

**Port of Brookings Harbor  
Board of Commissioners  
Special Meeting Agenda**  
Port of Brookings Harbor Office  
16340 Lower Harbor Rd  
Brookings OR 97415

**Wednesday, April 12, 2017 • 5:00 pm**

**Agenda:**

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| <b>7. Public Comments</b> – Limited to a maximum of three minutes per person. A "Public Comment Request", located near the entrance, must be completed and turned into the Chairman prior to the beginning of the meeting. |     |
| <b>8. Adjournment</b>  |     |



# Special Meeting Minutes for March 14, 2017

Port of Brookings Harbor Board of Commissioners  
Special Meeting Minutes  
Tuesday, March 14, 2017, 5:00 p.m.  
Port Office: 16340 Lower Harbor Rd, Brookings OR, 97415

**1. CALL TO ORDER AND ROLL CALL**

Chairman Davis called the meeting to order at 5:00 pm.

Commissioners present: Chairman Roy Davis, Roger Thompson & Sharon Hartung. Vice Chairman Sue Gold and Treasure Tim Patterson were absent.

Staff present: Port Manager Gary Dehlinger and Administration Assistant Danielle Shepard

**2. APPROVAL OF AGENDA**

*Comm. Thompson made the motion to approve the Agenda as written.  
Seconded by Comm. Hartung. Voting Yes: Unanimous.*

**3. APPROVAL OF MINUTES**

All minutes will be approved at the March 21, 2017 Regular Meeting

- A. Special Meeting – Tuesday, February 7, 2017
- B. Special Meeting – Tuesday, February 14, 2017
- C. Regular Meeting – Tuesday, February 21, 2017
- D. Special Meeting – Tuesday, February 27, 2017

**4. FINANCIAL REPORT**

Mr. Dehlinger informed the Board that this is the first financial report in 3 months. Mr. Dehlinger went over the layout of the financial report. We have received the ODOT money, 1.1 million, that paid IFA for the damage from the Tsunami.

- a. **Supplement Budget Hearing:** Mr. Dehlinger informed the Board that for the Ice House dredging, it was roughly \$450,000, but for the budget it says half a million dollars. This dredging was done earlier in the year due to the sinkhole debris.

- b. **Appoint Budget Officer:**

*Comm. Hartung made the motion to appoint Mr. Gary Dehlinger, Port Manager, as the Budget Officer for 2017-2018. Seconded by Comm. Thompson. Voting Yes: Unanimous.*

- c. **Appoint Budget Committee – March 21, 2017:** Postponed until March 21 Regular Meeting.

- d. **Draft Audit Report:** Mr. Dehlinger is looking for approval at the March 21<sup>st</sup> regular meeting, this way the report is to the State by the end of the month.

5. **NEW BUSINESS**

- a. **PFMC Representative Regarding Salmon Season – March 21, 2017:** Richard Heap will be present at the next meeting to inform us of the season.
- b. **CBN Lease Amendment:** Mr. Dehlinger informed the Board that this is fixing a few things in the lease. There were (2) different start times and there is no outside storage. Looking for approval at the March 21 Regular meeting.
- c. **Hallmark Lease:** Mr. Dehlinger informed the Board that Don Mann was working on this when he was here. Mr. Dehlinger has received an email from Hallmark stating they were okay with the lease, but want to back date the lease to March 2016, to match with the work area. Looking for approval at the March 21 Regular Meeting.
- d. **Bandon Pacific Lease:** Mr. Dehlinger informed the Board that Don Mann was working this lease when he was here. There has never been a signed lease with Bandon Pacific. Looking for approval at the March 21 Regular Meeting.
- e. **Zola's Lease:** Owner, Eian & Monica Savas, talked to the Board about what the business has gone through in the last (8) years. Right now, they are running out of space and propose how they can expand. Would like a blessing from the Board to move forward with the new building and what is needed there, removal of boat and storage unit to add in a refrigeration unit, and to build a fencing area to have a structured seating space. Mr. Dehlinger wanted the Board to be aware that that building is one of the oldest buildings and it might not be there for another 5 years and to keep that in mind. The Board asked Mr. & Mrs. Savas to come to the March 21 Regular Meeting, and Mr. Dehlinger will make up a draft lease.
- f. **J. Sloane Lease:** Mr. Dehlinger informed the Board that her lease is up, and that she plans on speaking at the March 21 Regular Meeting. Her lease includes utilities but without utilities included she pays \$1.22 a square footage. Mr. Dehlinger will have a draft lease ready and ready for approval at the March 21 Regular Meeting.
- g. **BC Fisheries Ice House/Cold Storage Lease Amendment:** Mr. Dehlinger informed the Board that this is just a name change, due to a new LLC.

*Comm. Hartung made the motion to approve the name change for the Ice House Lease as written. Seconded by Comm. Thompson. Voting Yes: Unanimous.*

*Comm. Thompson made the motion to approve the name change for the Cold Storage Lease as written. Seconded by Comm. Hartung. Voting Yes: Unanimous.*

- h. **Vendors at the RV Park:** Comm. Hartung asked how we couldn't have food down there before and now we can? Comm. Thompson asked about concessioners, is that why Fely's left because she wasn't a concessioner. Chairman Davis informed him that she left because she couldn't be a destination restaurant, but Mr. Dehlinger is asking for direction from the Board



whether to consider this or not. Mike with Chetco Brew stated that they have been doing research regarding food carts and food vendors and is willing to send that information to the Board. Postponed until March 21 Regular Meeting.

- i. **Change Order for Hoists – Dock:** Mr. Dehlinger informed the Board that the new dock design did not include the hoist. BC Fisheries bought the hoist, and the loan we had had contingencies. Mr. Dehlinger is asking the Board to take the contingency money and buy the hoist. BC Fisheries would have to maintain the hoist but it would be owned by the Port.

*Comm. Thompson made the motion to approve the change order for the hoist. Seconded by Comm. Hartung. Voting Yes: Unanimous.*

