

AFTER RECORDING RETURN TO:

Washington Business Bank  
223 5th Avenue SW  
Olympia, WA 98501

**COLLATERAL ASSIGNMENT OF AGREEMENTS  
AND SUBORDINATION**

**Property Owners:** Washington State, acting through its Department of Natural Resources;  
City of Olympia, a municipal corporation;

**Sublandlord:** Wedell A. Berg, Jr., a single individual (as to Sublease);

**Subtenant:** DKS Boardwalk, LLC, a Washington limited liability company

**Abbreviated Legal Description:** PTN. HARBOR AREA OLYMPIA TIDELANDS

**Additional Legal:** Exhibit A, page 15

**Tax Parcel No.:** 91000900100

**Auditor's Reference No.:** 4793145; \_\_\_\_\_

DKS BOARDWALK, LLC, a Washington limited liability company ("Borrower"), WEDELL A. BERG, JR., a single individual ("Berg"), and the CITY OF OLYMPIA, a municipal corporation ("Olympia") enter into this Collateral Assignment of Agreements and Subordination ("Agreement") in favor of Washington Business Bank, a Washington banking corporation (the "Lender") on \_\_\_\_\_, 2021 and agree as follows:

## RECITALS

Washington State, acting through its Department of Natural Resources (“State”) owns the Property legally described on *Exhibit A* and shown as One Tree Island Marina in that Record of Survey recorded in Thurston County, Washington on August 21, 2019, under Auditor’s File No. 4701732 (the “Master Premises”).

Olympia owns the Columbia Street right-of-way (“Permitted Use Area”) and leases the Percival Landing Boardwalk and associated facilities from Berg.

Berg currently leases the Master Premises, under an Aquatic Lands Lease, Lease Number 22-B74532, dated by date of last execution September 25, 2020 and recorded under Thurston County Auditor’s File No. 4793145 on October 20, 2020 (“Master Lease”).

Berg subleases a portion of Berg’s leasehold under the Master Lease to Boardwalk Associates Co-Tenancy Investors (“Boardwalk”) under the terms of that certain Sublease for Rental of Over-Water Property dated October 23, 2020 (“Sublease”). The portion of the real property Boardwalk subleased from Berg is legally described and is depicted on *Exhibit B* as “Parcel 3 – office/restaurant” (the “Premises”). For convenience, the Permitted Use Area shall be considered part of the term “Premises.”

The Premises contains a two-story commercial building and attached appurtenances thereto commonly known as 525 Columbia Street NW, Olympia, Thurston County, Washington, Thurston County Tax Parcel No. 91000900100 (“Building”). The Building is separately and independently owned by Boardwalk as personal property and is separate from the underlying real property.

A portion of the Building is also located in the Permitted Use Area and is adjacent to and structurally connected to the Percival Landing Boardwalk. Boardwalk and Olympia entered into a Right-of-Way Use Agreement dated, by date of its full execution, October 7, 2020, and recorded with the Thurston County Auditor’s Office under Auditor’s File Number 4805913 (“Use Agreement”) and a Maintenance Agreement dated October 28, 2020 (“Maintenance Agreement”) to govern the Building’s occupancy of the Permitted Use Area (the Maintenance Agreement and the Use Agreement are collectively referred to as the “Olympia Agreements”).

Dannielle Knutson (“Knutson”) and Boardwalk are parties to that certain Commercial & Investment Real Estate Purchase and Sale Agreement dated July 14, 2021 (“PSA”), whereby Knutson shall purchase the Building from Boardwalk on the terms and conditions set forth therein. Prior to closing the sale, Knutson anticipates assigning Knutson’s interest under the PSA to Borrower. The assignment of the Sublease and the assignment of the Olympia Agreements shall be part of the sale of the Building and Borrower shall assume all obligations and liabilities of Boardwalk under the Sublease and the Olympia Agreements.

Borrower is financing the purchase of the Building with a loan from Lender (the “Loan”).

Lender would not make the Loan unless Lender has a security interest in the Building and a collateral assignment of Borrower’s interest in the Sublease and the Olympia Agreements.

Berg is willing to consent to a collateral assignment of the Sublease to Lender and to agree to subordinate his interest in the Building, equipment, fixtures, and other collateral (“Collateral” as further defined below) located on the Premises to the lien of the Lender.

Olympia is willing to consent to a collateral assignment of the Olympia Agreements to Lender and subordinate any interest it may have in the Collateral to the lien of the Lender.

The State has consented to a collateral assignment of the Sublease to Lender, and has agreed to subordinate its interest in the Collateral located on the Premises to the lien of the Lender pursuant to the terms of that certain Consent To Assignment of Sublease for Security Purposes dated approximately of even date herewith, and recorded with the Thurston County Auditor's Office under Auditor's File Number \_\_\_\_\_ ("Consent to Assignment").

## **AGREEMENT**

In light of the foregoing Recitals, which are incorporated herein, the mutual promises contained herein and other valuable consideration, the parties agree as follows:

**1. Collateral Description.** The word "Collateral" means all of the following: 1) the Olympia Agreements; 2) the Sublease; 3) Borrower's interest in any subleases between Borrower and subtenants occupying the Building and rents, deposits or other payments related thereto; and 4) all of the personal property, appurtenances, tenant improvements, equipment, and fixtures which are located in and on the Building, or on the Premises and for the benefit of the Building or in the Permitted Use Area and for the benefit of the Building. Provided, however, any assignment of Borrower's interest in and to any improvements on the Premises is subject to any reversionary interest of Berg in the Sublease or the improvements on the Premises as may be provided for in the Sublease; any reversionary interests of Olympia in the Olympia Agreements or improvements on the Premises as may be provided for in the Olympia Agreements

**2. Borrower's Collateral Assignment of Sublease.** Borrower hereby assigns to Lender all of Borrower's rights in the Sublease and the Olympia Agreements as partial security for the Loan. The parties intend that this collateral assignment will be a present transfer to Lender of all of Borrower's rights under the Sublease and Olympia Agreements, subject to Borrower's rights to use the Premises and enjoy the benefits of the Sublease and Olympia Agreements while not in default of the Loan or the Sublease or Olympia Agreements. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Sublease or Olympia Agreements, including without limitation, liability for rent or fees. Whether Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as tenant under the Sublease and as a party to the Olympia Agreements. While Lender is in possession of the Premises, Lender will cause all payments due under the Sublease and attributable to that period of time to be made to Berg. While Lender is in possession of the Premises, Lender will cause all payments due under the Olympia Agreements and attributable to that period of time to be made to Olympia. If Lender later reassigns the Sublease or Olympia Agreements or vacates the Premises, Lender will have no further obligation to Berg or Olympia. Upon full performance by Borrower under the Loan, this Agreement shall be terminated, without the necessity of any further action by any of the parties. This Agreement includes all renewals of and amendments to the Sublease or the Loan, until the Loan is paid in full. No amendments may be made to the Sublease without Lender's prior written consent, which shall not be unreasonably withheld or delayed; provided, however, that minor amendments, which do not increase Borrower's obligations or decrease Borrower's rights under the Sublease or Olympia Agreements, may be made.

**3. Consent of Berg.** Berg hereby consents to the collateral assignment of Borrower's interest in the Sublease to Lender for security purposes under the Lender's Leasehold Deed of Trust which will be recorded by Lender against the Premises in the real property records of Thurston County upon closing

of the Loan. The term "Deed of Trust" shall mean the Lender's Leasehold Deed of Trust and the Lender's Assignment of Rents as may be applicable and the "Lender" shall mean Washington Business Bank, as its/their interests appear in the Deed of Trust.

**4. Consent of Olympia.** Olympia hereby consents to the collateral assignment of Borrower's interest in the Olympia Agreements to Lender for security purposes under the Deed of Trust.

**5. Status of Master Lease.** A true and correct copy of the Master Lease, together with all amendments, supplements, and modifications thereto, is attached as *Exhibit B* of the Sublease described below. The Master Lease is presently in full force and effect, is valid and enforceable according to its terms and has not been modified or amended in any way except as shown on the copy of the Master Lease attached hereto.

**6. Status of Sublease.** The Sublease has not been recorded with the Thurston County Auditor's Office and a true and correct copy of the Sublease, together with all amendments, supplements, and modifications thereto, is attached as *Exhibit C* to this Agreement. The Sublease is presently in full force and effect, is valid and enforceable according to its terms and has not been modified or amended in any way except as shown on the copy of the Sublease attached hereto. This Agreement is incorporated into and hereby made a part of the Sublease, and to the extent that any of the terms or provisions of the Sublease contradict the terms or provisions of this Agreement, the terms and provisions of this Agreement are deemed to amend the Sublease and shall control.

**7. Status of Olympia Agreements.** A true and correct copy of the Use Agreement, together with all amendments, supplements, and modifications thereto. The Maintenance Agreement has not been recorded with the Thurston County Auditor's Office and a true and correct copy of the Maintenance Agreement, together with all amendments, supplements, and modifications thereto, is attached as *Exhibit D* to this Agreement. The Olympia Agreements are presently in full force and effect, are valid and enforceable according to their terms and have not been modified or amended in any way except that the reference to Boardwalk being a general partnership is incorrect, and that it is a co-tenancy. The Olympia Agreements are incorporated into and hereby made a part of the Agreement, and to the extent that any of the terms or provisions of the Olympia Agreements contradict the terms or provisions of this Agreement, the terms and provisions of this Agreement are deemed to amend the Olympia Agreements and shall control.

**8. Non-Default.** So long as Borrower is not in breach or default under the Master Lease, Sublease, or Olympia Agreements, Borrower's possession of the Premises shall not be disturbed.

**9. Subordination of Berg's Interest.** Berg hereby consents to Lender's security interest (or other interest) in the Collateral and subordinates all interests, liens and claims which Berg now has or may hereafter acquire in the Collateral. Berg agrees that any lien or claim Berg may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Berg to Lender in this Agreement.

**10. Subordination of Olympia's Interest.** Olympia hereby consents to Lender's security interest (or other interest) in the Collateral and subordinates all interests, liens and claims which Olympia now has or may hereafter acquire in the Collateral. Olympia agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Olympia to Lender in this Agreement.

**11. Right to Foreclose Deed of Trust.** Lender recognizes that any Deed of Trust taken by Lender affects and applies only to Borrower's interest in the Premises and that neither Berg nor Olympia will permit any security interest to be taken in the remainder of the Premises. In the event of default by Borrower under the terms of the Deed of Trust, Lender may enforce or foreclose the Deed of Trust including the acceptance of a Deed in Lieu of Foreclosure. Berg and Olympia agree that in connection with any such foreclosure, Lender may: (a) acquire Borrower's interest in the Premises either by Deed in Lieu of Foreclosure or actual foreclosure without further consent of Berg or Olympia, subject to the requirements of this Agreement; (b) rent or sublease the Premises pending foreclosure of Borrower's interest in the Premises by Lender, subject to Berg's and Olympia's prior written consent, which shall not be unreasonably, withheld, delayed, or conditioned; or (c) assign and sell the Borrower's interest in the Premises in whole or in part to any person or entity, subject to the requirements of this Agreement.

**12. Surrender of the Premises.**

12.1 No surrender of the Premises or any other act of Borrower shall be deemed to terminate the Sublease and Berg will not terminate the Sublease voluntarily by agreement with Borrower unless Lender has been previously notified in writing and has consented to the termination in writing. The Sublease shall not be amended or modified unless Lender has been previously notified in writing and has consented to such amendment or modification in writing.

12.2 No surrender of the Premises or any other act of Borrower shall be deemed to terminate the Olympia Agreements and Olympia will not terminate the Olympia Agreements voluntarily by agreement with Borrower unless Lender has been previously notified in writing and has consented to the termination in writing. The Olympia Agreements shall not be amended or modified unless Lender has been previously notified in writing and has consented to such amendment or modification in writing.

**13. Notice of Default and Lender's Rights.**

13.1. Notice of Default.

13.1.1 If Borrower defaults under the Sublease or if any event occurs which would give Berg the right to terminate, modify, amend or shorten the term of the Sublease, Berg shall take no steps to exercise any right it may have under the Sublease without first giving Lender written notice of such default. A copy of each and every Notice of Default served or sent by Berg or its agent to or upon Borrower pursuant to the Sublease shall be sent contemporaneously to Lender in accordance with this Agreement. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

13.1.2 If Borrower defaults under the Olympia Agreements or if any event occurs which would give Olympia the right to terminate, modify, amend or shorten the term of the Olympia Agreements, Olympia shall take no steps to exercise any right it may have under the Olympia Agreements without first giving Lender written notice of such default. A copy of each and every Notice of Default served or sent by Olympia or its agent to or upon Borrower pursuant to the Olympia Agreements shall be sent contemporaneously to Lender in accordance with this Agreement. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

13.2. Termination for Monetary Default.

13.2.1 If the Notice of Default given by Berg to Lender relates to a monetary default and Borrower has not cured such monetary default within fifteen (15) days as provided in the Sublease and Borrower's failure to cure results in Berg desiring to terminate the Sublease, Berg may terminate the Sublease if such monetary default is not cured by either Borrower or Lender within thirty (30) days of Lender's receipt of Notice.

13.2.2 If the Notice of Default given by Olympia to Lender relates to a monetary default and Borrower has not cured such monetary default within fifteen (15) days or as otherwise provided in the Olympia Agreements and Borrower's failure to cure results in Olympia desiring to terminate the Olympia Agreements, Olympia may terminate the Sublease if such monetary default is not cured by either Borrower or Lender within thirty (30) days of Lender's receipt of Notice.

13.3. Termination for Non-Monetary Default (Berg). If the notice given by Berg to Lender relates to a non-monetary default and Borrower has not cured such non-monetary default within the fifteen (15)-day period specified in the Sublease, Berg shall take no action to terminate the Sublease if:

(a) within twenty (20) days after Berg's Notice to Lender of Borrower's failure to cure (or failure to diligently pursue a cure) Lender notifies Berg of its intent to realize upon its security interest and commences realization within sixty (60) days thereafter, and diligently pursues realization; and

(b) Lender notifies Berg that it will assume the Sublease when Lender is legally entitled to the ownership and/or possession of Borrower's interests in the Premises; and

(c) Lender pays Berg at time of notification all back rent or other monies or performances due that may be in default up to the date Lender notifies Berg of Lender's intent and further pays all rent that accrues during the period after Lender so notifies Berg and completes such other performances that may be required or come due under the Sublease.

Berg shall not terminate the Sublease because of Borrower's breach of any term(s) of the Sublease relating to the solvency of Borrower or the institution of any bankruptcy, insolvency, receivership or related action by or against Borrower as long as Lender cures any default under the Sublease by Borrower as provided in this Consent and Agreement. If the default is one that cannot reasonably be cured by Lender within the timeline provided in this Agreement (such as insolvency, bankruptcy, or other judicial proceeding against Borrower), but Lender has commenced to cure the noticed default and continues thereafter with all due diligence to attempt to complete its cure, even though such cure takes longer than such cure period, then the time to cure shall be extended for a reasonable period.

13.3.1. If the non-monetary default is of a nature which requires immediate abatement as a result of which Lender would not normally pursue realization on the Collateral, and Borrower has not taken steps to immediately cure the default, then Lender must take immediate steps to cure such default within ten (10) days of receipt of Notice or else the Berg may terminate the Sublease.

13.3.2. Upon termination of the Sublease as provided herein, Lender will release its Deed of Trust within fifteen (15) days thereafter.

13.4 *Termination for Non-Monetary Default (Olympia)*. If the Notice given by Olympia to Lender relates to a non-monetary default and Borrower has not cured such non-monetary default within a fifteen (15)-day period, or as otherwise specified in the Olympia Agreements, Olympia shall take no action to terminate the Olympia Agreements if:

(a) within twenty (20) days after Olympia's Notice to Lender of Borrower's failure to cure (or failure to diligently pursue a cure) Lender notifies Olympia of its intent to realize upon its security interest and commences realization within sixty (60) days thereafter, and diligently pursues realization; and

(b) Lender notifies Olympia that it will assume the Olympia Agreements when Lender is legally entitled to the ownership and/or possession of Borrower's interests in the Premises; and

(c) Lender pays Olympia at time of notification all back rent or other monies or performances due that may be in default up to the date Lender notifies Olympia of Lender's intent and further pays all fees or payments that accrues during the period after Lender so notifies Olympia and completes such other performances that may be required or come due under the Olympia Agreements.

