

ACTION ITEM – L

DATE: November 19, 2019
RE: Zola's on the Water Lease Proposal
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Eian Savas, owner of Zola's Pizzeria, has approached the Port with a proposal to purchase Sporthaven business. The proposal is attached for review.
- Mr. Savas will attend the meeting to introduce his plan for the new business and lease proposal.
- Zola's Pizzeria current lease is currently month to month. The building belongs to the Port and is not in good condition.
- The Sporthaven Marina building is still privately owned and leasing space on Port property. The outdoor seating area was built by the current owners and is part of Port property. The outdoor seating area is not included in the current lease with Sporthaven.
- Port counsel advises that in order for the restaurant building to not transfer to the Port and to instead transfer between buyer and seller, the Port needs to approve an assignment of the lease to Mr. Savas and then enter into an Amended and Restated Lease with Mr. Savas, which would essentially be a new lease in the Port's current format with standard terms.

DOCUMENTS

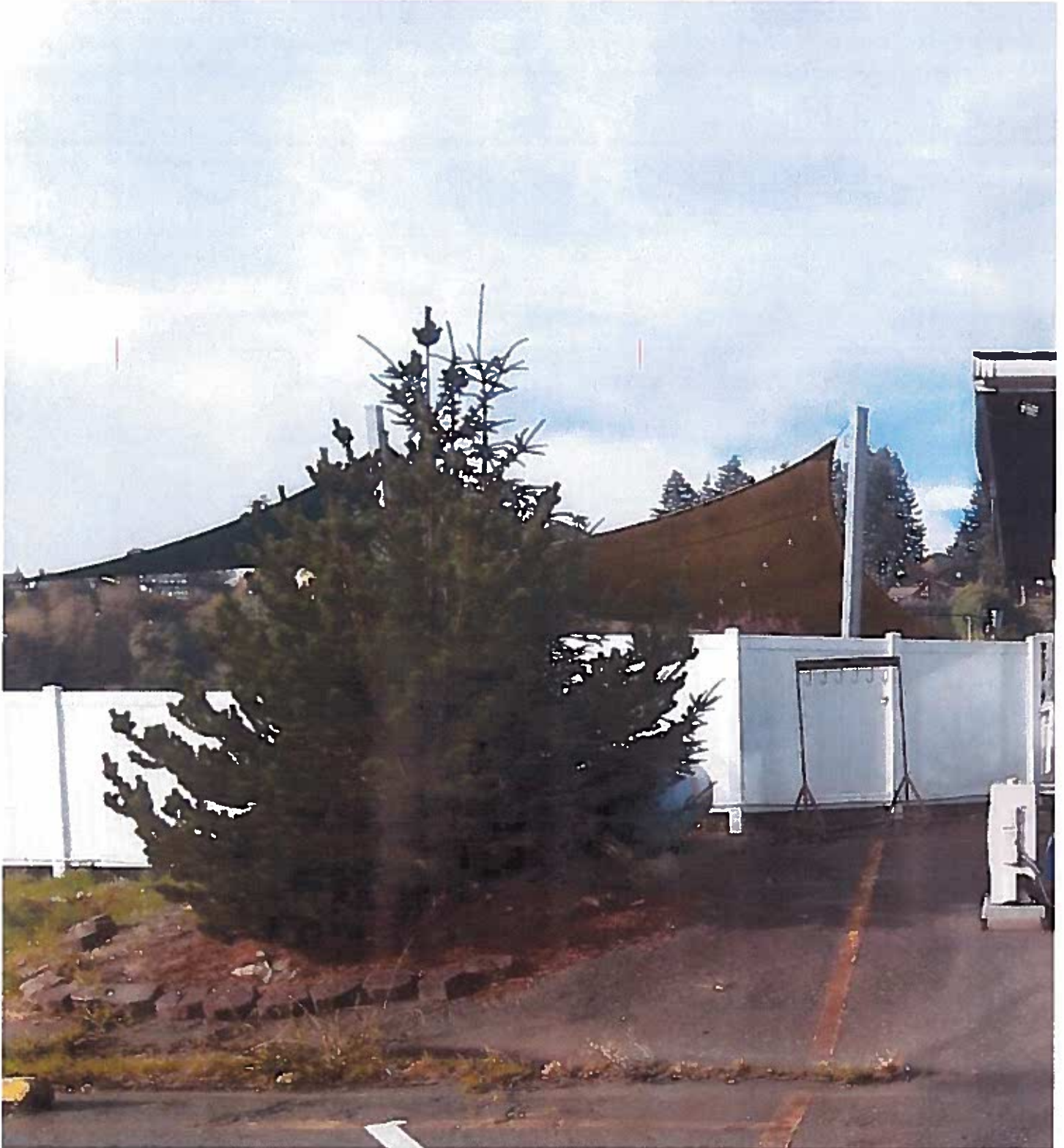
- Zola's on the Water Lease Proposal, 3 pages
- Existing Port Lease Rates, 1 page
- Current Zola's Pizzeria Invoice, 1 page
- Current Sporthaven Marina Invoice, 1 page
- Draft "Consent to Assignment and Assumption of Lease", 2 pages
- Proposed Amended and Restated Lease with Eian Savas, Zola's on the Water, 18 pages