- j. **Sport C & D Dock Conditions & Plan:** Mr. Dehlinger informed the Board that engineer Jack Akin did an assessment of C & D docks and pilings. The way the docks and pilings were put together 15 years ago, are falling out. Mr. Akin doesn't see the docks as being safe. C dock has already lost (2) pilings, which we had to remove E dock because it lost (3) pilings. The farther out on the dock the more damage is done, due to the river wind. We are currently relocating moorage holder. Mr. Dehlinger is asking the Board in which direction do you want us to go? Suggestions are; C dock, cut off be at slips 19/20 with some dock tightening, have the cutoff be at slips 13/14 with no labor included. D dock, stop at slip 31 and side-tie 20. We don't have room for all boats, and I am not saying to remove the docks but to relocate moorage holders, so no further damage is done. It's up to the Board if you want to take that risk, the engineer says the whole dock isn't safe. We would have to barricade where it's unsafe. Comm. Thompson asked, shouldn't we just pull those pilings and docks? Mr. Dehlinger informed him that as long as they are in the ground we can't touch them. Postponed until March 21 Regular Meeting. Chairman Davis suggests that any Commissioners who have not walked the docks to do so before the next meeting.
- k. **Resolution 471: Moorage License Agreement:** Mr. Dehlinger informed the Board that there is no evidence of a moorage license agreement ever being approved by the Board. We did follow the Port of Siuslaw's layout. Postponed until March 21 Regular Meeting.
- l. **Resolution 472: Moorage Rate Increase:** Mr. Dehlinger informed the Board that the moorage rates have not increased since 2013. Mr. Dehlinger reminded the Board of his proposed spreadsheet that showed that we are losing money. The Port loses about \$200 per slip, and 5% increase over the next 5 years will help. The Board had concern with the rates in certain areas of the Port, and had concern with increasing rates if we are closing portions of the docks. Postponed until March 21 Regular Meeting.
- m. **Resolution 473: Liveaboard Agreement & Policy:** Mr. Dehlinger informed the Board that this is another policy that was never approved by the Board. Looking for approval from the Board if you would like liveaboards, then be the Managers discretion on approval of the liveaboard. Postponed until March 21 Regular Meeting.
- n. **Resolution 474: Commissioners Rules & Policy:** Mr. Dehlinger informed the Board that this will take time for review, it is a big packet. Postponed until March 21 Regular Meeting.
- o. **SDIS Board Practices Assessment:** Mr. Dehlinger informed the Board that SDAO is doing this for other Ports, it's up to the Board if you would like an assessment on the Port. Looking

for direction from the Board to look into this or not. Postponed until March 21 Regular Meeting.

- p. **Surplus Equipment:** Mr. Dehlinger informed the Board that he has updated the surplus list. Chairman Davis and Mr. Dehlinger went out into the yard and made lot numbers of abandoned boat parts. Looking for approval to make all items surplus, this way items can be placed into a May auction. Mr. Dehlinger also informed the Board of the status of fishing vessel Reality. It has gone through the seizer and foreclosure process, he can still come in and pay up on his account, but the vessel is set up for auction. Postponed until March 21 Regular Meeting.
- q. **Appraisal Quote:** Chairman Davis informed the Board that this is to give Mr. Dehlinger direction on what mentioned properties we want him to get appraisal quotes for. Mr. Dehlinger did get appraisal quotes from Coos Bay, he can do these at different times and combine the properties so the bill is not huge.

*Comm. Thompson made the motion to approve the appraisal as written.  
Seconded by Comm. Hartung. Voting Yes: Unanimous.*

## 6. **PUBLIC COMMENTS**

### **No Public Comments**

Mr. Dehlinger wanted to inform the Board that he has turned in Oregon State Marine Board Grant paperwork to fix the launch ramp docks. When talking to O.S.M.B they would like to receive support letters, it will help with the grant process, the grant requires public input.

## 7. **ADJOURNMENT**

The meeting was unanimously adjourned at 6:36 p.m.

# Regular Meeting Minutes for March 21, 2017

Port of Brookings Harbor Board of Commissioners  
Regular Meeting Minutes  
Tuesday, March 21, 2017, 7:00 p.m.  
Best Western Conference Room: 16011 Boat Basin Rd, Brookings OR, 97415

**1. CALL TO ORDER AND ROLL CALL**

Chairman Davis called the meeting to order at 7:00 pm.

Commissioners present: Chairman Roy Davis, Vice Chairman Sue Gold, Treasure Tim Patterson, Roger Thompson & Sharon Hartung.

Staff present: Port Manager Gary Dehlinger. Administration Assistant Danielle Shepard was absent

**2. APPROVAL OF AGENDA**

*Vice Chair Gold made the motion to approve the Agenda as written.  
Seconded by Comm. Hartung. Voting Yes: Unanimous.*

**3. APPROVAL OF MINUTES**

**A. Special Meeting – Tuesday, February 7, 2017**

*Vice Chair Gold made the motion to approve the Special Meeting Minutes as written. Seconded by Comm. Thompson. Voting Yes: Unanimous.*

**B. Special Meeting – Tuesday, February 14, 2017**

*Vice Chair Gold made the motion to approve the Special Meeting Minutes as written. Seconded by Comm. Hartung. Voting Yes: Unanimous.*

**C. Regular Meeting – Tuesday, February 21, 2017**

*Vice Chair Gold made the motion to approve the Regular Meeting Minutes as written. Seconded by Comm. Hartung. Voting Yes: Unanimous.*

**D. Special Meeting – Tuesday, February 27, 2017**

*Comm. Thompson made the motion to approve the Special Meeting Minutes as written. Seconded by Vice Chair Gold. Voting Yes: Unanimous.*

**4. FINANCIAL REPORT**

**A. Supplement Budget Hearing - Action:** Mr. Dehlinger informed the Board that for the Ice House dredging.

*Comm. Thompson made the motion to approve the Supplement Budget as written. Seconded by Vice Chair Gold. Voting Yes: Unanimous.*

- B. Appoint Budget Committee – Action:** Mr. Dehlinger informed the Board that with further research it turns out we must have as many budget committee members as there are Commissioners, a total of 6 people.

*Vice Chair Gold made the motion to approve the (5) Budget Committee candidates. Seconded by Comm. Hartung. Voting Yes: Davis, Gold, Patterson, Hartung. Vote sustained: Thomson. Vote: 4-1 Motion passes.*

Budget Committee as follows: John Brazil, Richard Contestabile, Thomas Beene, Angi Christian, & Barbara Ciarmella

- C. Draft Audit Report - Action:**

*Comm. Thompson made the motion to approve the Draft Audit Report as written. Seconded by Vice Chair Gold. Voting Yes: Unanimous.*

**5. OLD BUSINESS**

No old business to be discussed

**6. NEW BUSINESS**

- A. PFMC Representative Regarding Salmon Season:** Chairman Davis directed this item to PFMC Representative Richard Heap. Mr. Heap stated that the Klamath is estimated 12,800 fish, by rule there is a minimum of 40,700 fish, we can harvest about 8%, that's about 1,000 fish. That means spreading only 1,000 fish between Cape Falcon and Mexico. The Klamath is classified as over fished, this will kick off a rebuilding plan. For recreational fishing from Cape Falcon to OR/CAL border we have 120 fish to work with. We have no season this year, California has closed all recreational and commercial fishing, and there has been talk about closing the recreational fishing in the Klamath river. The tribes are allowed 50% share of what is available. You can find information at: <http://www.pcouncil.org/council-operations/council-meetings/>

- B. CBN Lease Amendment – Action:**

*Vice Chair Gold made the motion to approve the CBN Lease Amendment as written. Seconded by Comm. Hartung. Voting Yes: Davis, Gold, Patterson, Hartung. Vote sustained: Thomson. Vote: 4-1 Motion passes.*