Olympia shall not terminate the Olympia Agreements because of Borrower's breach of any term(s) of the Olympia Agreements relating to the solvency of Borrower or the institution of any bankruptcy, insolvency, receivership or related action by or against Borrower as long as Lender cures any default under the Olympia Agreements by Borrower as provided in this Agreement. If the default is one that cannot reasonably be cured by Lender within the timeline provided in this Agreement (such as insolvency, bankruptcy, or other judicial proceeding against Borrower), but Lender has commenced to cure the noticed default and continues thereafter with all due diligence to attempt to complete its cure, even though such cure takes longer than such cure period, then the time to cure shall be extended for a reasonable period.

13.4.1. If the non-monetary default is of a nature which requires immediate abatement as a result of which Lender would not normally pursue realization on the Collateral, and Borrower has not taken steps to immediately cure the default, then Lender must take immediate steps to cure such default within ten (10) days of receipt of notice or else Olympia may terminate the Olympia Agreements.

13.4.2. Upon termination of the Olympia Agreements as provided herein, Lender will release its Deed of Trust within fifteen (15) days thereafter.

13.5. *Assumption of the Sublease and the Olympia Agreements*. If Lender acquires the interest of Borrower at any time or takes possession of the Collateral, then Lender shall formally assume the Sublease and the Olympia Agreements within twenty (20) days thereafter. Failure to so assume the Sublease or Olympia Agreements shall give Berg and Olympia the right to immediately terminate the Sublease and the Olympia Agreements respectively.

13.6. *Right to Assign*. Lender shall not have the right to assign Borrower's interest in the Premises, nor in the case of a foreclosure under the Deed of Trust shall the Trustee under the Deed of Trust transfer Borrower's interest in the Premises to any person or entity (other than Lender) without first obtaining the written consent of Berg or Olympia as the case may be, for such assignment or transfer, which consent will not be unreasonably withheld or delayed provided that Lender has disclosed to Berg or Olympia as the case may be (a) the identity of the proposed purchaser, assignee or transferee; (b) shown that the purchaser's, assignee's or transferee's credit standing would reasonably be acceptable to a commercially

prudent lender; and (c) provided evidence to Berg or Olympia as the case may be that the use of the Premises by such purchaser, assignee or transferee shall be consistent with the terms of the Master Lease, Sublease, Olympia Agreements or Borrower's prior use of the Premises. Upon the purchaser's, assignee's or transferee's assumption and agreement to perform and to be bound by all of the terms of the Sublease and Olympia Agreements, Lender shall be relieved of further liability under the Sublease; however, if Lender finances the purchaser, assignee or transferee, Lender shall again be subject to all the obligations set forth in this Agreement.

14. **Disposition of Insurance and Condemnation Proceeds.** Berg and Olympia shall be named as an additional insured under any of Borrower's casualty policies on the Premises to the extent of the interests limited in this paragraph 14. Should the Premises suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by Borrower, Berg, and Olympia agree that Borrower and Lender shall have the right to such proceeds. In the event the Premises are substantially damaged and Borrower's improvements have been repaired, Berg and Olympia shall only participate in the insurance proceeds to the extent necessary to repair and restore Berg's or Olympia's ground and any of Berg's, Olympia's, or Borrower's improvements (excluding the Building and personal property) on or in the ground to the same condition the land was in at the commencement of the Sublease, Olympia Agreements, or in the same condition at the time of the casualty. In the event Premises or the Building are so severely damaged that Borrower's and Lenders' decision is not to repair or restore the Premises, Berg and Olympia shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the Premises and any utilities or other such improvements (excluding rebuilding the Building) to the same condition the land was in at the commencement of the Sublease or Olympia Agreements or in the same condition at the time of the casualty. Other than as described herein, neither Berg nor Olympia shall have a claim to insurance proceeds or condemnation proceeds that are attributable to Borrower's interest in the Premises, nor shall Lender have any interest in Berg's or Olympia's condemnation proceeds, if any.

15. **Right to Participate in Litigation.** Lender shall have the right to participate in any litigation, arbitration or dispute directly affecting the Premises or the interests of Borrower, Lender, Berg, or Olympia therein, including without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. Berg or Olympia upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify Lender of the same.

16. **Incorporation of Mortgagee Protection Provisions.** To the extent not inconsistent with this Agreement, all provisions of the Master Lease, Sublease and Olympia Agreements which by their terms are for the benefit of any Premises mortgagee, are hereby incorporated herein for the benefit of Lender.

17. **Right to Remove Collateral.** In the event Lender exercises its rights under its Collateral and realizes upon the Collateral, Berg and Olympia agree that Lender is entitled to remove Borrower's furniture, trade fixtures and equipment installed by Borrower from the Premises at any reasonable time and that the Collateral shall remain personal property even though the trade fixtures may be affixed to or placed upon the Premises. The rights granted to Lender in this Agreement will continue until reasonable time, including any period to cure granted to Lender, after Lender receives Notice in writing from Berg or Olympia that Borrower no longer is in lawful possession of the Premises. "Trade fixtures" means the movable personal property of Borrower which is free standing or attached to the Premises. In the event Lender so realizes on its Collateral, Berg and Olympia waives any right, title, claim, lien or interest in the above trade fixtures by reason of such fixtures being attached to or located on the Premises. Lender shall use reasonable care in removing the trade fixtures from the Premises and shall repair any damage that may result from such removal which shall be completed in accordance with the terms of the Lease.



18. **Miscellaneous.** The following miscellaneous provisions are a part of this Agreement:

18.1. **Binding Effect.** This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower, Berg, and Olympia respecting subordination of the claim or claims of Berg, the State, or Olympia in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply.

18.2. **Multiple Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

18.3. **Authority to Sign.** Each party hereby represents and warrants that its entry into and its performance of its obligations under this Agreement are fully authorized and that all necessary actions therefore have been taken by it, and the person(s) signing this Agreement below on such party's behalf represents and warrants that he or she is fully authorized to do so. Borrower, Berg and Olympia acknowledge that Lender may assign its rights and interests under this Agreement to a third party, including but not limited to, the United States Small Business Administration.

18.4. **Lender's Rights with Respect to Loan.** Without Notice to Berg or Olympia and without affecting the validity of this Agreement, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligors on the Loan, or any Collateral for the Loan; including without limitation, extending, renewing, rearranging, or accelerating any of the Loan indebtedness.

18.5. **State Liability.** The State shall have no liability in connection with this Agreement or the instruments and obligation secured by this Agreement.

18.6. **Notice.** Any Notices required or permitted to be given under this Agreement shall be sufficient if (i) in writing and (ii) either (1) personally delivered or (2) sent by certified or registered mail, return receipt requested and postage prepaid, or (3) sent by overnight U.S. Express mail or overnight letter (commercial carrier), to the party's address as set forth below:

Berg: Wedell A. Berg Jr. #438  
16625 Redmond Way Suite M  
Redmond, WA 98052

City of Olympia: Olympia Parks, Arts and Recreation  
Attention: Parks Director  
P.O. Box 1967  
Olympia, WA 98507-1967

Borrower: Attn: Dannielle Knutson  
1801 Marigold St. NW  
Olympia, WA 98502

Lender: Washington Business Bank  
Attn: Gordon Osberg, Vice President / CCO  
223 5th Avenue SE  
Olympia WA 98501

With copy to: Bean, Gentry, Wheeler & Peternell, PLLC  
Attn: Mark L. Wheeler, Jr.  
910 Lakeridge Way SW  
Olympia, WA 98502

Any notice required or permitted to be given under this Agreement shall be deemed effective upon receipt or failure to accept delivery. Notice of any change in address shall be given as set forth in this section.

18.7. Governing Law. This Agreement is deemed executed in and shall be governed by and construed in accordance with the laws of the state of Washington without regard to principles of conflict of laws. Each of the parties consent to venue irrevocably and exclusively in Thurston County, Washington.

18.8. Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment. No provision in the Related Documents shall vary, modify or expand the covenants herein contained.

18.9. No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provisions of this Agreement. No prior waiver by Lender nor any course of dealing between Lender, Berg, or Olympia shall constitute waiver of any of Lender's rights or of any of Berg or Olympia's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

18.10. Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid, and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity, or enforceability of any other provision of this Agreement.

18.11. Definitions. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms in the singular include the plural and vice versa, any on gender includes all other genders, "includes" and "including" are not limiting, "or" is disjunctive but not exclusive, and "all" includes "any" and vice versa. Captions in this Agreement are used for convenience only and are not to be used in construing this Agreement. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

a) Agreement. This word “Agreement” means this Collateral Assignment of Agreements and Subordination, as this Collateral Assignment of Agreements and Subordination may be amended or modified from time to time together with all exhibits and scheduled attached to this Collateral Assignment of Agreements and Subordination from time to time. Borrower and Lender recognize that this Agreement is one of the Related Documents referred to in that certain Business Loan Agreement entered into by Borrower and Lender of even date herewith and the Related Documents identified therein.

b) Borrower. The word “Borrower” means DKS Boardwalk, LLC, a Washington limited liability company and includes all co-signers and co-makers signing the Note and all their successors and assigns.

c) Collateral. The word “Collateral” means all borrower’s right, title and interest in and to the Collateral Description section of this Agreement.

d) Master Lease, Sublease, and Olympia Agreements. “Master Lease” means that certain Master Lease referred to in the recitals above. The word “Sublease” means that certain Sublease referred to in the recitals above. The “Olympia Agreements” shall refer to the Right-of-Way Use and Maintenance Agreements with the City of Olympia referred to in the recitals above.

e) Lender. The word “Lender” means Washington Business Bank, a Washington banking corporation.

f) Loan. The words “Loan” means Lender Loan Number \_\_\_\_\_ and any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced.

g) Note. The word “Note” means the Note executed or to be executed by Borrower in the principal amount of \$\_\_\_\_\_ to evidence the Loan, together with all renewals or, extensions of, modifications of, refinancing of, consolidations of, and substitutions for the Note.

h) Premises. The word “Premises” means that certain real property that Berg subleases, as well as the Permitted Use Area as referred to in the recitals above.

i) Related Documents. The words “Related Documents” mean that certain Business Loan Agreement of even date herewith and all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds of trust, security deeds, collateral mortgages, financial statements, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

BORROWER AND BERG AND THE STATE AND OLYMPIA ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS COLLATERAL ASSIGNMENT OF AGREEMENTS AND SUBORDINATION AGREEMENT, AND BORROWER AND BERG AND THE STATE AND OLYMPIA AGREE TO ITS TERMS. THIS AGREEMENT IS DATED THE DATE AND YEAR SET FORTH ABOVE.

NOTICE CONCERNING ORAL AGREEMENTS, ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM

ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the parties hereto have executed these presents this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Borrower:**

DKS BOARDWALK, LLC

\_\_\_\_\_  
By: Dannielle Knutson  
Its: Sole Member

**Berg:**

WEDELL A. BERG, JR.

\_\_\_\_\_  
Wedell A. Berg, Jr.

**Lender:**

Washington Business Bank

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Olympia:**

City of Olympia

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form:

*Michael M. Young*  
\_\_\_\_\_  
By: Michael M. Young  
Its: Deputy City Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION FOR MASTER PREMISES**

**HARBOR AREA**

THAT PORTION OF THE OLYMPIA HARBOR AREA ABUTTING N. COLUMBIA STREET, FRONT LOTS 1 AND 2 OF BLOCK 2 AND B AVENUE WEST, AS SHOWN ON THE OFFICIAL MAPS OF THE OLYMPIA TIDE LANDS ON FILE WITH THE DEPARTMENT OF NATURAL RESOURCES AT OLYMPIA, WASHINGTON, BEGINNING AT A POINT ON THE INNER HARBOR LINE AT THE INTERSECTION OF THE EXTENDED NORTH LINE OF SAID B AVENUE WEST; THENCE S04°06'12"W 160.02 FEET ALONG THE INNER HARBOR LINE TO THE INTERSECTION OF THE EXTENDED SOUTH LINE OF SAID LOT 2 WITH THE INNER HARBOR LINE; THENCE S85°53'48"W 300 FEET TO A POINT ON THE OUTER HARBOR LINE; THENCE N04°06'12"W 160.02 FEET ALONG THE OUTER HARBOR LINE; THENCE N85°53'48"E 300 FEET TO THE POINT OF BEGINNING.

**BOARDWALK AREA**

THAT PORTION OF THE OLYMPIA HARBOR ABUTTING N. COLUMBIA STREET, FRONTING LOTS 1 AND 2 OF BLOCK 2 AND B AVENUE WEST, ASHOW SHOWN ON THE OFFICAL MAPS OF THE OLYMPIA TIDE LANDS ON FILE WITH THE DEPARTMENT OF NATURAL RESOURCES AT OLYMPIA, WASHINGTON, BEGINNING AT A POINT ON THE INNER HARBOR LINE AT THE INTERSECTION OF THE EXTENDED NORTH LINE OF SAID B AVENUE WEST; THENCE S04°06'12"e, 18.95 FEET ALONG THE INNER HARBOR LINE;  
THENCE S86°00'38"W, 190.70 FEET;  
THENCE S42°55'18"W, 3689 FEET;  
THENCE S12°01'49"W, 2.17 FEET;  
THENCE S04°11'44"E, 107.68 FEET;  
THENCE S6°18'41"E, 6.21 FEET TO THE SOUTH LINE OF AQUATIC LAND LEASE 22-B74532;  
THENCE ALONG THE SOUTH LINE OF AQUATICE LAND LEASE 22-B74532, S85°53'48"W, 8.72 FEET;  
THENCE N04°05'01"W, 118.22 FEET;  
THENCE N41°21'14"E, 59.59 FEET TO THE NORTH LINE OF AQUATIC LAND LEASE 22-B74532;  
THENCE ALONE THE NORTH LINE OF AQUATIC LAND LEASE 22-B74532, N85°53'48"E, 13.09 FEET TO THE BEGINNING.

IN THURSTON COUNTY, WASHINGTON.