COMMISSIONERS ACTION

- **Recommended Motion:**
Motion to (1) approve the assignment of the current lease with Howard and Cindy Jones, owners of Sporthaven Marina Bar and Grill, to Eian Savas, if so requested, and (2) approve the proposed Amended and Restated Lease Agreement with Eian Savas to be executed upon the assignment of the current lease with Howard and Cindy Jones.

portmanager@portofbrookingsharbor.com

From: eian savas <eiansavas@yahoo.com>
Sent: Wednesday, November 13, 2019 1:44 PM
To: portmanager@portofbrookingsharbor.com
Subject: Zolas on the water





Investment

After purchase of building and securing a lease we will begin the remodel.
Estimating 250K going into the building for remodel.

Lease Base Rate

- a. Square footage under building as measured by the Port: 3,795 sq. Ft. x .080 bare ground rate =303.60
- b. Square footage for outside seating: 2500 sq. ft. x .53 concrete rate = 1,325.00
- c. Lease payment:\$1,628.60

1 year discounted rent @ the .08 for all square footage

2. Rate Adjustors

Option b: increase every five years not to exceed 2% at any individual anniversary

3. Lease Term

- a. Option Thirty year initial term with 30 year extension with six five year options to extend.

4. Parking: Landlord provides for adequate parking, with understanding that Zola's will have no reserved spaces.

5. Zola's is permitted to operate in accordance with the terms of the lease in its present location.

6. Current Zola's building will not be re-occupied and will be removed within six months of termination of present occupancy.

7. We have a signed purchase sale agreement contingent on securing a lease.

8. We will begin the remodel immediately to be open by May 2020

9. Moving outside trees shown in picture

10. Taking ownership of the are where the tree was removed to add onto the building and maintain visual aesthetics.

PORT OF BROOKINGS HARBOR

1) Daily

• Pull thru full hook-up	_____	\$	43.00
• Back in full hook-up	_____	\$	37.00
• Partial hook-up	_____	\$	31.00

2) Weekly

• Pull thru full hook-up	_____	\$	258.00
• Back in full hook-up	_____	\$	222.00
• Partial hook-up	_____	\$	186.00

C. July 4th Holiday, 3 night minimum

1) Daily

• Pull thru full hook-up	_____	\$	95.00
• Back in full hook-up	_____	\$	84.00
• Partial hook-up	_____	\$	54.00

D. Other Holidays, (Labor and Memorial Days 3 night stay min. other holiday are 2 night min.)

1) Daily

• Pull thru full hook-up	_____	\$	55.00
• Back in full hook-up	_____	\$	46.00
• Partial hook-up	_____	\$	38.00

D. Laundry Machines - Currently not in operation

per-lead _____ Closed \$ _____ 2.00

E. Showers _____ Closed \$ _____ 0.50

Section 6. Commercial Retail

A. Warehouse - Shop

per square foot _____ \$ 0.53

B. Warehouse - Storage

per square foot _____ \$ 0.42

C. Commercial Docks

per square foot _____ \$ 0.66

D. Surfaced Concrete

per square foot _____ \$ 0.53

E. Surfaced Asphalt

per square foot _____ \$ 0.32

F. Retail Center

per square foot _____ \$ 1.130

G. Bare Ground

per square foot _____ \$ 0.080

H. Port Meeting Room Suite 202

Flat daily rate from 8am to 8pm _____ \$ 50.00

Section 7. Fines

A. Failure to pay launch fee _____ \$ 25.00

Section 8. Administration Fees

I may require payment or deposit in advance of service. (ORS 192.440(4)(a))