- C. Hallmark Lease – Action:**

*Comm. Thompson made the motion to approve the Hallmark Lease as written. Seconded by Vice Chair Gold. Voting Yes: Unanimous.*

- D. Bandon Pacific Lease – Action:**

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***Comm. Hartung made the motion to approve the Bandon Pacific Lease as written. Seconded by Vice Chair Gold. Voting Yes: Unanimous.***

- E. Zola's Lease – Action:** Chairman Davis directed this item to owner, Eian & Monica Savas. Mr. Savas informed the Board that they are running out of space and have a storage need. They are also proposing to enclose the patio seating that is outside and to move the stage. The stage would no longer be facing the river and would be facing the highway instead. This would support the years past complaints and it creates more structure for the business. We would also like to remove the boat that is attached to the building. We have tried to patch and fix all the leaks but it just isn't fixing anything. We suggest removing the boat and bring in a refrigeration unit to increase storage. We would like to increase the fence that hide the propane tanks. Comm. Patterson asked about the 1.24, is that the new adjusted rate? He was informed that that price is from the CPI increase. Comm. Patterson also asked why doesn't the lease state we will take over the storage area that was added in? He was informed that since Zola's has bought the building and it is movable it wouldn't be in the best interest of the Port to take ownership of it. Comm. Patterson made a suggestion to look into a new attorney.

***Comm. Thompson made the motion to approve the Zola's lease as written now and when improvements are made amends his lease. Seconded by Comm. Hartung. Voting Yes: Unanimous.***

- F. J. Sloane Lease – Action:** Chairman Davis directed this item to owner, Tabitha Wilson. Mrs. Wilson wanted to let the Board know that she loves being down at the Port. My lease has now been adjusted, and everyone around me is being charge \$1.05, and I have paid \$1.23 for the last 4 years. Mrs. Wilson is asking the Board what are the guidelines for the base rent, and why her rent is more. Chairman Davis wanted to make Mrs. Wilson aware that all leases have been a mess and Mr. Dehlinger is working very hard to fix all the leases. Mr. Dehlinger informed Mrs. Wilson that the long-term tenants with their CPI increase, it increases the rent over the years. If a new tenant comes in they would receive the \$1.05 price. Mrs. Wilson would like to see some guidelines and to have rent adjusted.

***Comm. Thompson made the motion to approve the J. Sloane lease as written. Seconded by Vice Chair Davis. Voting Yes: Unanimous.***

- G. Vendors at the RV Park – Action:** Mr. Dehlinger informed the Board that, Oregon Parks & Recreation stated that if we want vendors in the RV Park, they must fill out an application threw them and all funds must stay within the RV Park. Postponed until further notice.

***Vice Chair Davis made the motion to table this item until the Board has more information. Seconded by Comm. Thompson. Voting Yes: Unanimous.***

- H. Sport C & D Dock Conditions & Plan – Action:** Mr. Dehlinger is asking from the Board to approve Option 2B. Option 2B, closing slips down on C dock after 19 & 20, and on D Dock after finger 31 and side tie 20.

***Comm. Thompson made the motion to approve option 2B as written. Seconded by Vice Chair Davis. Voting Yes: Davis, Gold, Thomson, Hartung. Vote sustained: Patterson. Vote: 4-1 Motion passes.***

- I. Resolution 471: Moorage License Agreement – Action:** Mr. Dehlinger wanted to postpone this item until next meeting, due to wanting to adjust some verbiage in the agreement.
- J. Resolution 472: Moorage Rate Increase – Action:** Mr. Dehlinger wanted to postpone this item until next meeting, due to adding in a spreadsheet for the Board to review and propose a 5% increase, with revisiting rates on a year basis. Comm. Thompson would like to see all boats in either basin to be the same rate based on length. People with electricity should pay more for their slip and we raise the cost per kilowatt, for the labor to read and send out the bills. Comm. Patterson suggested a flat rate for electric, and would like to see a flat rate for moorage fees.
- K. Resolution 473: Liveaboard Agreement & Policy – Action:** Mr. Dehlinger wanted to postpone this item until next meeting.
- L. Resolution 474: Commissioners Rules & Policy:** Mr. Dehlinger wanted to postpone this item until next meeting, due to Board needing to review the Policy, and to have legal counsel review the document.

**M. SDIS Board Practices Assessment – Action:**

*Comm. Thompson made the motion to direct Mr. Dehlinger in finding the cost for the assessment. Seconded by Comm. Hartung. Voting Yes: Unanimous.*

**N. Surplus Equipment – Action:**

*Vice Chair Gold made the motion to approve the surplus equipment list. Seconded by Comm. Thompson. Voting Yes: Unanimous.*

**7. PUBLIC COMMENTS**

**John Brazil** – Postponed until next meeting

**8. COMMISSIONERS REPORT**

- Chairman Roy Davis: Please make sure you are being careful on the docks, I have seen a few people that have fallen into the basin. Wanted to thank the public for coming to the meetings.
- Vice Chair Sue Gold: I appreciate what Gary is doing, putting in all the hours and wanted to thank the public for coming to the meetings.
- Comm. Tim Patterson: Asked about the items that were postponed. He was informed that they will be discussed at the next meeting.
- Comm. Roger Thompson: I appreciate going up to Salem and meeting the Senators. Thank you, Gary, for all the information and I think you are doing a good job.
- Comm. Sharon Hartung: did go down to C & D dock, and the office is requesting you put a life jacket on if you go on the docks, because it is dangerous down there.

**9. ADJOURNMENT**

The meeting was unanimously adjourned at 8:30 p.m.

