

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING
THE SUBLEASE BY AND BETWEEN THE CITY OF OLYMPIA AND FIDDLEHEAD MARINA, INC.
FOR A SUBLEASE OF AQUATIC LANDS LEASE NO. 22-A02559.**

WHEREAS, Fiddlehead Marina, Inc. is the Tenant pursuant to Aquatic Lands Lease No. 22-A02559 ("Master Lease"), which commenced on July 1, 2002. The State of Washington, acting through the Department of Natural Resources ("State") is the landlord under the Master Lease. The aquatic lands subject to the Master Lease are in lower Budd Inlet, and Fiddlehead Marina, Inc. operates the Fiddlehead Marina on those leased aquatic lands; and

WHEREAS, Fiddlehead Marina, Inc. subleases a portion of its aquatic lands leased from the State under the Master Lease to the City of Olympia for use as part of the City's Percival Landing facility, including portions of the boardwalk and parking facilities; and

WHEREAS, Fiddlehead Marina, Inc. and the State are in the process of negotiating a new Master Lease, which will replace the current Master Lease, and will have a term of 30 years. It is expected that Fiddlehead Marina, Inc. and the State will execute that new Master Lease in early August 2020, and that the new Master Lease will have Aquatic Lands Lease No. 22-B02559; and

WHEREAS, with Fiddlehead Marina, Inc. and the State executing a new Master Lease, it is necessary for Fiddlehead Marina, Inc. (or its successor) and the City to enter into a new sublease for those portions of the Fiddlehead aquatic lease area on which the City operates its Percival Landing facilities; and

WHEREAS, the City and Fiddlehead Marina, Inc. anticipate that Fiddlehead Marina, Inc. will be transferring its interest in its Master Lease with the State to Fiddlehead Marina, LLC, a different legal entity, which is purchasing Fiddlehead Marina Inc.'s Fiddlehead Marina facilities and other assets; and

WHEREAS, the City and Fiddlehead Marina, Inc. have negotiated and agreed to terms on a new sublease for that portion of Fiddlehead's aquatic lease area for the City's Percival Landing facilities. The draft updated Sublease is attached hereto as Exhibit A. This new sublease may be executed after Fiddlehead's new Master Lease with the State is executed.

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the form of updated Sublease between the City of Olympia and Fiddlehead Marina, Inc. and the terms and conditions contained therein.
2. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Sublease, and any other documents necessary to execute said Sublease, and to make any minor modifications as may be required and are consistent with the intent of the Sublease, or to correct any scrivener's errors.

3. The City Council hereby recognizes that Fiddlehead Marina Inc.'s interest in the Master Lease with the State, and other marina facilities and assets, are anticipated to be transferred to Fiddlehead Marina, LLC, and that Fiddlehead Marina Inc.'s rights and interest under the updated Sublease will be transferred to Fiddlehead Marina, LLC, which will become the sublessor to the City. The City Manager is authorized to consent to such assignment on behalf of the City, should the City's consent be required.

PASSED BY THE OLYMPIA CITY COUNCIL this 21st day of July 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY

EXHIBIT A

SUBLEASE OF AQUATIC LANDS LEASE NO. 22-A02559

FIDDLEHEAD MARINA, INC. ("SUBLESSOR")

AND

CITY OF OLYMPIA ("SUBLESSEE")

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EXHIBIT A: MASTER LEASE

EXHIBIT B: MASTER LEASE AREA AND SUBLEASE AREA MAP

EXHIBIT C: SUBLEASED AREA LEGAL DESCRIPTION

EXHIBIT A

SUBLEASE OF AQUATIC LANDS LEASE NO. _____
FIDDLEHEAD MARINA, INC. ("SUBLESSOR")

AND

CITY OF OLYMPIA ("SUBLESSEE")

THIS SUBLEASE OF AQUATIC LANDS LEASE NO. 22-B02559 ("**Sublease**") is dated for reference purposes as of _____, 2020 and is made by and between **FIDDLEHEAD MARINA, INC.**, a Washington corporation, whose address is 611 Columbia St. NE Olympia, WA 98501 ("Sublessor") and the **CITY OF OLYMPIA**, a Washington municipal corporation, whose address is P.O. Box 1967, Olympia, Washington 98507-1967, ("Sublessee") (individually Sublessor and Sublessee are referred to herein as "Party" and collectively as "Parties").

RECITALS

- A. Fiddlehead Marina, Inc. is the Tenant pursuant to Aquatic Lands Lease No. 22-B02559, which commenced on _____ ("Master Lease"), attached hereto as Exhibit "A". The State of Washington, acting through the Department of Natural Resources ("State") is the landlord under the Master Lease. The Master Lease covers certain State-owned aquatic lands more particularly depicted in Exhibit "B" ("Sublease of Aquatic Lands Lease No. 22-B02559– Master Lease Area and Sublease Area Map") ("Leased Property").
- B. In consideration of the mutual benefits created in this Sublease and other good and valuable consideration, Sublessor desires to sublease a portion of the Leased Property to Sublessee, and Sublessee desires to sublease that portion of the Leased Property from Sublessor. The portion of the Leased Property to be subleased is more particularly described in Exhibit "C" ("Sublease of Aquatic Lands Lease No. 22-B02559 – Sublease Area Legal Description") ("Subleased Property").
- C. The Subleased Property is being subleased to Sublessee so that Sublessee may construct, place, and maintain upon the Subleased Property a boardwalk and parking facilities ("Percival Landing Facilities"), all in accord with the design drawings for Percival Landing North.
- D. The Parties recognize that sea level rise may necessitate modifications to Percival Landing Facilities in the future and so modifications to this Sublease may be required in the future. As provided below, the Parties agree in this Sublease to cooperate in good faith in to address the effects of sea level rise on the Percival Landing Facilities and make necessary modification to this Sublease.

AGREEMENT

THEREFORE, in consideration of the above recitals and the mutual promises set forth in this Sublease, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **RELATIONSHIP OF THE PARTIES.** Sublessor is a Tenant of the State and no privity of contract exists between Sublessee and State. Sublessor assumes no liability for any willful misconduct, gross negligence, or negligence of State and Sublessor covenants only to deliver such services, if any, as are provided in this Sublease. Sublessee's sole remedy for Sublessor's failure to deliver such services is

Sub-Lease - Lease No. 22-B02559

EXHIBIT A

rescission of this Sublease. The Sublessee shall observe and follow all lease terms and conditions promulgated by State under the Master Lease, except as otherwise provided in this Sublease.

2. **SUBLEASED PROPERTY.** Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor for the Term, as defined below, and upon all of the terms and conditions set forth in this Sublease, the Subleased Property described in Exhibit "C", subject to the terms of the Master Lease, except as otherwise provided in this Sublease. The Subleased Property comprises approximately 0.005 acres and represents approximately .24% of the total Leased Property, 2.12 acres.