A. Public Records Request Fee Schedule

1) Copies of Public Records, Black & White, 8X11, per page _____ \$ 0.25

2) Copies of Sound Recordings _____ \$ 10.00

3) Copies of Port By-Laws, Codes _____ \$ 20.00

Adopted by Board

19-24-19

Effective July 1, 2019



Port of Brookings Harbor
 PO Box 848
 Brookings, OR 97415
 (541) 469-2218

Invoice

Date: 11/1/2019
 Invoice #: 20193504

PAID
 11/13/2019

Bill To

Zola's Pizzeria
 16340 Lower Harbor Rd. Box 231
 Brookings, OR 97415-8303

Lease Information:

16362 Lower Harbor Road
 Brookings, OR 97415
 Lease Term: Month to Month
 County Account# R18819

Lease #	Terms
CL0033	10th of the month due

Description	Square Footage	Amount
NOVEMBER 2019 LEASE Retail Center per square foot	999	1,366.94

TERMS: Due upon receipt. Past due accounts will be assessed a late charge of 1.5% per month (18% per annum) or a \$35.00 late fee. In the event, suit or action is instituted to collect any amount owed on this account, the customer 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.

Total	\$1,366.94
Payments/Credits	-\$1,366.94
Balance Due	\$0.00

Visit our website at www.portofbrookingsharbor.com



Port of Brookings Harbor
 PO Box 848
 Brookings, OR 97415
 (541) 469-2218

Invoice

Date: 11/1/2019
 Invoice #: 20193499

PAID
 09/03/2019

Bill To

Sporthaven Marina
 Howard & Cindy Jones
 P.O. Box 6580
 Brookings, OR 97415

Moorage/Storage Information:

16374 Lower Harbor Road
 County Account# R37148
 Lease Term: 05/01/2016-05/01/2031

Terms
10th of the month due

Description	Quantity	Amount
NOVEMBER 2019 Lease Retail Center per square foot	2,788	1,022.71
10% - 5 Year Increase per Agreement 2017		102.27
Subtotal		1,124.98
C/R Sewer Utility		32.08

TERMS: Due upon receipt. Past due accounts will be assessed a late charge of 1.5% per month (18% per annum) or a \$35.00 late fee. In the event, suit or action is instituted to collect any amount owed on this account, the customer 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.

Visit our website at www.portofbrookingsharbor.com

Total	\$1,157.06
Payments/Credits	-\$1,157.06
Balance Due	\$0.00

DRAFT

**CONSENT TO ASSIGNMENT
AND
ASSUMPTION OF LEASE**

This Consent to Assignment and Assumption of Lease ("Consent") dated as of _____, is made by and among the Port of Brookings Harbor ("Landlord"), an Oregon municipal corporation, Howard Jones and Cynthia O'Reilly-Jones ("Assignor") and Eian Savas ("Assignee").

WHEREAS, Assignor is the current tenant of the premises known as 16374 Lower Harbor Road; and

WHEREAS, the original lease for the premises was entered into on March 21, 1996 between Landlord and Howard Toner, Cal Rosevear and Jerry Hogan dba BMH Enterprises as Tenant; and

WHEREAS, Landlord consented to the assignment of the original lease to Mike and Kathy Ramsay on September 20, 2005; and

WHEREAS, Landlord consented to the subsequent assignment of the lease to Assignor on March 6, 2012; and

WHEREAS, Assignor has requested Landlord's consent to the assignment and assumption of the lease to Eian Savas dba Zola's on the Water; and

WHEREAS, Landlord is willing to execute the Consent, subject to all of the terms and provisions herein contained.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. **CONSENT TO ASSIGNMENT.** Landlord hereby consents to the assignment and assumption of the Lease by Assignor to Assignee subject to the terms and provisions of this Consent.
2. **LEASE TERM.** Assignor and Assignee acknowledge and agree that the Lease expiration date is April 30, 2031.
3. **FURTHER ASSIGNMENT.** This Consent is not to be deemed a consent to the further assignment of the Lease. Pursuant to the Lease, Landlord's consent in writing must be obtained prior to any further assignment of the Lease.
4. **ASSUMPTION OF OBLIGATIONS.** Assignee hereby assumes all of the obligations of Assignor arising under the Lease from and after the Commencement Date of the Lease and agrees to be bound by and to perform all of the terms, covenants, agreements, provisions, and conditions of the Lease on Assignor's part to be performed or observed from and after the Commencement Date of the Lease.

