no adverse effect to the County/Licensor, to contest any such settlement on the grounds therefore with the opposing person or entity, after paying same); or

iv. any violations of laws, ordinances, rules, orders, or regulations which are based upon or in any way related to such hazardous materials, health, safety or environment, including, but not limited to, attorney or consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

f. This Section 26 shall survive the termination or expiration of this Agreement.

27. Liens or Encumbrances

Lessee shall not, without the County's written consent, permit the creation or imposition of any liens or encumbrances upon the Premises. In the event said liens have been created by or permitted by Lessee in violation of this provision, Lessee, at its sole cost and expense, will immediately discharge as of record any such lien or encumbrance.

28. No Credit Without Prior Approval

Lessee agrees that this Lease shall not be pledged, hypothecated, or put up as security for a loan, credit or for any reason whatsoever, without prior written approval of the County.

29. Indemnification

Lessee shall protect, indemnify and hold harmless the County and its officers, officials, employees, servants, departments, contractors, agents, invitees and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts, omissions or negligence of Lessee, its officers, officials, members, employees, servants, subcontractors, sublessees, agents, invitees or other persons, if any, and any successor or assign of any one or more of the foregoing, arising out of or in connection with Lessee's use of the Premises. Lessee shall defend the County and its officers, officials, employees, servants, departments, contractors, agents and other persons in any suit, including appeals, or at the County's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts, omissions, or

negligence of Lessee, its officers, officials, members, employees, servants, subcontractors, sublessees, agents, invitees or other persons, if any, and any successor or assign of any one or more of the foregoing, in connection with Lessee's use of the Premises. The liability of the Lessee shall not be limited to the insurance coverage (if any) prescribed below.

30. Insurance

In the event that the Lessee maintains a commercial general liability or a marine general liability policy covering the Premises and the shellfish cultivation activities conducted thereon, or the Lessee maintains insurance on its boats, such as a marine protection and indemnity policy, Lessee shall furnish to the County Declaration Pages for each such policy of insurance and, upon request, a true and certified original copy of each such policy evidencing compliance with the insurance requirements as stated herein. The County of Suffolk shall be named as an additional insured on all such policies.

31. Right to Inspect and Monitor; Regulatory Authority

a. County may, but shall not be obligated to, enter and inspect the Premises at any time. The County will use its best efforts not to unreasonably interfere with Lessee's operation during inspection.

b. County shall have the right to conduct environmental monitoring or sampling in, upon or over the Premises.

c. This Lease shall not impair any of the County's regulatory authority.

32. Interference; Eminent Domain

a. Except as otherwise provided herein, Lessee shall have no claim against the County for any damage, should Lessee's possession of the Premises or any part thereof be disturbed or interfered with or affected in any manner by reason of the acts or omissions of any person, or by reason of the enactment or adoption of any law, ordinance or regulation or by reason of any other act of any governmental authority, or for any other reason not in the County's control.

b. If, as a result of the exercise of the power of eminent domain or a conveyance in lieu thereof (hereinafter referred to as a "Proceeding"), a majority or more of the entire Premises ("materially all"), shall be taken, this Lease and all right, title and interest of the Lessee hereunder shall cease and come to an end on the earlier of the date on which possession is taken by the condemning authority or the date of vesting of title pursuant to such Proceedings. The County and Lessee shall each receive the value of their respective interests in the Premises, together with interest thereon from the date of taking to the date of payment at the rate paid on the award, and attorney's fees and other costs to the extent awarded. The values of the County's and Lessee's respective interests in the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award.

c. In the event of such interference or the exercise of eminent domain, Lessee's sole remedy with respect to the County shall be to terminate or request relocation of the lease in accordance with the Lease Program.

33. Harvest from Approved Waters

Shellfish may only be harvested from approved waters, as determined by New York State Department of Environmental Conservation (NYSDEC). In the event that NYSDEC water quality and water quality

classifications of waters within New York State change due to various environmental conditions as

determined by the NYSDEC, and the Lessee or the County is required to respond to those changes, the County shall not assume any liability for any changes in classification and shall assume no liability to the Lessee for damages incurred due to such actions. Lessee's sole remedy in such event shall be to terminate the lease or apply to the County to relocate it, in accordance with the Lease Program.