3. **TERM.**

a) Term. The term of this Sublease commences on the date of last signature, below, but in no event earlier than the commencement of the Master Lease ("Commencement Date") and ends one day prior to the expiration date of the Master Lease, _____, 2050, or earlier termination of the Master Lease ("Term").

b) Delay in Commencement. Notwithstanding the Commencement Date, if for any reason Sublessor cannot deliver possession of the Subleased Property to Sublessee on the Commencement Date, Sublessor is not liable therefore, nor does such failure affect the validity of this Sublease or the obligations of Sublessee hereunder. The Term is not extended as a result of any such delay. Sublessee is not obligated to pay the Rent described below until possession of the Subleased Property is tendered to Sublessee. If Sublessor has not delivered possession of the Subleased Property within sixty (60) days from the Commencement Date, Sublessee may, upon providing written notice to Sublessor, cancel this Sublease, in which event the Parties are discharged from all obligations contained in this Sublease.

c) Termination by Sublessor. Sublessor may terminate this Sublease prior to the end of the Term only if Sublessee abandons and no longer uses the Percival Landing Facilities.

d) Termination of Sublease Upon Termination of Master Lease. In the event of termination of the Master Lease, this Sublease terminates effective one day prior to such termination of the Master Lease.

4. **RENT. NONE**

5. **USE.**

a) Sublessor hereby authorizes Sublessee to construct, re-construct, place, and maintain upon the Subleased Property the Percival Landing Facilities, in accordance with the design drawings for Percival Landing North. Sublessor hereby further authorizes Sublessee to temporarily occupy and use adjacent portions of the Leased Property for the construction, re-construction, maintenance, or repair of the Percival Landing Facilities.

b) Sublessee may use and occupy the Subleased Property only for those purposes of constructing, re-constructing, placing, and maintaining the Percival Landing Facilities. Sublessee may not use the Subleased Property for any other purposes. Any other use or the failure to obtain necessary consents is a material breach of this Sublease.

c) Sublessee shall not do or permit anything to be done in or about the Subleased Property nor bring or keep anything therein that will increase the existing rate for insurance or cause a cancellation of any insurance policy covering the Subleased Property or the Leased Property.

EXHIBIT A

d) Sublessee shall, at Sublessee's expense, comply at all times with all applicable statutes, ordinances, rules, regulations, or other laws during the Term relating to Sublessee's use and occupancy of the Subleased Property. Sublessee shall not use or permit the use of the Subleased Property in any manner that will tend to create waste or a nuisance. Sublessee and Sublessee's employees and contractors shall conduct themselves in a responsible manner, and shall not violate any laws, while on the Subleased Property. Failure to comply with the terms of this paragraph is a material breach of this Sublease.

e) The Subleased Property is to be used for the benefit of the public and Sublessor will not interfere with the right of any member of the public to lawfully use the Percival Landing Facilities.

f) Sublessee shall maintain the Percival Landing Facilities in a reasonable manner and shall make necessary repairs thereto in a timely fashion.

g) Sublessee's occupancy and use of the Subleased Property may not unreasonably interfere with the business of the Sublessor.

i) Sublessor retains the right to maintain and upgrade its existing utility lines and facilities which are currently located on the property.

j) At the request of either party, the Parties will cooperate in good faith to modify this Sublease during the Term as necessary to address the effects of sea level rise on the Leased Property or the Percival Landing Facilities.

6. **CONDITION OF THE SUBLEASED PROPERTY.** Except as expressly provided herein, Sublessor has not and does not make any representation or warranty to Sublessee concerning the physical condition, value, permitted uses, or any other attributes or qualities of the Subleased Property. Sublessee, for itself and its representatives, successors, and assigns accepts the Sublease and takes possession of the Subleased Property in its "AS-IS," "WHERE-IS" condition, and may not make any claim, demand, or notice against Sublessor on account of the condition of the Subleased Property. **IN ENTERING INTO THIS SUBLEASE: (A) SUBLESSEE IS RELYING SOLELY ON ITS OWN INVESTIGATIONS, EXAMINATIONS, AND INSPECTIONS AND THOSE OF SUBLESSEE'S REPRESENTATIVES AND CONSULTANTS, AND ITS OWN JUDGMENT AS TO SUCH MATTERS; (B) SUBLESSEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY, DIRECT OR INDIRECT, MADE BY SUBLESSOR OR ON SUBLESSOR'S BEHALF, ORAL OR WRITTEN, EXPRESS OR IMPLIED, TO SUBLESSEE OR ANY AGENTS, REPRESENTATIVES, OR EMPLOYEES OF SUBLESSEE, WITH RESPECT TO THE CONDITION OF THE SUBLEASED PROPERTY, ITS COMPLIANCE WITH ANY LAWS, ANY RESTRICTIONS RELATED TO THE DEVELOPMENT OF THE SUBLEASED PROPERTY, THE SUITABILITY OF THE SUBLEASED PROPERTY FOR ANY PURPOSES WHATSOEVER, THE APPLICABILITY OF OR COMPLIANCE OF THE SUBLEASED PROPERTY WITH ANY GOVERNMENTAL REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO ZONING, LAND USE, AND ENVIRONMENTAL REQUIREMENTS PERTAINING TO THE SUBLEASED PROPERTY, ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS, CLAIMS ON OR AFFECTING OR PERTAINING TO THE SUBLEASED PROPERTY, OR TO ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE SUBLEASED PROPERTY OR THIS SUBLEASE; AND (C) SUBLESSEE IS AWARE THAT SUBLESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBLEASED PROPERTY.**

Any alterations or improvements to be constructed by Sublessee must be approved by State as set forth in Section 7 of the Master Lease. Any and all Sublessee alterations or improvements, including

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alterations and improvements existing as of the commencement of the Term of this Sublease, must be removed prior to the end of the Term unless Sublessor and State specifically agree otherwise. Sublessee has no right to make alterations or improvements to any portion of the Subleased Property except as expressly agreed to by Sublessor and as approved by State.

7. MASTER LEASE.

a) Subject to Master Lease. This Sublease is subject to and subordinate to all the provisions, terms, covenants, and conditions of the Master Lease. Sublessee has received and reviewed a copy of the Master Lease. In the event of a conflict between the Master Lease and this Sublease, the terms of the Master Lease control. As between Sublessor and Sublessee the terms, conditions, and respective obligations of Sublessor and Sublessee to each other under this Sublease are the terms and conditions of the Master Lease except for those provisions of the Master Lease that are specifically excluded from or are inconsistent with the terms of the Sublease. Therefore, for the purpose of this Sublease, the term "Tenant" in the Master Lease is deemed to mean "Sublessee" in this Sublease and the term "State" in the Master Lease is deemed to mean "Sublessor" in this Sublease.

b) Master Landlord Consent. Neither Party has any rights or obligations under this Sublease unless and until the written consent of the State for this Sublease in a form acceptable to the Parties (the "Master Landlord Consent") is obtained and delivered to Sublessor and Sublessee, if and as required under the Master Lease. If Master Landlord Consent is not obtained by _____, 2020, then upon notice from either Party to the other delivered prior to the obtaining of the Master Landlord Consent, this Sublease terminates. In addition, to the extent the Assumed Master Lease Obligations (defined below) requires Sublessee to obtain the consent or approval of State, those obligations require the consent or approval of both Sublessor and State. Once Sublessor's consent or approval is obtained, Sublessor shall cooperate with Sublessee's efforts to obtain State's consent or approval.

c) Duties and Obligations under Master Lease. Sublessee assumes, agrees to perform, and observe all provisions, terms, covenants, and conditions of Sublessor under the Master Lease as the same relate to the Subleased Property and to Sublessee's use and occupancy of the Subleased Property during the Term, except as may be expressly provided to the contrary herein (collectively, the assumed obligations are referred to herein as the "Assumed Master Lease Obligations").