# Financial Report



# Port of Brookings Harbor

## Balance Sheet

### As of March 31, 2017

	Mar 31, 17
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
1001 · CASH & CASH EQUIVALENTS	
1002 · General Funds Ckg 3634	
FUEL DOCK	1,600.61
1002 · General Funds Ckg 3634 - Other	8,770.83
<b>Total 1002 · General Funds Ckg 3634</b>	<b>10,371.44</b>
<b>Total 1001 · CASH &amp; CASH EQUIVALENTS</b>	<b>10,371.44</b>
1003 · CASH/EQUIVALENTS - RESTRICTED	
1005 · Capital Projects Fund 8018	2,500.00
1007 · USDA BOND MM 9529	10,196.84
1008 · Debt Service Fund MM 8627	
IFA LOAN SAVINGS	31,500.00
1008 · Debt Service Fund MM 8627 - Other	10.57
<b>Total 1008 · Debt Service Fund MM 8627</b>	<b>31,510.57</b>
<b>Total 1003 · CASH/EQUIVALENTS - RESTRICTED</b>	<b>44,207.41</b>
1012 · Cash on Hand/Petty Cash	
1014 · SAFE/ONSITE DRAWER	219.00
1015 · Fuel Dock Cash Drawer	200.00
1018 · RV Park Cash Drawer	600.00
1022 · Office/Danielle	100.00
1023 · Office/Skylar	100.00
<b>Total 1012 · Cash on Hand/Petty Cash</b>	<b>1,219.00</b>
<b>Total Checking/Savings</b>	<b>55,797.85</b>
<b>Accounts Receivable</b>	
1200 · Accounts Receivable Account	59,024.75
<b>Total Accounts Receivable</b>	<b>59,024.75</b>
<b>Other Current Assets</b>	
1210 · A/R-Auditor Adjustment Account	14,926.01
1305 · FUEL Inventory	12,089.04
1310 · Prepaid Insurance	14,081.00
1325 · Due from Other Port Funds	
1340 · Due from Debt Service Fund	14,830.50
<b>Total 1325 · Due from Other Port Funds</b>	<b>14,830.50</b>
1400 · RECEIVABLES	
1405 · Grants Receivables	
1408 · Dock Renovation L16010	1,480,213.00
<b>Total 1405 · Grants Receivables</b>	<b>1,480,213.00</b>
<b>Total 1400 · RECEIVABLES</b>	<b>1,480,213.00</b>
1499 · Undeposited Funds	9,161.22
<b>Total Other Current Assets</b>	<b>1,545,300.77</b>
<b>Total Current Assets</b>	<b>1,660,123.37</b>
<b>Fixed Assets</b>	
1600 · Fixed Asset	
1605 · Construction in Progress	317,006.75
1610 · Land	2,537,448.00
1620 · Buildings & Docks	17,537,959.68

# Port of Brookings Harbor

## Balance Sheet

### As of March 31, 2017

	Mar 31, 17
1630 - Equipment	
1632 - 50 BFMII Travelift Mobile Boat	324,200.00
1635 - Ford F250 Truck	25,701.50
1630 - Equipment - Other	1,246,981.99
Total 1630 - Equipment	1,596,883.49
Total 1600 - Fixed Asset	21,989,297.92
1690 - Allowance for depreciation	-6,387,634.00
Total Fixed Assets	15,601,663.92
<b>TOTAL ASSETS</b>	<b>17,261,787.29</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
2000 - General Fund Accts Payable	22,868.30
2002 - Capital Projects Accts Payable	1,010.00
2004 - Debt Service Accts Payable	62,500.00
Total Accounts Payable	86,378.30
Credit Cards	
2005 - RCU VISA ACCT	3,743.02
Total Credit Cards	3,743.02
Other Current Liabilities	
2010 - ACCRUED BENEFITS	15,607.78
2015 - DEFERRED REVENUE	14,926.01
2020 - Security Deposits C/R	10,586.53
2022 - Key Deposit	300.00
2100 - Payroll Liabilities	
Fringe Benefits	
2102 - Dental Insurance/Dependents	44.55
2104 - Medical Ins./Dependents	649.44
Total Fringe Benefits	693.99
Total 2100 - Payroll Liabilities	693.99
2120 - Due to Other Port Funds	
2130 - Due to USDA Revenue Bond Fund	14,830.50
Total 2120 - Due to Other Port Funds	14,830.50
2150 - Current Portion of LT Debt	1,158,799.00
Total Other Current Liabilities	1,215,743.81
Total Current Liabilities	1,305,865.13
Long Term Liabilities	
2200 - Notes Payable	
Revenue Bonds Payable	
2280 - USDA #97-02	1,287,801.78
Total Revenue Bonds Payable	1,287,801.78
2205 - 50 BFMII Travelift Mobile Boat	307,609.79
2235 - Land Purchase-Kyle Aubin	17,136.00
2250 - OEDD/Restructure Prin Pmts	
IFA/OBDD LOANS	
2256 - IFA/OBDD #520139/Boardwalk	94,836.34
2257 - IFA/OBDD #525172/RV Park Improv	153,941.40
2258 - IFA/OBDD #525176/Green Bldg	337,349.39
2259 - IFA/OBDD #525181/EurekaFishery	223,039.62
Total IFA/OBDD LOANS	809,166.75

**Port of Brookings Harbor**  
**Balance Sheet**  
**As of March 31, 2017**

	Mar 31, 17
<b>IFA/SPWF LOANS</b>	
2261 · IFA/SPWF L02009/Cold Storage	916,072.94
2263 · IFA/SPWF L96003/RV Park Beach	138,998.92
2264 · IFA/SPWF L98004/Dock Improv	264,262.25
2265 · L02001/Marine Fueling Dock	231,568.76
2266 · X03004/Eureka Fishery Invoice	243,158.36
2267 · L16010/Comm Rec Dock Reno	1,480,213.00
<b>Total IFA/SPWF LOANS</b>	<b>3,274,274.23</b>
<b>Total 2250 · OEDD/Restructure Prin Pmts</b>	<b>4,083,440.98</b>
<b>Total 2200 · Notes Payable</b>	<b>5,695,988.55</b>
2206 · INTEREST PAYABLE RESTRICTED	43,657.00
2207 · Accrued interest payable	2,605,943.00
2290 · Less current portion	-1,158,799.00
<b>Total Long Term Liabilities</b>	<b>7,186,789.55</b>
<b>Total Liabilities</b>	<b>8,492,654.68</b>
<b>Equity</b>	
2900 · Port Equity Account	7,162,741.28
Net Income	1,606,391.33
<b>Total Equity</b>	<b>8,769,132.61</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>17,261,787.29</b>

**Port of Brookings Harbor**  
**Profit & Loss**  
 July 2016 through March 2017

	Jul '16 - Mar 17
<b>Ordinary Income/Expense</b>	
<b>Income</b>	
4100 · MARINA/ADMINISTRATION	
4110 · Returned Check Charges	130.00
4120 · Finance Charges/Income	3,596.69
4125 · Administrative Fees	17.80
4130 · Boat Launch	15,443.30
4135 · Storage	37,917.70
4100 · MARINA/ADMINISTRATION - Other	22.50
<b>Total 4100 · MARINA/ADMINISTRATION</b>	<b>57,127.99</b>
4200 · COMMERCIAL RETAIL	
4210 · Commercial Retail Lease	298,144.79
4212 · CR/ Water	279.00
4214 · CR/Utilities	4,564.30
4215 · Property Tax	2,027.88
4222 · CPI-U	30.16
<b>Total 4200 · COMMERCIAL RETAIL</b>	<b>305,046.13</b>
4300 · MOORAGE	
4310 · Commercial Slip Rent	197,350.00
4320 · Recreational Slip Rent	147,109.24
4325 · Transient	10,467.00
4330 · Liveaboard	2,620.75
4335 · Dock Box	1,116.00
4340 · Moorage Electric	28,306.41
4350 · Other Fees	629.86
<b>Total 4300 · MOORAGE</b>	<b>387,599.26</b>
4400 · RV PARK	
4410 · Space Rental	389,996.99
4430 · Mini Mart	7,949.86
4440 · Laundry & Showers	11,097.89
4450 · Wood Sales	110.00
4460 · Dump Charges	65.00
4470 · Misc Purchases & Sales	1,209.25
<b>Total 4400 · RV PARK</b>	<b>410,428.99</b>
4500 · FUEL SALES	338,844.81
4550 · SPECIAL EVENT	
4551 · Registration	13,190.00
4554 · Sponsors	3,685.00
4555 · Vendors	9,785.00
4557 · Dinner Tickets	1,380.00
4558 · Misc Food and Beverage Sales	331.00
4559 · Raffle	242.00
4561 · Apparel Sales	4,578.00
4562 · Event Space Rental	300.00
<b>Total 4550 · SPECIAL EVENT</b>	<b>33,491.00</b>
4600 · BOATYARD	
4625 · Emergency Response & Repair	120.00
4630 · Other Services & Sales	12,890.06
4635 · Travel Lift Haul Out	3,699.60
4640 · Labor	3,467.50
4655 · Yard Days	13,662.72
<b>Total 4600 · BOATYARD</b>	<b>33,839.88</b>
4700 · ICE HOUSE	88,065.00
4800 · COLD STORAGE	19,221.59