34. Assignment

Lessee shall not assign (or transfer) the Lease without the County's prior written approval. Lease assignment may be requested by submission to the County of a Lease Assignment Application and an application fee. A lease assignment shall be subject to a complete application review process and the assignee shall meet the same standards as are applied to an initial lease applicant. In addition, the County shall consider the factors listed in the Lease Program. Upon the County's approval of an Assignment, both Lessee (as Assignor) and Assignee shall execute an Assignment document in a form approved by the County. Such Assignment shall be subject to all of the provisions of the Lease, assumption of all of the provisions of the Lease by the Lessee's Assignee, and to any other condition the County requires. No approval of any Assignment shall be construed as enlarging any obligation of the County under the terms and conditions of the Lease. Any attempt to assign (or transfer) the Lease without the County's consent shall be a material default by the Lessee.

35. Sublease

a. Lessee shall not sublet the Lease without the County's prior written approval. Notwithstanding any sublease approved by the County during the Term, the Lessee shall remain liable to the County hereunder and shall guarantee the sublessee's full and faithful execution of and compliance with all covenants, terms and conditions contained in this Lease, and shall cause all agreements between the Lessee and its Sublessee to expressly incorporate this Lease by reference into the terms and conditions therein. Any attempt to sublet the Lease without the County's consent shall be a material default by the Lessee.

b. Further, the County will not be required to first look to any sublessee of Lessee for the performance of any obligations of Lessee under this Lease, and the County shall not be required to assume any affirmative obligations with respect to any sublessee. However, in the event of a Default by the sublessee relating to these provisions, the County reserves all rights and remedies at law or in equity to enforce the obligations and duties of the sublessee through this Lease.

c. Lessee is limited to no more than one (1) sublease of all or a portion of the Premises at any time during the Term of this Lease.

36. County Representatives

It is expressly understood and agreed by and between the parties hereto that the officers, officials, employees and agents of the County are acting in a representative capacity for the County of Suffolk and not for their own benefit, and that neither Lessee nor any occupant of the Premises shall have any claim against them or any of them as individuals in any event whatsoever.

37. Public Relations

The Department shall have the right to approve all press releases and other statements to the newspapers,

radio, television, and other media made by Lessee relating to this transaction and the occupancy of the

Premises. In no way shall this prevent or preclude the lessee from advertising business operations or matters related to the sale of product associated with the leasehold.

38. Non-Discrimination

Lessee shall comply with all Federal and State non-discrimination laws.

39. Governing Law

This Lease shall be construed and interpreted in accordance with the laws of the State of New York, and without regard to its conflict of laws provisions. Venues shall be designated as Suffolk County, New York or the United States District Court for the Eastern District of New York.

40. Lessee's Authority to Enter Lease

Lessee represents that it has full power and has been duly authorized by all necessary action, to execute and deliver this Lease and to perform its obligations under this Lease.

41. No Waiver

Failure by the County or Lessee to insist upon the strict performance of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, or acceptance of full or partial Rent during any such breach, shall not constitute a waiver of any breach or of such covenant, agreement, term or condition hereof.

42. Business Day

If the day for performing any action required under this Lease does not occur on a County business day, the due date shall be on the next day when the County is open for official business

43. Conflicts of Interest

The Lessee shall not, during the Term, pursue a course of conduct which would cause a reasonable person to believe that he or she is likely to be engaged in acts that create a substantial conflict between its obligations under the Lease and its private interests. The Lessee is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue as long as the Term. The determination as to whether or when a conflict may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained.

44. Cooperation on Claims

Each of the parties hereto agrees to render diligently to the other party, without additional compensation, any and all cooperation, that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives in connection with this Lease.

45. Certification

The Lessee certifies under penalties of perjury that, except for other valid agreements with the County, there is no known spouse, life partner, business, commercial, economic, or financial relationship with the County or its elected officials. The Lessee also certifies that there is no relationship within the third degree of consanguinity, between the Lessee, any of its partners, members, directors, or shareholders owning five (5%) percent or more of the Lessee, and the County.

46. Not in Default

Lessee warrants that it is not, and shall not be during the Term of this Lease, in arrears to the County for taxes or upon debt or contract and is not, and shall not be during the Term of this Lease, in default as surety, contractor or otherwise on any obligation to the County

47. Disclosure of Violations

Lessee certifies that it has disclosed to the County, in writing, whether it has ever been convicted or found guilty of any civil, criminal or administrative violations of law, related to the following subjects: marine or environmental protection laws, laws related to shellfish aquaculture and food sanitation, and laws related to navigation and operation of a vessel, whether Federal, State, or local. Lessee certifies that such disclosure has also been made, if applicable, with respect to officers, directors and shareholders (for a corporate Lessee) and for all partners (for a partnership Lessee). Lessee shall update this certification annually.