d) Master Lease Time Periods. When, pursuant to the Assumed Master Lease Obligations, Sublessee is required to perform some act or to make some payment within a given number of days after an event, in each such instance the given number of days is reduced by the lesser of (a) one-half of the number of days specified in the Master Lease; or (b) five business days, so that Sublessor has an opportunity (but not an obligation) to cure any default of Sublessee under the Assumed Master Lease Obligations before a default occurs under the Master Lease. If the resulting number of days is not a whole number, it is rounded up to the nearest whole number of days.

e) No Knowledge of Default under Master Lease. Sublessor warrants and represents that Sublessor has received no notice of, and has no knowledge of, any default or material breach by Sublessor of any of its obligations under the Master Lease.

f) Modifications of Master Lease. Sublessor agrees to refrain from entering into any amendment to or modification of the Master Lease that would conflict with or limit the rights granted to Sublessee by this Sublease.

g) State's Obligations. Sublessor's only obligation to Sublessee with respect to the enforcement of State's obligations under the Master Lease is to use Sublessor's good faith efforts to do

EXHIBIT A

so, but Sublessor may elect not to enforce its rights under the Master Lease without incurring any liability to Sublessee whatsoever if enforcing such rights, in the reasonable judgment of Sublessor, would be detrimental to the overall relationship between Sublessor and State.

h) Sublessee's Obligations. Sublessee shall hold Sublessor free and harmless of and from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees arising out of Sublessee's failure to comply with or perform Sublessee's obligations hereunder.

i.) Transfer of Master Lease. This Sublease is an encumbrance on Sublessor's Master Lease. Should Sublessor move to convey or transfer its leasehold interest under the Master Lease, it shall notify Sublessee of its intention to do so at least twenty (20) days prior to executing said conveyance or transfer. Furthermore, any such conveyance or transfer must include as a condition thereof a provision that the conveyance or transferee is bound by the terms of this Sublease.

j. Other subleases. Sublessor shall not further sublease the Leased Property in a manner or to an extent which interferes with the use of the Subleased Property by Sublessee or the general public under this Sublease.

8. **ASSIGNMENT AND SUBLETTING.** Sublessee may not assign, mortgage, pledge, hypothecate, or otherwise encumber this Sublease, or any interest herein or any right or privilege appurtenant hereto. Sublessee may not sublet all or any portion of the Subleased Property. Any assignment, transfer, or sublease made in violation of this Section is void. Any such subletting or assignment of this Sublease or the Subleased Property is a material breach of this Sublease and results in an immediate termination of the Sublease.

9. **ENTRY AND INSPECTIONS.** Sublessor may enter the Subleased Property at any time to inspect the Subleased Property. Sublessor is not liable in any manner for any inconvenience, disturbance, loss of business, nuisance, interference with quiet enjoyment, or other damage arising out of Sublessor's entry on the Subleased Property as provided in this section, except damage, if any, resulting from the negligence or willful misconduct of Sublessor or its authorized representatives.

10. **INDEMNIFICATION.**

a) Indemnification of Sublessor: Sublessee shall hold Sublessor harmless from any claims arising from Sublessee's use and occupancy of the Subleased Property or from any activity permitted by Sublessee in or about the Subleased Property, and any claims arising from any breach or default in Sublessee's performance of any obligation under the terms of this Sublease or the Master Lease. If any action or proceeding is brought by reason of any such claim in which Sublessor is named as a Party, Sublessee shall defend Sublessor therein at Sublessee's expense by counsel reasonably satisfactory to Sublessor. Sublessor and its agents are not liable for any damage to property, nor for loss or damage to any property by theft or damage, nor from any injury to or damage to persons or property resulting from any cause whatsoever, unless caused by or due to the negligence or willful misconduct of Sublessor, its agents or employees.

b) Indemnification of State:

(1) Sublessee shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use of the Subleased

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Property, any Claim arising out of activities related to the Permitted Use of the Subleased Property, and any Claim arising out of the use, occupation, or control of the Subleased Property by 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.

(2) "Claim" as used in this Paragraph 10. b) 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.

(3) State shall not require Sublessee 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.

(4) 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 State and its employees, officials, officers, and agents. Further, Sublessee's obligation under this Sublease to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents is 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.

(5) 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 Sublessee or Sublessee's agents or employees, these indemnity provisions are valid and enforceable only to the extent of the negligence of the Sublessee and those acting on its behalf.

(6) Section 8 of the Master Lease, Environmental Liability/Risk Allocation, exclusively govern Sublessee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

11. **INSURANCE.**

a) Sublessee assumes the risk of damage to any fixtures, goods, inventory, merchandise, equipment, improvements, and Sublessor is not liable for injury to Sublessee's business or any loss of income relative to such damage. The Sublessee shall, at all times during the Term, and at its own cost, procure and continue in force insurance coverage in accordance with the terms of the Master Lease. Sublessee shall deliver to Sublessor prior to occupancy of the Subleased Property copies of the policies of insurance required of sublessor under the terms of the Master Lease, and naming Sublessor and State as additional named insureds.

EXHIBIT A

b) Waiver of Subrogation. As long as their respective insurers so permit, Sublessor and Sublessee each hereby waive any and all rights of recovery against the other for any loss or damage occasioned to such waiving Party or its property of others under its control to the extent that such loss or damage is insured against under any fire or extended coverage insurance policy that either may have in force at the time of such loss or damage. Each Party shall obtain any special endorsement, if required by their insurer, to evidence compliance with this waiver.

12. **SUBLESSOR'S REMEDIES UPON DEFAULT.**

Except as expressly otherwise provided in this Sublease, if Sublessee:

a) fails to deliver possession of the Subleased Property upon termination of this Sublease in the condition it is required to be delivered under the terms of the Master Lease upon the expiration or earlier termination of the Master Lease;

b) defaults under the Assumed Master Lease Obligations as the same may be modified by the terms of this Sublease;

c) fails to pay any Annual Rent within five (5) business after the same is due or fails to pay any other sum payable under this Sublease or the Master Lease when due; or

d) fails to perform or observe any other covenant, term, provision, or condition of this Sublease, which failure continues for ten (10) business days after written notice from Sublessor to Sublessee describing such failure, then in each instance,

Sublessee shall be in default under this Sublease and Sublessor shall be entitled to all the right and remedies available to State under the Master Lease following an event of default by the tenant thereunder and to any other rights and remedies available to a landlord under applicable law.

13. This paragraph intentionally omitted.

14. **ATTORNEY'S FEES.** If either Party brings an action to enforce the terms of this Sublease or to otherwise declare rights hereunder, the prevailing Party in said action, on trial and appeal, shall be entitled to recover reasonable attorneys' fees from the non-prevailing Party(s) as fixed by the Court.

15. **WAIVER.** No failure of the either Party to enforce any term of this Sublease may be deemed to be a waiver.

16. **NOTICES.** Any notice that either Party hereto may, or is required to, give must be given by mailing the same to:

SUBLESSOR: FIDDLEHEAD MARINA, INC.
Attention: Mr. Bob Wubbena
611 Columbia St. NW
Olympia, WA 98501

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SUBLESSEE: CITY OF OLYMPIA
P.O. Box 1967
Olympia, WA 98507-1967

Each Party shall notify the other promptly of any change in address. The additional provisions of Notice in the Master Lease control.

17. **RECORDING.** Sublessee shall record this Sublease in accordance with the terms of the Master Lease and shall provide such recording information to Sublessor and State upon completion.