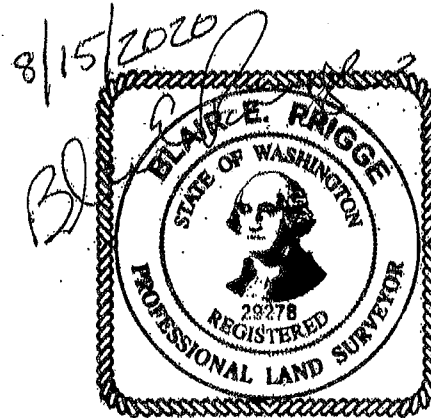
**EXHIBIT B**  
**DESCRIPTION OF PREMISES**

**BUILDING AREA  
WITH OUTSIDE SEATING AREA**

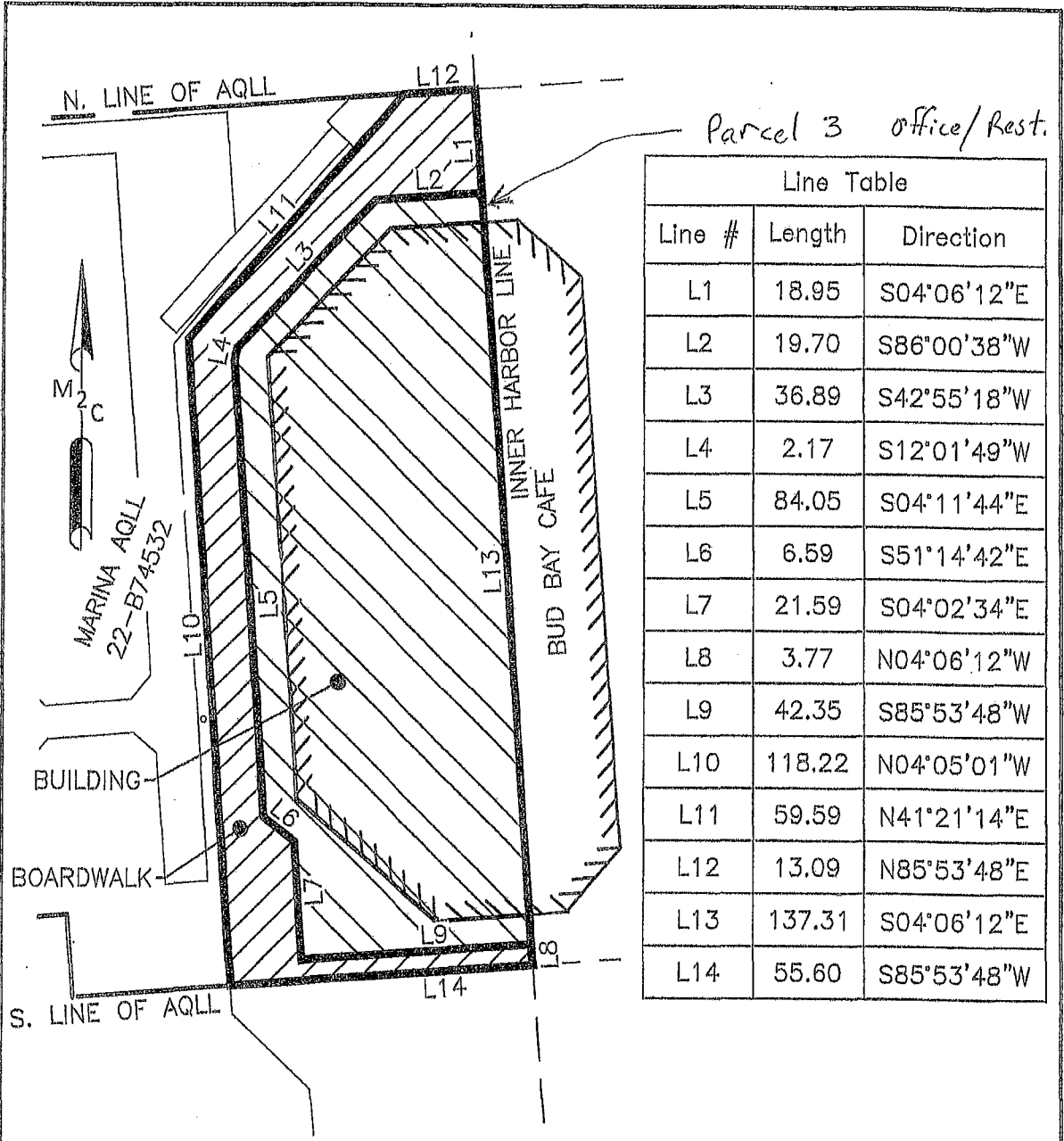
THAT PORTION OF THE OLYMPIA HARBOR AREA ABUTTING N. COLUMBIA STREET, FRONTING LOTS 1 AND 2 OF BLOCK 2 AND B AVENUE WEST, AS SHOWN ON THE OFFICIAL MAPS OF THE OLYMPIA TIDE LANDS ON FILE WITH THE DEPARTMENT OF NATURAL RESOURCES AT OLYMPIA, WASHINGTON, COMMENCING AT A POINT ON THE INNER HARBOR LINE AT THE INTERSECTION OF THE EXTENDED NORTH LINE OF SAID B AVENUE WEST; THENCE ALONG THE INNER HARBOR LINE, SOUTH 04°06'12" EAST, 18.95 FEET TO THE POINT OF BEGINNING;  
THENCE SOUTH 86°00'38" WEST, 19.70 FEET;  
THENCE SOUTH 42°55'18" WEST, 36.89 FEET;  
THENCE SOUTH 12°01'49" WEST, 2.17 FEET;  
THENCE SOUTH 04°11'44" EAST, 84.05 FEET;  
THENCE SOUTH 51°14'42" EAST, 6.59 FEET;  
THENCE SOUTH 04°02'34" EAST, 21.59 FEET;  
THENCE NORTH 85°53'48" EAST, 42.35 FEET TO SAID INNER HARBOR LINE;  
THENCE ALONG SAID INNER HARBOR LINE, NORTH 04°06'12" WEST, 137.31 FEET TO THE POINT OF BEGINNING.

CONTAINING 6,017 SQUARE FEET, MORE OR LESS;

SITUATE IN THE CITY OF OLYMPIA, THURSTON COUNTY, WASHINGTON.



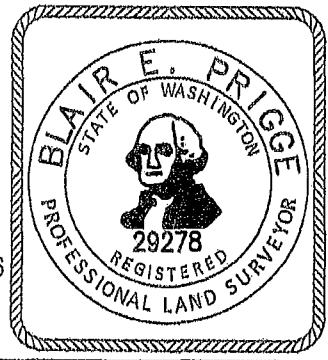




Line Table		
Line #	Length	Direction
L1	18.95	S04°06'12"E
L2	19.70	S86°00'38"W
L3	36.89	S42°55'18"W
L4	2.17	S12°01'49"W
L5	84.05	S04°11'44"E
L6	6.59	S51°14'42"E
L7	21.59	S04°02'34"E
L8	3.77	N04°06'12"W
L9	42.35	S85°53'48"W
L10	118.22	N04°05'01"W
L11	59.59	N41°21'14"E
L12	13.09	N85°53'48"E
L13	137.31	S04°06'12"E
L14	55.60	S85°53'48"W



PROFESSIONAL LAND SURVEYORS  
 2320 MOTTMAN RD SW, STE 106  
 TUMWATER, WA 98512  
 360-688-1949



ONE TREE ISLAND EXHIBIT  
 CLIENT: DELL BERG  
 DATE: 07/07/2020  
 SCALE: 1"=30'  
 M2C PROJECT NO.:  
 18-807  
 SHEET NO. 1 OF 1

**EXHIBIT C**  
**SUBLEASE**

## SUBLEASE FOR RENTAL OF OVER-WATER PROPERTY

This Sublease for Rental of Over-Water Property (“**Sublease**”), is made and entered into this 23rd day of October, 2020, by and between WEDELL A. BERG, JR., a single individual, hereinafter referred to as “**Berg**”, and BOARDWALK ASSOCIATES CO-TENANCY INVESTORS, hereinafter referred to as “**Sublessee**”.

1. Subleased Property. Berg hereby subleases to Sublessee, and Sublessee takes and subleases in an “as is” condition from Berg for the term and upon the covenants and conditions herein, that real property described as follows, which is a portion of the real property Berg currently leases from the State of Washington Department of Natural Resources (“**DNR**”), under DNR lease number 22-B74532 commencing August 1, 2020. (“**DNR Lease**”). The portion of the Berg property being subleased is referred to as the “**Subleased Property**” and is depicted on **Exhibit A as "Parcel 3- office/restaurant"**.. The Subleased Property also includes a building (“**Subleased Premises**”), which currently houses a restaurant and office use. Unless otherwise indicated, the term Subleased Property includes the Subleased Premises.

a. This Sublease is subject to all of the terms and conditions of the DNR Lease, a copy of which is attached as **Exhibit B**. In the event of a conflict between the terms of this Sublease and the DNR Lease, the terms of the DNR Lease shall control.

b. **Sublessee acknowledges receipt of a copy of the DNR Lease, together with any amendments thereto, and agrees to comply with all of the terms and conditions thereof, which are material to this Sublease and are incorporated by reference herein.**

2. Term. The term of this Sublease is thirty (30) years, and it shall expire on July 30, 2050, which is one day prior to the expiration of the DNR Lease. This Sublease shall commence on the first day of the first full calendar month following the date of full execution of this Sublease. To the extent the term of the DNR Lease is renewed for the Subleased Property, so shall the term of this Sublease be similarly renewed, upon approval of DNR, at DNR’s sole discretion, so that this Sublease shall expire one day prior to the expiration of the DNR Lease. The Sublessee acknowledges that the Sublease may need to be amended to reflect the requirements of the new DNR Lease. In the event Berg in his sole and absolute discretion chooses not to pursue renewal of the term of the DNR Lease, Sublessee may choose to seek to do so. Should Sublessee seek to do so, Berg shall reasonably cooperate with Sublessee’s efforts to obtain a new DNR Lease, including signature on documents that do not impose material requirements on Berg.

Berg agrees to advise Sublessee at least ninety (90) days prior to expiration of the DNR Lease of the status of renewal negotiations with DNR. In the event Berg chooses not to pursue

renewal, he shall so advise Sublessee at least thirty (30) days prior to expiration of the DNR Lease. Nothing herein shall be construed as obligating Berg to renew the DNR Lease, it being understood that Berg's decision to renew or not shall be made in his sole and absolute discretion. Nothing herein shall be construed as obligating DNR to renew the lease to Berg or any other party, nor obligating DNR to approve any future sublease. If the DNR Lease is terminated for any reason, this Sublease will terminate one day before the date of termination of the DNR Lease.

3. Rent.

a. Establishment of Base Rent. The rent payable under this Sublease shall be the greater of twenty-two thousand dollars (\$22,000) per year or the following:

- ii) The annual amount Berg is obligated to pay DNR under the DNR Lease for lease of the nonwater-dependent use portion of the DNR Leased Property (“**DNR Payment**”). Per DNR Lease Sections 4.1, 4.4, and 4.6 of the DNR Lease, the year-one rent for the non-water dependent portion of the DNR Leased Property is eleven thousand three hundred and fifty four dollars and forty cents (\$11,354.40), with said rent to be reevaluated in subsequent years pursuant to DNR Lease Section 4.6; and
- iii) An amount equal to one-half of one percent (0.5%) of the gross revenue of the restaurant operations occurring on the Subleased Property or originating from within the Subleased Premises (“**Gross Restaurant Revenues**”). Gross Restaurant Revenues shall be calculated on a cash basis and shall mean all revenues derived from the operation of such restaurant; and
- iv) Eight percent (8%) of the gross revenues derived from the operation of any other businesses operated within the Leased Premises or on the Leased Property (“**Grossed Business Revenues**”). Gross Business Revenues shall be calculated on a cash basis and shall include all consideration received from the operation of such businesses including, without limitation, all consideration received under all leases on the Subleased Premises.
- v) The aggregate of the DNR Payment, the Gross Restaurant Revenues and the Gross Business Revenues shall constitute the annual rental amount, unless said amount is less than twenty-two thousand dollars (\$22,000).
- vi) As required by DNR, this Sublease prohibits the pre-payment of rent more than the quarterly amount of rent due, i.e. the Sublessee cannot

prepay Berg for a longer period of time that Berg pays DNR, which is quarterly.

b. Right to Inspect Financial Records. Berg shall have reasonable access to the books and records of Sublessee and the Sublessee operating the restaurant on the Subleased Premises with respect to the gross revenue calculations described in this Section. All leases by Sublessee of the Subleased Premises shall be on an arm's-length basis and at the then prevailing market rate.

c. Payment and Late Fees. On or before the tenth (10th) day of each month after the first month following the lease commencement date, Sublessee shall pay a sum equal to one-twelfth (1/12th) of the annual rent.

d. Default for Non-Payment. Failure to pay rent or any other monetary obligations payable hereunder as specified herein shall constitute a default by Sublessee. A late charge equal to five percent (5%) of the delinquent amount shall be added to any payments not made by the tenth (10th) day of a calendar month. In addition, past due rent shall accrue interest at the rate of eighteen percent (18%) per annum.

e. Offset in the Event of Berg Non-Payment. In the event Berg fails to make rent payments required under the DNR Lease, Sublessee may contact DNR about making required rent payments directly to the Landlord under the DNR Lease. DNR has sole discretion on whether to accept such payments from the Sublessee. If the Sublessee makes Berg's rent payments directly to DNR, the Sublessee shall have the right to offset the amount of any payment so made from rental payments otherwise due under this Sublease.

4. Required and Optional Services and Uses.

a. Required Services and Uses. Sublessee shall develop and, during the entire Sublease term, maintain and operate a first class building for office space, retail space, and restaurant space on the Subleased Property ("**Required Services and Uses**").

b. Optional Services and Uses. Sublessee may alter, modify, or supplement the Required Services and Uses only with written approval from Berg, which approval shall not unreasonably be withheld ("**Optional Services and Uses**").

c. Restricted Use. Sublessee agrees not to use the Subleased Property for any other purpose nor to engage in any other business activity within or from the Subleased Premises other than permitted by Sections 4(a) and 4(b).

5. Berg Office Space Option. Berg shall have the option during the term of this Sublease, on six (6) months written notice to Sublessee, to rent from Sublessee on a first refusal

basis one hundred (100) square feet of functional office space in the Subleased Premise as long as it does not interfere with occupancy by other Sublessees. Rent shall be consistent with what is being charged other Sublessees in the building. Notwithstanding the provisions of any Lease between Sublessee and a Sublessee on the Subleased Premise, any such Sublessee shall be entitled to sublease space to Berg without the consent of Sublessee upon whatever terms Berg and such Sublessee may agree.

6. Ownership of Improvements. The Sublessee, without waiving the requirement to comply with all terms of the DNR Lease, expressly agrees to be bound by the provisions of Section 7 of the DNR Lease. So long as this Sublease remains in effect, Sublessee shall retain ownership of the all authorized improvements and trade fixtures placed on the leased premises, which includes the building currently occupied by the Sublessee's restaurant use, to the termination of the sublease ("**Sublessee-Owned Improvements**"). "Authorized improvements and trade fixtures" refers to those improvements or fixtures placed on the leased premises with the approval and consent of Berg and DNR. Upon termination of the sublease, Sublessee-Owned Improvements shall be removed as directed by DNR pursuant to §7.5 of the DNR Lease. Unless authorized in writing by DNR, at its sole discretion, following a request from the Sublessee, the Sublessee must remove all personal property and improvements at the termination of this Sublease. The removal of Sublessee-Owned Improvements, if requested by DNR shall be Sublessee's obligation. If DNR does not exercise its right to require removal of the Sublessee-Owned Improvements, Berg shall have the same rights granted to DNR in the DNR Lease to compel removal of the Sublessee-Owned Improvements.

7. Maintenance. Sublessee shall, at Sublessee's sole cost and expense, keep and maintain the Subleased Property and all buildings, facilities and improvements thereon, and all portions thereof throughout the entire term of this Sublease in a first class condition and in good, safe and sanitary order. Sublessee shall, at Sublessee's sole cost and expense, keep the Subleased Property clean and free of weeds, debris, and other unsightly or unsafe matter, and shall promptly dispose of all of the above, to be accomplished in accordance with all applicable laws and regulations.

a. If, after thirty (30) days' notice from Berg, Sublessee fails to maintain or repair any part of the Subleased Property or any improvement, fixtures or equipment thereon, Berg may, but shall not be obligated to, enter upon Subleased Property and perform such maintenance or repair and require reimbursement from Sublessee as additional rent.

b. Berg shall maintain that portion of the property and all buildings, facilities and improvements thereon, leased pursuant to the DNR Lease but not subleased to Sublessee hereunder, in good, safe and sanitary order as required by the DNR Lease.

8. Reconstruction Improvements Insurance.

a. In the event of the total or partial destruction, regardless of origin, of the subleasehold improvements, including without limitation the Subleased Premises, the Sublessee shall have the obligation to reconstruct such facilities to their original condition within six (6) months after obtaining necessary governmental approvals to do so, which governmental approvals shall be promptly and diligently pursued following destruction. There shall be no abatement or reduction of rent during such period. The Sublessee will carry property insurance on the improvements during the term of the Sublease. Any alterations or improvements to the Subleased Premise must be approved in advance by DNR as provided for in Section 7 of the DNR Lease.

b. The Sublessee will carry broad form perils property insurance covering fire and such other perils as Berg may reasonably require in an amount equal to at least eighty percent 80% of the replacement cost of the subleasehold improvements and all personal property therein. The policy shall name Berg as an additional insured. Sublessee shall provide a copy of the insurance policy to Berg within five (5) business days of Sublessee's execution of this Sublease.

c. In the event within the last five (5) years of the term of this Sublease such improvements are totally destroyed or are partially destroyed to such an extent so as to effectively prevent Sublessee's operation of its normal business activities on the Subleased Property, then Sublessee may upon thirty (30) days' written notice to Berg decline to so reconstruct such improvements, and terminate this Sublease, in which event Sublessee shall assign to Berg all of its interest in the property insurance policy mentioned above, to the extent of all remaining rental payments and any other payments due under the Sublease. If Berg relets the Subleased Premises, Sublessee shall be entitled to the return of any rental payments collected by Berg for the leasing of the Subleased Premises during the remainder of the term of this Sublease.