5. **RELEASE OF ASSIGNOR.** This Consent serves as a waiver and release of the continuing obligations of Assignor under the Lease as of the effective date of assignment of the lease from Assignor to Assignee. Assignor will remain responsible for any liabilities and obligations incurred up to the effective date of the assignment.

6. **GOVERNING LAW.** This Consent will be governed and construed in accordance with Oregon Law.

IN WITNESS WHEREOF, this Consent has been executed as of the day and year first above written.

LANDLORD:	ASSIGNOR:	ASSIGNEE:
<hr/> Roy Davis, Chairman Board of Commissioners Attest: <hr/> Commissioner	<hr/> Howard Jones <hr/> Cynthia O'Reilly-Jones	<hr/> Eian Savas <hr/>

DRAFT

**AMENDED AND RESTATED COMMERCIAL LEASE AGREEMENT
ZOLA'S ON THE WATER**

This amended and restated lease agreement (this "Lease") is made and entered into this ___ day of _____, 2019, by and between the **Port of Brookings Harbor**, an Oregon municipal corporation (referred to herein as the "Landlord") and **Eian Savas dba Zola's On the Water** (referred to herein as the "Tenant").

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

Approximately 3,795 sq.ft. of bare ground and 2,500 sq.ft. of concrete patio, as shown on Exhibit "A", attached hereto and made a part hereof, located at 16374 Lower Harbor Road, Brookings, Oregon (referred to herein as the "Leased Premises").

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

- a. **Assignment of Lease.** Tenant was assigned the original lease for a portion of the property covered by this Lease and pursuant to that assignment acquired title to the improvements on the premises that were part of the original lease.
- b. **Current Term.** The term of this Lease agreement is thirty (30) years commencing _____, 20____ and expiring _____, 20____.
- c. **Extended Term.** Landlord grants to Tenant the six options to extend the lease term for five (5) additional years each; provided that Tenant: (a) notifies the Port of its intent to exercise the option no less than 90 days prior to expiration of the term; (b) is not in default of this Lease; and (c) Landlord does not need the premises for its own use. The rental rate is to be adjusted to be commensurate with applicable rates adopted by the Board of Commissioners in effect at the end of the term. Failure to provide such notice is a default and a material breach of this Lease and Landlord may terminate this Lease on the expiration date and retake possession of the Leased Premises with or without process of law.
- d. **Rental Rate.** The base rental rate for the Leased Premises is One Thousand Six Hundred Twenty-eight and 60/100

Dollars (\$1,628.60) per month based upon the bare ground rental rate of \$0.08/sq.ft. per month for 3,795 sq.ft. (\$303.60) and \$0.53/sq.ft. per month for 2,500 sq.ft. (\$1,325.00). The building and associated improvements are the property of the Tenant.

- e. Reduced Rent for First Year. Tenant plans to make substantial improvements to the Leased Premises (estimated at \$250,000). In consideration of this substantial investment, the base rental rate for the first 12 months of this Lease will be reduced to \$0.08/sq.ft. for all 6,295 sq.ft. (\$503.60 per month).
- f. If Tenant does not vacate the Leased Premises at the expiration of the term or any extended term, Landlord may treat Tenant as tenant from month-to-month, subject to all of the provisions of this Lease, except that Landlord may establish a new rental rate commensurate with the applicable rates adopted by the Board of Commissioners in effect at the end of the term. Such month-to-month tenancy will be terminable at the end of any monthly rental period upon 10-days' written notice from Landlord. Tenant hereby waives any notice otherwise required by law with respect to a month-to-month tenancy.

