

**PORT OF BROOKINGS HARBOR
Board of Commissioners
Special Meeting Agenda**

Former Port Office
16340 Lower Harbor Rd, Suite 103
Harbor OR 97415

Friday, November 30, 2018 • 3:00 pm

Agenda

- 1. Call to Order, Pledge of Allegiance, and Roll Call**
- 2. Approval of Agenda**
- 3. Agenda Related Public Comments ***
- 4. Non - Agenda Related Public Comments ***
- 5. New Business**
 - a. Brookings Harbor Cold Storage, Consent to the Lease Assignment
 - b. Brookings Harbor Ice House, Consent to the Lease Assignment
 - c. Previous BC Fisheries Dock, Consent to the Lease Assignment
- 6. Adjournment**

* Limited to a maximum of three minutes per person. A "Public Comment Request", located near the entrance, must be completed and turned into the President prior to the beginning of the meeting.

This Institution is an Equal Opportunity Provider.

November 26, 2018

Mr. Gary Dehlinger
Port Manager
Port of Brookings Harbor
16330 Lower Harbor Rd
Brookings, OR 97415



Re: Request for Consent to Lease Assignments

Dear Mr. Dehlinger:

We are writing to provide the Port with notice of intent to assign three real estate leases, and to kindly request consent to such assignment from the Port in its capacity as landlord. Draft consent forms are enclosed with this letter.

The three leases are:

1. The Ice House Commercial Lease Agreement between the Port and Brookings Harbor Ice House, LLC, dated March 1, 2017;
2. The Cold Storage Lease Agreement between the Port and Brookings Harbor Cold Storage, LLC, dated March 1, 2017 (the "Cold Storage Lease"); and
3. The Commercial Lease Agreement for certain dock and storage space between the Port and BC Fisheries, LLC, dated July 20, 2007 (the "Dock Lease").

By way of background, Pacific Choice Seafood has operated a landing station in Brookings for the last 32 years. However, Pacific's operation is constrained by lack of cold storage and because Pacific only leases a small dock space with a single hoist. Pacific is also committed to ensuring that the local ice house continues to operate.

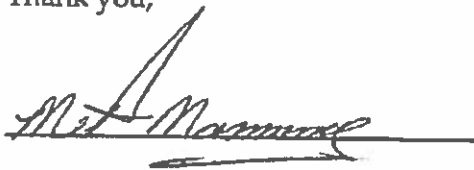
Pacific recently reached a tentative agreement to acquire the ice house, cold storage and dock/loading assets from the above-referenced companies. However, the assets are on land leased from the Port. Therefore, as a condition to an asset purchase, Pacific has requested that the sellers first obtain consent to assign the leases. In addition, the term

of the Dock Lease expires in July 2019, so Pacific has requested that sellers obtain a reasonable extension of that lease.

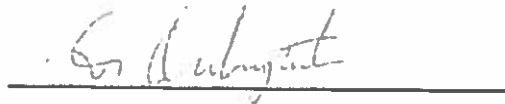
We understand that assignment of the leases is allowed with notice and consent from the Port, and that consent should not be unreasonably withheld or delayed. We therefore provide this letter to kindly request the Port's consent to the lease assignments, and to respectfully ask for urgent action in light of the parties' anticipated closing date this Friday, November 30.

Please let us know if we can provide any further information in support of this request.

Thank you,



Mike Manning, Manager of BC Fisheries,
LLC, Brookings Harbor Cold Storage, LLC,
and Brookings Harbor Ice House, LLC



Dan Occhipinti, VP/Secretary Pacific
Seafood Processing, LLC

**CONSENT TO ASSIGNMENT OF AGREEMENT
FOR LEASE OF BUSINESS PREMISES
(COLD STORAGE)**

THIS CONSENT TO ASSIGNMENT OF AGREEMENT FOR LEASE OF BUSINESS PREMISES (the "Consent") is made by the Port of Brookings Harbor, an Oregon Port District (the "Port") with respect to a lease by Brookings Harbor Cold Storage, LLC, an Oregon limited liability company ("Cold Storage").

RECITALS

- A. The Port and Cold Storage are the parties to a Commercial Lease Agreement Cold Storage dated March 1, 2017, as amended by the Lease Amendment Cold Storage dated June 1, 2017 (collectively, the "Amended Lease");
- B. Cold Storage will sell substantially all of the assets used or useful in connection with its business (the "Transaction") to Pacific Seafood Processing, LLC, an Oregon limited liability company ("Pacific"), on or after November 30, 2018 (the "Closing");
- C. As a result of the Transaction, Pacific will assume all rights and obligations of Cold Storage under the Amended Lease.

CONSENT

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the Port consents to the assignment of the Amended Lease as follows:

- 1. By its execution hereof, the Port hereby: (i) consents and agrees to the assignment of the aforementioned Amended Lease to Pacific, as described above, effective as of Closing; (ii) waives any further or additional notice or consent requirements related to the Transaction described above under Article 18 of the Amended Lease or otherwise; (iii) in accordance with the Amended Lease, agrees that Pacific shall be responsible for and perform and satisfy all of the Cold Storage's duties and obligations under the Amended Lease that arise from and after Closing; and (iv) confirms that (a) the Amended Lease is currently in full force and effect, (b) no event of default currently exists, (c) no other modifications will be made to the Amended Lease for the Transaction other than those described in this Consent, and (d) the Amended Lease shall remain in full force and effect through the remainder of the term.
- 2. The undersigned represents and warrants that it has the right, power, and authorization to execute this Consent.
- 3. The undersigned further agrees that all future notices required to be sent to the lessee under the Amended Lease shall be sent to:

Pacific Seafood Processing, LLC
Attn: Legal & Strategic Affairs
16797 SE 130th Avenue
Clackamas, Oregon 97015

Port of Brookings Harbor, an Oregon Port District

By: _____

Name: _____

Its: _____

Date: _____

**COMMERCIAL LEASE AGREEMENT
COLD STORAGE**

This lease is made and entered into at Brookings, Oregon this 1st day of March 2017, by and between the **Port of Brookings Harbor (the Landlord)** and **Brookings Harbor Cold Storage LLC (the Tenant)**.

1. **Leased Premises.** Landlord hereby leases to Tenant the following described properties located in the Port of Brookings Harbor on the terms and conditions stated below:

a. A Cold Storage Building and work area, as shown in Exhibit "A", attached hereto and incorporated herein by this reference (the "Leased Premises").

2. **Lease Term and Base Rental.**

a. Landlord hereby leases to Tenant approximately 11,200 square-feet of ground, (the Leased Premises, as shown in Exhibit A), located at 16266 Harbor Drive, Brookings, Oregon. The Leased Premises contains Three Thousand Four Hundred (3,400) square feet of bare ground, the Cold Storage Building of Four Thousand One Hundred Thirty-Four (4,134) square feet and concrete work area consisting of Three Thousand Six Hundred and Sixty-Six (3,666) square feet. The Base Rental for the Leased Premises shall be as follows:

1. The rental rate for the Bare ground shall be \$0.09 per month for a total of Three Hundred Six and 00/0 Dollars per month (\$306.00);

2. The rental rate for the cold storage building shall be \$0.50 per month for a total of Two Thousand Sixty-Seven and 00/00 Dollars per month (\$2,067.00);

3. The rental rate for the concrete work area shall be \$0.50 per month for a total of One Thousand Eight Hundred Thirty-Three and 00/00 per month (\$1,833.00).

The initial term of this lease shall be for a term of thirty (30) years commencing March 1, 2017 and continuing through February 28, 2047.

The total Base Rental for the Leased Premises shall be Four Thousand Two Hundred Six and 00/00 Dollars (\$4,206.00) per month, as calculated above, payable on the first day of each month commencing March 1, 2017.

- b. Upon termination of the initial term of this lease, Landlord grants to Tenant the option to renew this lease in whole or in part of the Leased Premises, for one (1) additional five (5) year term at terms and conditions to be negotiated, provided Tenant a) is not in default of this lease at the time the option is exercised and b) Landlord does not need the ground for its own use and c) Landlord is otherwise satisfied with Tenant's use of the leased premises during the initial term. The parties agree to negotiate in good faith with respect to the renewal terms and conditions on terms at least as favorable as those offered to any other tenant of Landlord at the time.
- c. Tenant shall notify the Landlord in writing ninety (90) days prior to expiration of the lease of tenant's intent to exercise all or any portion of Tenant's option to extend the lease. Failure to provide such notice is a default and a material breach of the lease and Landlord may terminate the lease on the expiration date and retake possession of the Leased Premises with or without process of law.
- d. Tenant has the first right of refusal to purchase leased land, if Port of Brookings Harbor decides to sell the property described in Exhibit A, the Leased Premises.

3. Base Rent Payment. Tenant shall pay the base rent for the leased Premises and any additional rent provided herein without deduction or offset. The Base rent shall increase annually, on each anniversary of the lease commencement for the second and each subsequent year, according to the Consumer Price Index for All Urban Consumers (CPI-U). The Base Rent increase shall be for the total amount of the Base Rent due. Base rent shall include all prior percentage increases.

Rent for any partial month during the lease term shall be prorated to reflect the number of days during the month that Tenant occupies the Premises.

Additional rent means any other sums payable by Tenant to Landlord under this lease. At the end of the Lease agreement, a new Base Rent will be established. Should any rent or other payment required of Tenant by this lease not be paid within 10 days after it is due, a late charge of 1.5% per month (18% per annum) will be assessed. In the event, suit or action is instituted to collect any amount owed on this account, the undersigned applicant agrees to pay any reasonable

attorney fees, collection agency fees and any other costs associated with such action. A \$50.00 fee will be assessed on any Returned payment.

4. **Lease Consideration/Security Deposit.** Upon execution of the lease, Tenant base rent is due the first day of the month of the lease term for which rent is payable. Tenant is required to pay a security deposit in the sum of \$2,152.00. Landlord may apply the security deposit to pay the cost of performing any obligation which Tenant fails to perform within the time required by this lease, but such application by Landlord shall not be the exclusive remedy for Tenant's default. If the security deposit is applied by the Landlord, Tenant shall on demand pay the sum necessary to replenish the security deposit to its original amount. To the extent not applied by Landlord to cure defaults by Tenant, the security deposit shall be returned to Tenant upon termination of this lease, or, by mutual agreement between Landlord and Tenant, applied against the rent payable for the last month of the term.

5. **Use.** Tenant shall use the Leased Premises to deliver, store and produce ice and for no other purpose without Landlord's written consent. Tenant is entitled to the exclusive use of the hoist owned by Landlord. In connection with its use of the Leased Premises, Tenant shall at its expense promptly comply with all applicable laws, ordinances, rules and regulations of any public authority, including those of the Port of Brookings Harbor, and not unreasonably annoy, obstruct or interfere with the rights of other tenants of the Port of Brookings Harbor, wherever located. Tenant shall not create or maintain any nuisance or any objectionable fumes, noise, or vibrations while using the Leased Premises.

6. **Equipment.** Tenant shall install in the Leased Premises only such equipment as is customary for the intended *use* and shall not overload the dock or electrical circuits of the Leased Premises or alter the plumbing or wiring of the Leased Premises, without the written consent of Landlord. Landlord must approve, in advance, the location and manner of installing any electrical, heat generating or communication equipment or exceptionally heavy articles. Any equipment installed by Tenant shall remain Tenant's property and shall be installed and operated at Tenant's expense. Cranes or boom trucks not owned by Tenant are prohibited from operating on the Leased Premises unless authorized by the Landlord.

7. **Sign.** No signs, awnings, antennas, or other apparatus shall be positioned as to be visible from outside the Leased Premises without Tenant obtaining Landlord's prior written approval as to design, size, location, and color. All signs installed by Tenant shall comply with Landlord's standards for signs, and all applicable codes and signs and sign hardware shall be removed upon termination of this lease with the sign location restored to its formal state unless Landlord elects to retain all or any portion thereof.

8. **Utilities and Services.** Landlord shall furnish all utilities up to the Leased Premises and Tenant shall be directly responsible for any and all electrical charges or fees for electrical service, and shall make arrangements to be billed directly from the local electric co-op (Coos-Curry Electric Cooperative, Inc.). Tenant shall make the necessary arrangements to have a meter installed in the name of Tenant for billing purposes. Tenant shall comply with all government laws or regulations regarding the use or reduction of use of utilities on the Leased Premises. Unless caused by Landlord's negligence or intentional act, interruption, limitation, curtailment, or rationing of services or utilities shall not be deemed an eviction or disturbance of Tenant's use and possession of the Leased Premises, render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this lease, and Landlord shall take all reasonable steps to correct any interruption in service.