18. **SEVERABILITY.** If a court concludes that any provision of this Sublease is invalid or unenforceable, the remainder remains valid and enforceable according to its terms. Each and every provision of this Sublease that provides for a limitation of liability, disclaimer of warranties, or exclusions of damages is intended by the Parties to be severable and independent of any other provision and to be enforced as such. Further, if any remedy under this Sublease is determined to have failed of its essential purpose, all other limitations of liability and exclusion of damages set forth in this Section remains in full force and effect.

19. **ENTIRE AGREEMENT.** This Sublease expresses the Parties' entire understanding and agreement as to the subject matter, and there are no other warranties, representations, covenants, or understandings made by either Party to the other. This Sublease supersedes, terminates, and otherwise renders null and void any and all prior agreements or contracts, whether written or oral, entered into between Sublessee and Sublessor with respect to the matters expressly set forth in this Sublease.

THIS Sublease requires the signature of all Parties and is executed as of the date of the last signature below.

SUBLESSEE
CITY OF OLYMPIA

I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Sublease Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.

Steven J. Burney
City Manager
Dated _____

Approved as to form:

Deputy City Attorney

EXHIBIT A

**SUBLESSOR
FIDDLEHEAD MARINA**

I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Sublease Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.

Robert Wubben, Fiddlehead Marina, Inc.

Dated _____

Exhibit A
EXHIBIT A

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER
NOR A COMMITMENT TO EXTEND AN OFFER**

When recorded, return to:
Robert Wubben
Fiddlehead Marina, Inc.
611 Columbia Street NW STE D
Olympia, WA 98501



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

AQUATIC LANDS LEASE

Lease No. 22-B02559

Grantor: Washington State Department of Natural Resources
Grantee(s): Fiddlehead Marina, Inc.
Legal Description: SW1/4 NW1/4, Section 14, Township 18 North, Range 2 West, W.M.
Complete Legal Description on Page 39
Auditor Reference Number 4715890
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 FIDDLEHEAD MARINA, INC., a Washington corporation ("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).

EXHIBIT A

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER
NOR A COMMITMENT TO EXTEND AN OFFER**

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 record of survey referenced in Exhibit A includes a true and accurate description of the Property boundaries and the location of the Improvements existing on the Property. Tenant’s obligation to provide a true and accurate description of the Property boundaries and the location of the Improvements existing on the Property 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

EXHIBIT A

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2.1 Permitted Use. Tenant shall use the Property for an open moorage marina, a portion of an office building, and portions of a public access boardwalk (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. Exhibit B includes additional obligations on Tenant.

- (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:
 - (i) 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.
 - (ii) 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.
 - (iii) 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.
 - (iv) Tenant shall pressure wash painted structures using appropriate filter fabric to control and contain paint particles generated by the pressure washing.
- (d) Tenant shall avoid damage caused by propeller wash from vessels.
- (e) Tenant shall not allow vessels to come in contact with underlying bedlands (commonly referred to as “grounding out”) at any time.
- (f) Tenant shall not allow floating structures to come in contact with underlying bedlands (commonly referred to as “grounding out”). Tenant must either (1) locate all 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. From the Commencement Date to August 2, 2025, this restriction does not apply to the existing floating structures.
- (g) Tenant shall not construct new bulkheads or place new hard bank armoring.

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- (h) Tenant shall not install fixed breakwaters.
- (i) Tenant shall not construct or install new covered moorage or boat houses.
- (j) Tenant shall incorporate current 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.
- (k) Except when necessary to comply with a statute, regulation, code, or other law, and where approved by State, Tenant shall not expand the exterior dimensions ("footprint") or the height of an existing building.

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. Residential uses, as defined by WAC 332-30-106 (62)(b), are allowed on the Property and are required to be in compliance with WAC 332-30-171. The following limits and restrictions apply to residential uses on the Property. Exhibit B includes additional requirements and limits relating to residential uses on the Property.

- (a) The only slips on the Property that are authorized to have residential uses are the residential use slips identified in Attachment 4 to Exhibit B. There are currently 17 slips out of 80 on the Property that have residential uses. The current number of residential use slips exceeds the ten percent residential use limit set forth in WAC 332-30-171(2)(a). In accordance with 332-30-171(3)(a), Tenant reported 15 of its slips had residential uses and therefore Tenant has met the requirements for applying the attrition process set forth in WAC 332-30-171(3)(b) to 15 vessels. Tenant shall decrease the number of residential use slips on the Property through attrition in accordance with WAC 332-30-171(3)(b) until the number of residential use slips on the Property are at the ten percent residential use limit permitted for the Property.

Tenant shall obtain State's prior approval before adding or changing the location of any residential use slips. In no case will State approve a new or replacement residential use if the total number of residential uses on the Property, including the new or replacement residential use, would exceed the ten percent residential use limit for the Property.

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- (b) This Lease does not authorize any floating houses as defined by WAC 332-30-106 (23). All residential uses authorized in this Lease must be vessels as defined by WAC 332-30-106(74).

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Thirty (30) years (the “Term”), beginning on the 3rd day of August, 2020 (the “Commencement Date”), and ending on the 2nd day of August, 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 prior to Tenant’s use of 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:

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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 Sixteen thousand Three Hundred Sixty-Five Dollars and Sixteen Cents (\$16,365.16), consisting of Fourteen Thousand Four Hundred Seventy-Eight Dollars and Seventy-Six Cents (\$14,478.76) related to the water-dependent rent and One Thousand Eight Hundred Eighty-Six Dollars and Forty Cents (\$1,886.40) related to the nonwater-dependent rent.
- (c) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is due and payable in full on or before the Commencement Date and on or before the same date of each year 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.

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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.

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- (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

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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.

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7.2 Existing Improvements. On the Commencement Date, the following Tenant-Owned Improvements are located on the Property: a portion of an office building and walkway including thirty-two (32) support pilings, portions of a public access boardwalk with an unknown number of support pilings, two (2) gangways, a floating access dock, three (3) floating main docks, forty-one (41) finger floats, four (4) accessory floats, forty-three (43) pilings associated with the dock and float system, a dolphin with eleven (11) pilings, and a bulkhead with nineteen (19) pilings.

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

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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 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

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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 not provide anchorage or moorage in water more shallow than five (5) feet at the extreme low tide.
- (4) 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.
- (5) Tenant shall orient and shield lighting fixtures attached to overwater structures in a manner that 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.
- (6) Tenant shall not allow new floating structures to come in contact with underlying bedlands (commonly referred to as “grounding 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.

- (a) Removal of Tenant-Owned Improvement 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.

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- (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 enters into a new Lease for 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.

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- (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.

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.

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- (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) Exhibit C, which is attached for information only and is not incorporated in the Lease, identifies Hazardous Substances known to exist in, on, under, or above the Property. State makes no representations or warranties of any kind about Exhibit C. State specifically does not guarantee its accuracy or completeness.
- (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.

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- (d) At a minimum, Tenant and affiliates shall observe the following Hazardous Substances operational standards. If the Washington Department of Ecology, United States 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:

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- (1) Employees and authorized agents of the United States Environmental Protection Agency (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.

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- (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

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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.