# Port of Brookings Harbor

## Profit & Loss

### July 2016 through March 2017

	Jul '16 - Mar 17
<b>4900 · PORT PROPERTY EVENTS</b>	
4910 · Grounds Use Fee	2,400.00
<b>Total 4900 · PORT PROPERTY EVENTS</b>	<b>2,400.00</b>
<b>Total Income</b>	<b>1,676,064.65</b>
<b>Gross Profit</b>	<b>1,676,064.65</b>
<b>Expense</b>	
<b>5000 · II PERSONAL SERVICES/PAYROLL</b>	
<b>5010 · WAGES &amp; SALARIES</b>	
5012 · Salary - Port Manager	
5018 · Wages/Office Staff	129,217.34
5020 · Wages/Operations Staff	96,362.37
5024 · Wages/RV Park	33,892.76
<b>Total 5010 · WAGES &amp; SALARIES</b>	<b>259,472.47</b>
5030 · OVERTIME PAY	24,485.10
<b>5040 · EMPLOYEE COSTS &amp; BENEFITS</b>	
5050 · Paid Time Off	26,181.06
5055 · Disability Bank	3,716.88
5060 · Paid Holidays	8,904.00
5070 · Payroll Taxes	32,258.46
5078 · Non Tax Mileage Reimbursement	3,043.71
5079 · Personal Vehicle Allowance	2,493.00
5090 · Retirement	21,937.96
<b>Total 5040 · EMPLOYEE COSTS &amp; BENEFITS</b>	<b>98,535.07</b>
5075 · Workers Compensation	-88.90
5080 · Health Care and Dental	40,202.79
6560 · Payroll Expenses/Fees	2,944.88
<b>Total 5000 · II PERSONAL SERVICES/PAYROLL</b>	<b>425,551.41</b>
<b>6000 · I MATERIALS &amp; SERVICES</b>	
5500 · FUEL purchased for resale	291,298.88
5540 · MINI-MART (Cost of Goods)	7,665.88
<b>6001 · ADVERTISING &amp; NOTIFICATIONS</b>	
6002 · Marketing & Advertising	7,081.74
6004 · Legal Notices	1,926.98
6001 · ADVERTISING & NOTIFICATIONS - Other	945.00
<b>Total 6001 · ADVERTISING &amp; NOTIFICATIONS</b>	<b>9,953.72</b>
<b>6100 · REPAIRS &amp; MAINTENANCE</b>	
6110 · Maintenance & Repairs	137,254.20
6115 · Services & Supplies	72,898.51
6120 · Landscaping & Beautification	12,146.34
6125 · Tools-Under \$5,000	1,959.00
6130 · Janitorial Services	17,670.00
6135 · Security Contract	6,244.00
<b>Total 6100 · REPAIRS &amp; MAINTENANCE</b>	<b>248,172.05</b>
<b>6200 · UTILITIES</b>	
6210 · Telecommunications	11,637.34
6220 · Electric	144,810.98
6230 · Water	14,356.34
6240 · Sanitary	29,894.03
6250 · Waste Management	97,747.62
6260 · Cable TV	4,412.51
6270 · Propane Gas	631.72
6200 · UTILITIES - Other	6,296.00
<b>Total 6200 · UTILITIES</b>	<b>309,786.54</b>

**Port of Brookings Harbor**  
**Profit & Loss**  
 July 2016 through March 2017

	Jul '16 - Mar 17
<b>6300 · OFFICE EXPENSE</b>	
6315 · Office Services & Supplies	8,537.19
6320 · Leased Equipment(incl'g copier)	15,202.96
6330 · Dues, Subs & Pubs	12,419.16
6345 · Postage	1,970.48
6348 · Computers & Software Purchases	4,385.09
6300 · OFFICE EXPENSE - Other	6.00
<b>Total 6300 · OFFICE EXPENSE</b>	<b>42,520.88</b>
<b>6350 · BANK SERVICE &amp; FINANCE FEES</b>	
6335 · Merchant Services Fees	18,297.14
6360 · Bank Service Charge/Fees	293.45
6365 · Finance Charge/Late Fee	1,810.10
<b>Total 6350 · BANK SERVICE &amp; FINANCE FEES</b>	<b>20,400.69</b>
<b>6400 · TRAVEL &amp; ENTERTAINMENT</b>	
6415 · Lodging	867.70
6420 · Meals & Other	1,416.70
6425 · Mileage Reimbursement	55.52
<b>Total 6400 · TRAVEL &amp; ENTERTAINMENT</b>	<b>2,339.92</b>
<b>6500 · PERMITS, LICENSES, TAXES &amp; MISC</b>	
6510 · Conferences/Education/Meetings	2,123.98
6525 · Lodging Taxes	7,050.99
6545 · Taxes-Property	4,706.83
6570 · Donations & Contributions	
6575 · Permits & Licenses	685.00
6585 · Harbor RFPD Service	15,000.00
6500 · PERMITS, LICENSES, TAXES & MISC - Other	1,166.70
<b>Total 6500 · PERMITS, LICENSES, TAXES &amp; MISC</b>	<b>30,733.50</b>
<b>6550 · SPECIAL EVENTS</b>	
6551 · Food Expenses	3,049.62
6552 · Clothing	3,694.65
6553 · Entertainment	175.00
6554 · Prizes	10,325.06
6555 · Professional Planning	3,800.00
6557 · Supplies & Services	2,277.22
6558 · Advertising	2,631.80
6559 · Permits/Insurance/Fees	
<b>Total 6550 · SPECIAL EVENTS</b>	<b>25,953.35</b>
<b>6600 · BAD DEBT</b>	<b>2,807.95</b>
6650 · Cash over/short	
<b>6800 · INSURANCE; PROP &amp; CAS, BOND</b>	
6810 · Port Self Insurance	1,510.45
6800 · INSURANCE; PROP & CAS, BOND - Other	70,162.39
<b>Total 6800 · INSURANCE; PROP &amp; CAS, BOND</b>	<b>71,672.84</b>
<b>6900 · PROFESSIONAL FEES</b>	
6910 · Accounting	5,100.00
6920 · Audit	14,382.41
6924 · Management Consulting	37,723.96
6925 · Consultants	4,440.00
6935 · Legal	8,643.35
6945 · IT Support/Services	2,729.88
6900 · PROFESSIONAL FEES - Other	430.00
<b>Total 6900 · PROFESSIONAL FEES</b>	<b>73,449.60</b>
<b>Total 6000 · MATERIALS &amp; SERVICES</b>	<b>1,136,755.80</b>
<b>Total Expense</b>	<b>1,562,307.21</b>
<b>Net Ordinary Income</b>	<b>113,757.44</b>