9. **Maintenance and Repair - Tenant**

a. Tenant is at all times during the term of this lease, and at Tenant's sole cost and expense, obligated to keep the entire of the Leased Premises and every part thereof in good condition and repair; ordinary wear and tear and damage to the Leased Premises by earthquake, act of God, or the elements. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, decorate, or paint the Leased Premises or any part thereof. Landlord shall have the right to erect scaffolding and other apparatus necessary for the purpose of making repairs, and Landlord shall have no liability for interference with Tenant's use because of repairs and installations. Tenant shall have no claim against Landlord for any interruption or reduction of services or interference with Tenant's occupancy, and no such interruption or reduction shall be construed as a constructive or otherwise eviction of Tenant. Repair of damage caused by negligent or intentional acts or breach by this lease by Tenant, its employees or invitees shall be at Tenant's expense.

b. Tenant shall maintain the Leased Premises, including the hoists and dock structures, in the condition existing at time of leasing, normal wear and tear excepted. Landlord may inspect repairs, and may declare a default if the Leased Premises are not deemed in good repair after written notice of thirty (30) days for the dock and ten (10) days for the hoist itself.

c. Tenant shall be responsible for controlling and preventing any equipment usage of the dock area from vehicles or equipment which exceed 80,000 lbs GVW, by their invitees or other persons utilizing the facility in connection with the permitted usage described herein. Tenant shall be responsible for damages and/or repairs to the Leased Premises which result from overload of the dock, hoist or storage facility by the invitees of Tenant or persons utilizing the structure in connection with Tenant's business.

d. Tenant shall be responsible for any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except repairs that would otherwise be the responsibility of Landlord under Section 10 or Section 15.

e. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.

f. If Tenant fails to perform Tenant's obligations under this Section 9 or under any other Section of this lease, Landlord may enter upon the affected portion of the Leased Premises after ten (10) days' prior written notice to Tenant (except in case of emergency, in which no notice shall be required), perform such obligations on Tenant's behalf and put the Leased Premises in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to Landlord together with Tenant's next Base Rent installment.

g. On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Leased Premises to Landlord in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Leased Premises shall not be deemed ordinary wear and tear if the same could have been prevented by commercially reasonable maintenance practices. Tenant shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing which were on the Leased Premises prior to the commencement of the lease, in good operating condition.

10. Maintenance and Repair - Landlord's Obligations. The following shall be the responsibility of Landlord:

a. Provide adequate means of ingress and egress to the Leased Premises.

b. Provide access to a water supply and electricity.

c. Repair and maintenance of existing exterior water, sewage, and electrical services up the point of entry to the Leased Premises.

d. Repair and maintain any structural element, that does not meet the definition of Major Damage as provided in Section 15, with respect to the Leased Premises.

11. Alterations. Tenant shall not make any alterations, additions, or improvements to the Leased Premises without Landlord's prior written consent. Any such additions, alterations, or improvements, except for removable machinery and trade fixtures, and approved additions shall at once become part

of the realty and belong to the Landlord. Landlord may at its option require that Tenant remove any alterations and restore the Leased Premises to the original condition upon termination of this lease. Landlord shall have the right to approve the contractor used by Tenant for any work in the Leased Premises, and to post notices of non-responsibility in connection with any work being performed by Tenant in the Leased Premises. Any approved tenant improvement costs to building structure or Port infrastructure within the Lease Premises may be credited up to 50% of the base lease rate.

12. Indemnity. Tenant shall not allow any liens to attach to the Leased Premises or Tenant's interest in the Leased Premises as a result of its activities. In the event that a materialman, mechanic's, or other lien is filed, or a claim of lien is made for work claimed to have been done for Tenant, Landlord will have the option in its sole discretion to require Tenant to post a Surety Bond within ten (10) days at Tenant's expense or to pay and discharge the lien, and Tenant agrees to reimburse Landlord promptly upon demand. These Landlord remedies are not exclusive as Landlord has other remedies as provided by law including requiring Tenant to pay for Landlord's attorney fees and costs relating to any such lien.

Except as otherwise stated herein, Tenant hereby waives all claims against Landlord for damage to any property or injury, illness, or death of any person in, upon, or about the Leased Premises arising at any time and from any cause whatsoever other than by reason of the willful act of Landlord, its officers, employees, invitees, licensees or agents. Tenant shall defend, indemnify and hold Landlord harmless from any and all claims or liability for damage to any property or injury, illness, or death of any person (a) occurring in or on the Leased Premises or any part thereof arising at any time and from any cause whatsoever other than by reason of the willful act of Landlord, its officers, employees, invitees, licensees or agents; or (b) occurring in, on, or about any part of the Leased Premises when such damage, injury, illness, or death shall be caused by the act, negligence, omission, or fault of Tenant, its agents, servants, employees, invitees, or licensees. Except as otherwise stated herein, Landlord shall have no liability to Tenant because of loss or damage caused by the acts or omissions of other tenants of Landlord, or by third parties. The provisions of this paragraph shall survive the termination of this lease with respect to any damage, injury, illness, or death occurring prior to such termination.

13. Insurance. Tenant shall carry liability insurance and fire insurance with limits of not less than Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage, for injury or death of persons and damage to or loss or destruction of property. Such insurance shall be endorsed to name the Port of Brookings Harbor (Landlord) and Landlord's agent, if any, as an additional insured and additional loss payee and shall contain a "severability of interests" provision. Such insurance shall cover the liability insured under this Lease. All coverage shall be on an occurrence basis and not on a claim made basis. All

policies required by this section shall be endorsed to provide a waiver of subrogation in favor of the Port of Brookings Harbor.

Tenant shall furnish a certificate evidencing such insurance which shall state that the coverage shall not be cancelled or materially changed without fourteen (14) days advance notice to Landlord and Landlord's agent, if any, and a renewal certificate shall be furnished at least fourteen (14) days prior to expiration of any policy. Tenant shall be responsible to Landlord, and shall reimburse and hold Landlord harmless for any bodily injury, fire, or property damage not covered by insurance.

13.1 Tenant shall furnish certificates of insurance to Port's General Manager, P.O. Box 848, Brookings, Oregon 97415 certifying the existence of such insurance. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits or not renewed without fourteen (14) days advance written notice to the Landlord and Landlord's agent, if any, and a renewal certificate shall be furnished at least 14 days prior to the expiration of any policy.

13.2 The insurance required herein shall be primary and without right of contribution from other insurance that may be in effect and without subordination. Any other insurance carried by the Landlord is excess. The insurance policies must be underwritten by a company licensed in the state of Oregon, and carry a minimum Best's rating of "A-VI or better. Tenant shall furnish the Landlord with certificates of insurance showing compliance with these insurance provisions no later than five (5) days prior to commencement of this Lease. Tenant shall be responsible for any deductible amounts payable under all policies of insurance.

13.3 Landlord reserves the right to review, investigate and reject insurance companies proposed to be used by Tenant if they are determined inadequate to provide necessary coverage's as herein specified. All insurance required by this Agreement to be purchased and maintained by Tenant shall be obtained from an insurance company licensed or authorized in the State of Oregon to issue the insurance policies for the limits and coverage's required herein.

13.4 If Tenant's policies lapse or are canceled at any time during the term of this Contract, Landlord shall have the right to immediately terminate Tenant's lease until such insurance requirements have been fully satisfied by Tenant. Tenant shall be responsible to Landlord, and shall reimburse and hold Landlord harmless for any bodily injury, fire or property damage not covered by Tenant's insurance.

14. Exemption of Landlord from Liability

Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares,

merchandise or other property of Tenant, Tenant's employees, invites, customers, or any other person in or about the Leased Premises or the Port, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, wires or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Leased Premises or upon other portions of the Port, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, occupant or user of the Port, nor from the failure of Landlord to enforce the provisions of any other lease of the Port.

15. Major Damage. Major damage means damage by fire or other casualty to the Leased Premises that causes the Leased Premises or any substantial portion of the Leased Premises to be unusable, or which will cost more than twenty-five percent (25%) of the pre-damage value of the Leased Premises to repair, or which is not covered by insurance. In case of major damage, Landlord or Tenant may elect to terminate this lease by notice in writing to the other party within thirty (30) days after such date. If this lease is not terminated following major damage, or if damage occurs that is not major damage, Landlord shall promptly restore the Leased Premises to the condition existing just prior to the damage, with the exception of damage to Tenant improvements. Restoration of any Tenant improvements or alterations installed by Tenant, and the costs thereof, shall be the responsibility of the Tenant. Rent shall be reduced from the date of damage until the date restoration work being performed by the Landlord is substantially complete, with the reduction to be in proportion to the area of the Leased Premises not useable by Tenant.

16. Waiver of Subrogation. Tenant shall be responsible for insuring its personal property and trade fixtures located on the Leased Premises and any alterations or Tenant improvements it has made to the Leased Premises. Neither Landlord nor Tenant shall be liable to the other for any loss or damage caused by any of the risks that are or could be covered by a standard all risk insurance policy with the extended coverage endorsement, or for any business interruption, and there shall be no subrogated claims by one party's insurance carrier against the other party arising out of any loss.

17. Eminent Domain. If a condemning authority takes title by eminent domain or by agreement in lieu thereof to the entire Leased Premises or a portion sufficient to render the Leased Premises unsuitable for Tenant's use, then either party may elect to terminate this lease effective on the date that possession is taken by the condemning authority; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Leased Premises taken shall be of such extent and nature as to

substantially handicap, impede, or impair Tenant's use of the balance of the Leased Premises for the purpose intended. Rent shall be reduced for the remainder of the term in an amount proportionate to the reduction in area of the Leased Premises caused by the taking. All condemnation proceeds shall belong to Landlord, and Tenant shall have no claims against Landlord or the condemnation award because of the taking.

18. Assignment and Subletting. This lease shall bind and inure to the benefit of the parties, their respective heirs, successors, and assigns, provided that Tenant shall not assign its interest under this lease or sublet all or any portion of the Leased Premises without first obtaining Landlord's consent in writing. This provision shall apply to all transfers by operation of law including but not limited to mergers and changes in control of Tenant. No assignment shall relieve Tenant of its obligation to pay rent or perform other obligations required by this lease and no consent to one assignment or subletting shall be consent to any further assignment or subletting. Landlord shall not unreasonably withhold or delay its consent to any assignment, or to subletting, accepting that the proposed Tenant has been approved by Landlord in writing.

A new base rent may be established for the remainder of the lease at the sole option of the Landlord. If Tenant proposes a subletting or assignment to which Landlord is required to consent under this paragraph, Landlord shall have the option of terminating this lease and dealing directly with the proposed sub-tenant or assignee, or any third party. If an assignment or subletting is permitted, any cash profit, or the net value of any other consideration received by Tenant as a result of such transaction shall be paid to Landlord promptly following its receipt by Tenant. Tenant shall pay any costs incurred by Landlord in connection with a request for assignment or subletting, including reasonable attorney fees.

19. Default.

a. Any of the following shall constitute a default by Tenant under this lease:

1. Tenant's failure to pay rent or any other charge under this lease within ten (10) days after its due, or failure to comply with any other term or condition within twenty (20) days following written notice from Landlord specifying the noncompliance. If such noncompliance cannot be cured within the 20-day period, this provision shall be satisfied if Tenant commences correction within such period and thereafter proceeds in good faith and with reasonable diligence to effect compliance as soon as possible. Time is of the essence of this lease.

2. Tenant's insolvency, business failure or assignment for the benefit of its creditors. Tenant's commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of

any petition filed against it under such laws within the time required to answer, or the appointment of a receiver for Tenant's property.

3. Assignment or subletting by Tenant in violation of Section 18 above.

4. Vacation or abandonment of the Leased Premises for more than three (3) months without the written consent of Landlord.

5. If this Lease is levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

20. Remedies for Default. In case of default as described in Section 19 above, Landlord shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law.

a. Landlord may terminate the lease and reenter and retake possession of the Leased Premises, and remove any persons or property by legal action or by self help with the use of reasonable force and without liability for damages. Following such retaking of possession, efforts by Landlord to relet the Leased Premises shall be sufficient if Landlord follows its usual procedures for finding tenants for the Leased Premises at rates not less than the current rates for other comparable space on Port property. If Landlord has other vacant space available, prospective tenants may be placed in such other space without prejudice to Landlord's claim to damages to loss of rentals from Tenant.

b. Landlord may recover all damages caused by Tenant's default which shall include an amount equal to rentals lost because of the default, all attorney fees and costs. Landlord may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages shall bar a later action for damages subsequently accruing. Landlord may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the lease. Such damages shall be measured by the difference between the rent under this lease and the reasonable rental value of the Leased Premises for the remainder of the term, discounted to the time of judgment at the prevailing interest rate on judgments.

c. Landlord may make any payment or perform any obligation which Tenant has failed to perform, in which case Landlord shall be entitled to recover from Tenant upon all demand all amounts so expended plus interest from the date of the expenditure at the rate of one and one-half percent (1.5%) per month. Any such payment or performance by Landlord shall not waive Tenant's default.

21. Regulations. Landlord shall have the right (but shall not be obligated) to make, revise, and enforce commercially reasonable regulations or policies consistent with this lease for the purpose of promoting safety, order, economy, cleanliness, and good service to all tenants of the Landlord, provided that if Landlord passes a regulation or policy that interferes with Tenant's quiet enjoyment or unreasonably interferes with Tenant's use of the Leased Premises, then Tenant may terminate this lease. All such regulations and policies shall be complied with as if part of this lease.