9. Liens. Sublessee will keep the Subleased Property free from any liens arising out of obligations incurred by the Sublessee. Upon written request from Berg, Sublessee will furnish written proof of payment of any charge which, if not paid, could provide the basis for a lien on the Subleased Property.

10. Insurance Procurement and Indemnity. Sublessee shall procure and maintain continuously public liability insurance and/or other insurance that complies with the terms and limits established in DNR Lease Sections 10.2 and 10.3 and that names both Berg and DNR as additional insureds. Sublessee shall indemnify Berg and DNR to the same extent that Berg is required to indemnify DNR under the terms of the DNR Lease:

a. Sublessee shall indemnify, defend, and hold harmless Berg and DNR, their employees, officials, officers, and agents from any Claim arising out of the Subleased Property, any Claim arising out of activities related to the use of the Subleased Property, and any Claim arising out of the use, occupation, or control of the Subleased Property by the Sublessee, its

contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees to the fullest extent permitted by law and subject to the limitations provided below.

b. "Claim" as used in this Section 10 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Subleased Property, diminution in value, and/or damages resulting from loss of use of the Subleased Property.

c. DNR shall not require Sublessee to indemnify, defend, and hold harmless DNR, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of DNR, its employees, officials, officers, or agents.

d. Berg shall not require Sublessee to indemnify, defend, and hold harmless Berg, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of Berg, its employees, officials, officers, or agents.

e. Sublessee specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless DNR or Berg or their respective employees, officials, officers, and agents. Further, Sublessee's obligation under this Lease to indemnify, defend, and hold harmless DNR or Berg, or their respective employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the worker's compensation acts.

f. Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State of Washington or the State's employees, officials, officers, or agents, and (b) the Sublessee's or Sublessee's subSublessees, agents, or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Sublessee and those acting on its behalf.

g. DNR Lease Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Sublessee's liability to both DNR and Berg for hazardous substances and Sublessee's obligation to indemnify, defend, and hold harmless both DNR and Berg for hazardous substances-related Claims.

h. Insurance Required:

(1) At its own expense, Sublessee, or Sublessee's contractor(s) where permitted in DNR Lease Section 10.3, shall procure and maintain during the Term of this Sublease, the insurance coverages and limits described in this Section 10.

Berg may terminate this Sublease if Sublessee fails to maintain required insurance.

(2) Unless both DNR and Berg agree to an exception, Sublessee shall provide insurance issued by an insurance company or companies admitted to conduct business in the State of Washington and have a rating of A- or better by the most recently published edition of



A.M. Best's Insurance Reports. Sublessee may submit a request to Berg and the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.

(3) All general liability, excess, umbrella, and pollution legal liability insurance policies must name Berg and the State of Washington, the Department of Natural Resources, and their respective elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.

(4) All property insurance, builder's risk insurance and equipment breakdown insurance must name Berg and the State of Washington, the Department of Natural Resources, and their respective elected and appointed officials, officers, agents, and employees as a loss payee.

(5) All insurance provided in compliance with this Sublease must be primary as to any other insurance or self-insurance programs afforded to or maintained by Berg or DNR.

(6) Waiver.

(a) Sublessee waives all rights against both DNR and Berg for recovery of damages to the extent insurance maintained pursuant to this Sublease covers these damages.

(b) Except as prohibited by law, Sublessee waives all rights of subrogation against both DNR and Berg for recovery of damages to the extent that the damages are covered by insurance maintained pursuant to this lease.

i. Proof of Insurance.

(1) Sublessee shall provide both DNR and Berg with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease; and, if requested, copies of policies to both DNR and Berg.

(2) The certificate(s) of insurance must reference the DNR Lease number.

(3) Receipt of such certificates, endorsements or policies by both DNR and Berg does not constitute approval by either DNR or Berg of the terms of such policies.

j. Notice of Cancellation or Non-Renewal.

Both DNR and Berg must each receive written notice before cancellation or non-renewal of any insurance required by this Sublease, as follows:

(1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide both DNR and Berg ten (10) days' advance notice of cancellation; otherwise, provide both DNR and Berg forty-five (45) days' advance notice of cancellation or nonrenewal.

(2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide both DNR and Berg ten (10) days' advance notice of cancellation; otherwise, provide DNR twenty (20) days' advance notice of cancellation or non-renewal.

k. Adjustments in Insurance Coverage.

(1) As Berg deems necessary, Berg may impose changes in the limits of liability for all types of insurance to comply with the requirements of DNR and the DNR Lease.

(2) Sublessee shall secure new or modified insurance coverage within thirty (30) days after Berg requires changes in the limits of liability or other insurance provisions as may be required by DNR during the course of the DNR Lease.

j. Failure to Procure and Maintain Insurance.

If Sublessee fails to procure and maintain the insurance described above within fifteen (15) days after Sublessee receives a notice to comply from Berg, Berg may either:

(1) Deem the failure an event of default under this Sublease and terminate the Sublease without giving the Sublessee any further opportunity to cure, or

(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Sublessee shall pay to Berg the full amount paid by Berg, together with interest at the statutory rate from the date of Berg's notice of the expenditure until Sublessee's repayment.

l. General Terms.

(1) Neither DNR nor Berg represent that coverage and limits required under this Sublease are adequate to protect the SubSublessee.

(2) Coverage and limits do not limit Sublessee's liability for indemnification and reimbursements granted to DNR and Berg under this Sublease.

(3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Sublease, then to pay the cost of the reconstruction, then to pay the Berg any sums in arrears, and then to Sublessee.

11. Insurance Types and Limits.

(a) General Liability Insurance.

(1). Sublessee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Subleased Property and/or arising out of Sublessee's use, occupation, or control of the Subleased Property and,

if necessary, commercial umbrella insurance with a limit of not less than Two Million Dollars (\$2,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the “each occurrence” limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the “each occurrence” limit.

(2). CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

(3). MGL insurance must have no exclusions for non-owned watercraft.

(b) Workers’ Compensation.

(1) State of Washington Workers’ Compensation.

(i). Sublessee shall comply with all State of Washington workers’ compensation statutes and regulations. Sublessee shall provide workers’ compensation coverage for all employees of Sublessee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Sublessee’s use, occupation, and control of the Property.

(ii). If Sublessee fails to comply with all State of Washington workers’ compensation statutes and regulations and either Berg incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Sublessee shall indemnify Berg. Indemnity shall include all fines; payment of benefits to Sublessee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

(iii). Longshore and Harbor Workers’ and Jones Acts. Longshore and Harbor Workers’ Act (33 U.S.C. Section 901 et seq.) and/or the Jones Act (46 U.S.C. Section 688) may require Sublessee to provide insurance coverage in some circumstances. Sublessee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Sublessee is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) Employers’ Liability Insurance.

Sublessee shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits of not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

(d) Property Insurance.

- (1) Sublessee shall buy and maintain property insurance covering all real property and fixtures, equipment, Sublessee improvements and betterments (regardless of whether owned by Sublessee or Berg). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived.
- (2) Sublessee shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, Sublessee improvements and betterments (regardless of whether owned by Sublessee or Berg) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
- (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which Berg shall hold in trust, including interest earned by Berg on such proceeds, for use according to the terms of this Sublease. The Parties shall use insurance proceeds in accordance with Sections 10 and 11 of this Sublease .
- (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
  - (i) Repair and restore damaged building(s) and/or Improvements to their former condition, or
  - (ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

(e) Builder's Risk Insurance.

- (1) Sublessee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by Berg. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on

a replacement cost basis. The insurance must name Sublessee, all contractors, and all subcontractors in the work as insured.

(2) Insurance described above must cover or include the following:

- (i). All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
- (ii). The entire work on the Subleased Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
- (iii). Portions of the work located away from the Subleased Property but intended for use at the Property, and portions of the work in transit;
- (iv). Scaffolding, falsework, and temporary buildings located on the Subleased Property; and
- (v). The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(3) Sublessee or Sublessee's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.

(4) Sublessee or Sublessee's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Sublessee, all contractors, and subcontractors in the work as insured.

12. Waiver of Subrogation. Whether the loss or damage is due to the negligence of either Berg or Sublessee, their agents or employees, or any other cause, Berg or Sublessee do each hereby release and relieve the other, their agents or employees, from responsibility for, and waive their entire claim of recovery for (i) any loss or damage to the real or personal property of either located anywhere in the Subleased Property, including without limitation the Subleased Premises, arising out of or incident to the occurrence of any of the perils which are covered by their respective fire insurance policies, with extended coverage endorsements, and (ii) any loss resulting from business interruption at the Subleased Premises or loss of rental income from the Subleased Property out of or incident to the occurrence of any of the perils which may be covered by the business interruption insurance policy and by the loss of rental income insurance policy held by Berg or Sublessee. Each party shall use best efforts to cause its insurance carriers to consent to the foregoing waiver of rights of subrogation against the other party. Notwithstanding the foregoing, no such release shall be effective unless the aforesaid insurance policy or policies shall expressly permit such a release or contain a waiver of the carrier's right to be subrogated.

13. Hold Harmless. Sublessee and Berg agree to protect and save each other and each other's employees and agents, while acting within the scope of their duties as such, harmless

from and against all claims, demands and cause of action of any kind or character, including the cost of defense thereof, arising in favor of each other's employees or third parties on account of but not limited to personal injuries, death or damage to property, arising out of the premises leased by Sublessee or in any way resulting from acts or omissions of the Sublessee and/or its agents, employees or representatives.

Berg shall not be liable to the Sublessee for claims or damages arising from any defect in the construction of or the present condition of the Subleased Premises, whether known or unknown, or for damage by storm, rain or leakage.

14. Assignment or Sublease. Sublessee shall not assign or transfer this Sublease or any interest therein nor sublet the whole or any part of the Subleased Property, nor shall this Sublease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the written consent of Berg and DNR first having been obtained. DNR's consent shall be at DNR's sole discretion. Berg's consent shall not be unreasonably conditioned or withheld.

- a. If Sublessee is a corporation, Sublessee further agrees that if at any time during the term of this Sublease one-half (1/2) or more of the outstanding shares of any class of stock of Sublessee corporation shall belong to any stockholders other than those who own one-half (1/2) or more of the outstanding shares of that class of stock at the time of the execution of this Sublease or to members of their immediate families, such change in the ownership of the stock of the Sublessee shall be deemed an assignment of this Sublease within the meaning of this Section.
- b. If Sublessee is a general or limited partnership, Sublessee agrees that if at any time during the term of this Sublease one-half (1/2) or more of the partnership interest shall belong to any partners other than those who own one-half (1/2) or more of the partnership interest of Sublessee at the time of execution of this Sublease or to members of their immediate family, such change in ownership of partnership interest shall be deemed an assignment of this Sublease within the meaning of this Section.
- c. If Berg shall give his and obtain DNR's consent to any assignment or sublease, this Section 14 shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without Berg's obtaining Berg's and DNR's further consent.
- d. If Sublessee desires to assign, transfer or sublease this Sublease or any interest therein, he shall notify both DNR and Berg in writing of said desire to assign or transfer and the details of the proposed agreement, at least thirty (30) days prior to the proposed date of assignment or transfer to a third party. The notification shall include, but need not be limited to a financial statement of the proposed assignee,

including but not limited to a full disclosure of the monetary payment or any other considerations involved, and an executed affidavit from the proposed assignee stating he has examined this Sublease, understands this Sublease, agrees to assume and be bound by all of the Sublessee's obligations and covenants under this Sublease, the same as if he were the original Sublessee hereunder, and the proposed date of assignment, transfer or sublease. Both DNR and Berg will review the request and respond with either an approval or disapproval of the request in a timely manner.

- e. Berg's approval of an assignment to a financially sound assignee shall not be unreasonably conditioned or withheld. DNR's approval of the assignment shall be at DNR's sole discretion.
- f. Sublessee shall not delegate any of its duties under this Sublease without the written consent of Berg and DNR.

15. Utilities. Sublessee shall be solely responsible for ensuring that all utility services, including but not limited to water, sewer, gas, electricity and oil, are furnished to the Subleased Property and shall be solely responsible for the costs of installation and maintenance thereof. Sublessee shall remove all waste and garbage from the Subleased Property at its own expense.

16. Signs. No sign, advertisement, notice or other lettering that affects the exterior appearance of the Subleased Property, including, without limitation, the Subleased Premises, will be exhibited, inscribed, painted or affixed by Sublessee on any part of the outside or inside of the premises without Berg's prior written consent; provided, that such consent shall not be unreasonably withheld. If Sublessee violates this provision, Berg may remove the sign without any liability, and may charge the expense incurred by such removal to the Sublessee, provided, however, Berg shall give Sublessee written notice of Sublessee's violation of this provision and Sublessee shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision, before Berg shall remove said signs. All signs erected or installed by Sublessee shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.

17. Inspections-Access. Berg reserves the right to inspect the Subleased Property, including without limitation the Subleased Premises, at any and all reasonable times throughout the term of this Sublease; provided, that Berg shall not interfere unduly with Sublessee's operations.

The right of inspection reserved to Berg hereunder shall impose no obligations on Berg to make inspections to ascertain the condition of the Subleased Property, and shall impose no liability upon Berg for failure to make such inspections.

18. Berg Access Rights. Berg reserves the non-exclusive right to utilize that portion of the Subleased Property necessary for purposes related to the marina uses on that portion of the property subject to the DNR Lease that is not being subleased to Sublessee (“**Marina Uses**”). Such purposes include, but are not limited to, ingress and egress; construction, maintenance and operation of power lines, water pipes and other utilities; and any and every other purpose reasonably related to the operation of the Marina Uses. Such Marina Uses shall not adversely and unreasonably affect Sublessee’s normal business operations.

19. Taxes. Sublessee shall pay throughout the term of this Sublease, all license and excise fees and occupation taxes covering the business conducted on the Subleased Property, and all taxes on property of Sublessee on the Subleased Property and all taxes on the subleasehold interest created by this Sublease, and any other taxes pertaining to Sublessee’s use of the Subleased Property, including but not limited to real property, personal property, and/or leasehold excise taxes.

20. Assurance of Performance--Lease Obligations. In the event of a default in the performance of any obligation under this Sublease which remains uncured for more than ten (10) days after demand, Berg may request, and the Sublessee shall provide, adequate assurance of the future performance of all obligations under this Sublease. The adequacy of any assurance shall be determined according to commercially reasonable standards for lessors of real property in Thurston, County Washington.

21. Time is of the Essence. Time is of the essence of this Sublease, and in the event of the failure of Sublessee to pay the rentals or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Sublessee shall be in default.

22. Default. If Sublessee has defaulted in the performance of any of the obligations under this Sublease, Berg may terminate this Sublease under the provisions of this Section. Berg will give Sublessee ten (10) days’ notice in writing as to monetary defaults, and sixty (60) days’ notice in writing as to non-monetary defaults stating the nature of the default to permit Sublessee to remedy the default within the ten (10) or sixty (60) day period. In the event Sublessee fails to cure said default, Berg may, at any time after the expiration of the ten (10) or sixty (60) days, terminate this Sublease, on written notice.

23. Condemnation.

- a. Berg and Sublessee will give to the other immediate written notice of the receipt of notice of any proceedings with respect to a condemnation and of any intention of any authority to exercise the power of eminent domain.
- b. If all of the Subleased Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration



of the term of this Sublease, this Sublease terminates as of the date condemner takes possession, and Sublessee will have no claim or interest in or to any award of just compensation except that the Sublessee will be entitled to an amount equal to the fair market value of the Sublessee's leasehold interest in any improvement taken by the condemner made to the Subleased Property by Sublessee, but not to exceed the amount of that part, if any, of the award attributable to the fair market value of the improvements.