8.11 Closeout Assessment.

- (a) State may require Tenant to conduct a Closeout Environmental Assessment (“Closeout Assessment”) prior to Termination Date or after a valid notice of early termination according to the procedures set forth in (b)-(j) below.
- (b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of Hazardous Substances on the Property and associated natural resources. The Closeout Assessment may include sediment sampling.
- (c) No later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of a valid notice of early termination, State may provide Tenant with written notice that State requires a Closeout Assessment.
- (d) Within sixty (60) days of State’s notice that Closeout Assessment is required and before commencing assessment activities, Tenant shall submit a proposed plan for conducting the Closeout Assessment in writing for State’s approval.
- (e) If State fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, State waives requirement for approval.
- (f) Tenant shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.
- (g) If the Lease has terminated, State may require Tenant to enter into a right of entry or other use authorization prior to the Tenant entering the Property for any Closeout Assessment work required by this Paragraph 8.11.
- (h) Tenant shall submit Closeout Assessment to State upon completion.
- (i) As required by law, Tenant shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.
- (j) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property, State may require Tenant to conduct additional assessment work to determine the existence, scope, and effect of Hazardous Substances on adjacent property, any other property subject to use by Tenant in conjunction with its use of the Property, or on associated natural

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resources. Tenant shall submit additional assessment work to State upon completion. As required by law, Tenant shall report to the appropriate regulatory authorities if the additional assessment discloses a release or threatened release of Hazardous Substances.

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;

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- (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 the annual 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. Short-term subleasing of moorage slips for a term of one year or less does not require State's prior approval pursuant to Paragraphs 9.1 or 9.3. Tenant shall conform moorage sublease agreements to the sublease requirements in Paragraph 9.3.

9.5 Event of Assignment. If Tenant is a corporation, dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant is an assignment of this Lease. If Tenant is a partnership, dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant is an assignment of this Lease. If Tenant is a limited liability company, conveyance of an economic interest of greater than fifty percent (50%) is an assignment of this Lease. Assignments defined in this Paragraph 9.5 require State's consent under Paragraph 9.1.

SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY

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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

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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 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

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- 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 State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

- (a) General Liability Insurance.

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- (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

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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.

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- (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.
- (f) Protection and Indemnity Insurance (P&I). For each vessel owned, used, and/or operated on the Property by Tenant or Tenant's contractor(s), Tenant or Tenant's contractor(s) shall procure and maintain P&I insurance with limits of liability not less than One Million Dollars (\$1,000,000). The P&I insurance must cover, at a minimum, all claims relating to injuries or damages to persons or property sustained in, on, or about the property; fuel spills; wreck removal; salvage; injuries to passengers and crew of the vessel; and damages to nets and fishing lines. If necessary, Tenant shall procure and maintain commercial umbrella liability insurance covering claims for these risks.
- (g) Hull Insurance. Tenant or Tenant's contractor(s) shall procure and maintain hull insurance for each vessel owned and/or operated by the Tenant or Tenant's contractor(s) on the Property. The coverage amount of each hull insurance policy must be equal to the value of the covered vessel.

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 Ninety Thousand Dollars (\$90,000.00), 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

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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

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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 decking, docks, rafts, floats, wharves, piers, fixed docks, gangways, 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 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

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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 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

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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 cure 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.

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- (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.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

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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: Fiddlehead Marina, Inc.
611 Columbia Street NW STE D
Olympia, WA 98501

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

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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. This agreement supersedes agreement 22-A02559, which will be terminated upon the execution of this agreement.

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.

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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.

EXHIBIT A

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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.

FIDDLEHEAD MARINA, INC.

Dated: _____, 20__

By: ROBERT L. WUBBENA
Title: Treasurer and Secretary
Address: 611 Columbia Street NW STE D
Olympia, WA 98501

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

By: KATRINA LASSITER
Title: Interim Deputy Supervisor for Aquatic
Resources Division
Address: Shoreline District
950 Farman Avenue North
Enumclaw, WA 98022

Approved as to form this

, Assistant Attorney General

EXHIBIT A

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REPRESENTATIVE ACKNOWLEDGMENT

STATE OF)
) ss.
County of)

I certify that I know or have satisfactory evidence that ROBERT L. WUBBENA is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Treasurer and Secretary of FIDDLEHEAD MARINA, INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 20____

(Signature)

(Seal or stamp)

(Print Name)

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

My appointment expires _____

EXHIBIT A

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STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)

County of) ss.
)

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 Aquatic Resources Division 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: _____, 20____

(Seal or stamp)

(Signature)

(Print Name)

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

My appointment expires _____

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**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY & USE CLASSIFICATIONS**

Agreement Number 22-B02559

1. LEGAL DESCRIPTION OF THE PROPERTY:

That real property legally described and shown as FIDDLEHEAD MARINA in that Record of Survey recorded in Thurston County, Washington on October 25, 2019 under Auditor's File Number 4715890.

2. SQUARE FOOTAGE OF EACH USE CLASSIFICATION:

Water-dependent	<u>91,076</u>
Water-dependent use that is Public Access	<u>888</u>
Nonwater-dependent	<u>1,048</u>
Total Square Feet	<u>93,012</u>

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EXHIBIT B

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities.

The facility, known as Fiddlehead 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. The Property is the former location of a Standard Oil fuel transfer pier which operated between approximately 1911 and 1982. Water depths on the property are estimated to be between +15 feet and -13 feet at MLLW, and sediments are primarily mud. The shoreline is partially armored with a creosote bulkhead and concrete rubble. The nearby Deschutes River supports spawning runs of Chinook, chum, coho, and steelhead. Critical habitat is designated for Chinook. There is no documented presence of submerged aquatic vegetation or forage fish spawning habitat in the vicinity, but Surf smelt spawning is documented on the west shore of the bay. An outfall for emergency and stormwater purposes discharges on the north side of the Property under Easement Number 51-074666 with LOTT Wastewater Treatment Plant.

A marina has been present at this location since at least 1984, and has been in its current configuration since 2017. Dredging occurred within the Property during the time of original marina construction between 1983 and 1985. The facility has been a Certified Clean Marina under the Clean Marina Washington program through the Puget Soundkeeper Alliance since 2016.

This paragraph includes additional details about some of the improvements listed in Paragraph 7.2. The two steel gangways have composite decking; the floating access dock and three floating main docks have a mix of treated wood, concrete, and composite decking; the 41 finger floats have a mix of treated wood, composite, and concrete decking; the four accessory floats have treated wood decking; the bulkhead consists of a mix of treated wood and rip rap; and the public access boardwalk is constructed with ACZA-treated wood. The overwater office building, boardwalk and bulkhead are primarily supported by creosote pilings. The majority of dock and finger floatation is provided by foam-filled tires, although exposed foam supplemental floatation has been placed on the majority of finger floats. Some polytubs have also been installed as supplemental floatation. The City of Olympia, who is a subtenant of the Tenant, owns the public access boardwalk Improvements, including the boardwalk structure and associated pilings.

Water and electric service are available at all slips. No pumpout or fueling service is present. Long term moorage, including residential moorage, is available on the Property. Additionally, the Tenant allows some transient moorage on the waterward

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side of the access dock, between docks A and B, by a yacht sales company for moorage of vessels for sale. The marina is accessible through two gates that remain locked.