22. Access. During times other than normal business hours Tenant's officers and employees or those having business with Tenant may be required to identify themselves or show passes in order to gain access to the Leased Premises. In such event, Landlord shall have no liability for permitting or refusing to permit access to anyone. With reasonable notice to Tenant, Landlord shall have the right to enter upon the Leased Premises at any time by passkey or otherwise to determine Tenant's compliance with this lease, to perform necessary services, maintenance and repairs to the Leased Premises, or to show the Leased Premises to any prospective tenant or purchasers. Except in case of emergency such entry shall be with at least 24 hours prior notice and at such times and in such manner as to minimize interference with the reasonable business use of the Leased Premises by Tenant.

Landlord reserves to itself a right of access over the subject real property, and a right of access over the dock attached hereto. Landlord further reserves to itself a non-exclusive license to use the hoist at the north end of the dock only. Landlord may from time to time operate its own heavy equipment, such as, but not limited to, a forklift or crane, upon the leased premises as the need arises.

23. Notices. Notices to the parties relating to the lease shall be in writing, effective when delivered, or if mailed, effective on the second day following mailing, postage prepaid, to the address for the party stated in this lease or to such other address as either party may specify by notice to the other. Notice to Tenant may always be delivered to the Leased Premises. Rent shall be payable to Landlord at the same address and in the same manner, but shall be considered paid only when received.

24. Subordination. This lease shall be subject and subordinate to any mortgages, deeds of trust, or land sale contracts (hereafter collectively referred to as encumbrances) now existing against the Leased Premises. At Landlord's option this lease shall be subject and subordinate to any future encumbrance hereafter placed against the Leased Premises (including the underlying land) or any modifications of existing encumbrances, and Tenant shall execute such documents as may reasonably be requested by Landlord or the holder of the encumbrance to evidence this subordination.

25. Transfer of Premises. If the Leased Premises is sold or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee and recognize it as the Landlord under this lease, and, provided the purchaser assumes all obligations hereunder, the transferor shall have no further liability hereunder.

26. Estoppel. Either party will within twenty (20) days after notice from the other execute, acknowledge and deliver to the other party a certificate whether or not this lease has been modified and is in full force and effect, whether there are any modifications or alleged breaches by the other party; the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent; and any other facts that may be reasonably requested. Failure to deliver the certificate within the specified time shall be conclusive upon the party of whom the certificate was requested that the lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate. If requested by the holder of any encumbrance or any ground lessor, Tenant will agree to give such holder or lessor notice of and an opportunity to cure any default by Landlord under this lease. Unresolved good faith disputes between Landlord and Tenant shall be resolved pursuant to mandatory binding arbitration as provided herein.

27. Attorney's Fees. In the event any action, suit, arbitration or other proceeding shall be instituted by either party to this Lease to enforce any provision of this Lease or any matter arising therefrom or to interpret any provision of this Lease, including any proceeding to compel arbitration, the prevailing party shall be entitled to recover from the other a reasonable attorney fee to be determined by the Court or Arbitrator(s). In addition to recovery of a reasonable attorney fee, the prevailing party shall be entitled to recover from the other costs and disbursements, including all costs of Arbitration and the Arbitrator(s) fees, and expert witness fees, as fixed by the Court or tribunal in which the case is heard.

In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party shall recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney fees in the lower court, or courts, or arbitration proceeding, such fee to be determined by the appellate court or lower court or arbitrator, as the appellate court may determine. In addition to recovery of a reasonable attorney fee on appeal, the prevailing party shall be entitled to recover from the other costs and disbursements and expert witness fees as fixed by the appellate court. All costs and disbursements which may be awarded pursuant to this paragraph shall bear interest at the maximum legal rate from the date they are incurred until the date they are paid by the losing party.

28. Quiet Enjoyment. Landlord warrants that so long as Tenant complies with all material terms of this lease, it shall be entitled to peaceable and undisturbed possession of the Leased Premises free from any eviction or disturbance by Landlord. Landlord shall have no liability to Tenant for loss or damages arising out of the acts of other tenants of Port property or third parties, nor any liability for any reason which exceeds the value of its interest in the Leased Premises. Notwithstanding the above, Landlord reserves to itself a right of access over and across the dock leased herein, provided that such access does not unreasonably interfere with Tenant's use of the Leased Premises.

29. Complete Agreement. This lease and the attached Exhibits constitute the entire agreement of the parties and supersede all prior written and oral agreements and representations. Neither Landlord nor Tenant is relying on any representations other than those expressly set forth herein. Any modification to this lease must be in writing and signed by both parties.

30. Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice of the party's right to require strict performance of the same provision in the future or of any other provision.

31. Real Property Taxes.

a. Payment of Taxes. Tenant shall pay the real property tax, if any, as defined in paragraph 31.c. below applicable to Tenant's portion of the Port as represented by the lease.

b. Additional Improvements. Tenant shall be responsible for paying Tenant's share of any increase in real property tax specified in the Tax Assessor's records and work sheets as being caused by additional improvements placed upon the Leased Premises by Tenant or by Landlord for the use by Tenant.

c. Definition of "Real Property Tax". As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Port or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof.

32. Severability. The invalidity of any provision of this lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions herein.

33. Time of Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

34. Security Measures. Each party acknowledges that they shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the other party or their property. Each party assumes all responsibility for the protection of itself, its agents and invitees and its property from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option from providing security protection for the Port or any part thereof.

35. "As-is". This lease is not subject to any implied warranties, but is leased "as is".

36. Intentionally Omitted

37. Arbitration.

37.1 Any controversy or claim arising out of or relating to this lease, including, without limitation, the making, performance or interpretation of this lease, shall be settled by arbitration in Curry County, Oregon, and any Judgment on the arbitration award may be entered in any court having Jurisdiction over the subject matter of the controversy.

37.2 Any party asserting a claim arising out of or relating to this lease may make a written demand for arbitration. In this event, the parties shall agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator shall be an attorney licensed to practice law in the State of Oregon. If the parties cannot agree within 30 days to the selection of a single arbitrator after the election to arbitrate, either party may request that the selection of an arbitrator be made by a Judge of the Circuit Court of the State of Oregon for Curry County. The dispute shall be heard by the arbitrator selected within 90 days thereafter, unless the parties agree otherwise.

37.3 The parties will pay their own costs of arbitration, and each will be obligated for one-half of the arbitrator's fee. In the event of arbitration under the provisions of this Lease, the prevailing party shall be awarded reasonable attorney fees and related costs.

37.4 If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recess of, the arbitration hearings. ORS 183.450(1) through (4), where applicable, shall control the admission of evidence at the

hearing in any arbitration conducted hereunder, provided however no error by the arbitrator in application of the statute shall be grounds as such for vacating the arbitrator's award. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall give written notice to the parties stating the arbitration determination and shall furnish to each party a signed copy of such determination and Judgment so the award may be entered in any court having Jurisdiction over the parties. The parties agree that all facts and other information relating to any arbitration arising under this contract shall be kept confidential to the fullest extent permitted by law.

37.5 The parties agree that the arbitrator shall have no Jurisdiction to render an award and/or Judgment for punitive damages. The parties agree that the decision of the arbitrator shall be final and binding on the parties and a Judgment may be entered on the arbitrator's award. Unless otherwise inconsistent herewith, the provisions of ORS Chapter 36 shall apply to any arbitration hereunder. The duty to arbitrate shall survive the cancellation or termination of this contract.

37.6 Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be the existence of the agreement to arbitrate and the failure of one Party to comply with that agreement, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

37.7 Neither Party shall institute any legal proceeding against the other to enforce any right hereunder or for breach hereof, except that either Party may institute litigation (i) to enforce its rights of arbitration hereunder (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither Party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this Section 37.

37.8 If any dispute between the Parties arises from or in connection with any claim of litigation initiated by any third party (either as claimant, plaintiff, counterclaimant, or defendant/third Party plaintiff), then, unless the Parties agree otherwise, the resolution of that dispute under the arbitration provisions of this Section may at the option of either Party be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with a claim or litigation so initiated by a third party, either Party may at any time initiate arbitration under this Section 37 to determine prospective liability between the Parties upon facts which are stipulated, admitted solely for the purpose of arbitrating prospective liability, or not reasonably in

dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to mandatory arbitration hereunder upon the demand of either Party. In the event Landlord is made a party to such claim or litigation so initiated by a third party, Owner shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether Owner is required to, or in fact does, initiate a crossclaim, counterclaim, or third-party claim under Subclause (iii) of Subsection 37.7 above, and regardless of Tenant's indemnity obligations under Section 9 above.

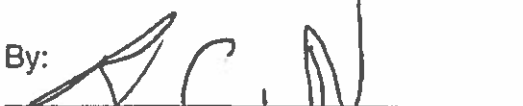
The duty to arbitrate shall survive the cancellation or termination of this lease.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this lease as of the day and year first written above.

PORT OF BROOKINGS-HARBOR,
Landlord

**Brookings Harbor Cold Storage
LLC,
Tenant**

By:



Name: Roy Davis

Title: Chairman

By:



Name:

Mike Manning

Title:

Managing Member

Mailing Address:

P.O. Box 7140

Brookings, OR 97415

Phone 541-412-7368

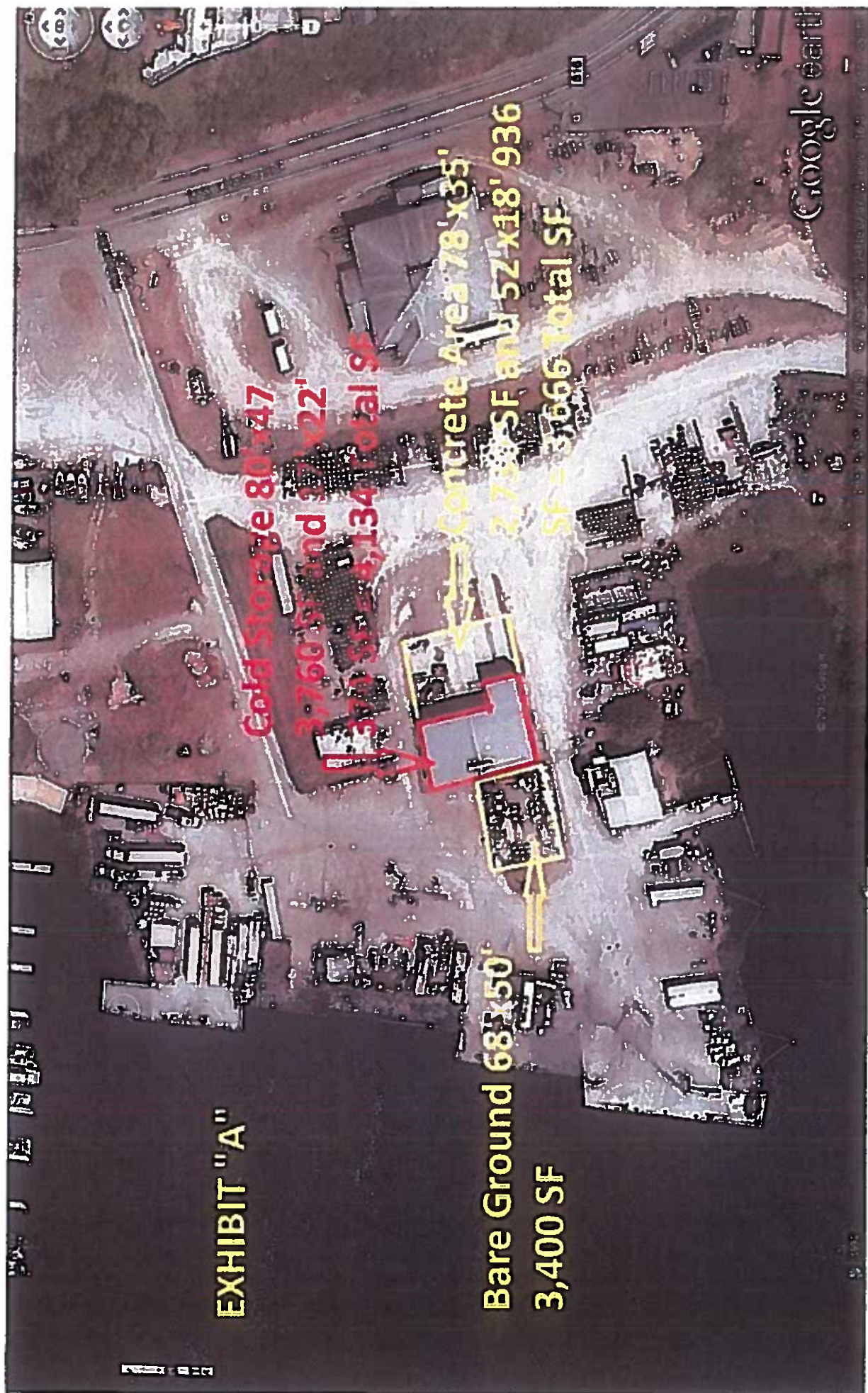


EXHIBIT "A"

**Bare Ground 68x50'
3,400 SF**

**Cold Storage 80x47'
3,760 SF and 37x22'
814 SF = 4,574 Total SF**

**Concrete Area 78'x35'
2,730 SF and 52'x18' 936
SF = 3,666 Total SF**

**CONSENT TO ASSIGNMENT OF AGREEMENT
FOR LEASE OF BUSINESS PREMISES
(ICE HOUSE)**

THIS CONSENT TO ASSIGNMENT OF AGREEMENT FOR LEASE OF BUSINESS PREMISES (the "Consent") is made by the Port of Brookings Harbor, an Oregon Port District (the "Port") with respect to a lease by Brookings Harbor Ice House, LLC, an Oregon limited liability company ("Ice House").