**Port of Brookings Harbor**  
**Profit & Loss**  
 July 2016 through March 2017

	Jul '16 - Mar 17
<b>Other Income/Expense</b>	
<b>Other Income</b>	
7000 - PROPERTY TAX	
7010 - Previously Levied Tax	5,259.75
7020 - Current Tax Levy	202,671.63
<b>Total 7000 - PROPERTY TAX</b>	<b>207,931.38</b>
7100 - Interest Income	-2,173.69
7120 - RESTITUTIONS & SETTLEMENTS	
7125 - State of OR; Claim #L15955101	112,000.00
7120 - RESTITUTIONS & SETTLEMENTS - Other	513.21
<b>Total 7120 - RESTITUTIONS &amp; SETTLEMENTS</b>	<b>112,513.21</b>
7140 - COOS CURRY CO-OP PATRONAGE	6,700.72
7150 - Longevity Credit;SDAO	7,091.50
7200 - GRANT REVENUES	
7240 - MAP Grant	4,785.00
7290 - ODOT GRANT REVENUE (L12001)	1,162,051.00
7291 - Dock Rev-L16010-Interim Recev	646,923.00
<b>Total 7200 - GRANT REVENUES</b>	<b>1,813,759.00</b>
7300 - FEMA REVENUE	
7311 - PW 29 - Ice House Dredging	224,723.84
<b>Total 7300 - FEMA REVENUE</b>	<b>224,723.84</b>
<b>Total Other Income</b>	<b>2,370,545.96</b>
<b>Other Expense</b>	
74001 - DREDGING EXPENSE	5,233.57
8100 - FEMA EXPENSES	
8120 - PW 29-Ice House Dredging	134,966.94
8121 - FEMA/Launch Ramp	106.96
8125 - FEMA/OEM Fuel Dock Repairs	6,137.00
8126 - FEMA/Storm Damage 2017	985.00
<b>Total 8100 - FEMA EXPENSES</b>	<b>142,195.90</b>
8200 - GRANT EXPENSES	
8230 - Dock Repair L16010 interim loan	646,923.00
8240 - Sport Basin; Piling Repair	7,154.98
<b>Total 8200 - GRANT EXPENSES</b>	<b>654,077.98</b>
8400 - DEBT SERVICE FUND	
8430 - Paid Interest	
8431 - Bank Fees	235.78
8432 - IFA	1,830.80
8442 - Umpqua Bank Loan Interest	113.17
8443 - 50 BFMII Travelift Interest	6,704.79
<b>Total 8430 - Paid Interest</b>	<b>8,884.54</b>
<b>Total 8400 - DEBT SERVICE FUND</b>	<b>8,884.54</b>
8600 - Revenue Bond Fund	
8610 - Revenue Bond Interest	67,520.08
<b>Total 8600 - Revenue Bond Fund</b>	<b>67,520.08</b>
<b>Total Other Expense</b>	<b>877,912.07</b>
<b>Net Other Income</b>	<b>1,492,633.89</b>
<b>Net Income</b>	<b>1,606,391.33</b>

**Port of Brookings Harbor  
General Fund Profit & Loss  
July 2016 through March 2017**

Ordinary Income / Expense	BEACHFRONT		COLD STORAGE	COMMERCIAL RETAIL	FUEL DOCK	ICE HOUSE	*MARINA MOORAGE	Office Finance Charges	PORT PROP		SPECIAL EVENTS	Vehicles	TOTAL
	DREDGING	RV PARK							EVENTS	EVENTS			
Income													
4100 • OFFICE/ADMINISTRATION							52,712.29	2,886.16					55,598.45
4200 • COMMERCIAL RETAIL				305,046.13									305,046.13
4300 • MOORAGE							389,128.80						389,128.80
4400 • RV PARK		410,428.99											410,428.99
4500 • FUEL SALES					338,844.81								338,844.81
4550 • SPECIAL EVENT													33,491.00
4600 • BOATYARD			33,839.88								33,491.00		33,839.88
4700 • ICE HOUSE						88,065.00							88,065.00
4800 • COLD STORAGE			19,221.59										19,221.59
4900 • PORT PROP. EVENTS									2,400.00				2,400.00
<b>Total Income</b>		410,428.99	33,839.88	305,046.13	338,844.81	88,065.00	441,841.09	2,886.16	2,400.00	33,491.00			1,676,064.65
Expense													
5000 • PERSONAL SERVICES		42,033.38	8,297.52	12,604.82	7,082.99	15,802.10	316,568.27			2,300.47			405,802.99
6000 • MATERIALS & SERVICES		114,472.81	13,544.54	98,280.82	308,751.68	123,973.40	420,987.00			30,787.63	16,175.74		1,136,515.70
<b>Total Expense</b>		156,506.19	21,842.06	110,885.64	315,834.67	139,775.50	737,555.27			33,088.10	16,175.74		1,542,318.69
<b>Net Ordinary Income</b>		253,922.80	11,997.82	194,160.49	23,010.14	(51,710.50)	(295,714.18)	2,886.16	2,400.00	402.90	(16,175.74)		133,745.96
Other Income / Expense													
Other Income													
7000 • PROPERTY TAX							207,931.38						207,931.38
7100 • Interest Income							(2,182.44)						(2,182.44)
7120 • RESTITUTIONS & SETTLEMENTS							513.21						513.21
7140 • COOS CURRY CO-OP PATRONAGE							6,700.72						6,700.72
7150-Longevity Credit SDAO							7,091.50						7,091.50
<b>Total Other Income</b>	0.00	0.00	0.00	0.00	0.00	0.00	220,054.37	0.00	0.00	0.00	0.00	0.00	220,054.37
Other Expense		1,830.80											
74001 • DREDGING EXPENSE	5,233.57												
8300 • CAPITAL OUTLAYS			0.00										5,233.57
<b>Total Other Expense</b>	5,233.57	1,830.80	0.00										
<b>Net Other Income</b>	(5,233.57)	(1,830.80)	0.00				220,054.37						16,058.03
<b>Net Income</b>	(5,233.57)	252,092.00	11,997.82	194,160.49	23,010.14	(51,710.50)	(75,659.81)	2,886.16	2,400.00	402.90	(16,175.74)		346,735.96
Additional Expenses & Liabilities													
Loan Payments		29,386.99	37,272.00	38,992.00	14,034.45		118,884.43						289,465.20
REVISED NET INCOME (Incl. Loans)	(5,233.57)	222,703.01	(25,274.18)	155,168.49	8,975.69	(51,710.50)	(194,544.24)	2,886.16	2,400.00	402.90	(16,175.74)		57,270.76
Depreciation		13,618.67	44,874.00	85,815.33	6,666.67	7,788.67	117,826.67						332,538.67
REVISED NET INCOME (Incl. Loans & Depr.)	(5,233.57)	209,084.35	(70,148.18)	69,353.16	2,309.02	(59,499.17)	(312,370.90)	2,886.16	2,400.00	402.90	(16,175.74)		(251,308.57)
Accrued IFA Interest (Due at end of Loan Term)		437,211.00		835,902.00	200,110.00		267,817.00						2,606,418.00