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 August 2, 2025, Tenant shall replace existing treated wood floats and pilings with non-toxic materials such as untreated wood, steel, concrete, fiberglass or recycled plastic, or encase the existing wood in a manner that prevents leaching of contaminants into surface water. Tenant may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood to replace above water structural framing. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.
- B. By August 2, 2025, Tenant shall remove the following from the Property: (1) existing creosote piling stub from beneath the overwater office building, (2) the derelict creosote dolphin from the waterward side of the C dock, (3) the four (4) timber accessory floats from the shoreward side of the A/B access dock, (4) the partially buried tire from the shoreward side of the A/B access dock, and (5) the three (3) derelict creosote pilings from the shoreward side of the A/B access dock.
- C. By August 2, 2025, Tenant shall remove existing unencapsulated floatation materials from the Property. Tenant may replace existing unencapsulated floatation materials with encapsulated floatation materials.
- D. By August 2, 2021, Tenant shall remove the existing tire fender from the Property. Tenant may replace the existing tire with inert or encapsulated floatation materials.
- E. By August 2, 2032, Tenant shall remove existing tire floatation from the Property. Tenant may replace existing tires with inert or encapsulated floatation materials.
- F. Tenant shall implement and follow the moorage management measures described in the Moorage Management Plan attached as Attachment 1 to this Exhibit B for the duration of this Lease. If, at any time during the term of the Lease, the moorage management measures provided in the Moorage Management Plan are not sufficient to avoid vessel grounding and scour, Tenant

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shall submit to State a new Moorage Management Plan for approval. Tenant shall implement the new Moorage Management Plan immediately upon State's approval. State may require Tenant to submit a new Moorage Management Plan if dredging is proposed on the Property.

- G. By August 2, 2025, Tenant shall install stoppers on all floating structures sufficient to prevent grounding and keeping the bottom of the structure above the level of the substrate.
- H. By August 2, 2025, Tenant shall replace the existing bank armoring with a design approved by State.
- I. By August 2, 2021, Tenant shall orient and shield the two lighting fixtures attached to the pilings on C dock in a manner that 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 that 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.
- J. By August 2, 2032, Tenant shall replace the 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%) functional open space or forty percent (40%) or greater multi-directional open space.
- K. By February 2, 2050, Tenant shall sample sediments and submit sampling reports to State as specified in Attachment 2 to this Exhibit B.
- L. By August 2, 2021, Tenant shall post visible signage that includes all national and state emergency reporting numbers for oil and chemical spills.
- M. By August 2, 2021, Tenant shall mark all no wake zones with visible signage.
- N. Tenant shall comply with the following obligations and requirements relating to residential uses.
 - 1. Tenant shall not dispose of any item associated with residential uses into the water.

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2. Tenant shall implement and follow the waste disposal measures and contingency plan described in the Waste Management Plan attached as Attachment 3 to this Exhibit B for the duration of this Lease. If, at any time during the term of the Lease, the waste disposal measures or the contingency plan provided in the Waste Management Plan are not sufficient for ensuring all waste is disposed of in accordance with applicable federal, state, and local laws, Tenant shall submit to State a new Waste Management Plan for approval. Tenant shall implement the new Waste Management Plan immediately upon State's approval.
3. Tenant shall collect documentation on a monthly basis documenting each residential occupant's compliance with upland disposal of treated and untreated sewage. Tenant shall annually provide documentation to State confirming that all residential occupants on the Property are disposing of treated and untreated sewage in an upland facility.
4. Tenant shall implement and Tenant shall require all residential occupants to implement the following additional residential BMPs:
 - a. Tenant shall post facility rules and regulations regarding trash disposal, including what items are prohibited in facility receptacles.
 - b. Tenant and residential occupants shall keep all garbage and recycling containers closed and secured. Tenant shall report any containers that are damaged to their solid waste hauler or municipality as soon as a problem is identified.
 - c. Tenant and residential occupants shall contain and clean up all household hazardous spills and toxic substances immediately.
 - d. When using household hazardous or toxic products, Tenant and residential occupants shall utilize a double containment system (e.g. use two tarps or tarp and drip pan) to collect any spills and more effectively prevent the materials from entering the water.
 - e. Tenant and residential occupants shall store all household hazardous products and petroleum and oil based machinery in a manner that prevents the entry of debris and waste materials into the water.
 - f. Tenant and residential occupants shall secure all household items and outdoor furnishings associated with all residential uses in a manner that prevents them from blowing or falling into the water.
 - g. Tenant and residential occupants shall keep absorbent pads or other spill response materials available to absorb any spilled material.
 - h. If a household hazardous substance or toxic substance is spilled, Tenant and residential occupants shall implement the following:
 - i. Tenant shall report all household hazardous product spills to 1-800-OILS-911 immediately,
 - ii. Tenant shall not pour liquid detergent or other dispersants onto the spill,
 - iii. Tenant shall stop the source of the spill and begin clean up immediately, and
 - iv. Tenant shall double bag used absorbent pads and other spill response materials and dispose of them in an upland facility designated for hazardous waste.

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- i. Tenant and residential occupants shall pick up all pet wastes promptly to reduce wastes from entering the water. Tenant shall scoop and discard pet waste via the residential sewer system or upland garbage.
- j. Tenant and residential occupants shall affix and secure all utility lines to prevent material degradation and/or aquatic contamination. This includes sewage, electric, water, cable and gas lines and their housings. Utility housing must meet all local and state building and fire codes.
- k. Tenant and residential occupants shall skim all debris from the water when detected and dispose of such debris in an on-shore receptacle.

Within thirty (30) days following the Commencement Date, Tenant shall give a copy of the above BMPs to each residential occupant, and to any new residential occupant when they arrive at the marina.

- 5. Attachment 4 includes the following information regarding the residential uses on the Property:
 - a. Location of residential uses, including slip number;
 - b. Name of occupant(s);
 - c. Date when current moorage agreement for each residential use slip commenced and termination date of each agreement; and
 - d. Vessel registration number issued by Department of Licensing, if applicable.
- 6. Tenant shall notify State within sixty (60) days if any residential use vacates the marina for a period greater than thirty (30) days and is not replaced with another residential use. Tenant shall provide to State the registration number of the residential use that vacated.

EXHIBIT A

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ATTACHMENT 1 TO EXHIBIT B MOORAGE MANAGEMENT PLAN

Shallow Water Management—for Fiddlehead Marina
May 5, 2020

Fiddlehead Marina is located at the junction of three dynamic marina sediment transport systems—the twice daily tidal exchanges at the end of Budd Inlet, the discharge of the sediments from the Deschutes Watershed via Capital Lake and the discharge of a major City of Olympia storm water outfall. As a result the shallow water management plan in the marina must be monitored routinely and change with local sediment conditions. Annual depth monitoring will occur the last week of May, following the normal flood stage/rainy season in the Deschutes River’s extra deposits of sediment in lower Budd Inlet. The new soundings will guide the implementation of this policy.

The Marina uses an Olympia Area Tide Guide computed from the latest available data from the National Oceanic and Atmospheric Administration. An annual book showing the daily low and high tides to the nearest minute, based on a 19 year average, is made available to all moorage customers for reference and their use in planning boat transit to and from the marina to the northern part of Budd Inlet.

The Marina uses the Olympia area MLLW tide reference point of 0.0 in feet for all boat moorage placement and tie up decisions. The annual depth to sediment monitoring, along with the Tide Book, guides the placement of boats in slips with reference to the documented boat drafts.