RECITALS

- A. The Port and Ice House are the parties to a Commercial Lease Agreement Ice House dated March 1, 2017, as amended by the Lease Amendment Ice House dated June 1, 2017 (collectively, the "Amended Lease");
- B. Ice House will sell substantially all of the assets used or useful in connection with its business (the "Transaction") to Pacific Seafood Processing, LLC, an Oregon limited liability company ("Pacific"), on or after November 30, 2018 (the "Closing");
- C. As a result of the Transaction, Pacific will assume all rights and obligations of Ice House under the Amended Lease.

CONSENT

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the Port consents to the assignment of the Amended Lease as follows:

- 1. By its execution hereof, the Port hereby: (i) consents and agrees to the assignment of the aforementioned Amended Lease to Pacific, as described above, effective as of Closing; (ii) waives any further or additional notice or consent requirements related to the Transaction described above under Article 18 of the Amended Lease or otherwise; (iii) in accordance with the Amended Lease, agrees that Pacific shall be responsible for and perform and satisfy all of the Ice House's duties and obligations under the Amended Lease that arise from and after Closing; and (iv) confirms that (a) the Amended Lease is currently in full force and effect, (b) no event of default currently exists, (c) no other modifications will be made to the Amended Lease for the Transaction other than those described in this Consent, and (d) the Amended Lease shall remain in full force and effect through the remainder of the term.
- 2. The undersigned represents and warrants that it has the right, power, and authorization to execute this Consent.
- 3. The undersigned further agrees that all future notices required to be sent to the lessee under the Amended Lease shall be sent to:

Pacific Seafood Processing, LLC
Attn: Legal & Strategic Affairs
16797 SE 130th Avenue
Clackamas, Oregon 97015

Port of Brookings Harbor, an Oregon Port District

By: _____

Name: _____

Its: _____

Date: _____

**COMMERCIAL LEASE AGREEMENT
ICE HOUSE**

This lease is made and entered into at Brookings, Oregon this 1st day of March 2017, by and between the **Port of Brookings Harbor** (the Landlord) and **Brookings Harbor Ice House LLC** (the Tenant).

1. **Leased Premises.** Landlord hereby leases to Tenant the following described properties located in the Port of Brookings Harbor on the terms and conditions stated below:

a. An Ice House, work area and ice delivery dock with one hoist, as shown in Exhibit "A", attached hereto and incorporated herein by this reference (the "Leased Premises").

2. **Lease Term and Base Rental.**

a. Landlord hereby leases to Tenant approximately 8,800 square-feet of ground, (the Leased Premises, as shown in Exhibit A), located at 16266 Harbor Drive, Brookings, Oregon. The Leased Premises contains Five Thousand Eight Hundred (5,800) square feet of bare ground, the ice plant consisting of Two Thousand (2,000) square feet and the ice delivery dock consisting of One Thousand (1,000) square feet. The Base Rental for the Leased Premises shall be as follows:

1. The rental rate for the Bare ground shall be \$0.09 per month for a total of Five Hundred Twenty-Two and 00/0 Dollars per month (\$522.00);

2. The rental rate for the Ice Plant shall be \$0.50 per month for a total of One Thousand and 00/00 Dollars per month (\$1,000.00);

3. The rental rate for the Ice Delivery Dock shall be \$0.63 per month for a total of Six Hundred Thirty and 00/00 per month (\$630.00).

The initial term of this lease shall be for a term of thirty (30) years commencing March 1, 2017 and continuing through February 28, 2047.

The total Base Rental for the Leased Premises shall be Two Thousand One Hundred Fifty Two and 00/00 Dollars (\$2,152.00)

per month, as calculated above, payable on the first day of each month commencing March 1, 2017.

- b. Upon termination of the initial term of this lease, Landlord grants to Tenant the option to renew this lease in whole or in part of the Leased Premises, for one (1) additional five (5) year term at terms and conditions to be negotiated, provided Tenant a) is not in default of this lease at the time the option is exercised and b) Landlord does not need the ground for its own use and c) Landlord is otherwise satisfied with Tenant's use of the leased premises during the initial term. The parties agree to negotiate in good faith with respect to the renewal terms and conditions on terms at least as favorable as those offered to any other tenant of Landlord at the time.
- c. Tenant shall notify the Landlord in writing ninety (90) days prior to expiration of the lease of tenant's intent to exercise all or any portion of Tenant's option to extend the lease. Failure to provide such notice is a default and a material breach of the lease and Landlord may terminate the lease on the expiration date and retake possession of the Leased Premises with or without process of law.
- d. Tenant has the first right of refusal to purchase leased land, if Port of Brookings Harbor decides to sell the property described in Exhibit A, the Leased Premises.

3. Base Rent Payment. Tenant shall pay the base rent for the leased Premises and any additional rent provided herein without deduction or offset. The Base rent shall increase annually, on each anniversary of the lease commencement for the second and each subsequent year, according to the Consumer Price Index for All Urban Consumers (CPI-U). The Base Rent increase shall be for the total amount of the Base Rent due. Base rent shall include all prior percentage increases.

Rent for any partial month during the lease term shall be prorated to reflect the number of days during the month that Tenant occupies the Premises.

Additional rent means any other sums payable by Tenant to Landlord under this lease. At the end of the Lease agreement, a new Base Rent will be established. Should any rent or other payment required of Tenant by this lease not be paid within 10 days after it is due, a late charge of 1.5% per month (18% per annum) will be assessed. In the event, suit or action is instituted to collect any amount owed on this account, the undersigned applicant agrees to pay any reasonable attorney fees, collection agency fees and any other costs associated with such action. A \$50.00 fee will be assessed on any Returned payment.

4. **Lease Consideration/Security Deposit.** Upon execution of the lease, Tenant base rent is due the first day of the month of the lease term for which rent is payable. Tenant is required to pay a security deposit in the sum of \$2,152.00. Landlord may apply the security deposit to pay the cost of performing any obligation which Tenant fails to perform within the time required by this lease, but such application by Landlord shall not be the exclusive remedy for Tenant's default. If the security deposit is applied by the Landlord, Tenant shall on demand pay the sum necessary to replenish the security deposit to its original amount. To the extent not applied by Landlord to cure defaults by Tenant, the security deposit shall be returned to Tenant upon termination of this lease, or, by mutual agreement between Landlord and Tenant, applied against the rent payable for the last month of the term.

5. **Use.** Tenant shall use the Leased Premises to deliver, store and produce ice and for no other purpose without Landlord's written consent. Tenant is entitled to the exclusive use of the hoist owned by Landlord. In connection with its use of the Leased Premises, Tenant shall at its expense promptly comply with all applicable laws, ordinances, rules and regulations of any public authority, including those of the Port of Brookings Harbor, and not unreasonably annoy, obstruct or interfere with the rights of other tenants of the Port of Brookings Harbor, wherever located. Tenant shall not create or maintain any nuisance or any objectionable fumes, noise, or vibrations while using the Leased Premises.

6. **Equipment.** Tenant shall install in the Leased Premises only such equipment as is customary for the intended *use* and shall not overload the dock or electrical circuits of the Leased Premises or alter the plumbing or wiring of the Leased Premises, without the written consent of Landlord. Landlord must approve, in advance, the location and manner of installing any electrical, heat generating or communication equipment or exceptionally heavy articles. Any equipment installed by Tenant shall remain Tenant's property and shall be installed and operated at Tenant's expense. Cranes or boom trucks not owned by Tenant are prohibited from operating on the Leased Premises unless authorized by the Landlord.

7. **Sign.** No signs, awnings, antennas, or other apparatus shall be positioned as to be visible from outside the Leased Premises without Tenant obtaining Landlord's prior written approval as to design, size, location, and color. All signs installed by Tenant shall comply with Landlord's standards for signs, and all applicable codes and signs and sign hardware shall be removed upon termination of this lease with the sign location restored to its formal state unless Landlord elects to retain all or any portion thereof.

8. **Utilities and Services.** Landlord shall furnish all utilities up to the Leased Premises and Tenant shall be directly responsible for any and all electrical charges or fees for electrical service, and shall make arrangements to be billed directly from the local electric co-op (Coos-Curry Electric Cooperative, Inc.). Tenant shall make the necessary arrangements to have a meter installed in the name of Tenant for billing purposes. Tenant shall comply with all government laws or regulations regarding the

use or reduction of use of utilities on the Leased Premises. Unless caused by Landlord's negligence or intentional act, interruption, limitation, curtailment, or rationing of services or utilities shall not be deemed an eviction or disturbance of Tenant's use and possession of the Leased Premises, render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this lease, and Landlord shall take all reasonable steps to correct any interruption in service.

9. Maintenance and Repair - Tenant

a. Tenant is at all times during the term of this lease, and at Tenant's sole cost and expense, obligated to keep the entire of the Leased Premises and every part thereof in good condition and repair; ordinary wear and tear and damage to the Leased Premises by earthquake, act of God, or the elements. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, decorate, or paint the Leased Premises or any part thereof. Landlord shall have the right to erect scaffolding and other apparatus necessary for the purpose of making repairs, and Landlord shall have no liability for interference with Tenant's use because of repairs and installations. Tenant shall have no claim against Landlord for any interruption or reduction of services or interference with Tenant's occupancy, and no such interruption or reduction shall be construed as a constructive or otherwise eviction of Tenant. Repair of damage caused by negligent or intentional acts or breach by this lease by Tenant, its employees or invitees shall be at Tenant's expense.

b. Tenant shall maintain the Leased Premises, including the hoists and dock structures, in the condition existing at time of leasing, normal wear and tear excepted. Landlord may inspect repairs, and may declare a default if the Leased Premises are not deemed in good repair after written notice of thirty (30) days for the dock and ten (10) days for the hoist itself.

c. Tenant shall be responsible for controlling and preventing any equipment usage of the dock area from vehicles or equipment which exceed 80,000 lbs GVW, by their invitees or other persons utilizing the facility in connection with the permitted usage described herein. Tenant shall be responsible for damages and/or repairs to the Leased Premises which result from overload of the dock, hoist or storage facility by the invitees of Tenant or persons utilizing the structure in connection with Tenant's business.

d. Tenant shall be responsible for any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except repairs that would otherwise be the responsibility of Landlord under Section 10 or Section 15.

e. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.

f. If Tenant fails to perform Tenant's obligations under this Section 9 or under any other Section of this lease, Landlord may enter upon the affected portion

of the Leased Premises after ten (10) days' prior written notice to Tenant (except in case of emergency, in which no notice shall be required), perform such obligations on Tenant's behalf and put the Leased Premises in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to Landlord together with Tenant's next Base Rent installment.

g. On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Leased Premises to Landlord in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Leased Premises shall not be deemed ordinary wear and tear if the same could have been prevented by commercially reasonable maintenance practices. Tenant shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing which were on the Leased Premises prior to the commencement of the lease, in good operating condition.

10. Maintenance and Repair - Landlord's Obligations. The following shall be the responsibility of Landlord:

a. Provide adequate means of ingress and egress to the Leased Premises.

b. Provide access to a water supply and electricity.

c. Repair and maintenance of existing exterior water, sewage, and electrical services up the point of entry to the Leased Premises.

d. Repair and maintain any structural element, that does not meet the definition of Major Damage as provided in Section 15, with respect to the Leased Premises.

11. Alterations. Tenant shall not make any alterations, additions, or improvements to the Leased Premises without Landlord's prior written consent. Any such additions, alterations, or improvements, except for removable machinery and trade fixtures, and approved additions shall at once become part of the realty and belong to the Landlord. Landlord may at its option require that Tenant remove any alterations and restore the Leased Premises to the original condition upon termination of this lease. Landlord shall have the right to approve the contractor used by Tenant for any work in the Leased Premises, and to post notices of non-responsibility in connection with any work being performed by Tenant in the Leased Premises. Any approved tenant improvement costs to building structure, docks or Port infrastructure within the Lease Premises may be credited up to 50% of the base lease rate.

12. Indemnity. Tenant shall not allow any liens to attach to the Leased Premises or Tenant's interest in the Leased Premises as a result of its activities. In the event that a materialman, mechanic's, or other lien is filed, or a claim of lien is made for

work claimed to have been done for Tenant, Landlord will have the option in its sole discretion to require Tenant to post a Surety Bond within ten (10) days at Tenant's expense or to pay and discharge the lien, and Tenant agrees to reimburse Landlord promptly upon demand. These Landlord remedies are not exclusive as Landlord has other remedies as provided by law including requiring Tenant to pay for Landlord's attorney fees and costs relating to any such lien.