3. Base Rent Payment.

- a. Tenant is to pay the base rent for the Leased Premises and any additional rent provided herein without deduction or offset. Additional rent means any other sums payable by Tenant to Landlord under this Lease.
- b. The base rent will 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), not to exceed 2.0% each year. The base rent increase will be for the total amount of the base rent due. Base rent includes all prior percentage increases.
- c. Rent for any partial month during the lease term will be prorated to reflect the number of days during the month that Tenant actually occupied the Premises.
- d. 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's 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 this Lease, Tenant's 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 \$1,628.60. 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 will not be the exclusive remedy for Tenant's default. If the security deposit is applied by the Landlord, Tenant is required to pay on demand 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 must 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 of Leased Premises.

a. Tenant may use the Leased Premises for the following purposes only, and for no other purpose without Landlord's prior written consent: restaurant (indoor and outdoor dining), including the sale of beer and wine for consumption on-premises.

b. In connection with its use of the Leased Premises, Tenant must, at its sole expense, promptly comply with all applicable laws, ordinances, rules and regulations of any public authority, including, but not limited to, those of the Port of Brookings Harbor, Curry County and the State of Oregon, and not unreasonably annoy, obstruct or interfere with the rights of other tenants of the Port of Brookings Harbor, wherever located. Tenant must not create or maintain any nuisance, noise, objectionable fumes, or vibrations while using the Leased Premises. Tenant will be responsible for any System Development Charges applicable to or caused by the Tenant's use of the Leased Premises.

6. Improvements and Fixtures.

- a. All improvements on the property will become the property of the Landlord upon expiration or earlier termination of this Lease, unless expressly otherwise agreed to by the parties.
 - b. All fixtures placed upon the Leased Premises during the term, other than Tenant's trade fixtures, will, at Landlord's option, become the property of Landlord upon the expiration or earlier termination of this Lease.
 - c. Prior to termination or expiration of the lease term, Tenant is required to remove all furnishings, furniture, and trade fixtures which remain its property. If Tenant fails to do so, such failure will be deemed an abandonment of the property. Upon giving Tenant 20 days' written notice, Landlord may sell or otherwise dispose of the property. Tenant will be responsible for all costs of storing and disposing of abandoned personal property, with interest at the legal rate from the date of expenditure by Landlord.
7. **Signs.** All signs, awnings, antennas, or other apparatus positioned as to be visible from outside the Leased Premises require Landlord's prior written approval as to design, size, location, and color. All signs installed by Tenant must comply with Landlord's standards for signs, and all applicable codes and signs and sign hardware are to be removed upon termination of this Lease with the sign location restored to its former state unless Landlord elects to retain all or any portion thereof.
8. **Utilities and Services.** Tenant is responsible for all utilities, including but not limited to, water, sewer, electricity, gas, phone, and garbage. Unless caused by Landlord's negligence or intentional act, the interruption, limitation, curtailment, or rationing of services or utilities may not be deemed an eviction or disturbance of Tenant's use and possession of the Leased Premises, or render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease.
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 entirety of the Leased Premises, including the improvements thereon (exterior, interior and structural elements), and every part thereof in good condition and repair; excepting ordinary

wear and tear and damage to the Leased Premises by earthquake, act of God, or the elements.

b. On the last day of the term hereof, or upon any sooner termination, Tenant must surrender the Leased Premises to Landlord in good condition and repair, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Leased Premises will not be deemed ordinary wear and tear if the same could have been prevented by commercially reasonable maintenance practices.

10. **Maintenance and Repair – Landlord.** Landlord has no maintenance and repair obligations for the improvements or utilities upon the Leased Premises during the term of this Lease.

11. **Alterations.** Tenant may not make any alterations, additions, or improvements to the Leased Premises without Landlord's prior written consent. Landlord will have the right to approve the contractor used by Tenant for any work on the Leased Premises, and to post notices of non-responsibility in connection with any work being performed by Tenant on the Leased Premises.