\*Merged Office/Admin with Marina - added in Finance Charges



**Capital Projects Fund**  
**Profit & Loss**  
**July 2016 through March 2017**

	FEMA-Boat Launch Ramp	FEMA/OEM Fuel Dock Project	FEMA-RV Park Driftwood	FEMA-Sport Basin 1 Piling	FEMA-PW29 Ice House Dredging	FEMA - Other	Total FEMA (CAPITAL PROJECT FUND)	Dock Renovation L16010	MAP GRANT	Total GRANTS	Total CAPITAL PROJECT FUND
	(FEMA)	(FEMA)	(FEMA)	(FEMA)	(FEMA)	(FEMA)		(GRANTS)	(GRANTS)	(CAPITAL PROJECT FUND)	
Ordinary Income/Expense											
5000 - II PERSONAL SERVICES/PAYROLL	440.59			4,819.67	14,488.16		19,748.42				19,748.42
Total Expense	440.59			4,819.67	14,488.16		19,748.42				19,748.42
Net Ordinary Income	-440.59	0.00	0.00	-4,819.67	-14,488.16	0.00	-19,748.42	0.00	0.00	0.00	-19,748.42
Other Income/Expense											
Other Income											
7120 - RESTITUTIONS & SETTLEMENTS											
7200 - GRANT REVENUES					112,000.00		112,000.00				112,000.00
7300 - FEMA REVENUE					224,723.84		224,723.84	646,923.00	4,785.00	651,708.00	1,813,759.00
Total Other Income					336,723.84		1,498,774.84	646,923.00	4,785.00	651,708.00	2,150,482.84
Other Expense	106.96	6,137.00	985.00	7,154.98	134,966.94		149,243.92				149,243.92
8100 - FEMA EXPENSES	106.96	6,137.00	985.00	7,154.98	134,966.94		149,243.92	646,923.00		646,923.00	646,923.00
8200 - GRANT EXPENSES	-106.96	-6,137.00	-985.00	-7,154.98	-201,756.90		-1,349,530.92	646,923.00		646,923.00	796,166.92
Total Other Expense	-547.55	-6,137.00	-985.00	-11,974.55	-187,268.74		-1,329,675.54		4,785.00	4,785.00	1,354,315.92
Net Other Income					187,268.74		1,329,675.54		4,785.00	4,785.00	1,334,460.54
Net Income											

\*ODOT Grant Revenue L12001 (funds of \$1,162,051.00 used to satisfy debt to IFA)

**Debt Service Fund**  
**Profit & Loss**  
**July 2016 through March 2017**

	Travellift	Umpqua Loan	DEBT SERVICE FUND -		Total DEBT
			(DEBT SERVICE FUND)	(DEBT SERVICE FUND)	
Ordinary Income/Expense				SERVICE FUND	TOTAL
6000 · I MATERIALS & SERVICES	6,704.79	348.95		7,053.74	7,053.74
Total Expense	6,704.79	348.95		7,053.74	7,053.74
Net Ordinary Income	-6,704.79	-348.95		-7,053.74	-7,053.74
Other Income/Expense					
Other Income					
7100 · Interest Income			4.81	4.81	4.81
Total Other Income			4.81	4.81	4.81
Net Other Income			4.81	4.81	4.81
Net Income	-6,704.79	-348.95	4.81	-7,048.93	-7,048.93

**Port of Brookings Harbor  
REVENUE BOND FUND Profit & Loss  
July 2016 through March 2017**

	Jul '16 - Feb 17
Ordinary Income/Expense	
Expense	
6000 . I MATERIALS & SERVICES	
6350 . BANK SERVICE & FINANCE FEES	
6366 . Note payable interest expense	67,520.08
Total 6350 . BANK SERVICE & FINANCE FEES	67,520.08
Total 6000 . I MATERIALS & SERVICES	67,520.08
Total Expense	67,520.08
	-67,520.08
Net Ordinary Income	
Other Income/Expense	
Other Income	
7100 . Interest Income	3.94
Total Other Income	3.94
Net Other Income	3.94
Net Income	-67,516.14