In addition to providing the customer with a free new Tide Book that identifies the low tide to the nearest minute of the day, the Marina posts the upcoming months low tide referenced to the MLLW of 0.0 feet. The information is on a “Message White Board” visible to all customers from the outside of the Marina Offices. The customer must then plan their own transit plans using the navigation charts for Budd Inlet.

The marina’s annual monitoring identifies where the sediment build up has occurred near the shore where the two shore access points are, and in several of the near shore slips. Due to the previous dredging by the Marina and the tidal influence, the actual depositions differ along the shore and this continues to change with the shifting sediments from this dynamic zone of interacting marine conditions.

For those slip/fingers with less than five feet of water when low tides are at -3.0 (approximately 8.0 feet of water above -3.0 low tide) the marina will limit its placement of boats for moorage based on the documented drafts of four feet or less, guided by the annual marina sediment soundings. The marina will not moor boats that have a draft that is projected to ground out based on the annual measurement of the sediment and the Tide Book’s projected minus tide referenced to 0.0 MLLW in feet. This applies to all slips in the marina.

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Additionally slips # B-15, C-18, C-19, C-19A, C-20A, C-20 & C-21 have been negatively impacted by the near shore sedimentation. These slips will only be used for temporary shallow water seasonal moorage when it is projected that there is at least one foot of water in these slips, until a planned maintenance dredge is completed. All slips assigned will be based on maintaining minimum of 1.0 feet of water during low tide conditions.

The corral area between Docks A & B and used for boats for sale was previously dredged to a minus 15 feet. The shoulder areas have partially filled in with new sediment. The moorage agreement with the company provides that if larger boats with a deep draft are temporarily located in the corral, the company will proactively move those boats to avoid grounding out. The marina works with the Port of Olympia to allow temporary moorage at their deep water Plaza dock if needed. This enables the company to temporarily relocate the deep draft boats to a location to avoid grounding out.

MARINA SHALLOW WATER POLICY

The Marina's shallow water management plan is to limit the moorage in the marina with less than 8.0 feet of water at 0.0 MLLW conditions for boats with shallower draft to prevent grounding out during negative tides and to reduce scour of the underlying sediments. Placement of boats with shallow drafts of less than the projected depth of the water during projected low tides will guide the moorage of boats. With this placement, all customer boats will be able to exit the marina on low tides except in rare situations where sediment obstructs their exit. They are made aware of the shallow water conditions that may restrict their exit transit into and out of the marina for the one hour of extreme low tide.

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ATTACHMENT 2 TO EXHIBIT B SEDIMENT SAMPLING REPORT

Sampling at the end of the lease term shall be conducted by February 2, 2050. Sampling shall include the 47 SMS chemicals of concern and tributyltin. Tenant should reference Washington Department of Ecology's (Ecology) Sediment Cleanup Users Manual II for guidance to create a Sediment Analysis Plan (SAP). The SAP should contain a sufficient number and distribution of samples for a Phase II environmental site assessment.

1. The Tenant shall submit the SAP to State prior to sampling.
2. Upon State approval of the SAP, Tenant must conduct sampling and submit the report to State.
3. Tenant must submit sampling data to Ecology's myEIM database process (see link for details): <https://ecology.wa.gov/Research-Data/Data-resources/Environmental-Information-Management-database/EIM-submit-data>.
4. If an exceedance is identified through Ecology's myEIM database, Tenant must notify State within 30 days and report findings to Ecology per WAC 173-340-300(2).

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ATTACHMENT 3 TO EXHIBIT B WASTE MANAGEMENT PLAN

FIDDLEHEAD MARINA, INC- WASTE MANAGEMENT
March 9, 2020

Fiddlehead Marina's Waste Management Plan encompasses a control and disposal program for all wastes generated, or disposed of on the Fiddlehead Site. Fiddlehead Marina is a Certified Clean Marina and is guided by the Programs Best Management Practices, and those promoted by the Department of Natural Resources.

The following summarizes the key elements of the Fiddlehead Marina Program, with the completed Clean Marina Forms and monitored sites attached for further explanation.

- 1) **SEWAGE COLLECTIONS AND DISPOSAL.** The Fiddlehead Office building is connected to the City/LOTT wastewater system for disposal of all waste generated via the onsite restrooms and showers. A MOBILE PUMP OUT system is contracted with for individual boat domestic waste disposal.
- 2) **GREY WATER.** Disposal of grey water is discouraged into state waters. Boaters will use best management practices as defined by the Clean Marina Program to avoid and minimize the release of grey water. **Contingency:** Boaters may utilize alternative pump out services or pump out locations if services become unavailable at the Fiddlehead Marina
- 3) **BOAT PUMPOUT AND DISPOSAL.** Each boat is required to dispose of their own waste. Live a boards are required to document regular disposal, either by motoring to nearby approved pump out stations, or to contract with a mobile pumper such as Pelican Pump out Services. The boaters are required to keep records of such service. **Contingency:** If boat pump out and waste disposal is temporarily unavailable boater will be directed to use the nearest pump out facility located at Swan Town Marina. If monthly pump out records do not confirm that approved and regular disposal of on boat human wastes is properly disposed of, boater will required to demonstrate safe disposal practices or vacate their slip at the end of the 30 day notice to vacate.
- 4) **OIL CHANGES/ON BOAT MAINTENANCE.** Boaters are required to contract for such service, or if they do it themselves, they must transport waste oils to a County approved disposal site or to Swan Town Collection site. If a boater leaves its oil waste products near the Marina Dumpster, it is delivered to an approved dump site. **Contingency:** Any boater found to violate this rule will be given one warning of violation. Future violations will be the basis of a five day notice to vacate their slip at the marina.
- 5) **BOAT CLEANING.** Tenants are required to follow the Clean Marina Protocol on cleaning their boats and taking their boat to Swanton haul out services for bottom maintenance. Above water cleaning of boats must follow Clean Marina Best Practices

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(see attached) **Contingency:** All boaters are made aware of this policy by posted signs and periodic newsletters from the marina. Violators are subject to 5 day notice and termination per their lease agreement.

- 6) **SOLID WASTE.** FH maintains a locked (available by code to all customers) 6 CY dumpster is available to all tenants with weekly pickup. The dumpster is monitored daily and inappropriately disposed of items are put into the dumpster. **Contingency:** Marina security cameras include coverage of Dumpster usage. If boaters do not properly dispose of waste, marina custodian will monitor and give us notice on violators who are then given one notice. Second notice makes them subject to slip vacation within 30 days. Mid night dumpsters waste is put into dumpster by custodian daily. If City fails to empty dumpster on routine weekly schedule, they are immediately called for extra pick up. If solid waste removal is disrupted, Fiddlehead Marina will secure dumpster facility to ensure solid waste is not entering waterways or otherwise polluting area, until removal resumes.