12. **Indemnity.**

a. Tenant must not allow any liens to attach to the Leased Premises, or Tenant's interest in the Leased Premises, as a result of Tenant's 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 of requiring Tenant to post a Surety Bond within ten (10) days at Tenant's expense or to pay and discharge the lien. 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's fees and costs relating to any such lien.

b. Except as otherwise provided 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 solely by reason of the gross negligence or willful act of Landlord, its officers, employees, or agents. Tenant must defend, indemnify and hold

Landlord harmless from and against 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 solely by reason of the gross negligence or willful act of Landlord, its officers, employees, or agents; or (b) occurring in, on, or about any part of the Leased Premises when such damage, injury, illness, or death was caused in whole or in part by the act, neglect, omission, or fault of Tenant, its agents, servants, employees, invitees, or licensees (including, without limitation, when such damage, injury, illness, or death has been caused in part by Landlord, its officers, employees, or agents.) Landlord will 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 survive the termination of this Lease with respect to any damage, injury, illness, or death occurring prior to such termination.

13. Insurance.

- a. Tenant is required to carry commercial general liability 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 including coverage for personal and advertising injury, operations and products completed. Such insurance must 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 contain a "severability of interests" provision. All coverage must be on an occurrence basis and not on a claims made basis. All policies required by this section must also be endorsed to provide a waiver of subrogation in favor of the Port of Brookings Harbor. Tenant will be responsible to pay for any deductible amounts payable under any policy of insurance.

- b. Tenant is required to furnish certificates of insurance to Port's General Manager, P.O. Box 848, Brookings, Oregon 97415 certifying the existence of such insurance no later than five (5) days prior to commencement of this Lease. Each insurance policy required by this clause is to be endorsed to state that coverage will 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 must be furnished at least 14 days prior to the expiration of any policy.

- c. The insurance required herein will 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.
- d. Landlord reserves the right to review, investigate and reject insurance companies proposed to be sued by Tenant if they are determined inadequate to provide necessary coverage's as herein specified. All insurance required to be purchased and maintained by Tenant must 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.
- e. If Tenant's policies lapse or are canceled at any time during the term of this Lease, Landlord will have the right to immediately terminate this Lease. Tenant will be responsible to Landlord, and must 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 will 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, invitees, customers, or any other person in or about the Leased Premises or the Port, nor may Landlord be held 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 premises 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, unless such injury and/or damage results from the gross negligence or willful acts of Landlord. Landlord may not be held 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 or Tenant's improvements to the Leased Premises that causes the Leased Premises or any substantial portion of the Leased Premises (including the improvements thereon) to be unusable, or which will cost more than twenty-five percent (25%) of the pre-damage value of the Leased Premises (or Tenant's improvements thereon) to repair. In case of major damage, Tenant may elect to terminate this Lease by notice in writing to Landlord within sixty (60) days after such date. Tenant and Tenant's insurance will still be responsible to restore the Leased Premises and Tenant's improvements thereon even if Tenant chooses to terminate this Lease. If this Lease is not terminated following major damage, or if damage occurs that is not major damage, Tenant must promptly restore the Leased Premises and Tenant's improvements thereon to the condition existing just prior to the damage.
16. **Waiver of Subrogation.** Tenant is responsible for insuring its personal property, improvements and trade fixtures located on the Leased Premises and any alterations or new Tenant improvements it makes to the Leased Premises. Neither Landlord nor Tenant may be held 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 an extended coverage endorsement, or for any business interruption. There may be no subrogated claims by one party's insurance carrier against the other party arising out of any such 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 will be that the portion of the Leased Premises taken must 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 will 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 belong to Landlord, and Tenant will have no claims against Landlord or the condemnation award because of the taking.
18. **Assignment and Subletting.**

- a. This Lease will bind and inure to the benefit of the parties, their respective heirs, successors, and assigns, provided that Tenant may 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 applies to all transfers by operation of law including, but not limited to, mergers and changes in control of Tenant. No assignment will act to relieve Tenant of its obligation to pay rent or perform other obligations required by this Lease and no consent to one assignment or subletting may be deemed consent to any further assignment or subletting. Landlord may 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.

- b. Upon the assignment of this Lease, 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 will 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 is to be paid to Landlord promptly following its receipt by Tenant. Tenant must 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 events 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 will 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 will 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 this 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 re-let the Leased Premises will 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 include an amount equal to rent lost because of the default and all attorney's fees and costs. Landlord may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages will act to 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 will 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 that Tenant has failed to perform, in which case Landlord will 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 will not act to waive Tenant's default.

21. Regulations. Landlord will have the right (but not the obligation) 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 must 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 will have no liability for permitting or refusing to permit access to anyone. With reasonable notice to Tenant, Landlord will 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 cases of emergency, such entry will be made 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.