- c. If part of the Subleased Property is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Sublease, Berg or Sublessee may choose to terminate this Sublease as of the date the condemner takes possession. If neither Berg nor Sublessee elects to terminate this Sublease, the rent will be reduced in the same portion that the value of the portion of the premises to be taken bears to the value of the entire Subleased Property as of the date condemner takes possession. Sublessee will have no claim or interest in or to any award of just compensation or damages except that the Sublessee will be entitled to an amount equal to the fair market value of the Sublessee's leasehold interest in the part taken by the condemner of any improvements made to the Subleased Property by the Sublessee, but not to exceed the amount of that part, if any, of the award attributable to the fair market value of the improvements.
  
- d. If temporary use of all or a portion of the Subleased Premises is taken by any lawful authority for a period, which would reduce the subleasehold and consequently, would cause the Subleased Premises to be unlesseeable for the use by Sublessee for the purposes set forth in the section of this Sublease titled "Use of Premises," at Sublessee's determination, then Berg or Sublessee may choose to terminate this Sublease. If Berg or Sublessee elect to terminate this Sublease, this Sublease will terminate the date the condemner takes possession and Sublessee will have no claim or interest in or to any award of just compensation except that the Sublessee will be entitled to an amount equal to the fair market value of the Sublessee's leasehold interest in any improvements made to the Subleased Property by the Sublessee. If neither Berg or Sublessee elects to terminate this Sublease, this Sublease will continue in full force and effect. Sublessee will be entitled to receive any award from the condemner for the use of all or part of the Subleased Premises, EXCEPT that Sublessee may elect to have the rents reduced by the amount proportionally attributable to any partial temporary taking, in which event the Sublessee shall not be entitled to any portion of the award attributable to land use.

24. Waiver. The acceptance of partial rent by Berg for any period or periods after a default or of performance of any covenant of this Sublease after a default by Sublessee will not be considered a waiver of the default unless Berg gives Sublessee written notice that the

acceptance is a waiver. No waiver by Berg of any default by Sublessee will be construed to be or act as a waiver of any subsequent default by Sublessee.

25. Litigation Costs. In the event either party hereto shall bring suit or any action against the other party by reason of a default hereunder or a breach of any provision hereof, or to recover any rent or other monies due hereunder or to recover possession of the Subleased Property, or to obtain any other relief, declaratory or otherwise, arising out of this Sublease, then the prevailing party in such suit or action shall be entitled to an award of its reasonable attorneys' fees and costs and expenses incurred in connection with such suit or action, including appeals.

26. Choice of Law and Venue. This Sublease shall be construed under the laws of the State of Washington. Any action arising under this Sublease shall be brought in Thurston County Superior Court.

27. Cumulative Remedies. No provision of this Sublease precludes Berg from pursuing any other remedies, including equitable remedies and injunctive relief, for Sublessee's failure to perform their obligations.

28. Heirs, Agents and Assigns. Without limiting any provisions of this Sublease pertaining to assignment and subletting, the provisions of this Sublease bind the heirs, legal representatives, successors, agents and assigns of all parties to this Sublease

29. Surrender of Possession. At the expiration or termination of this Sublease, Sublessee will promptly surrender possession of the Subleased Premises to Berg.

30. Holding Over. DNR, at its sole discretion, must approve the DNR Lease going into holdover/month-to-month status before the Sublease can be similarly extended. Following DNR approval of the DNR Lease going into holdover/month-to-month status, Berg, at its sole discretion may approve a holdover of this Sublease, provided that the holdover shall incorporate any conditions required by DNR. If the Sublessee, with the consent of Berg, holds over after the expiration or other sooner termination of this Sublease, the resulting tenancy shall be a month-to-month tenancy, unless otherwise agreed, provided that the term of the Sublease will expire one day prior to the expiration of the DNR Lease; provided that, any tenancy beyond the term of the DNR Lease must be approved by DNR, at its sole discretion. During such month-to-month tenancy, the amount of rent to be paid shall be determined in accordance with the provisions of Section 3. Rent adjustments, notice of termination of the tenancy by either party and notice by Berg of changes in the conditions of tenancy shall all require at least thirty (30) days' notice. During such month to-month tenancy, rent shall be paid on the first of each month, in advance, at whatever location Berg may designate, and all provisions of this Sublease shall apply.

31. Severability. If any term or provision of this Sublease or the application of any term or provision to any person or circumstances is invalid or unenforceable, the remainder of this Sublease, or the application of the term or provision to persons or circumstances other than

those as to which it is held invalid or unenforceable, will not be affected and will continue in full force.

32. “Sublessee” Includes Sublessee. It is understood and agreed that for convenience the word “Sublessee” and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Sublease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Sublessee or Sublessees under this Sublease.

33. Captions. The captions in this Sublease are for convenience only and do not in any way limit or amplify the provisions of this Sublease.

34. Notices. Required notices except legal notices shall be given in writing to the following respective address:

To Berg:                      Wedell A. Berg, Jr. #438  
                                         16625 Redmond Way Suite M  
                                         Redmond, WA 98052

To Sublessee:                Boardwalk Associates Co-Tenancy Investors  
                                         Attn: Pat Rants  
                                         724 Columbia St. NW Suite 140  
                                         Olympia, WA 98501

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence.

35. Attachments to Sublease. This Sublease includes the following; which are attached thereto, incorporated herein and made a part hereof:

**Exhibit A**—Sketch of Leased Property showing Leased Premise

**Exhibit B**—DNR Lease

36. Sole Authority to Deal with DNR. The obligations of the DNR Lease, including the obligation to pay rent, and discharge the covenants in that DNR Lease, are expressly understood and agreed to continue and remain as unitary obligations of Berg under that DNR Lease. Berg shall have the sole and exclusive authority to deal with DNR in all matters relating to the DNR Lease, including application of the DNR Lease to this Sublease. The parties acknowledge that there is no privity of contract between the Sublessee and DNR.

37. Right of First Refusal. Sublessee shall have the right of first refusal on any future bona fide offer to purchase the Leased Property or Berg's **DNR Leasehold**, which is defined as the water-related portion of the DNR Lease (i.e. the marina). Under this right of first refusal, Berg shall deliver to Sublessee a copy of any bona fide offer to purchase the Leased Property or the DNR Leasehold, which Berg is willing to accept. If Sublessee wishes to purchase the Leased Property or DNR Leasehold on the same terms and conditions as set out in the offer delivered by Berg, then Sublessee shall give written notice of such intent within ten (10) days after receipt of the copy of said offer from Berg. Upon giving notice of an intent to purchase the Leased Property or DNR Leasehold from Berg, the Sublessee shall thereafter comply with the terms and conditions of said offer. If Sublessee fails to give written notice of intent to purchase within the ten (10) day period, then Berg may sell to the offeror under the terms and conditions set forth in the offer.

38. Arbitration. In the event Berg and Sublessee cannot agree upon a matter to be mutually determined, or a dispute arises concerning the rights or obligations of the parties hereunder, then the matter shall be determined by binding arbitration in accordance with the rules of the American Arbitration Association then in effect in Seattle, Washington, which are not inconsistent with this Sublease. Either party may elect to initiate arbitration, each party shall select one arbitrator, and the two arbitrators so selected shall select a third arbitrator. The arbitration proceedings shall be held in Olympia, Washington. It is the intention of the parties that discovery be limited by the arbitrators to the minimum essential to afford a fair hearing to the parties. As part of their decision in any arbitration hereunder, the arbitrators may require the losing party to pay some or all of the costs of the arbitration and the prevailing party's reasonable attorneys' fees. The decision of the arbitrators on issues arbitrated shall be final, absent fraud or collusion. Jurisdiction and venue of any action to compel arbitration, or to challenge the decision of the arbitrators due to fraud or collusion, shall be had exclusively in the Superior Court of the State of Washington for Thurston County.

39. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

40. Specific Performance and Materiality of Terms. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof. All terms and provisions of this Agreement are material.

41. No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

42. Severability. This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation


of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

43. Cooperation in Execution of Documents. The parties agree to properly and promptly execute and deliver any and all additional documents that may be necessary to render this Agreement practically effective. This Section shall not require the execution of any document that expands, alters or in any way changes the terms of this Agreement.

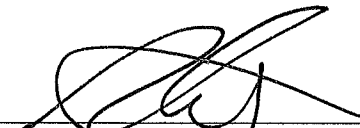
44. Full Understanding. The parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto; and that they are executing this Agreement after sufficient review and understanding of its contents. Both parties have had an equal opportunity to participate in the drafting and review of this documents.

45. Final and Complete Agreement. This Agreement is integrated and constitutes the final and complete expression of the parties on all subjects relating to the sublease of the Leased Property. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by the parties. This Sublease supersedes and replaces all prior agreements, discussions and representations on all subjects discussed herein, without limitation. No party is entering into this Sublease in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the exhibits hereto.

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

  
\_\_\_\_\_  
Wedell A. Berg, Jr.

Boardwalk Associates Co-Tenancy Investors

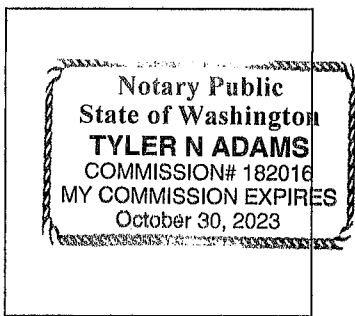
  
\_\_\_\_\_  
Its: President

STATE OF WASHINGTON )  
 )  
COUNTY OF King )

SS:

I certify that I know or have satisfactory evidence that WEDELL A. BERG, JR. is the person who appeared before me, and s/he acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged that s/he executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: Oct. 23, 2019.



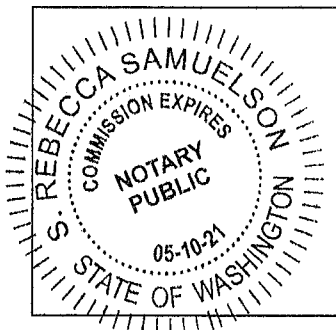
Tyler N. Adams  
Print Name: Tyler N. Adams  
NOTARY PUBLIC in and for the State of  
Washington, residing at:  
King County.  
My Appointment Expires: 10/30/2023

STATE OF WASHINGTON )  
 )  
COUNTY OF Thurston )

SS:

I certify that I know or have satisfactory evidence that Pat Rants is the person who appeared before me, and s/he acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the President, of the Boardwalk Associates that executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 10/29/2020, 2019.



S. Rebecca Samuelson  
Print Name: S. Rebecca Samuelson  
NOTARY PUBLIC in and for the State of  
WA, residing at:  
Tumwater WA  
My Appointment Expires: 05-10-2021

**EXHIBIT A**  
**LEGAL DESCRIPTION AND SKETCH OF THE LEASED PROPERTY**

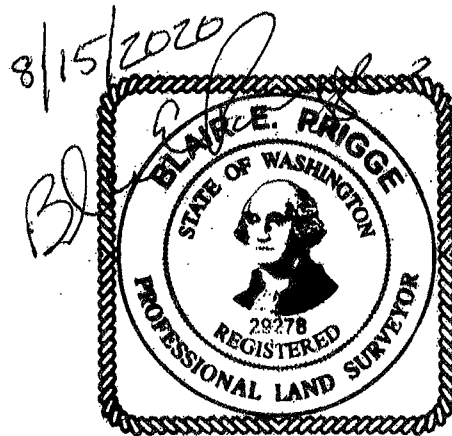
Exhibit A to Sublease  
Parcel 3

BUILDING AREA  
WITH OUTSIDE SEATING AREA

THAT PORTION OF THE OLYMPIA HARBOR AREA ABUTTING N. COLUMBIA STREET, FRONTING LOTS 1 AND 2 OF BLOCK 2 AND B AVENUE WEST, AS SHOWN ON THE OFFICIAL MAPS OF THE OLYMPIA TIDE LANDS ON FILE WITH THE DEPARTMENT OF NATURAL RESOURCES AT OLYMPIA, WASHINGTON, COMMENCING AT A POINT ON THE INNER HARBOR LINE AT THE INTERSECTION OF THE EXTENDED NORTH LINE OF SAID B AVENUE WEST; THENCE ALONG THE INNER HARBOR LINE, SOUTH 04°06'12" EAST, 18.95 FEET TO THE POINT OF BEGINNING;  
THENCE SOUTH 86°00'38" WEST, 19.70 FEET;  
THENCE SOUTH 42°55'18" WEST, 36.89 FEET;  
THENCE SOUTH 12°01'49" WEST, 2.17 FEET;  
THENCE SOUTH 04°11'44" EAST, 84.05 FEET;  
THENCE SOUTH 51°14'42" EAST, 6.59 FEET;  
THENCE SOUTH 04°02'34" EAST, 21.59 FEET;  
THENCE NORTH 85°53'48" EAST, 42.35 FEET TO SAID INNER HARBOR LINE;  
THENCE ALONG SAID INNER HARBOR LINE, NORTH 04°06'12" WEST, 137.31 FEET TO THE POINT OF BEGINNING.

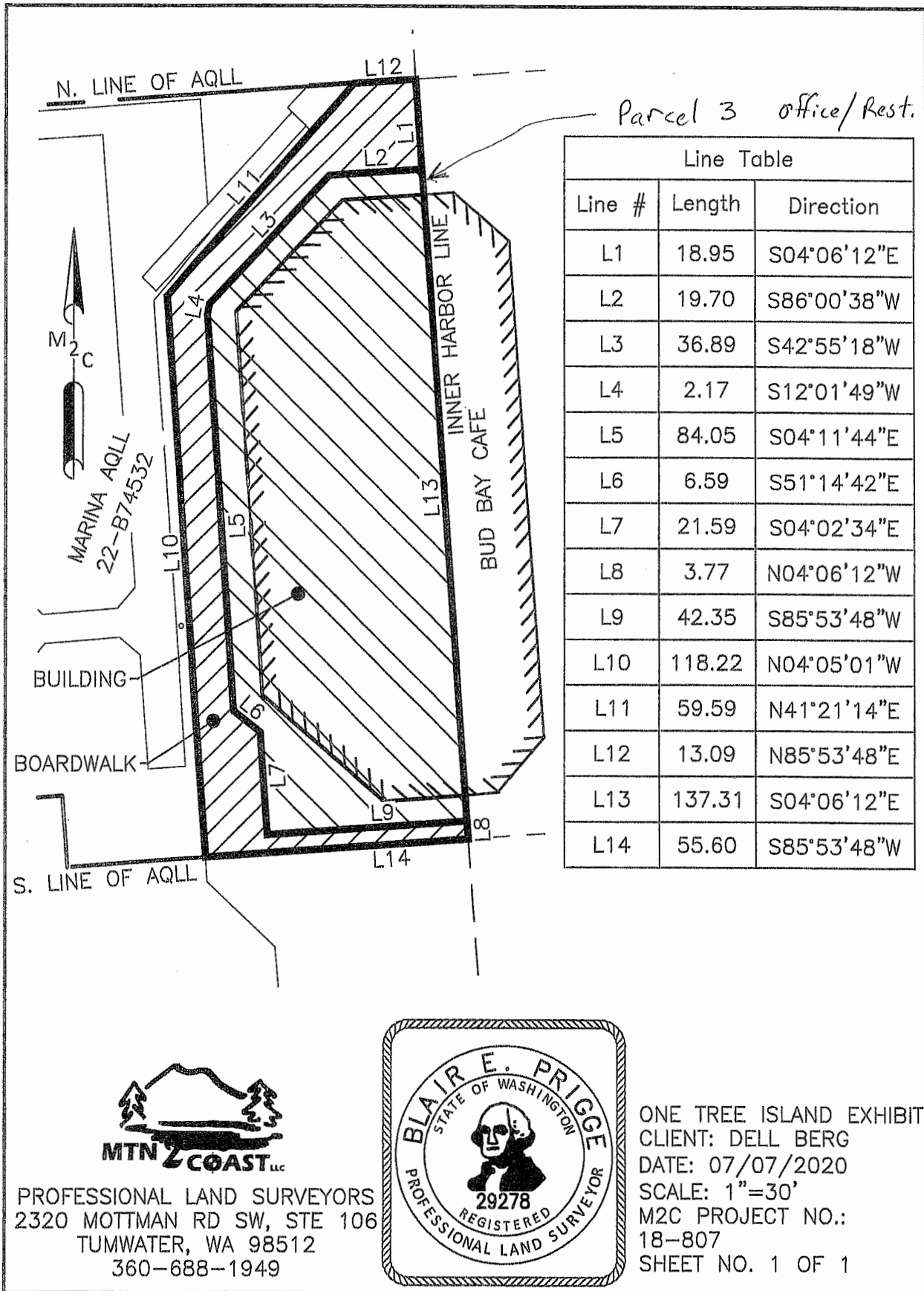
CONTAINING 6,017 SQUARE FEET, MORE OR LESS;

SITUATE IN THE CITY OF OLYMPIA, THURSTON COUNTY, WASHINGTON.