Except as otherwise stated herein, Tenant hereby waives all claims against Landlord for damage to any property or injury, illness, or death of any person in, upon, or about the Leased Premises arising at any time and from any cause whatsoever other than by reason of the willful act of Landlord, its officers, employees, invitees, licensees or agents. Tenant shall defend, indemnify and hold Landlord harmless from any and all claims or liability for damage to any property or injury, illness, or death of any person (a) occurring in or on the Leased Premises or any part thereof arising at any time and from any cause whatsoever other than by reason of the willful act of Landlord, its officers, employees, invitees, licensees or agents; or (b) occurring in, on, or about any part of the Leased Premises when such damage, injury, illness, or death shall be caused by the act, negligence, omission, or fault of Tenant, its agents, servants, employees, invitees, or licensees. Except as otherwise stated herein, Landlord shall have no liability to Tenant because of loss or damage caused by the acts or omissions of other tenants of Landlord, or by third parties. The provisions of this paragraph shall survive the termination of this lease with respect to any damage, injury, illness, or death occurring prior to such termination.

13. Insurance. Tenant shall carry liability insurance and fire insurance with limits of not less than Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage, for injury or death of persons and damage to or loss or destruction of property. Such insurance shall be endorsed to name the Port of Brookings Harbor (Landlord) and Landlord's agent, if any, as an additional insured and additional loss payee and shall contain a "severability of interests" provision. Such insurance shall cover the liability insured under this Lease. All coverage shall be on an occurrence basis and not on a claim made basis. All policies required by this section shall be endorsed to provide a waiver of subrogation in favor of the Port of Brookings Harbor.

Tenant shall furnish a certificate evidencing such insurance which shall state that the coverage shall not be cancelled or materially changed without fourteen (14) days advance notice to Landlord and Landlord's agent, if any, and a renewal certificate shall be furnished at least fourteen (14) days prior to expiration of any policy. Tenant shall be responsible to Landlord, and shall reimburse and hold Landlord harmless for any bodily injury, fire, or property damage not covered by insurance.

13.1 Tenant shall furnish certificates of insurance to Port's General Manager, P.O. Box 848, Brookings, Oregon 97415 certifying the existence of such insurance. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits or not renewed without fourteen (14) days advance written notice to the Landlord and

Landlord's agent, if any, and a renewal certificate shall be furnished at least 14 days prior to the expiration of any policy.

13.2 The insurance required herein shall be primary and without right of contribution from other insurance that may be in effect and without subordination. Any other insurance carried by the Landlord is excess. The insurance policies must be underwritten by a company licensed in the state of Oregon, and carry a minimum Best's rating of "A-VI or better. Tenant shall furnish the Landlord with certificates of insurance showing compliance with these insurance provisions no later than five (5) days prior to commencement of this Lease. Tenant shall be responsible for any deductible amounts payable under all policies of insurance.

13.3 Landlord reserves the right to review, investigate and reject insurance companies proposed to be used by Tenant if they are determined inadequate to provide necessary coverage's as herein specified. All insurance required by this Agreement to be purchased and maintained by Tenant shall be obtained from an insurance company licensed or authorized in the State of Oregon to issue the insurance policies for the limits and coverage's required herein.

13.4 If Tenant's policies lapse or are canceled at any time during the term of this Contract, Landlord shall have the right to immediately terminate Tenant's lease until such insurance requirements have been fully satisfied by Tenant. Tenant shall be responsible to Landlord, and shall reimburse and hold Landlord harmless for any bodily injury, fire or property damage not covered by Tenant's insurance.

14. Exemption of Landlord from Liability

Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invites, customers, or any other person in or about the Leased Premises or the Port, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, wires or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Leased Premises or upon other portions of the Port, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, occupant or user of the Port, nor from the failure of Landlord to enforce the provisions of any other lease of the Port.

15. Major Damage. Major damage means damage by fire or other casualty to the Leased Premises that causes the Leased Premises or any substantial portion of the Leased Premises to be unusable, or which will cost more than twenty-five percent (25%) of the pre-damage value of the Leased Premises to repair, or which is not covered by insurance. In case of major damage, Landlord or Tenant may elect to

terminate this lease by notice in writing to the other party within thirty (30) days after such date. If this lease is not terminated following major damage, or if damage occurs that is not major damage, Landlord shall promptly restore the Leased Premises to the condition existing just prior to the damage, with the exception of damage to Tenant improvements. Restoration of any Tenant improvements or alterations installed by Tenant, and the costs thereof, shall be the responsibility of the Tenant. Rent shall be reduced from the date of damage until the date restoration work being performed by the Landlord is substantially complete, with the reduction to be in proportion to the area of the Leased Premises not useable by Tenant.

16. Waiver of Subrogation. Tenant shall be responsible for insuring its personal property and trade fixtures located on the Leased Premises and any alterations or Tenant improvements it has made to the Leased Premises. Neither Landlord nor Tenant shall be liable to the other for any loss or damage caused by any of the risks that are or could be covered by a standard all risk insurance policy with the extended coverage endorsement, or for any business interruption, and there shall be no subrogated claims by one party's insurance carrier against the other party arising out of any loss.

17. Eminent Domain. If a condemning authority takes title by eminent domain or by agreement in lieu thereof to the entire Leased Premises or a portion sufficient to render the Leased Premises unsuitable for Tenant's use, then either party may elect to terminate this lease effective on the date that possession is taken by the condemning authority; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Leased Premises taken shall be of such extent and nature as to substantially handicap, impede, or impair Tenant's use of the balance of the Leased Premises for the purpose intended. Rent shall be reduced for the remainder of the term in an amount proportionate to the reduction in area of the Leased Premises caused by the taking. All condemnation proceeds shall belong to Landlord, and Tenant shall have no claims against Landlord or the condemnation award because of the taking.

18. Assignment and Subletting. This lease shall bind and inure to the benefit of the parties, their respective heirs, successors, and assigns, provided that Tenant shall not assign its interest under this lease or sublet all or any portion of the Leased Premises without first obtaining Landlord's consent in writing. This provision shall apply to all transfers by operation of law including but not limited to mergers and changes in control of Tenant. No assignment shall relieve Tenant of its obligation to pay rent or perform other obligations required by this lease and no consent to one assignment or subletting shall be consent to any further assignment or subletting. Landlord shall not unreasonably withhold or delay its consent to any assignment, or to subletting, accepting that the proposed Tenant has been approved by Landlord in writing.

A new base rent may be established for the remainder of the lease at the sole option of the Landlord. If Tenant proposes a subletting or assignment to which Landlord is require to consent under this paragraph, Landlord shall have the option of terminating

this lease and dealing directly with the proposed sub-tenant or assignee, or any third party. If an assignment or subletting is permitted, any cash profit, or the net value of any other consideration received by Tenant as a result of such transaction shall be paid to Landlord promptly following its receipt by Tenant. Tenant shall pay any costs incurred by Landlord in connection with a request for assignment or subletting, including reasonable attorney fees.

19. Default.

a. Any of the following shall constitute a default by Tenant under this lease:

1. Tenant's failure to pay rent or any other charge under this lease within ten (10) days after its due, or failure to comply with any other term or condition within twenty (20) days following written notice from Landlord specifying the noncompliance. If such noncompliance cannot be cured within the 20-day period, this provision shall be satisfied if Tenant commences correction within such period and thereafter proceeds in good faith and with reasonable diligence to effect compliance as soon as possible. Time is of the essence of this lease.

2. Tenant's insolvency, business failure or assignment for the benefit of its creditors. Tenant's commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer, or the appointment of a receiver for Tenant's property.

3. Assignment or subletting by Tenant in violation of Section 18 above.

4. Vacation or abandonment of the Leased Premises for more than three (3) months without the written consent of Landlord.

5. If this Lease is levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

20. Remedies for Default. In case of default as described in Section 19 above, Landlord shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law.

a. Landlord may terminate the lease and reenter and retake possession of the Leased Premises, and remove any persons or property by legal action or by self help with the use of reasonable force and without liability for damages. Following such retaking of possession, efforts by Landlord to relet the Leased Premises shall be sufficient if Landlord follows its usual procedures for finding tenants for the Leased Premises at rates not less than the current rates for other comparable space on Port property. If Landlord has other vacant space available, prospective tenants may be

placed in such other space without prejudice to Landlord's claim to damages to loss of rentals from Tenant.

b. Landlord may recover all damages caused by Tenant's default which shall include an amount equal to rentals lost because of the default, all attorney fees and costs. Landlord may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages shall bar a later action for damages subsequently accruing. Landlord may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the lease. Such damages shall be measured by the difference between the rent under this lease and the reasonable rental value of the Leased Premises for the remainder of the term, discounted to the time of judgment at the prevailing interest rate on judgments.

c. Landlord may make any payment or perform any obligation which Tenant has failed to perform, in which case Landlord shall be entitled to recover from Tenant upon all demand all amounts so expended plus interest from the date of the expenditure at the rate of one and one-half percent (1.5%) per month. Any such payment or performance by Landlord shall not waive Tenant's default.

21. Regulations. Landlord shall have the right (but shall not be obligated) to make, revise, and enforce commercially reasonable regulations or policies consistent with this lease for the purpose of promoting safety, order, economy, cleanliness, and good service to all tenants of the Landlord, provided that if Landlord passes a regulation or policy that interferes with Tenant's quiet enjoyment or unreasonably interferes with Tenant's use of the Leased Premises, then Tenant may terminate this lease. All such regulations and policies shall be complied with as if part of this lease.

22. Access. During times other than normal business hours Tenant's officers and employees or those having business with Tenant may be required to identify themselves or show passes in order to gain access to the Leased Premises. In such event, Landlord shall have no liability for permitting or refusing to permit access to anyone. With reasonable notice to Tenant, Landlord shall have the right to enter upon the Leased Premises at any time by passkey or otherwise to determine Tenant's compliance with this lease, to perform necessary services, maintenance and repairs to the Leased Premises, or to show the Leased Premises to any prospective tenant or purchasers. Except in case of emergency such entry shall be with at least 24 hours prior notice and at such times and in such manner as to minimize interference with the reasonable business use of the Leased Premises by Tenant.

Landlord reserves to itself a right of access over the subject real property, and a right of access over the dock attached hereto. Landlord further reserves to itself a non-exclusive license to use the hoist at the north end of the dock only. Landlord may from time to time operate its own heavy equipment, such as, but not limited to, a forklift or crane, upon the leased premises as the need arises.

23. Notices. Notices to the parties relating to the lease shall be in writing, effective when delivered, or if mailed, effective on the second day following mailing, postage prepaid, to the address for the party stated in this lease or to such other address as either party may specify by notice to the other. Notice to Tenant may always be delivered to the Leased Premises. Rent shall be payable to Landlord at the same address and in the same manner, but shall be considered paid only when received.

24. Subordination. This lease shall be subject and subordinate to any mortgages, deeds of trust, or land sale contracts (hereafter collectively referred to as encumbrances) now existing against the Leased Premises. At Landlord's option this lease shall be subject and subordinate to any future encumbrance hereafter placed against the Leased Premises (including the underlying land) or any modifications of existing encumbrances, and Tenant shall execute such documents as may reasonably be requested by Landlord or the beholder of the encumbrance to evidence this subordination.

25. Transfer of Premises. If the Leased Premises is sold or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee and recognize it as the Landlord under this lease, and, provided the purchaser assumes all obligations hereunder, the transferor shall have no further liability hereunder.

26. Estoppel. Either party will within twenty (20) days after notice from the other execute, acknowledge and deliver to the other party a certificate whether or not this lease has been modified and is in full force and effect, whether there are any modifications or alleged breaches by the other party; the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent; and any other facts that may be reasonably requested. Failure to deliver the certificate within the specified time shall be conclusive upon the party of whom the certificate was requested that the lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate. If requested by the holder of any encumbrance or any ground lessor, Tenant will agree to give such holder or lessor notice of and an opportunity to cure any default by Landlord under this lease. Unresolved good faith disputes between Landlord and Tenant shall be resolved pursuant to mandatory binding arbitration as provided herein.

27. Attorney's Fees. In the event any action, suit, arbitration or other proceeding shall be instituted by either party to this Lease to enforce any provision of this Lease or any matter arising therefrom or to interpret any provision of this Lease, including any proceeding to compel arbitration, the prevailing party shall be entitled to recover from the other a reasonable attorney fee to be determined by the Court or Arbitrator(s). In addition to recovery of a reasonable attorney fee, the prevailing party shall be entitled to recover from the other costs and disbursements, including all costs of Arbitration and the Arbitrator(s) fees, and expert witness fees, as fixed by the Court or tribunal in which the case is heard.

In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party shall recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney fees in the lower court, or courts, or arbitration proceeding, such fee to be determined by the appellate court or lower court or arbitrator, as the appellate court may determine. In addition to recovery of a reasonable attorney fee on appeal, the prevailing party shall be entitled to recover from the other costs and disbursements and expert witness fees as fixed by the appellate court. All costs and disbursements which may be awarded pursuant to this paragraph shall bear interest at the maximum legal rate from the date they are incurred until the date they are paid by the losing party.