23. Notices. Notices to the parties relating to this Lease must 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 will be payable

to Landlord at the same address and in the same manner, but will be considered paid only when received.

24. **Subordination.** This Lease is 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 will be subject and subordinate to any future encumbrance hereafter placed against the Leased Premises (including the underlying land) or any modifications of existing encumbrances. Tenant must 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 must attorn to the purchaser or transferee and recognize it as the landlord under this Lease, and, provided the purchaser assumes all obligations hereunder, the Landlord (transferor) will have no further liability hereunder.

26. **Estoppel.** Either party will within twenty (20) days after notice from the other party execute, acknowledge and deliver to the other party a certificate reciting: 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; 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 will 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 will be resolved pursuant to mandatory binding arbitration as provided herein.

27. **Attorney's Fees.**
 - a. In the event any action, suit, arbitration or other proceeding is 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 will 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's fee, the prevailing party will 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.

- b. In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party will be entitled to recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney's 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 will 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 will 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 will be entitled to peaceable and undisturbed possession of the Leased Premises free from any eviction or disturbance by Landlord. Landlord will 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.

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 will not be deemed a waiver 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 is required to pay all real and personal property taxes, if any, applicable to Tenant's use and possession of the Leased Premises.
 - b. **Additional Improvements.** Tenant will be responsible for paying any increase in real property tax specified in the Tax Assessor's records and work sheets caused by additional improvements placed upon the Leased Premises by Tenant or by Landlord for use by Tenant.
 - c. **Definition of "Real Property Tax".** As used herein, the term "real property tax" includes 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 will not 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 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 full responsibility for the protection of itself, its agents and invitees and its property from acts of third parties. Nothing herein contained may prevent Landlord, at Landlord's sole option from providing security protection for the Port or any part thereof.
35. **No Warranties.** The Leased Premises are leased "as-is" and in their current condition as of the first day of the lease term. No warranties, express or implied, are provided by Landlord.
36. **Parking.** Landlord does not reserve any parking spaces to Tenant as part of this Lease, however, all public parking spaces of Landlord are available to Tenant and Tenant's patrons, employees, and other invitees.

37. Arbitration.

- a. Any controversy or claim arising out of or relating to this Lease, including, without limitation, the making, performance or interpretation of this Lease, is to 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.
- b. 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 agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator must 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 is to be heard by the arbitrator selected within 90 days thereafter, unless the parties agree otherwise.
- c. 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 will be entitled to an award of reasonable attorney fees and related costs.
- d. 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, will 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 may be grounds for vacating the arbitrator's award. Each party will be entitled to present evidence and argument to the arbitrator. The arbitrator must give written notice to the parties stating the arbitration determination and 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.
- e. The parties agree that the arbitrator will have no Jurisdiction to render an award and/or judgment for punitive damages. The parties agree that the decision of the arbitrator will 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 will apply to any arbitration hereunder. The duty to arbitrate will survive the cancellation or termination of this Lease.
- f. Service of process in connection therewith is to be made by

certified mail. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined will be the existence of the agreement to arbitrate and the failure of one party to comply with that agreement, and those issues are to be determined summarily by the court without a jury. All other issues must be decided by the arbitrator, whose decision thereon will 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.

- g.** Neither party may 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 may 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.
- h.** 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 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 will 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, Landlord may 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 Landlord is required to, or in fact does, initiate a crossclaim, counterclaim, or third-party claim, and regardless of Tenant's indemnity obligations.
- i.** The duty to arbitrate will 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 last written below.

**PORT OF BROOKINGS-HARBOR,
Landlord**

**EIAN SAVAS DBA ZOLA'S ON THE
WATER, Tenant**

Dated: _____

Dated: _____

By: _____
Board Chairman Roy Davis

By: _____

ATTEST:

Commissioner

Mailing Address:
P.O. Box 848
Brookings, OR 97415

Phone: 541-469-2218
Fax: 541-359-3999

Mailing Address:

Phone:
Fax :

Zola's on the Water Exhibit "A"



82.5 ft X 46 ft = 3,795 SF

50 ft X 50 ft = 2,500 SF

Building = 3,795 SF
Outdoor Seating = 2,500 SF