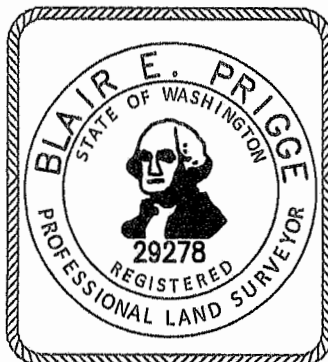




# Exhibit A to Sublease



**MTN & COAST LLC**  
 PROFESSIONAL LAND SURVEYORS  
 2320 MOTTMAN RD SW, STE 106  
 TUMWATER, WA 98512  
 360-688-1949



ONE TREE ISLAND EXHIBIT  
 CLIENT: DELL BERG  
 DATE: 07/07/2020  
 SCALE: 1"=30'  
 M2C PROJECT NO.:  
 18-807  
 SHEET NO. 1 OF 1

**EXHIBIT B**  
**DNR MASTER LEASE**

When recorded, return to:  
Wedell A. Berg Jr.  
Attn: 438  
16625 Redmond Way Ste M  
Redmond, WA 98052



HILARY S. FRANZ  
COMMISSIONER OF PUBLIC LANDS

## AQUATIC LANDS LEASE

### Lease No. 22-B74532

Grantor: Washington State Department of Natural Resources  
Grantee(s): Wedell A. Berg, Jr.  
Legal Description: SW1/4 NW1/4, Section 14, Township 18 North, Range 2 West, W.M.  
Complete Legal Description on Page 36  
Auditor Reference Number: 4701732  
Assessor's Property Tax Parcel or Account Number: Not Applicable  
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: Not Applicable

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and WEDELL A. BERG, JR, a single individual ("Tenant").

## BACKGROUND

Tenant desires to lease a portion of the aquatic lands commonly known as Budd Inlet, which is a harbor area located in Thurston County, Washington, from State, and State desires to lease the Property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter



into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

## SECTION 1 PROPERTY

### 1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").
- (b) This Lease is subject to all valid interests of third parties noted in the records of Thurston County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Lease does not include a right to harvest, collect, or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

### 1.2 Survey and Property Descriptions.

- (a) Tenant warrants that the legal description provided in Exhibit A is a true and accurate description of the Property boundaries and the Improvements already existing on the Property. Tenant's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease
- (b) Tenant's use or occupancy of any state-owned aquatic lands outside the Property boundaries is a material breach of this Lease and State may seek remedies under Section 14 of this Lease in addition to any other remedies afforded by law or equity or otherwise.

**1.3 Inspection.** State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

## SECTION 2 USE

**2.1 Permitted Use.** Tenant shall use the Property for a commercial marina, a two-story commercial office building/restaurant, and public access (the "Permitted Use"), and for no other

purpose. Exhibit B includes additional details about the Permitted Use, the Property, and Improvements. The Permitted Use of this Lease shall not be changed or modified without the written consent of State which shall be at State's sole discretion.

**2.2 Restrictions on Permitted Use and Operations.** The following limitations and requirements apply to the Property and adjacent state-owned aquatic land. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease.

- (a) Tenant shall not cause or permit:
  - (1) Damage to natural resources,
  - (2) Waste, or
  - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Nothing in this Lease shall be interpreted as an authorization to dredge the Property.
- (c) If pressure washing or cleaning any equipment, machinery, or floating or fixed structures, Tenant shall avoid scouring the substrate and damaging any aquatic land and vegetation. Tenant shall also comply with the following limitations:
  - (1) If equipment contains or is covered with petroleum based products: (1) Tenant shall not pressure wash such equipment in or over the water and (2) all wash water must be contained and taken to an approved treatment facility.
  - (2) Tenant shall collect or sweep up non-organic debris accumulations on structures resulting from pressure washing and properly dispose of such debris in an upland location.
  - (3) Tenant shall pressure wash using only clean water. Tenant shall not use or add to the pressure washing unit any detergents or other cleaning agents.
  - (4) Tenant shall pressure wash painted structures using appropriate filter fabric to control and contain paint particles generated by the pressure washing.
  - (5) Tenant shall avoid damage caused by propeller wash from vessels.
  - (6) Tenant shall not allow moorage or anchorage of vessels in water shallower than seven (7) feet at the extreme low tide, and shall not allow vessels to come in contact with underlying tidelands or bedlands (commonly referred to as "grounding out") at any time.
- (d) Tenant shall not construct new bulkheads or place hard bank armoring.
- (e) Tenant shall not construct or install new covered moorage or boat houses.
- (f) Tenant shall incorporate best management practices for marinas to prevent release of chemical contaminants, wastewater, garbage, and other pollutants. As of the Commencement Date, current best management practices for marinas are set forth in Pollution Prevention for Washington State Marinas, available at <https://wsg.washington.edu/wordpress/wp-content/uploads/marina-handbook.pdf>. If this Lease, the Department of Natural Resources, Department of Ecology, or any other governmental entity that has jurisdiction over the

Property establishes different standards, Tenant shall meet the most protective standard.

**2.3 Conformance with Laws.** Tenant shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant's use or occupancy of the Property.

**2.4 Liens and Encumbrances.** Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant's occupancy of the Property.

**2.5 Residential Uses Prohibited.** Residential uses, as defined by WAC 332-30-106(62), are not permitted on the Property.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Lease is Thirty (30) years (the "Term"), beginning on the 1st day of August, 2020 (the "Commencement Date"), and ending on the 31st day of July, 2050 (the "Termination Date"), unless terminated sooner under the terms of this Lease. Whenever the phrase "termination of this Lease" or "termination of the Lease" is used in this Lease, it shall refer to the ending, termination, cancellation, or expiration of the Lease.

**3.2 Renewal of the Lease.** This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant or deny. Tenant must apply for a new lease at least one (1) year prior to Termination Date.

**3.3 End of Term.**

- (a) Removal of Improvements and Personal Property: Prior to the termination of this Lease, Tenant shall remove Improvements and Personal Property in accordance with Section 7, Improvements.
- (b) Restoration of Property:
  - (1) Prior to the termination of this Lease, Tenant shall restore the Property to its condition before the installation of any Improvements on the Property.
  - (2) This restoration is to be done at Tenant's expense and to the satisfaction of State. Restoration of the Property is considered to be Work, as described in Section 7 of the Lease. Tenant's plans for restoring the Property shall be submitted to State for prior approval in accordance with Section 7 of this Lease.
  - (3) If Tenant fails to restore the condition of the Property as required by this Paragraph, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited on the Property, lost revenue resulting from the

condition of the Property, and administrative costs associated with State's remedy.

- (c) Vacation of Property: Upon the termination of this Lease, Tenant shall cease all operations on and use of the Property and surrender the Property to State.

### **3.4 Holdover.**

- (a) If Tenant remains in possession of the Property after the Termination Date, and State has not notified Tenant that Tenant must vacate the Property, in the absence of a new lease agreement between State and Tenant, the following terms apply: Tenant's occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, except that either Party may terminate the tenancy on thirty (30) days' written notice. The month-to-month occupancy will not be an extension or renewal of the Term.
  - (1) The monthly rent during the month-to-month tenancy will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
  - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.
- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe State all amounts due under RCW 79.02.300 or other applicable laws.

## **SECTION 4 RENT**

### **4.1 Annual Rent.**

- (a) The Annual Rent is based on the use classification of Tenant's Permitted Use of the Property and the square footage of each use classification, as set forth in Exhibit A.
- (b) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Seventeen Thousand Seven Hundred Thirteen Dollars and Thirty-Eight Cents (\$17,713.38) consisting of Six Thousand Three Hundred Fifty-Eight Dollars and Ninety-Eight Cents (\$6,358.98) related to the water-dependent use and Eleven Thousand Three Hundred Fifty-Four Dollars and Forty Cents (\$11,354.40) related to the nonwater-dependent use.
- (c) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is paid in quarterly installments, each of which is equal to one-fourth (1/4) of the then current Annual Rent. The first installment, in the amount of Four Thousand Four Hundred Twenty-Eight Dollars and Thirty-Four Cents (\$4,428.34), is due and payable in full on or before the Commencement Date and subsequent installments shall be due and payable in full on or before the same day

of each third month thereafter. Any payment not paid by State's close of business on the date due is past due.

- (d) **Public Use and Access.** This Lease allows for free or reduced rent for areas that meet the requirements of RCW 79.105.230 and WAC 332-30-131. If Tenant's use of these areas cease to meet the requirements for free or reduced rent in RCW 79.105.230 and WAC 332-30-131, State will charge Tenant water-dependent rent for using these areas.

**4.2 Payment Place.** Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

**4.3 Adjustment Based on Change in Use Classification.** Neither the use classification nor the square footage of a use classification shall be changed without the prior written consent of State. If the use classification or the square footage of a use classification is changed, the Annual Rent shall be adjusted based on the revised use classification or square footage of each use classification.

**4.4 Rent Adjustment Procedures.**

- (a) **Notice of Rent Adjustment.** State shall provide notice of adjustments to the Annual Rent allowed under Paragraphs 4.5(b) and 4.6(b) to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.
- (b) If State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

**4.5 Rent Adjustments for Water Dependent Uses**

- (a) **Inflation Adjustment.** State shall adjust water dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.
- (b) **Revaluation of Rent.** At the end of the first four year period of the Term, and at the end of each subsequent four year period, State shall revalue the water dependent Annual Rent in accordance with RCW 79.105.200-.360.
- (c) **Rent Cap.** State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until State implements the full amount of increase as determined by the statutory rent formula.

**4.6 Rent Adjustments for Nonwater Dependent Uses**



- (a) **Inflation Adjustment.** State shall adjust nonwater-dependent rent annually on the Commencement Date, except in those years in which State revalues the rent under Paragraph 4.6(b) below. Adjustment is based on the percentage rate of change in the previous calendar year's Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, for the Seattle-Tacoma-Bellevue Metropolitan Statistical Area, All Urban Consumers, all items 1982-84 = 100. If publication of the Consumer Price Index is discontinued, State shall use a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index.
- (b) **Revaluation of Rent.** At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the nonwater dependent Annual Rent to reflect the then-current fair market rent.

## **SECTION 5 OTHER EXPENSES**

- 5.1 Utilities.** Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.
- 5.2 Taxes and Assessments.** Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the Improvements, or Tenant's use and enjoyment of the Property.
- 5.3 Right to Contest.** If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.
- 5.4 Proof of Payment.** If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.
- 5.5 Failure to Pay.** If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

## **SECTION 6 LATE PAYMENTS AND OTHER CHARGES**

- 6.1 Failure to Pay Rent.** If Tenant fails to pay rent when due under this Lease, State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.
- 6.2 Late Charge.** If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

**6.3 Interest Penalty for Past Due Rent and Other Sums Owed.**

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

**6.4 Referral to Collection Agency and Collection Agency Fees.** If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

**6.5 No Accord and Satisfaction.** If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

**6.6 No Counterclaim, Setoff, or Abatement of Rent.** Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

**SECTION 7 IMPROVEMENTS**

**7.1 Improvements Defined.**

- (a) "Improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, adjacent state-owned aquatic lands, or Improvements or (2) diminishing the value or utility of the Property, adjacent state-owned aquatic lands, or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant (2) acquired by Tenant from the prior tenant, (3) made by

subtenants on the Property, or (4) acquired by a subtenant from Tenant or a prior subtenant or tenant.

- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by State.

**7.2 Existing Improvements.** On the Commencement Date, the following Improvements are located on the Property: a gangway, three (3) floating docks, twenty-seven (27) finger floats, pilings, a portion of an elevated boardwalk, and a portion of a two-story building. The gangway, three floating docks, twenty-seven finger floats and all pilings not associated with the boardwalk and building are State-Owned Improvements. The boardwalk, the pilings associated with the boardwalk, and the two-story building are Tenant-Owned Improvements. State-Owned Improvements that are removed and replaced in accordance with the terms of this Lease shall become Tenant-Owned Improvements upon their replacement.

**7.3 Construction, Major Repair, Modification, and Other Work.**

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements ("Work").
- (b) Except in an emergency, Tenant shall not conduct Work, without State's prior written consent. Tenant shall obtain State's prior written consent as follows:
  - (1) Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.
  - (2) State may deny consent if State determines that denial is in the best interest of the State of Washington or if proposed Work does not comply with Paragraphs 7.4 and 11.3. State may impose additional conditions reasonably intended to protect and preserve the Property.
  - (3) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat, including, but not limited to: native aquatic vegetation, commercial geoduck tracts, forage fish spawning areas, and salmon critical habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.
- (c) Tenant shall immediately notify State of emergency Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.
- (d) Tenant shall not commence or authorize Work until Tenant or Tenant's contractor has:
  - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction.

Tenant or Tenant's contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.

- (2) Obtained all required permits.
- (e) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (f) Upon completing Work, Tenant shall promptly provide State with as-built plans and specifications. State may also require Tenant to obtain an updated record of survey showing the Property boundaries and the as-built location of all Improvements on the Property.
- (g) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

#### **7.4 Standards for Work.**

- (a) Applicability of Standards for Work.
  - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work commences when State approves plans and specifications.
  - (2) If Tenant commences Work five years or more after the Commencement Date, Tenant shall comply with State's then current standards for Work.
  - (3) Tenant may ascertain State's current standards for Work as follows:
    - (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with then current standards for Work on State-owned Aquatic Lands.
    - (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards.
    - (iii) If State does not timely provide current standards upon Tenant's request, the standards under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for standards.
    - (iv) If Tenant fails to (1) make a request for current standards or (2) timely submit plans and specifications to State after receiving current standards, Tenant shall make changes in plans or Work necessary to conform to current standards for Work upon State's demand.

- (b) Standards for Work.
  - (1) Tenant shall not install skirting on any overwater structure.
  - (2) Tenant shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-330, Authorized Work Times in Saltwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW), United States Fish and Wildlife Service (USFWS), or National Marine Fisheries Service (NMFS).
  - (3) Tenant shall install grating on new floats, piers, wharves, fingers, docks, decks, fixed docks, and/or gangways as follows: For floats, fingers, and docks, Tenant shall install unobstructed grating on at least fifty percent (50%) of the surface area; grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space. For gangways, piers, wharves, decks, and fixed docks, Tenant shall install grating on one hundred percent (100%) of the surface area; grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space.
  - (4) Tenant shall not allow new floating structures to come in contact with underlying tidelands or bedlands ("ground out"). Tenant must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to prevent grounding, keeping the bottom of the structure above the level of the substrate.

**7.5 Tenant-Owned Improvements at End of Lease.**

- (a) Removal of Tenant-Owned Improvements upon termination.
  - (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Lease unless State waives the requirement for removal.
  - (2) Tenant-Owned Improvements remaining on the Property after the termination of the Lease shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
  - (3) If Tenant-Owned Improvements remain on the Property after the termination of the Lease without State's consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
  - (1) State may waive removal of any Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant enters into a new lease for the Property.
  - (2) If Tenant re-leases the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.

- (3) If Tenant does not enter into a new lease for the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
  - (i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.
  - (ii) State, within ninety (90) days of receiving Tenant's notification, will notify Tenant whether State consents to any Tenant-Owned Improvements remaining. State has no obligation to grant consent.
  - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
  - (1) Tenant shall not remove Tenant-Owned Improvements if State waives the requirement for removal of any Tenant-Owned Improvements.
  - (2) Tenant shall maintain such Tenant-Owned Improvements in accordance with this Lease until the termination of the Lease. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Tenant-Owned Improvements State has designated to remain.