28. Quiet Enjoyment. Landlord warrants that so long as Tenant complies with all material terms of this lease, it shall be entitled to peaceable and undisturbed possession of the Leased Premises free from any eviction or disturbance by Landlord. Landlord shall have no liability to Tenant for loss or damages arising out of the acts of other tenants of Port property or third parties, nor any liability for any reason which exceeds the value of its interest in the Leased Premises. Notwithstanding the above, Landlord reserves to itself a right of access over and across the dock leased herein, provided that such access does not unreasonably interfere with Tenant's use of the Leased Premises.

29. Complete Agreement. This lease and the attached Exhibits constitute the entire agreement of the parties and supersede all prior written and oral agreements and representations. Neither Landlord nor Tenant is relying on any representations other than those expressly set forth herein. Any modification to this lease must be in writing and signed by both parties.

30. Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice of the party's right to require strict performance of the same provision in the future or of any other provision.

31. Real Property Taxes.

a. **Payment of Taxes.** Tenant shall pay the real property tax, if any, as defined in paragraph 31.c. below applicable to Tenant's portion of the Port as represented by the lease.

b. **Additional Improvements.** Tenant shall be responsible for paying Tenant's share of any increase in real property tax specified in the Tax Assessor's records and work sheets as being caused by additional improvements placed upon the Leased Premises by Tenant or by Landlord for the use by Tenant.

c. **Definition of "Real Property Tax"**. As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Port or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof.

32. Severability. The invalidity of any provision of this lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions herein.

33. Time of Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

34. Security Measures. Each party acknowledges that they shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the other party or their property. Each party assumes all responsibility for the protection of itself, its agents and invitees and its property from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option from providing security protection for the Port or any part thereof.

35. "As-is". This lease is not subject to any implied warranties, but is leased "as is".

36. Intentionally Omitted

37. Arbitration.

37.1 Any controversy or claim arising out of or relating to this lease, including, without limitation, the making, performance or interpretation of this lease, shall be settled by arbitration in Curry County, Oregon, and any Judgment on the arbitration award may be entered in any court having Jurisdiction over the subject matter of the controversy.

37.2 Any party asserting a claim arising out of or relating to this lease may make a written demand for arbitration. In this event, the parties shall agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator shall be an attorney licensed to practice law in the State of Oregon. If the parties cannot agree within 30 days to the selection of a single arbitrator after the election to arbitrate, either party may request that the selection of an arbitrator be made by a Judge of the Circuit Court of the State of Oregon for Curry County. The dispute shall be heard by the arbitrator selected within 90 days thereafter, unless the parties agree otherwise.

37.3 The parties will pay their own costs of arbitration, and each will be obligated for one-half of the arbitrator's fee. In the event of arbitration under the provisions of this Lease, the prevailing party shall be awarded reasonable attorney fees and related costs.

37.4 If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recess of, the arbitration hearings. ORS 183.450(1) through (4), where applicable, shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided however no error by the arbitrator in application of the statute shall be grounds as such for vacating the arbitrator's award. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall give written notice to the parties stating the arbitration determination and shall furnish to each party a signed copy of such determination and Judgment so the award may be entered in any court having Jurisdiction over the parties. The parties agree that all facts and other information relating to any arbitration arising under this contract shall be kept confidential to the fullest extent permitted by law.

37.5 The parties agree that the arbitrator shall have no Jurisdiction to render an award and/or Judgment for punitive damages. The parties agree that the decision of the arbitrator shall be final and binding on the parties and a Judgment may be entered on the arbitrator's award. Unless otherwise inconsistent herewith, the provisions of ORS Chapter 36 shall apply to any arbitration hereunder. The duty to arbitrate shall survive the cancellation or termination of this contract.

37.6 Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be the existence of the agreement to arbitrate and the failure of one Party to comply with that agreement, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

37.7 Neither Party shall institute any legal proceeding against the other to enforce any right hereunder or for breach hereof, except that either Party may institute litigation (i) to enforce its rights of arbitration hereunder (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither Party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this Section 37.

37.8 If any dispute between the Parties arises from or in connection with any claim of litigation initiated by any third party (either as claimant, plaintiff, counterclaimant, or defendant/third Party plaintiff), then, unless the Parties agree otherwise, the resolution of that dispute under the arbitration provisions of this Section may at the option of either Party be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with a claim or litigation so initiated by a third party, either Party may at any time initiate arbitration under this Section 37 to determine prospective liability between the Parties

upon facts which are stipulated, admitted solely for the purpose of arbitrating prospective liability, or not reasonably in dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to mandatory arbitration hereunder upon the demand of either Party. In the event Landlord is made a party to such claim or litigation so initiated by a third party, Owner shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether Owner is required to, or in fact does, initiate a crossclaim, counterclaim, or third-party claim under Subclause (iii) of Subsection 37.7 above, and regardless of Tenant's indemnity obligations under Section 9 above.

The duty to arbitrate shall survive the cancellation or termination of this lease.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this lease as of the day and year first written above.

PORT OF BROOKINGS-HARBOR,
Landlord

Brookings Harbor Ice House LLC,
Tenant

By: 

By: 

Name: Roy Davis

Name: M. K. MANNING

Title: Chairman

Title: MANAGING MEMBER

Mailing Address:

P.O. Box 7140

Brookings, OR 97415

Phone 541-412-7368



EXHIBIT "A"

120'x65'

Total SF Area = 7,800

Subtract 2,000 SF for

Ice House = 5,800 SF

Ice House 50'x20' = 2,000 SF

Dock 50'x20' = 1,000 SF

**CONSENT TO ASSIGNMENT OF AGREEMENT
FOR LEASE OF BUSINESS PREMISES
(DOCK AND STORAGE)**

THIS CONSENT TO ASSIGNMENT OF AGREEMENT FOR LEASE OF BUSINESS PREMISES (the "Consent") is made by the Port of Brookings Harbor, an Oregon Port District (the "Port") with respect to a lease by BC Fisheries, LLC, an Oregon limited liability company ("BC Fisheries").

RECITALS

- A. The Port and BC Fisheries are the parties to a Commercial Lease Agreement BC Fisheries dated July 20, 2007, as amended by the Lease Extension dated April 11, 2014 (collectively, the "Amended Lease");
- B. The Amended Lease includes two leased premises: (i) a receiving dock and hoist (the "Dock Premises"), and (ii) a 15,220 square foot storage area adjacent to the Dock Premises (the "Storage Premises");
- C. BC Fisheries will sell substantially all of the assets used or useful in connection with its business at the Dock Premises and Storage Premises (the "Transaction") to Pacific Seafood Processing, LLC, an Oregon limited liability company ("Pacific"), on or after November 30, 2018 (the "Closing");
- D. As a result of the Transaction, Pacific will assume all rights and obligations of BC Fisheries under the Amended Lease.

CONSENT

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the Port consents to the assignment of the Amended Lease as follows:

- 1. By its execution hereof, the Port hereby: (i) consents and agrees to the assignment of the aforementioned Amended Lease to Pacific, as described above, effective as of Closing; (ii) waives any further or additional notice or consent requirements related to the Transaction described above under Article 19 of the Amended Lease or otherwise; (iii) in accordance with the Amended Lease, agrees that Pacific shall be responsible for and perform and satisfy all of the BC Fisheries's duties and obligations under the Amended Lease that arise from and after Closing; (iv) grants an extension of the Amended Lease, under the current terms and conditions, for an additional five years through July 31, 2024; and (v) confirms that (a) the Amended Lease is currently in full force and effect, (b) no event of default currently exists, (c) no other modifications will be made to the Amended Lease for the Transaction other than those described in this Consent, and (d) the Amended Lease shall remain in full force and effect through the remainder of the term.
- 2. The undersigned represents and warrants that it has the right, power, and authorization to execute this Consent.
- 3. The undersigned further agrees that all future notices required to be sent to the lessee under the Amended Lease shall be sent to:

Pacific Seafood Processing, LLC
Attn: Legal & Strategic Affairs
16797 SE 130th Avenue
Clackamas, Oregon 97015

Port of Brookings Harbor, an Oregon Port District

By: _____

Name: _____

Its: _____

Date: _____



April 11, 2014

Michael Wayne Manning and Zjanett Pearl Manning
B C Fisheries, LLC
PO Box 7140, Brookings, OR 97415

Board of Commissioners:

Chairman
Roy Davis

Vice Chairman
Sue Gold

Secretary/Treasurer
Jim Relaford

Board Members
Mike Manning
Tim Patterson

Dear Mike and Zjanett,

This letter serves to confirm that your request to extend your lease has been approved by The Port of Brookings Harbor under the same terms and conditions per the current lease for an additional five (5) years from August 1, 2014 thru July 31, 2019.

Please sign your agreement below and return this original copy to us.

Sincerely,

Ted Fitzgerald

EXECUTIVE DIRECTOR

Michael Wayne Manning and Zjanett Pearl Manning

B C Fisheries, LLC

LEASE

This lease is made and entered into at Brookings, Oregon this 20th day of July, 2007, by and between the Port of Brookings Harbor (the Landlord) and B C Fisheries, LLC (the Tenant) dba Blaine Crab.

1. **Leased Premises.** Landlord hereby leases to Tenant the following described properties located in the Port of Brookings Harbor on the terms and conditions stated below:

a. A receiving dock and hoist, legally described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Dock Premises"). A map of the Dock Premises is identified as Exhibit "B" also attached hereto and incorporated herein by this reference. *26,000 sq ft*

b. A storage area located adjacent to the Dock Premises, consisting of approximately 15,220 square feet of property, which is further described in Exhibit "C", attached hereto and incorporated herein by this reference (the "Storage Premises").

c. The Dock Premises and the Storage Premises shall be referred to collectively herein as the "Leased Premises".

2. Lease Term.

a. The initial term of the lease for the Dock Premises shall commence on the 20th day of July, 2007, and shall continue through the 31st day of July, 2014. The Base Rental of the lease of the Dock Premises shall be the sum of TWO THOUSAND THREE HUNDRED FORTY FIVE AND 00/100 DOLLARS (\$2,345.00) (U.S.) per month, payable in advance on the first day of each month commencing on the 1st day of September, 2007. Tenant and Landlord each acknowledges that Tenant has been in possession of the Dock Premises since the 20th day of July, 2007, through the date of the execution of this lease, and that Tenant has paid all rents due up to November 30, 2007. *2345/100*

b. The initial term of the lease for the Storage Premises shall commence on the 20th day of July, 2007, and shall continue through the 31st day of July, 2014. The Base Rental of the lease for the Storage Premises shall be the sum of FOUR THOUSAND FIVE HUNDRED SIXTY SIX AND 00/100 DOLLARS (\$4,566.00) (US) per year payable in advance on the first day of May, 2008, and on the first day of each succeeding May during the term of the lease. Tenant's use of the Storage Premises has been paid until May 1, 2008. *331.02/100*

c. Upon the termination of the initial term of this lease, Landlord grants to Tenant the option to renew this lease in whole or in part as to one or the other premises, for one (1) additional five (5) year term at terms and conditions to be negotiated, provided Tenant is not in default of this lease at the time the option is exercised and b) Landlord does not need the ground for its own use and c) Landlord is otherwise satisfied with Tennant's use of the leased premises during the initial term. The parties agree to negotiate in good faith

with respect to the renewal terms and conditions on terms at least as favorable as those offered to any other tenant of Landlord at the time.

d. Tenant shall notify the Landlord in writing ninety (90) days prior to expiration of the lease of tenant's intent to exercise all or any portion of Tenant's option to extend the lease. Failure to provide such notice is a default and a material breach of the lease and Landlord may terminate the lease on the expiration date and retake possession of the Leased Premises with or without process of law.

3. Rent Payment. Tenant shall pay the base rent for the Leased Premises and any additional rent provided herein without deduction or offset, except as set forth herein. Base rent shall increase annually, on each anniversary of the lease commencement beginning on the second and continuing each subsequent year in the same percentage of increase as the Consumer Price Index – all items – Western Urban Index increased for the previous twelve (12) months. Base rent shall include all prior percentage increases. In no case shall the minimum base rent be less than the initial base rent for this lease. Rent for any partial month during the lease term shall be prorated to reflect the number of days during the month that Tenant occupies the Leased Premises. Additional rent means any other sums payable by Tenant to Landlord under this lease. At the end of the lease, a new Base Rent will be established. Rent not paid when due shall bear an automatic \$35.00 late fee each month if not paid by the 10th of the month due.

4. Security Deposit. Upon execution of the lease, Tenant shall pay the sum of \$2,345.00 as a security deposit. Landlord may apply the security deposit to pay the cost of performing any obligation which Tenant fails to perform within the time required by this lease, but such application by Landlord shall not be the exclusive remedy for Tenant's default. If the security deposit is applied by the Landlord, Tenant shall on demand pay the sum necessary to replenish the security deposit to its original amount. To the extent not applied by Landlord to cure defaults by Tenant, the security deposit shall be returned to Tenant upon termination of this lease, or, by mutual agreement between Landlord and Tenant, applied against the rent payable for the last month of the term.