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ATTACHMENT 4 TO EXHIBIT B RESIDENTIAL USES

DOCK A		DOCK B		DOCK C	
1		1	30	1	
2	ARMSTRONG - WN4800JR	2	29	2	38
3		3	28	3	37
4	MERKLE - WN2168081777	4	27	4	36
5		5	26	5	35
6	SPAULDING - WN2943SN	6	25	6	34
7	MARSH - WN5536RU	7	24	7	33
8	COLEMAN - WN4772SU	8	23	8	32
9	GIAQUINTO - WN9420NN	9	22	9	31 COWAN - DO956766 (CG Reg Pending)
10		10	21	10	30 SUTTER - WNZ0498AA
11		11	20	11	29
12		12	19	12	28 MERRITT - WN1971RT
			18	13	27
		13	17 ALDRIDGE - WN7564NJ	14	26
		14		15	25
			16 KELLER - WN6532NW	16	24
		15		17	23
				18	22
				19	21
				19A	20
					20A

FIDDLEHEAD MARINA BUILDING

EXHIBIT A

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**ATTACHMENT 4 TO EXHIBIT B (CONTINUED)
RESIDENTIAL USES**

Live Aboard Count	Slip #	Owner	Vessel Type	Lease Date	Term	Registration #
1	A-2	Armstrong	Power Boat	11/1/2018	MTM	WN4800JR
2	A-7	Marsh	Sail Boat	12/19/2014	MTM	WN5536RU
3	A-8	Coleman	Sail Boat	4/1/2020	MTM	WN9420NN
4	A-9	Giaquinto	Sail Boat	6/1/2014	MTM	WN4772SU
5	B-3	Merkle	Power Boat	4/15/2019	MTM	WN2168081777
6	B-6	Spaulding	Power Boat	8/1/2018	MTM	WN2943SN
7	B-16	Keller	Power Boat	11/11/2008	MTM	WN6532NW
8	B-17	Aldridge	Power Boat	4/1/2020	MTM	WN7564NJ
9	C-2	Adams	Sail Boat	8/14/2019	MTM	WN1450SR
10	C-3	Varnal	Sail Boat	2/1/2014	MTM	WN7274Z
11	C-6	Armstrong	Sail Boat	9/1/2017	MTM	BLBA69CD889
12	C-7	Hawkins	Sail Boat	12/1/2013	MTM	CNYA00040873
13	C-9	Stanfield	Sail Boat	6/1/2017	MTM	WN7272JR
14	C-14	Sherer	Sail Boat	6/18/2018	MTM	WN1510RE
15	C-28	Merritt	Sail Boat	1/1/2019	MTM	WN1971RT
16	C-30	Sutter	Sail Boat	10/20/1994	MTM	WNZ0498AA
17	C-31	Cowan	Power Boat	9/1/2019	MTM	DO956766

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**EXHIBIT C
SEDIMENT SAMPLING REPORT**

To be submitted by Tenant

DRAFT

EXHIBIT A

EXHIBIT B

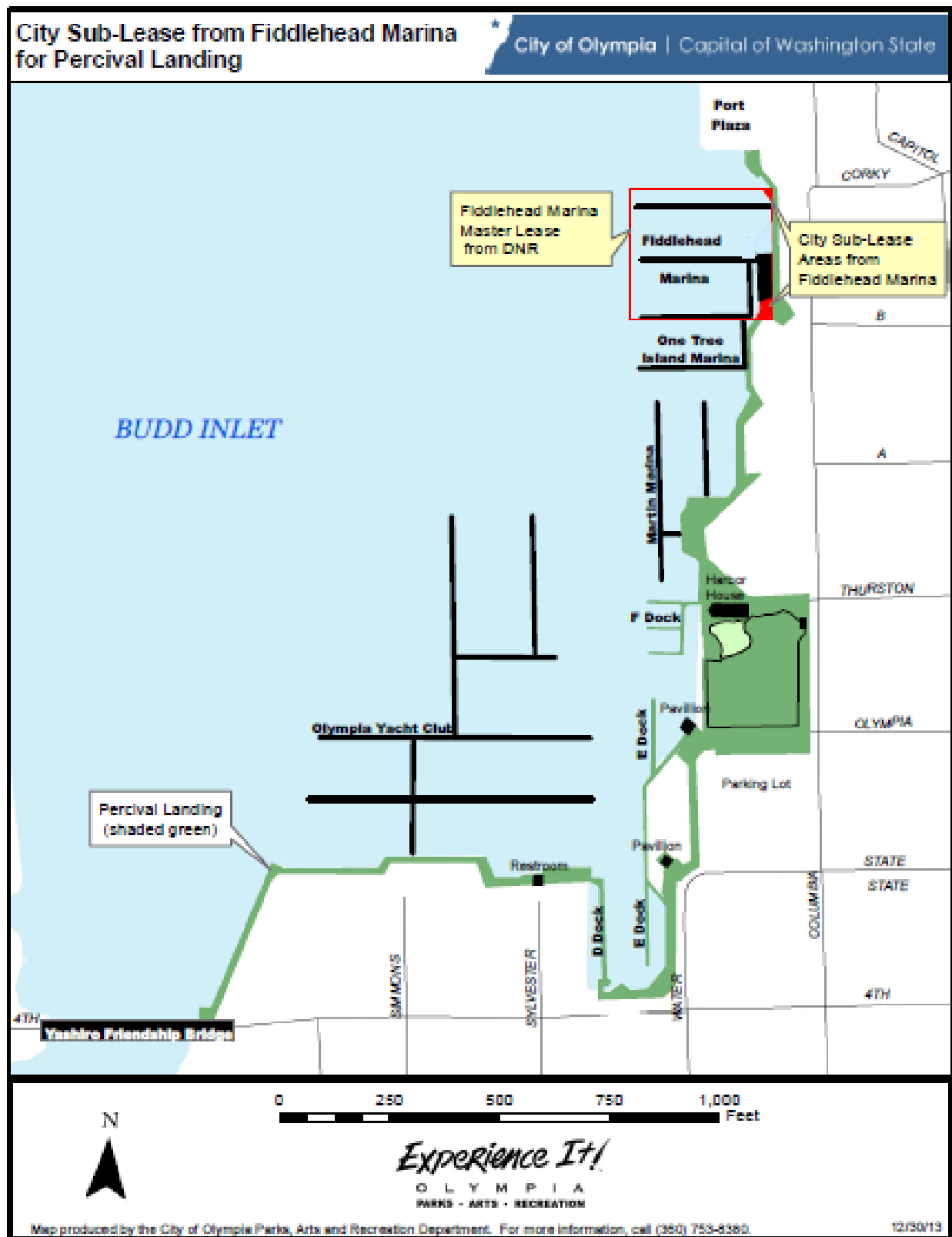


EXHIBIT A

EXHIBIT "C"

SUBLEASE OF AQUATIC LANDS LEASE NO. 22-A02559

SUBLEASED AREA – LEGAL DESCRIPTION

Those portions of Olympia Harbor Leases Nos. 2559 and 2400 lying between the inner harbor line and the outer harbor line as shown on the Fourth Supplemental Maps of Replat of a portion of Olympia Tidelands and Harbor Areas, Plate 1, recorded under Auditor's File Number 1041210, Records of Thurston County, Washington, described as follows:

Commencing at the intersection of the inner harbor line with the westerly extension of the South line of Block 3, Olympia Tidelands; thence North 4° 05' 20" West along said harbor line, 1.00 feet to the point of beginning; thence North 49° 05' 20" West, 8.48 feet, thence North 4° 05' 20" West, 26.00 feet; thence North 40° 54' 40" East, 8.48 feet to said harbor line; thence South 4° 05' 20" East, 38.00 feet to the point of beginning.

ALSO, beginning at the intersection of the inner harbor line with the westerly extension of the South line of Block 4 of Olympia Tidelands; thence South 4° 05' 20" East along said harbor line, 8.00 feet; thence North 49° 05' 53" West, 11.31 feet; thence North 85° 53' 33" East, 8.00 feet to the point of beginning.

In the City of Olympia, Thurston County, Washington.