#### **7.6 Unauthorized Improvements.**

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements on the Property is a default of the Lease. State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and Tenant fails to remove Unauthorized Improvements, State may remove Unauthorized Improvements and Tenant shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Tenant a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.
- (d) If State consents to Unauthorized Improvements remaining on the Property, upon State's consent, the Unauthorized Improvements will be treated as Tenant-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

#### **7.7 Personal Property.**

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the termination of the Lease. Tenant is liable for damage to the Property and Improvements resulting from removal of Personal Property.

- (c) State may sell or dispose of all Personal Property left on the Property after the termination of the Lease.
  - (1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs in conducting the sale, and any other payment due from Tenant to State. State shall pay the remainder, if any, to the Tenant. Tenant shall be liable for any costs of removing the Personal Property and any costs of conducting the sale that exceed the proceeds received by State.
  - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

**7.8 Disposition of State-Owned Improvements.**

- (a) Tenant shall remove State-Owned Improvements in accordance with Paragraph 7.3 by the termination of this Lease unless State waives the requirement for removal.
- (b) If Tenant enters into a new Lease, State may waive requirement for Tenant to remove State-Owned Improvements.
- (c) If Tenant fails to remove State-Owned Improvements, State may remove all Improvements and Tenant shall pay the costs of removal and disposal.

**SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definitions.**

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW.
- (d) "Tenant and affiliates" when used in this Section 8 means Tenant or Tenant's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

**8.2 General Conditions.**

- (a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above:
  - (1) The Property; and

- (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
  - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
  - (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

**8.3 Current Conditions and Duty to Investigate.**

- (a) State makes no representation about the condition of the Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Property.
- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Tenant to meet Tenant's obligations under this Lease and utilize the Property for the Permitted Use.

**8.4 Use of Hazardous Substances.**

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant's use or occupancy of the Property results in violation of law:
  - (1) Tenant shall submit to State any plans for remedying the violations, and
  - (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.
- (d) At a minimum, Tenant and affiliates shall observe the following Hazardous Substances operational standards. If the Washington Department of Ecology, U.S. Environmental Protection Agency (EPA) or other regulatory agency establishes different standards applicable to Tenant's activities under the Permitted Use, Tenant shall meet the standard that provides greater protection to the environment.
  - (1) Tenant shall not allow work on overwater structures or vessels without protective measures to prevent discharge of toxins to the water, including:
    - (i) Tenant shall not cause or allow underwater hull scraping and other underwater removal of paints.



- (ii) Tenant shall not cause or allow underwater refinishing work from boats or temporary floats unless permitted by an industrial National Pollutant Discharge Elimination System (NPDES) permit.
  - (iii) Tenant shall not cause or allow above the waterline boat repairs or refinishing in-water except if limited to decks and superstructures and less than 25 percent (25%) of a boat is repaired or refinished in-water per year.
  - (iv) Tenant shall use and require others to use tarps and other dust, drip and spill containment measures when repairing or refinishing boats in water.
- (2) Tenant shall not store or allow others to store fuel tanks, petroleum products, hydraulic fluid, machinery coolants, lubricants and chemicals not in use in locations above the water surface.
  - (3) Tenant shall inspect all equipment using petroleum products, hydraulic fluids, machinery coolants, chemicals, or other toxic or deleterious materials on a monthly basis and immediately make all repairs necessary to stop leakage. Tenant shall document the monthly inspections and repairs and keep such documentation for the duration of the Lease. Within thirty (30) days of a request by State, Tenant shall make any requested documentation of monthly inspections available to State.
  - (4) Tenant shall maintain a supply of oil spill containment materials adequate to contain a spill from the largest vessel in use on the Property.

**8.5 Management of Contamination, if any.**

- (a) Tenant and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
  - (1) Employees and authorized agents of the EPA , the Washington State Department of Ecology, health department, or other similar environmental agencies; and
  - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

**8.6 Notification and Reporting.**

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
  - (1) A release or threatened release of Hazardous Substances;

- (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
  - (3) Any lien or action arising from Hazardous Substances;
  - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
  - (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
  - (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits; U.S. Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Shoreline Substantial Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

**8.7 Indemnification.**

- (a) Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities that arise out of, or relate to:
  - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
  - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold harmless State for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.
- (c) If Tenant fails to exercise care as described in Paragraph 8.2(b)(2), to the extent permitted by law, Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

**8.8 Reservation of Rights.**

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.

- (b) The Parties expressly reserve all rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

**8.9 Cleanup.**

- (a) If Tenant's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

**8.10 Sampling by State, Reimbursement, and Split Samples.**

- (a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with the Tests, provided State gave Tenant thirty (30) calendar days advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) calendar days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

## SECTION 9 ASSIGNMENT AND SUBLETTING

**9.1 State Consent Required.** Tenant shall not sell, convey, mortgage, assign, pledge, sublease, or otherwise transfer, or encumber any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall be at State's sole discretion.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation, and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon:
  - (1) Changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or
  - (2) The agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant. Tenant shall remain liable for the full and complete performance, satisfaction, and compliance with the terms of this Lease.
- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

**9.2 Rent Payments Following Assignment.** The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

**9.3 Terms of Subleases.**

- (a) Tenant shall submit the terms of all subleases to State for prior approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
  - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
  - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
  - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
  - (4) The sublease must terminate if this Lease terminates for any reason;
  - (5) The subtenant must receive and acknowledge receipt of a copy of this Lease;
  - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than three months rent;

- (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
- (8) The sublease must provide that there is no privity of contract between the subtenant and State;
- (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
- (10) The subtenant's permitted use must be within the scope of the Permitted Use;
- (11) The sublease must require the subtenant to meet the Indemnification requirements under Section 10;
- (12) The sublease must require the subtenant to meet the Insurance requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement;
- (13) The sublease must require the subtenant to comply with the Financial Security requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement;
- (14) If the sublease includes moorage of a vessel, the sublease must require the subtenant to procure marine insurance as set forth in Paragraph 10.2(c)(4) of this Lease.

**9.4 Short-Term Subleases of Moorage Slips and Office Building Units.** Short-term subleasing of moorage slips for a term of one year or less and short-term sub-subleases of units within the office building for a term of one year or less do not require State's prior approval pursuant to Paragraphs 9.1 or 9.3(a); however, all such sublease and sub-sublease agreements shall meet the sublease requirements in Paragraph 9.3(b).

## **SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY**

### **10.1 Indemnity.**

- (a) Tenant shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, and any Claim arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property, diminution in value, and/or damages resulting from loss of use of the Property.

- (c) State shall not require Tenant to indemnify, defend, and hold harmless State, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State, its employees, officials, officers, or agents.
- (d) Tenant specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, Tenant's obligation under this Lease to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the worker's compensation acts.
- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents, and (b) the Tenant or Tenant's subtenants, agents, or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Tenant and those acting on its behalf.
- (f) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

**10.2 Insurance Terms.**

- (a) Insurance Required.
  - (1) At its own expense, Tenant, or Tenant's contractor(s) where permitted in Paragraph 10.3, shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Paragraph 10.2 and in Paragraph 10.3, Insurance Types and Limits. State may terminate this Lease if Tenant fails to maintain required insurance.
  - (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
  - (3) All general liability, excess, umbrella, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.
  - (4) All property insurance, builder's risk insurance and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as a loss payee.

- (5) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
  - (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
  - (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) Proof of Insurance.
  - (1) Tenant shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease; and, if requested, copies of policies to State.
  - (2) The certificate(s) of insurance must reference the Lease number.
  - (3) Receipt of such certificates, endorsements or policies by State does not constitute approval by State of the terms of such policies.
  - (4) For all moorage agreements issued by the Tenant that are entered into or renewed after June 12, 2014, Tenant shall require all vessels except transient vessels to provide proof of marine insurance that provides coverage at liability limits of at least three hundred thousand dollars (\$300,000) per occurrence and includes, at a minimum, general liability, legal liability, and pollution liability coverage. To the extent not already included in the general, legal, and pollution liability coverage of a vessel owner, Tenant shall also require the vessel owner to provide proof of coverage for fuel spills, hull damage, wreck removal, salvage, and injuries to passengers and crew of the vessel. Failure to comply with the insurance requirements as outlined in RCW 88.26.030 shall cause Tenant to assume secondary liability under RCW 79.100.060 for any derelict or abandoned vessel as defined in RCW 79.100.010 located on the Property.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
  - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
  - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
  - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.

- (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
  - (1) Deem the failure an Event of Default under Section 14 and terminate the Lease without giving Tenant any further opportunity to cure, or
  - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Tenant's repayment.
- (g) General Terms.
  - (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
  - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
  - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

**10.3 Insurance Types and Limits.**

- (a) General Liability Insurance.
  - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than Two Million Dollars (\$2,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
  - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
  - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
  - (1) State of Washington Workers' Compensation.



- (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
  - (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
- (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
  - (1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived.
  - (2) Tenant shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
  - (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

- (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
  - (i) Repair and restore damaged building(s) and/or Improvements to their former condition, or
  - (ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.
- (e) **Builder's Risk Insurance.**
  - (1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and all subcontractors in the work as insured.
  - (2) Insurance described above must cover or include the following:
    - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
    - (ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
    - (iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;
    - (iv) Scaffolding, falsework, and temporary buildings located on the Property; and
    - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
  - (3) Tenant or Tenant's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
  - (4) Tenant or Tenant's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured.

#### **10.4 Financial Security.**

- (a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its

option, may approve ("Security"). Tenant shall provide Security in an amount equal to Forty-One Thousand Dollars (\$41,000.00), which secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.

- (b) All Security must be in a form acceptable to State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports, unless State approves an exception in writing. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount:
    - (i) At the same time as revaluation of the Annual Rent,
    - (ii) As a condition of approval of assignment or sublease of this Lease,
    - (iii) Upon a material change in the condition or disposition of any Improvements, or
    - (iv) Upon a change in the Permitted Use.
  - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate the Lease or cure the default or (4) prevent termination of the Lease because of the default.

## SECTION 11 MAINTENANCE AND REPAIR

**11.1 State's Repairs.** State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

**11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.**

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all Improvements in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions,

repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that may be required by any public authority having jurisdiction over the Property and requiring it for public health, safety and welfare purposes.

- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, replacements or changes to the Property and to any Improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

**11.3 Limitations.** The following limitations apply whenever Tenant conducts maintenance, repair, or replacement. The following limitations also apply whenever Tenant conducts Work on the Property.

- (a) Tenant shall not use or install treated wood on decks, pilings, or any other structure at any location above or below water, except that Tenant may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood for above water structural framing. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.
- (b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of floatation material into the water.

## SECTION 12 DAMAGE OR DESTRUCTION

**12.1 Notice and Repair.**

- (a) In the event of any damage to or destruction of the Property or any Improvements, Tenant shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Other Work and Tenant's additional obligations in Exhibit B, if any.

**12.2 State's Waiver of Claim.** State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

**12.3 Insurance Proceeds.** Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the

availability of any insurance proceeds to Tenant from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

**12.4 Rent in the Event of Damage or Destruction.** Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

**12.5 Default at the Time of Damage or Destruction.** If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

## **SECTION 13 CONDEMNATION**

### **13.1 Definitions.**

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

**13.2 Effect of Taking.** If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

### **13.3 Allocation of Award.**

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

## **SECTION 14 DEFAULT AND REMEDIES**

**14.1 Default Defined.** Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease;
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

**14.2 Tenant's Right to Cure.**

- (a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is sixty (60) days.
- (c) For nonmonetary defaults not capable of cure within sixty (60) days, Tenant may submit a reasonable alternative cure schedule for State's approval, which State has discretion to grant or deny. The default is not an Event of Default if State approves the alternative schedule and Tenant cures the default in accordance with the approved alternative cure schedule.
- (d) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

**14.3 Remedies.**

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) State's Rights to Cure Tenant's Defaults.
  - (1) If an Event of Default occurs, State may, without terminating this Lease, remedy the default (in whole or in part) on behalf of Tenant at Tenant's expense. Tenant shall pay State all costs, expenses, fees, and damages incurred by State in connection therewith.
  - (2) If Tenant is in default under the terms of the Lease, and State determines that such default poses an imminent threat of injury or damage to persons or property, State may enter the Property and take actions to eliminate, mitigate, or remedy the imminent threat at Tenant's expense. On demand by State, Tenant shall pay State the amount of all costs, expenses, and fees incurred by State in connection therewith.
  - (3) The rights given to State under Paragraph 14.3(b)(1)-(2) shall neither impose a duty on State nor excuse any failure on Tenant's part to comply with any term, covenant, or condition of this Lease.
- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.

- (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.
- (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
- (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which State is lawfully entitled for Tenant's default or threatened default of any provision of this Lease.

## SECTION 15 ENTRY BY STATE

### 15.1 Right to Enter The Property

- (a) State and persons authorized by State may, without notice to Tenant, enter the Property and any Improvements on the Property at any reasonable hour to inspect the Property and Improvements, to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, to survey habitat and species, enforce the terms of the Lease, or to exercise any right of State under the Lease or the law.
- (b) State and persons authorized by State, may enter the Property and any Improvements at any time without notice in the case of an imminent threat of injury or damage to persons or property or to prevent waste on the Property.

**15.2 Disclaimer.** State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease. The rights given to State under this Section 15 do not impose, nor does State assume by reason thereof, any responsibility for the care, maintenance, or supervision of the Property or any part thereof.

**15.3 Right to Enter Tenant's Land.** Tenant leases from the City of Olympia the uplands and aquatic lands adjacent to the Property. Tenant grants State and persons authorized by State permission to cross these uplands and aquatic lands adjacent to the Property.

## SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

### 16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.
- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

**16.2 Eviction by Third-Party.** If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

## SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days' written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
 Aquatic Resources Division  
 950 Farman Avenue North  
 Enumclaw, WA 98022

Tenant: Dell Berg Attn: 438  
 16625 Redmond Way Ste M  
 Redmond, WA 98052

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

## SECTION 18 MISCELLANEOUS

**18.1 Authority.** Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full



right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

**18.2 Successors and Assigns.** Subject to the limitations set forth in Section 9, this Lease binds and inures to the benefit of the Parties, their successors, and assigns.

**18.3 Headings.** The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

**18.4 Entire Agreement.** This Lease, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

**18.5 Waiver.**

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

**18.6 Cumulative Remedies.** The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

**18.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Lease.

**18.8 Language.** The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

**18.9 Invalidity.** The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

**18.10 Applicable Law and Venue.** This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

**18.11 Statutory Reference.** Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

**18.12 Recordation.** At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number.

**18.13 Modification.** No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

**18.14 Survival.** Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

**18.15 Exhibits and Attachments.** All referenced exhibits and attachments are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

Dated: 8/26, 2020 Wedell A. Berg Jr.  
By: WEDELL A. BERG, JR.  
Title: Individual  
Address: 16625 Redmond Way Ste M  
Redmond, WA 98052

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: September 25, 2020 Katrina Lassiter  
By: KATRINA LASSITER  
Title: Interim Deputy Supervisor for Aquatics  
Address: Aquatic Resources Division  
950 Farman Avenue N  
Enumclaw, WA 98022

Approved as to form this  
23<sup>rd</sup> day of July 2020  
Jennifer Clements, Assistant Attorney General

INDIVIDUAL ACKNOWLEDGMENT

STATE OF STATE )  
 ) ss.  
County of County King. )

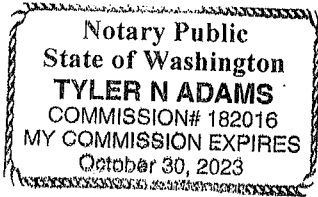
I certify that I know or have satisfactory evidence that WEDELL A. BERG, JR. is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: Aug 26th, 2020

(Seal or stamp)

Tyler N. Adams  
(Signature)

Tyler N. Adams  
(Print Name)



Notary Public in and for the State of  
Washington, residing at  
Seattle

My appointment expires Oct. 30, 2023

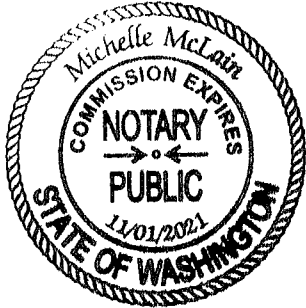
STATE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
Thurston ) ss.  
County of ~~County~~ )

I certify that I know or have satisfactory evidence that KATRINA LASSITER is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Interim Deputy Supervisor for Aquatics of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: September 25, 20  

(Seal or stamp)



Michelle McLain  
(Signature)

Michelle McLain  
(Print Name)

Notary Public in and for the State of  
Washington, residing at  
Olympia

My appointment expires 11/1/21

**EXHIBIT A  
PROPERTY DESCRIPTION**

**Agreement Number:** 22-B74532

**1. LEGAL DESCRIPTION OF THE PROPERTY:**

That real property legally described and shown as One Tree Island Marina in that Record of Survey recorded in Thurston County, Washington on August 21, 2019 under Auditor's File Number 4701732.