5. Use. Tenant shall use the Dock Premises to off load fish, crab and other product from commercial boats, and for no other purpose without Landlord's written consent. Tenant is entitled to the exclusive use of the hoist owned by Landlord. Tenant shall use the Storage Premises for the storage of trailers, totes, tanks and crab pots, and for general storage, and for no other purpose without Landlord's written consent. In connection with its use of the Leased Premises, Tenant shall at its expense promptly comply with all applicable laws, ordinances, rules and regulations of any public authority, including those of the Port of Brookings Harbor, and not unreasonably annoy, obstruct or interfere with the rights of other tenants of the Port of Brookings Harbor, wherever located. Tenant shall not create or maintain any nuisance or any objectionable fumes, noise, or vibrations while using the Leased Premises.

6. Relocation. Landlord, during the term of this lease, may need to relocate the existing hoists on the Dock Premises. In the event that such a relocation becomes

necessary, Landlord shall provide Tenant a similar location that will be suitable for handling commercial boats and which will allow Tenant the same facilities as are described in Exhibits "A" and "B", at no cost to Tenant associated with such relocation of the hoists.

7. Equipment. Tenant shall install in the Leased Premises only such equipment as is customary for the intended use and shall not overload the dock or electrical circuits of the Leased Premises or alter the plumbing or wiring of the Leased Premises, without the written consent of Landlord. Landlord must approve, in advance, the location and manner of installing any electrical, heat generating or communication equipment or exceptionally heavy articles. Any equipment installed by Tenant shall remain Tenant's property and shall be installed and operated at Tenant's expense.

8. Sign. No signs, awnings, antennas, or other apparatus shall be positioned as to be visible from outside the Leased Premises without Landlord's written approval as to design, size, location, and color. All signs installed by Tenant shall comply with Landlord's standards for signs, and all applicable codes and signs and sign hardware shall be removed upon termination of this lease with the sign location restored to its formal state unless Landlord elects to retain all or any portion thereof.

9. Utilities and Services. Landlord shall furnish all utilities up to the Leased Premises and Tenant shall be directly responsible for any and all electrical charges or fees for electrical service, and shall make arrangements to be billed directly from the local electric co-op (Coos-Curry Electric Cooperative, Inc.). Tenant shall make the necessary arrangements to have a meter installed in the name of Tenant for billing purposes. Tenant shall comply with all government laws or regulations regarding the use or reduction of use of utilities on the Leased Premises. Unless caused by Landlord's negligence or intentional act, interruption, limitation, curtailment, or rationing of services or utilities shall not be deemed an eviction or disturbance of Tenant's use and possession of the Leased Premises, render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this lease, and Landlord shall take all reasonable steps to correct any interruption in service.

10. Maintenance and Repair - Tenant

a. Tenant is at all times during the term of this lease, and at Tenant's sole cost and expense, obligated to keep the entire of the Leased Premises and every part thereof in good condition and repair; ordinary wear and tear and damage to the Leased Premises by earthquake, act of God, or the elements and the repairs listed on Exhibit D, excepted. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, decorate, or paint the Leased Premises or any part thereof, except as hereinafter listed on Exhibit D. Landlord shall have the right to erect scaffolding and other apparatus necessary for the purpose of making repairs, and Landlord shall have no liability for interference with Tenant's use because of repairs and installations. Tenant shall have no claim against Landlord for any interruption or reduction of services or interference with Tenant's occupancy, and no such interruption or reduction shall be construed as a constructive or otherwise

eviction of Tenant. Repair of damage caused by negligent or intentional acts or breach by this lease by Tenant, its employees or invitees shall be at Tenant's expense.

b. Tenant shall maintain the Leased Premises, including the hoist and dock structures, in the condition existing at time of leasing, normal wear and tear excepted. Landlord may inspect repairs, and may declare a default if the Leased Premises are not deemed in good repair after written notice of thirty (30) days for the dock and ten (10) days for the hoist itself.

c. Tenant shall be responsible for controlling and preventing any usage of the Leased Premises which exceeds 26,000 pounds per square inch, by their invitees or other persons utilizing the facility in connection with the permitted usage described herein. Tenant shall be responsible for damages and/or repairs to the Leased Premises which result from overload of the dock, hoist or storage facility by the invitees of Tenant or persons utilizing the structure in connection with Tenant's business.

d. Tenant shall be responsible for any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 13 dealing with waiver of subrogation, but including repairs that would otherwise be the responsibility of Landlord under Section 11.

e. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 11.

f. If Tenant fails to perform Tenant's obligations under this Section 10 or under any other Section of this lease, Landlord may enter upon the affected portion of the Leased Premises after ten (10) days' prior written notice to Tenant (except in case of emergency, in which no notice shall be required), perform such obligations on Tenant's behalf and put the Leased Premises in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to Landlord together with Tenant's next Base Rent installment.

g. On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Leased Premises to Landlord in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Leased Premises shall not be deemed ordinary wear and tear if the same could have been prevented by commercially reasonable maintenance practices. Tenant shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing which were on the Leased Premises prior to the commencement of the lease, in good operating condition.

11. Maintenance and Repair - Landlord's Obligations. The following shall be the responsibility of Landlord:

a. Provide adequate means of ingress and egress to the Leased Premises.

- b. Provide access to a water supply and electricity.
- c. Repair and maintenance of existing exterior water, sewage, and electrical services up the point of entry to the Leased Premises.
- d. Repair and maintain any structural element with respect to the Leased Premises.

12. Alterations. Tenant shall not make any alterations, additions, or improvements to the Leased Premises without Landlord's prior written consent. Any such additions, alterations, or improvements, except for removable machinery and trade fixtures, and approved additions shall at once become part of the realty and belong to the Landlord. Landlord may at its option require that Tenant remove any alterations and restore the Leased Premises to the original condition upon termination of this lease. Landlord shall have the right to approve the contractor used by Tenant for any work in the Leased Premises, and to post notices of non-responsibility in connection with any work being performed by Tenant in the Leased Premises.

13. Indemnity.

a. Tenant shall not allow any liens to attach to the Leased Premises or Tenant's interest in the Leased Premises as a result of its activities. In the event that a materialman, mechanic's, or other lien is filed, or a claim of lien is made for work claimed to have been done for Tenant, Landlord will have the option in its sole discretion to require Tenant to post a Surety Bond within ten (10) days at Tenant's expense or to pay and discharge the lien, and Tenant agrees to reimburse Landlord promptly upon demand. These Landlord remedies are not exclusive as Landlord has other remedies as provided by law including requiring Tenant to pay for Landlord's attorney fees and costs relating to any such lien. Except as otherwise stated herein, Tenant hereby waives all claims against Landlord for damage to any property or injury, illness, or death of any person in, upon, or about the Leased Premises arising at any time and from any cause whatsoever other than by reason of the negligence or willful act of Landlord, its officers, employees, invitees, licensees or agents. Tenant shall defend, indemnify and hold Landlord harmless from any and all claims or liability for damage to any property or injury, illness, or death of any person (a) occurring in or on the Leased Premises or any part thereof arising at any time and from any cause whatsoever other than by reason of the negligence or willful act of Landlord, its officers, employees, invitees, licensees or agents; or (b) occurring in, on, or about any part of the Leased Premises when such damage, injury, illness, or death shall be caused by the act, negligence, omission, or fault of Tenant, its agents, servants, employees, invitees, or licensees. Except as otherwise stated herein, Landlord shall have no liability to Tenant because of loss or damage caused by the acts or omissions of other tenants of Landlord, or by third parties. The provisions of this paragraph shall survive the termination of this lease with respect to any damage, injury, illness, or death occurring prior to such termination.

14. Insurance. Tenant shall carry liability insurance and fire insurance with limits of not less than One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage, which insurance shall have an endorsement naming Landlord and Landlord's agent, if any, as additional insured and additional loss payee and covering the liability insured under Paragraph 15 of this Lease. Tenant shall furnish a certificate evidencing such insurance which shall state, if possible, that the coverage shall not be cancelled or materially changed without ten (10) days advance notice to Landlord and Landlord's agent, if any, and a renewal certificate shall be furnished at lease ten (10) days prior to expiration of any policy. Tenant shall be responsible to Landlord, and shall reimburse and hold Landlord harmless for any bodily injury, fire, or property damage not covered by insurance.

15. Exemption of Landlord from Liability
Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invites, customers, or any other person in or about the Leased Premises or the Port, nor shall Tenant be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, wires or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Leased Premises or upon other portions of the Port, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Except as otherwise stated herein, Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, occupant or user of the Port, nor from the failure of Landlord to enforce the provisions of any other lease of the Port.

16. Major Damage. Major damage means damage by fire or other casualty to the Leased Premises that causes the Leased Premises or any substantial portion of the Leased Premises to be unusable, or which will cost more than twenty-five percent (25%) of the pre-damage value of the Leased Premises to repair, or which is not covered by insurance. In case of major damage, Landlord or Tenant may elect to terminate this lease by notice in writing to the other party within thirty (30) days after such date. If this lease is not terminated following major damage, or if damage occurs that is not major damage, Landlord shall promptly restore the Leased Premises to the condition existing just prior to the damage, with the exception of damage to Tenant improvements. Restoration of any Tenant improvements or alterations installed by Tenant, and the costs thereof, shall be the responsibility of the Tenant. Rent shall be reduced from the date of damage until the date restoration work being performed by the Landlord is substantially complete, with the reduction to be in proportion to the area of the Leased Premises not useable by Tenant.

17. Waiver of Subrogation. Tenant shall be responsible for insuring its personal property and trade fixtures located on the Leased Premises and any alterations or Tenant improvements it has made to the Leased Premises. Neither Landlord nor Tenant shall be liable to the other for any loss or damage caused by any of the risks that are or could be covered by a standard all risk insurance policy with the extended coverage endorsement, or

for any business interruption, and there shall be no subrogated claims by one party's insurance carrier against the other party arising out of any loss.

18. Eminent Domain. If a condemning authority takes title by eminent domain or by agreement in lieu thereof to the entire Leased Premises or a portion sufficient to render the Leased Premises unsuitable for Tenant's use, then either party may elect to terminate this lease effective on the date that possession is taken by the condemning authority; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Leased Premises taken shall be of such extent and nature as to substantially handicap, impede, or impair Tenant's use of the balance of the Leased Premises for the purpose intended. Rent shall be reduced for the remainder of the term in an amount proportionate to the reduction in area of the Leased Premises caused by the taking. All condemnation proceeds shall belong to Landlord, and Tenant shall have no claims against Landlord or the condemnation award because of the taking.

19. Assignment and Subletting. This lease shall bind and inure to the benefit of the parties, their respective heirs, successors, and assigns, provided that Tenant shall not assign its interest under this lease or sublet all or any portion of the Leased Premises without first obtaining Landlord's consent in writing. This provision shall apply to all transfers by operation of law including but not limited to mergers and changes in control of Tenant. No assignment shall relieve Tenant of its obligation to pay rent or perform other obligations required by this lease and no consent to one assignment or subletting shall be consent to any further assignment or subletting. Landlord shall not unreasonably withhold or delay its consent to any assignment, or to subletting provided the subrental rate or effective rental paid by the assignee is not less than the current scheduled rental rate of the Leased Premises for comparable space and the proposed Tenant has been approved by Landlord in writing. A new base rent may be established for the remainder of the lease at the sole option of the Landlord. If Tenant proposes a subletting or assignment to which Landlord is required to consent under this paragraph, Landlord shall have the option of terminating this lease and dealing directly with the proposed sub-tenant or assignee, or any third party. If an assignment or subletting is permitted, any cash profit, or the net value of any other consideration received by tenant as a result of such transaction shall be paid to Landlord promptly following its receipt by Tenant. Tenant shall pay any costs incurred by Landlord in connection with a request for assignment or subletting, including reasonable attorney fees.

20. Default.

a. Any of the following shall constitute a default by Tenant under this lease:

1. Tenant's failure to pay rent or any other charge under this lease within ten (10) days after its due, or failure to comply with any other term or condition within twenty (20) days following written notice from Landlord specifying the noncompliance. If such noncompliance cannot be cured within the 20-day period, this provision shall be satisfied if Tenant commences correction within such period and thereafter proceeds in good faith and

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with reasonable diligence to effect compliance as soon as possible. Time is of the essence of this lease.

2. Tenant's insolvency, business failure or assignment for the benefit of its creditors. Tenant's commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer, or the appointment of a receiver for Tenant's property.

3. Assignment or subletting by Tenant in violation of Section 19 above.

4. Vacation or abandonment of the Leased Premises for more than three (3) months without the written consent of Landlord.

5. If this Lease is levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

21. Remedies for Default. In case of default as described in Section 20 above, Landlord shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law.

a. Landlord may terminate the lease and reenter and retake possession of the Leased Premises, and remove any persons or property by legal action or by self help with the use of reasonable force and without liability for damages. Following such retaking of possession, efforts by Landlord to relet the Leased Premises shall be sufficient if Landlord follows its usual procedures for finding tenants for the Leased Premises at rates not less than the current rates for other comparable space on Port property. If Landlord has other vacant space available, prospective tenants may be placed in such other space without prejudice to Landlord's claim to damages to loss of rentals from Tenant.

b. Landlord may recover all damages caused by Tenant's default which shall include an amount equal to rentals lost because of the default, all attorney fees and costs. Landlord may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages shall bar a later action for damages subsequently accruing. Landlord may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the lease. Such damages shall be measured by the difference between the rent under this lease and the reasonable rental value of the Leased Premises for the remainder of the term, discounted to the time of judgment at the prevailing interest rate on judgments.

c. Landlord may make any payment or perform any obligation which Tenant has failed to perform, in which case Landlord shall be entitled to recover from Tenant upon all

demand all amounts so expended plus interest from the date of the expenditure at the rate of one and one-half percent (1.5%) per month. Any such payment or performance by Landlord shall not waive Tenant's default.