48. Suffolk County Legislative Requirements

The parties agree to be bound by the terms of the Suffolk County Legislative Requirements, annexed hereto as "Exhibit B," and made a part hereof.

49. Severability

It is expressly agreed that if any term or provision of this Lease and or any amendment hereto, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Lease and any amendment hereto, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Lease and any amendment hereto shall be valid and shall be enforced to the fullest extent permitted by law.

50. Notices

Unless otherwise expressly provided herein, all notices shall be in writing and shall be deemed sufficiently given if sent by regular first class mail and certified mail, or personally delivered during business hours as follows: 1.) to the Lessee at the address on page 1 of the Lease and 2.) to the County at the Department, or as to either of the foregoing, to such other address as the addressee shall have indicated by prior written notice to the addressor. All notices received by the Lessee relating to a legal claim shall be immediately sent to the Department and also to the County Attorney at 100 Veterans Memorial Highway, P.O. Box 6100, (Sixth Floor), Hauppauge, New York, 11788. The County shall report to the Lessee in writing within ten (10) days of the initiation by or against it of any legal action or proceeding in connection with or relating to this Lease.

51. Merger; No Oral Changes; No Representations

It is expressly agreed that this Lease represents the entire agreement of the parties, and that all previous understandings are merged in this Lease. Neither party has made any representations or promises, except as expressly contained herein. No modification of this Lease shall be valid unless written in the form of an Amendment and executed by both parties.

52. Recording

a. Simultaneously with the execution of this Lease, the parties shall execute a Memorandum of Lease pursuant to Real Property Law §291-c, in a form to be supplied by the County. A Memorandum of Lease for any lease renewal, and for any modifications of the Lease (e.g., relocation, change in acreage) shall also be executed by the parties.

b. Upon the expiration or sooner termination of the Term of this lease, Lessee shall, upon request of the County, deliver such document(s) as the County shall reasonably request to evidence the expiration of termination of the Memorandum of Lease. Upon Lessee's failure to comply within thirty (30) days after receiving said request from the County, Lessee shall be deemed to have authorized the County to unilaterally execute and record the document(s) removing the Memorandum of Lease from the public record.

c. The documents referred to in this paragraph 52 shall be executed and acknowledged by Lessee, shall be in a form satisfactory to the County and shall be in a form suitable for recording.

d. Unless otherwise provided, Lessee shall record the above documents, at Lessee's sole expense, in the Office of the Suffolk County Clerk, no later than sixty (60) days after final signature on the Lease or other lease modification or lease termination.

e. Lessee shall also execute and file, or upon the County's request submit to the Department, New York State and Real Property Tax returns and other forms as are required for recording such documents.

f. The provisions of this Paragraph 52 shall survive the expiration or sooner termination of this Lease.

53. No Employment or Principal-Agent Relationship

Notwithstanding anything herein, this Lease shall not be construed as creating an employment or principal-agent relationship.

End of Text

EXHIBIT A

Certified Survey Map with coordinates and legal description of Lease Site No. _____

(BLANK PAGE - REMOVE THIS PAGE AND INSERT SURVEY MAP)

EXHIBIT B

Suffolk County Legislative Requirements

1. Contractor's/Vendor's Public Disclosure Statement

It shall be the duty of the Lessee to read, become familiar with, and comply with the requirements of Section A5-7 of Article V of the Suffolk County Code.

Unless certified by an officer of the Lessee as being exempt from the requirements of Section A5-7 of Article V of the Suffolk County Code, the Lessee represents and warrants that it has filed with the Comptroller the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the Comptroller on or before the 31st day of January in each year of the Lease's duration. The Lessee acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of the Lease, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Lease.

Required Form: Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

2. Gratuities

It shall be the duty of the Lessee to read, become familiar with, and comply with the requirements of Chapter 386 of the Suffolk County Code.

The Lessee represents and warrants that it has not offered or given any gratuity to any official, employee or agent of the County or the State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement.

3. Non Responsible Bidder

It shall be the duty of the Lessee to read, become familiar with, and comply with the requirements of Article II of Chapter 143 of the Suffolk County Code.

Upon signing the Lease, the Lessee certifies that it has not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of section 143-5 of the Suffolk County Code under "Nonresponsible Bidder."

4. Suffolk County Local Laws

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at http://www.co.suffolk.ny.us. Under "County Services A-Z, click on "Laws of Suffolk County."

End of Text for Exhibit B