**2. SQUARE FOOTAGE OF EACH USE CLASSIFICATION:**

Water-dependent	<u>40,000</u>
Water-dependent use that is Public Use and Access	<u>1,698</u>
Nonwater-dependent	<u>6,308</u>
<b>Total Square Feet</b>	<b><u>48,006</u></b>

**PLAN OF OPERATIONS  
EXHIBIT B**

**1. DESCRIPTION OF PERMITTED USE.**

**A. Existing Facilities**

The facility, known as One Tree Island Marina, is located on the east shore of the West Bay of Budd Inlet, just south of the Port of Olympia. Surrounding land use is high density commercial and industrial. Water depths are estimated to be between -12 feet and -16 feet at MLLW, and sediments are primarily mud. There is no documented longshore sediment drift and the shoreline is constructed of fill armored with rip rap. The nearby Deschutes River supports spawning runs of Chinook, coho, chum, and steelhead. Critical habitat is designated for Chinook. There is no documented forage fish spawning habitat in the vicinity, but Surf smelt are known to spawn on the west shore of the bay. No other priority habitats or species of concern are identified.

It is noted that the Property was dredged at the time of marina expansion in 1987. Dredged sediment was found to be contaminated with heavy metals, phthalates, and polycyclic aromatic hydrocarbons (PAHs), and was disposed of onsite as part of a Confined Aquatic Disposal (CAD) pilot project completed by the U.S. Army Corps of Engineers. In addition, the Property is located just south of the Budd Inlet Sediment Area, which is known to be contaminated with dioxin and carcinogenic polycyclic aromatic hydrocarbons (cPAHs). The emergency outfall for the LOTT Wastewater Treatment Plant discharges just north of the marina, and several nearby facilities discharge industrial stormwater to the bay. Water quality impairments are documented for dissolved oxygen, bacteria, and temperature.

A marina has been in place at this location since 1986, and has been present in its current configuration since 1987. The marina provides short and long term moorage of the Property for up to 59 vessels up to 32 feet in length. Electric and water service are available to all slips; no fueling or pumpout service occurs on site. Improvements on the Property include an aluminum gangway with ACZA-treated wood decking, three concrete floating docks, 27 concrete finger floats, a portion of an ACZA-treated wood elevated walkway associated with the City of Olympia's Percival Landing, and approximately two-thirds of a building that houses a restaurant and various office space. The building is owned by Boardwalk Associates Co-Tenancy Investors, with the managing co-tenant being EOP Partnership III. Dock and finger floatation is encapsulated within concrete pontoons, and marina improvements and the raised walkway are supported by treated wood pilings. Rip rap armoring material along the shoreline is also located on the Property.

**B. Proposed Work.** Tenant proposes no new facilities or Work.

**2. ADDITIONAL OBLIGATIONS.**

State has not authorized Tenant to conduct any Work on the Property. Where Work will need to be conducted to meet the Additional Obligations below, Tenant shall obtain State's prior written consent in accordance with Section 7.3 of this Lease and obtain all necessary regulatory permits prior to commencing such Work.

- A. By July 31, 2021, Tenant shall post visible signage on the Property that includes all national and state emergency reporting numbers for oil and chemical spills.
- B. By July 31, 2021, Tenant shall mark all no-wake zones with visible signage.
- C. By July 31, 2032, Tenant shall replace existing treated wood pilings with non-toxic materials such as untreated wood, steel, concrete, or recycled plastic, or encase the existing wood in a manner that prevents leaching of contaminants into surface water.
- D. By July 31, 2032, Tenant shall replace existing docks, floats, and gangways as follows:
  - (i) For docks, and floats, Tenant shall install grating on at least fifty percent (50%) of the surface area. Grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space.
  - (ii) For gangways, Tenant shall install grating on one hundred percent (100%) of the surface area. Grating material must have at least sixty percent (60%) unobstructed open space or forty percent (40%) or greater multi-directional open space..
- E. Tenant shall submit to State for approval a written sewage management plan by July 31, 2022 that identifies and explains the methods Tenant will require vessels moored on the Property to use for disposing wastewater from vessel holding tanks and portable toilets and identifies available upland restroom facilities Tenant shall implement the plan sixty (60) days after State approves or waives approval of the plan.
- F. Tenant shall orient and shield lighting fixtures attached to overwater structures in a manner which minimizes the amount of light shining directly on the water, minimizes the amount of glare on the water, and minimizes the amount of light broadcasting into the night sky. Tenant shall implement the following measures to achieve this requirement:
  - (i) Tenant shall direct light to walkways,
  - (ii) Tenant shall use light shields which prevent light from being emitted upward and prevent glare on the water,
  - (iii) Tenant shall use fixtures that do not emit light upward,
  - (iv) Tenant shall use lights that are "warm-white" or filtered,
  - (v) Tenant shall not use fluorescent light bulbs.



**EXHIBIT D**  
**MAINTENANCE AGREEMENT**

**MAINTENANCE AGREEMENT  
BETWEEN THE CITY OF OLYMPIA  
AND BOARDWALK ASSOCIATES.**

THIS AGREEMENT is made and entered into the 28<sup>th</sup> day of October, 2020, by and between the City of Olympia, a Washington municipal corporation (“Olympia”) and Boardwalk Associates, a Washington general partnership (“Boardwalk Associates”) (jointly “the Parties”). This Agreement is intended to provide the terms by which the Olympia and Boardwalk Associates will cooperate in, and share in the costs of, maintaining certain elements of the infrastructure described below.

**Background**

1. Boardwalk Associates subleases certain aquatic lands from Wedell A. Berg, Jr., who holds a lease for aquatic lands from the Washington Department of Natural Resources (DNR). Boardwalk Associates and Olympia also have a right-of-way use agreement allowing Boardwalk Associates to use a portion of the City’s Columbia Street right-of-way. Boardwalk Associates owns a building and associated appurtenances which are partly on aquatic lands leased from Berg and partly on Olympia’s right-of-way, under the right-of-way use agreement between Olympia and Boardwalk Associates. Boardwalk Associate’s sublease area is shown and described in Exhibit A.
2. Olympia is subleasing from Berg another portion of Berg’s aquatic lands that he leases from DNR for Olympia’s Percival Landing boardwalk and associated facilities. Olympia’s sublease area is shown and described in Exhibit B.
3. Certain portions of Boardwalk Associates’ building and associated appurtenances and Olympia’s Percival Landing boardwalk and associated facilities are structurally connected.
4. Given this structural connection, the parties wish to cooperate in, and as appropriate share in the cost of, maintaining their respective infrastructure.

Therefore, the parties agree as follows:

**Agreement**

1. Infrastructure maintenance responsibilities:
  - a. Except as provided in c, below, the City shall maintain and repair as necessary its sublease area, including that area designated as Percival Landing and the handrail along the water side of the landing.

- b. Except as provided in c, below, Boardwalk Associates shall maintain and repair as necessary its sublease area.
  - c. Maintenance of or repair to a shared structure (a structure that support both facilities in Olympia's sublease area and facilities in Boardwalk Associate's sublease area) will be jointly completed by Olympia and Boardwalk Associates, with the costs of such maintenance or repair proportionally shared based upon a square footage of the area supported by structure requiring maintenance or repair.
  - d. The necessity of and responsibility for maintenance of or repair to a shared structure will be determined by agreement of the parties or through structural engineering inspection initiated by either party. The party undertaking such inspection will provide a copy of any inspection report to the other party and allow receiving party to accept the determination or hire a structural engineer to dispute the initiating party's findings. Any dispute over the necessity of and responsibility for maintenance or repairs must be resolved as provided in section 3 below.
2. Payment for shared maintenance or repair costs: When one party performs maintenance or repairs, or incurs maintenance or repair expenses, for a shared structure, that party shall send an invoice to the other party for that other party's share of the maintenance or repairs. The invoice must detail the costs and expenses incurred. The other party shall pay their share of the costs of the maintenance or repair within 30 days of receipt of the invoice. Any dispute over maintenance or repair costs incurred by one party must be resolved as provided in section 3 below.
3. Dispute resolution: Any dispute related to this Agreement must be resolved as follows:
  - a. The parties will attempt to settle any dispute arising out of or related to this Agreement through consultation and negotiation in good faith in a spirit of mutual cooperation. Such matters will be initially addressed by the Parks Director of Olympia and the Manager of Boardwalk Associates, who shall attempt to resolve the dispute through good faith negotiations by telephone or in person as may be agreed. If they fail to resolve the dispute within 30 days after either party notifies the other of the dispute, then the matter will be escalated to the City Manager of Olympia and the Manager of Boardwalk Associates or their designees for resolution. They will use attempt to resolve the dispute through good faith negotiations by telephone or in person as may be agreed. If they fail to resolve the dispute within 30 days after it is referred to them and do not mutually agree to extend the time for negotiation, then the dispute will be submitted to mediation under subsection b, below.
  - b. If a dispute is not resolved as provided in subsection a, above, then the parties shall proceed to mediation before mediator selected by agreement of the parties.

Each party shall bear an equal share of the mediation costs unless the parties agree otherwise.

- c. If and only if the parties do not resolve the dispute through mediation under subsection b, above, the parties may proceed to litigate the dispute in Thurston County superior court.
4. Term and termination: The term of this Agreement begins on the date of last signature and continues for 30 years, unless earlier terminated. This Agreement will earlier terminate automatically if the parties' structures that are structurally connected cease to be so connected, or if such structures cease to exist. Otherwise, this Agreement may be earlier terminated only by mutual agreement of the parties.
  5. Other matters:
    - a. This Agreement is binding on any successor or assign of a party.
    - b. This Agreement is governed by the laws of the State of Washington. If it is necessary to enforce any of the terms of this Agreement, any action must be brought in Thurston County Superior Court for the State of Washington.
    - c. Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit is entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.
    - d. This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm, corporation, or entity other than the Parties.
    - e. This Agreement may not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.
    - f. If any term or provision of this Agreement or the application thereof to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, is not affected thereby; and each such term and provision of this Agreement is valid and must be enforced to the fullest extent permitted by law.
    - g. This Agreement may be modified or amended only by written agreement, signed by both parties.

- h. Notices: Any notice require to be given related to this Agreement must be sent to:

For the City of Olympia:  
Olympia Parks, Arts & Recreation  
Attn: Parks Director  
PO Box 1967  
Olympia, WA 98507-1967

For Boardwalk Associates  
The Rants Group  
724 Columbia St. NW  
Suite 140  
Olympia, WA 98501

Signed

**CITY OF OLYMPIA**

Signature: Steven J Burney  
Steven J. Burney, City Manager

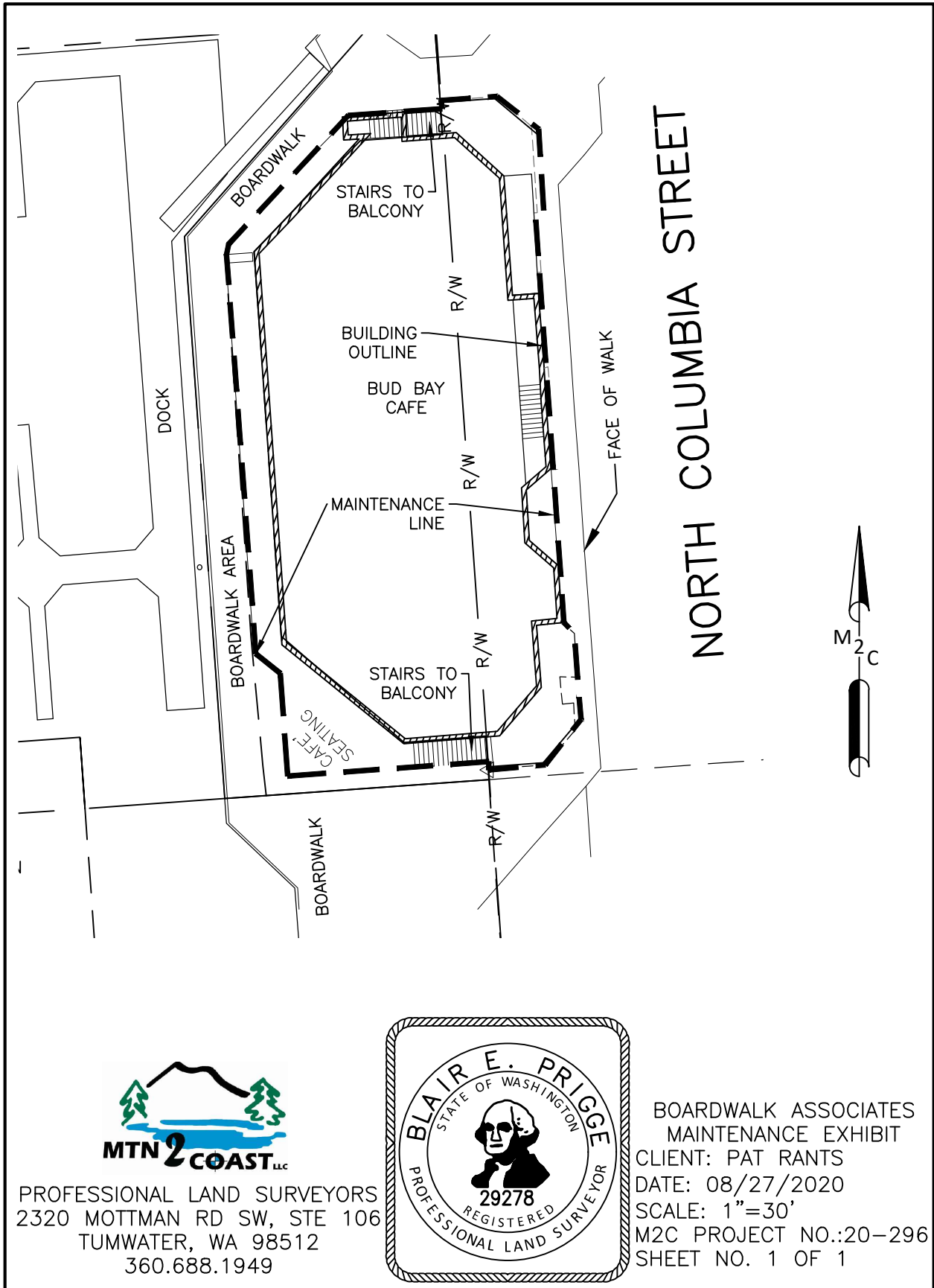
Approved as to form:

Michael M. Young  
Deputy City Attorney

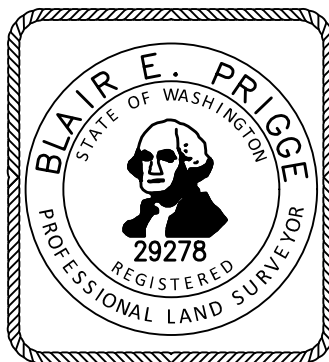
**BOARDWALK ASSOCIATES**

Signature: Pat Rants  
Pat Rants, the Rants Group

EXHIBIT A



PROFESSIONAL LAND SURVEYORS  
2320 MOTTMAN RD SW, STE 106  
TUMWATER, WA 98512  
360.688.1949



BOARDWALK ASSOCIATES  
MAINTENANCE EXHIBIT  
CLIENT: PAT RANTS  
DATE: 08/27/2020  
SCALE: 1"=30'  
M2C PROJECT NO.:20-296  
SHEET NO. 1 OF 1