22. Regulations. Landlord shall have the right (but shall not be obligated) to make, revise, and enforce commercially reasonable regulations or policies consistent with this lease for the purpose of promoting safety, order, economy, cleanliness, and good service to all tenants of the Landlord, provided that if Landlord passes a regulation or policy that interferes with Tenant's quiet enjoyment or unreasonably interferes with Tenant's use of the Leased Premises, then Tenant may terminate this lease. All such regulations and policies shall be complied with as if part of this lease.

23. Access. During times other than normal business hours Tenant's officers and employees or those having business with Tenant may be required to identify themselves or show passes in order to gain access to the Leased Premises. In such event, Landlord shall have no liability for permitting or refusing to permit access to anyone. With reasonable notice to Tenant, Landlord shall have the right to enter upon the Leased Premises at any time by passkey or otherwise to determine Tenant's compliance with this lease, to perform necessary services, maintenance and repairs to the Leased Premises, or to show the Leased Premises to any prospective tenant or purchasers. Except in case of emergency such entry shall be with at least 24 hours prior notice and at such times and in such manner as to minimize interference with the reasonable business use of the Leased Premises by Tenant.

24. Notices. Notices to the parties relating to the lease shall be in writing, effective when delivered, or if mailed, effective on the second day following mailing, postage prepaid, to the address for the party stated in this lease or to such other address as either party may specify by notice to the other. Notice to Tenant may always be delivered to the Leased Premises. Rent shall be payable to Landlord at the same address and in the same manner, but shall be considered paid only when received.

25. Subordination. This lease shall be subject and subordinate to any mortgages, deeds of trust, or land sale contracts (hereafter collectively referred to as encumbrances) now existing against the Leased Premises. At Landlord's option this lease shall be subject and subordinate to any future encumbrance hereafter placed against the Leased Premises (including the underlying land) or any modifications of existing encumbrances, and Tenant shall execute such documents as may reasonably be requested by Landlord or the beholder of the encumbrance to evidence this subordination.

26. Transfer of Premises. If the Leased Premises is sold or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee and recognize it as the Landlord under this lease, and, provided the purchaser assumes all obligations hereunder, the transferor shall have no further liability hereunder.

27. Estoppel. Either party will within twenty (20) days after notice from the other execute, acknowledge and deliver to the other party a certificate whether or not this lease has been modified and is in full force and effect, whether there are any modifications or alleged

Initials
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breaches by the other party; the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent; and any other facts that may be reasonably requested. Failure to deliver the certificate within the specified time shall be conclusive upon the party of whom the certificate was requested that the lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate. If requested by the holder of any encumbrance or any ground lessor, Tenant will agree to give such holder or lessor notice of and an opportunity to cure any default by Landlord under this lease. Unresolved good faith disputes between Landlord and Tenant shall be resolved pursuant to mandatory binding arbitration.

28. Attorney's Fees. In any litigation or arbitration arising out of this lease, the prevailing party shall be entitled to recover attorney fees, costs and expert witness fees, if any, at trial, on any appeal, or in any other proceeding.

29. Quiet Enjoyment. Landlord warrants that so long as Tenant complies with all material terms of this lease, it shall be entitled to peaceable and undisturbed possession of the Leased Premises free from any eviction or disturbance by Landlord. Landlord shall have no liability to Tenant for loss or damages arising out of the acts of other tenants of the Leased Premises or third parties, nor any liability for any reason which exceeds the value of its interest in the Leased Premises. Notwithstanding the above, Landlord reserves to itself a right of access over and across the dock leased herein, provided that such access does not unreasonably interfere with Tenant's use of the Leased Premises.

30. Complete Lease. This lease and the attached Exhibits, constitute the entire agreement of the parties and supersede all prior written and oral agreements and representations. Neither Landlord nor Tenant is relying on any representations other than those expressly set forth herein. Any modification to this lease must be in writing and signed by both parties.

31. Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice of the party's right to require strict performance of the same provision in the future or of any other provision.

32. Real Property Taxes.

a. Payment of Taxes. Tenant shall pay the real property tax, if any, as defined in paragraph 32.b. applicable to Tenant's portion of the Port as represented by the lease.

b. Additional Improvements. Tenant shall be responsible for paying Tenant's share of any increase in real property tax specified in the Tax Assessor's records and work sheets as being caused by additional improvements placed upon the Port by other Tenants or by Landlord for the exclusive enjoyment of such other Tenants.

c. Definition of "Real Property Tax". As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or

bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Port or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof.

33. Severability. The invalidity of any provision of this lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions herein.

34. Time of Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

35. Security Measures. Each party acknowledges that they shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the other party or their property. Each party assumes all responsibility for the protection of itself, its agents, and invitees and its property from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option from providing security protection for the Port or any part thereof.

36. "As-is". This lease is not subject to any implied warranties, but is leased "as is".

37. Guarantee. Tenant is an Oregon Limited Liability Corporation, organized and operated by and through Michael Wayne Manning and Zjanett Pearl Manning. As a condition of entering into this lease with Tenant, Michael Wayne Manning and Zjanett Pearl Manning hereby agree to personally assume all of the covenants and agreements herein and also agree to personally guarantee any and all financial amounts due under this lease.

38. Arbitration. Any controversy or claim arising out of or relating to this lease, including without limitation, the making, performance, or interpretation of this lease shall be settled by arbitration. If the Landlord or Tenant disagree whether the either is legally entitled to recover damages under this lease, then either Landlord or Tenant may make a written demand for arbitration. The parties agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator shall be an attorney licensed to practice law in the State of Oregon. The party seeking arbitration shall give written notice to that effect to the other and shall, in that notice, select an arbitrator. Within 15 days thereafter, the other party shall by written notice either agree to the arbitrator selected or suggest another person to act as arbitrator. If the parties cannot agree within 30 days to the selection of a single arbitrator after the election to arbitrate, either party may request that the selection of an arbitrator be made by a judge of the Circuit Court for Curry County, Oregon. Landlord and Tenant will pay their own costs of arbitration, and, unless costs are awarded by the arbitrator to the prevailing party, each is obligated to pay one half of the arbitrator's fee.

Unless otherwise agreed the arbitration shall be conducted in Curry County, Oregon. If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided for by the Oregon Rules of Civil Procedure both in advance of and during recess of the arbitration proceedings. ORS 183.450 (1) through (4), where applicable, shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided

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Date 11/5/07

however no error by the arbitrator in application of the statute shall be grounds as such for vacating the arbitrator's award. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall give written notice to the parties stating the arbitration determination and shall furnish to each party a signed copy of such determination and judgment so the award may be entered in any court having jurisdiction over the parties.

If arbitration is commenced, this contract shall be governed by and construed in accordance with the laws of the State of Oregon. The parties agree that the arbitrator shall have no jurisdiction to render an award or judgment for punitive damages. The parties agree that the decision of the arbitrator shall be final and binding on the parties and a judgment may be entered on the arbitrator's award. The parties agree that all facts and other information relating to any arbitration arising under this contract shall be kept confidential to the fullest extent permitted by law. Unless otherwise inconsistent herewith, the provisions of ORS chapter 36 shall apply to any arbitration hereunder. In the event of arbitration under the provisions of this Lease, the prevailing party shall be awarded reasonable attorney fees and related costs, disbursements and expert witness fees as provider for in this contract.

The duty to arbitrate shall survive the cancellation or termination of this Lease.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this lease as of the day and year first written above.

**PORT OF BROOKINGS-HARBOR,
Landlord**

By: *Sue Gold*
Name: Sue Gold
Title: BOARD CHAIR

**B C FISHERIES, LLC,
Db a BLAINE CRAB, Tenant**

By: *Mike Manning*
Name: MIKE MANNING
Title: president/owner
Mailing Address: PO. BOX 71412
Brookings OR 97415
Phone: 1-541-412-7368

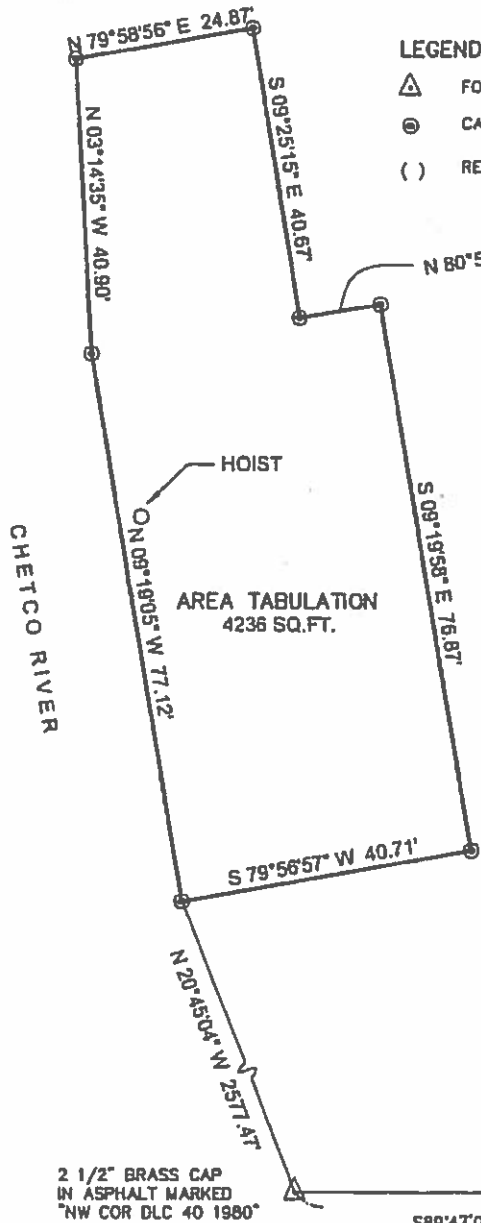
**MICHAEL WAYNE MANNING and
ZJANETT PEARL MANNING,
individually:**

Michael Wayne Manning
Michael Wayne Manning

Zjanett Pearl Manning
Zjanett Pearl Manning

EXHIBIT - A

LOCATED IN
 SW1/4 OF THE SE1/4, SECTION 5, T41S, R13W,
 WILLAMETTE MERIDIAN, CURRY COUNTY, OREGON
 BLAINE CRAB DOCK



LEGEND

- △ FOUND MONUMENTS PER CS 41-1268
- ⊙ CALCULATED LEASE CORNER, NO MONUMENT SET OR FOUND
- () RECORD DATA PER CS 41-1268

AREA TABULATION
 4236 SQ.FT.

2 1/2" ALUM CAP
 MARKED "MARQUESS
 & ASSOC." BEARS
 NORTH 0.22' FROM DLC LINE

2 1/2" ALUM CAP
 MARKED "MARQUESS
 & ASSOC."

2 1/2" BRASS CAP
 IN ASPHALT MARKED
 "NW COR DLC 40 1980"

589°47'00"E 533.65'
 (589°47'00"E 533.70')
 BASIS OF BEARINGS

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

PREPARED FOR: PORT OF BROOKINGS HARBOR
 SURVEY DATE: APRIL 2004
 JOB #: 04-058



[Signature]
 OREGON
 JULY 25, 1983
 RICHARD P. ROBERTS
 2730
 EXPIRES 12/31/04

Roberts & Associates

Land Surveying INC

English Village Ctr.
 15957 Hwy 101 S. #11
 P.O. Box 2791
 Harbor, OR 97415

Ph: 541-469-0162
 Fax: 541-469-5456

BC FISHERIES LLC. EXHIBIT "B"

Curry County Enterprise GIS



Legend

- ROADS
- PARCELS
- CITY LIMITS
- URBAN GROWTH BOUNDARY
- TOWNSHIPS

App. 4113-05DC

Scale: 1:1,418

Map center: 42° 2' 56.8" N, 124° 16' 4.5" W



This map is a public resource of general information. Use this information at your own risk. Curry County makes no warranty of any kind, expressed or implied, including any warranty of merchantability, fitness for any particular purpose or any other matter.

EXHIBIT C

Curry County Enterprise GIS



This map is a public resource of general information. Use this information at your own risk. Curry County makes no warranty of any kind, expressed or implied, including any warranty of merchantability, fitness for any particular purpose or any other matter.

Map center: 42° 2' 57.33" N, 124° 16' 4.83" W



Legend

- SITUS
- TAX CODES
- ▲ ASSESSMENT
- ~ ROADS
- PARCELS
- ▭ CITY LIMITS
- ▭ URBAN GROWTH BOUNDARY
- TOWNSHIPS

— 4236 Φ
High Dock

— 15,220 Φ
Storage Area



Loss added: July 20, 2007