# Port of Brookings Harbor General Funds (Check Register)

March 1, 2017 to March 31, 2017

Type	Date	Num	Name	Memo	Amount
<b>1001 - CASH &amp; CASH EQUIVALENTS</b>					
<b>1002 - General Funds Ckg 3634</b>					
<b>FUEL DOCK</b>					
Transfer	03/30/2017			Funds Transfer- Creating a sub account for FUEL; Amount is Fuel Revenue fr	16,508.60
Bill Pmt -Check	03/30/2017	8050	Carson-Davis Oil Company	CUSTOMER # 76-0011262	-15,596.51
Total FUEL DOCK					912.09
<b>1002 - General Funds Ckg 3634 - Other</b>					
General Journal	03/01/2017	PAY 3/1/17		Rec 03/01/2017 Payroll- INCLUDES US BANK SEP IRA PMT CHECK \$1462.	-12,597.55
General Journal	03/01/2017	TAX 3/1/17		REC 03/01/2017 Payroll Taxes	-4,688.74
Check	03/02/2017	DEBIT	Elavon	FEBRUARY 2017 MERCHANT SERVICE FEE ACCT#316	-645.84
Check	03/02/2017	DEBIT	Elavon	FEBRUARY 2017 Merchant Service Fee - acct#873 Ventek	-22.79
Check	03/02/2017	DEBIT	Elavon	FEBRUARY 2017 MERCHANT SERVICE FEE ACCT#902	-415.03
Check	03/02/2017	DEBIT	Elavon	FEBRUARY 2017 MERCHANT SERVICE FEE ACCT#951	-92.90
Bill Pmt -Check	03/06/2017	8002	Anchor Lock & Key	INV#4512-6 Bathroom Keys /Door Hardware/Labor & INV#4465 -Re-Key Skit	-454.00
Bill Pmt -Check	03/06/2017	8003	Frank's Heating & Refrigeration	Whale's Tail Annual Maintenance 2/9/17	-238.00
Bill Pmt -Check	03/06/2017	8004	Freeman Rock, Inc.	INV#92799 - 4 YARDS CONCRETE TRAVEL LIFT RAMP REPAIR	-770.50
Bill Pmt -Check	03/06/2017	8005	Gold Beach LumberYard, Inc.	STATEMENT DATE 2/28/17	-187.37
Bill Pmt -Check	03/06/2017	8006	Harbor Water District P.U.D.	Dec, Jan, Feb - Acct#0307500 with Adjustments	-1,743.54
Bill Pmt -Check	03/06/2017	8007	Harbor Sanitary District	February 2017 Sanitary Bill	-1,959.20
Bill Pmt -Check	03/06/2017	8008	Kerr's Ace Hardware Inc	STATEMENT DATE 2/28/17	-424.12
Bill Pmt -Check	03/06/2017	8009	Les Schwab Tire Center	ACCT#24804672	-124.00
Bill Pmt -Check	03/06/2017	8010	NAPA Auto Part	ACCT#11871	-110.39
Bill Pmt -Check	03/06/2017	8011	Restroom Direct	Hand dryers for Restrooms	-1,640.00
Bill Pmt -Check	03/06/2017	8012	Nationwide Life Insurance Co.	Policy Number: 50206538714071001 - Volunteer Insurance Annual	-225.00
Bill Pmt -Check	03/06/2017	8013	Spec Dist Assoc of OR- Healthcare	Customer #: 03-0016414 MARCH PREMIUM	-4,953.24
Bill Pmt -Check	03/06/2017	8014	Spec Dist Assoc of OR- Prop & Cas	Policy#31P16414-203 Customer ID: 01-16414	-8,187.35
Bill Pmt -Check	03/06/2017	8015	United Rentals	BOOM 45-50' TELESCOPIC 4WD Manlift for travellift construction	-1,590.79
Transfer	03/06/2017			Funds Transfer - to pay FEMA bills, Gold Beach Lumber #156255/2 and Goet	-639.98
Check	03/08/2017	8016	Rebecca Flesch	Compensation for incident on 3/3/2017 at Port Parking Lot in front of Whale's	-1,510.45
Bill Pmt -Check	03/09/2017	8017	Harbor Sanitary District	Jan, Feb with Jan Adjustment for Acct #1724C	-423.33
Bill Pmt -Check	03/10/2017	8018	Coos-Curry Electric inc	ACCT # 67601	-17,377.48
Bill Pmt -Check	03/10/2017	8019	Rogue Credit Union	ACCT #306-89 CARD#8593	-4,557.43
Bill Pmt -Check	03/10/2017	8020	SCDC, Inc.	Individual Membership 2017	-150.00
Bill Pmt -Check	03/10/2017	8021	Spec Dist Assoc of OR- Prop & Cas	Policy#31P16414-203 Customer ID: 01-16414	-8,187.35
Transfer	03/10/2017			Transfer Funds to pay EMC Inv#91009-1668 & 91009-1669	-4,120.00
Check	03/10/2017	DEBIT	ADP	Advice of Debit #489504182	-110.03
Bill Pmt -Check	03/15/2017	DEBIT	Elavon	1 Case of Thermal Paper Rolls for VX 680 terminals	-104.09
General Journal	03/15/2017	PAY 3/15		Rec 03/15/2017 - INCLUDES US BANK SEP IRA PMT CHECK \$1369.85	-12,105.05
General Journal	03/15/2017	TAX 3/15		Rec 03/15/2017 Payroll Taxes	-4,480.31
Transfer	03/15/2017			Funds Transfer for March 2017 payment	-4,659.00
Bill Pmt -Check	03/16/2017	8022	5-R Excavation, LLC	INV#1209	-150.00
Bill Pmt -Check	03/16/2017	8023	Anchor Lock & Key	INV#4472-Spare Keys	-5.00
Bill Pmt -Check	03/16/2017	8024	Carson-Davis Oil Company	CUSTOMER # 76-0011262	-13,274.55
Bill Pmt -Check	03/16/2017	8025	Curry County Tax Collector	R26496 6/30/17, R27455 6/30/17, R10247 6/30/17	-4,395.46
Bill Pmt -Check	03/16/2017	8026	Curry Equipment	STATEMENT DATE 2/28/17	-101.89

# Port of Brookings Harbor

## General Funds (Check Register)

March 1, 2017 to March 31, 2017  
Account #2040-2434-001 BILLING PERIOD 2/1/17-2/28/17  
Customer No. ORBRK0013 Statement Date: 2/28/17 Garbage Bags, 800' BRC

Bill Pmt -Check	03/16/2017	8027	Curry Transfer & Recycling	INV#156544/2 - supplies	-5,215.55
Bill Pmt -Check	03/16/2017	8028	Fastenal Industrial Supplies	INV#1489, 1490, 1491, 1501, 1503, 1515, 1520-electrical repairs	-1,023.51
Bill Pmt -Check	03/16/2017	8029	Gold Beach LumberYard, Inc.	INV#8005 & INV#8078- Truck Logo & Installation	-40.35
Bill Pmt -Check	03/16/2017	8030	Gowman Electric, Inc.	TEMPORARY FENCING AROUND BANDON PACIFIC FAILING DOCK & FE	-696.54
Bill Pmt -Check	03/16/2017	8031	In-Motion Graphics and Design, LLC	BILLING PERIOD 2/1/17-2/28/17 Acct#522445-002 SPORT FISHING DOCK	-105.00
Bill Pmt -Check	03/16/2017	8032	Medford Fence Co	Using Credit on Acct due to removal of tank at Laundromat	-2,875.60
Bill Pmt -Check	03/16/2017	8033	Roto Rooter	ACCT# 816180 Feb 2017 FULL RUN	-197.92
Bill Pmt -Check	03/16/2017		Suburban Propane	Funds Transfer for payment for Medford Fence and Misc Bills	-97.75
Bill Pmt -Check	03/16/2017	8034	Western Communications	INV#233046 - Weedtrimmer Check & Maintenance	-5,122.69
Transfer	03/16/2017			Funds Transfer for Gold Beach Inv created in error	-177.73
Bill Pmt -Check	03/16/2017	8035	Curry Equipment	Parking at Salem 3/2/17 & 3/13/17	177.73
Transfer	03/16/2017			Funds Transfer for pmt to Curry County permit fee/Launch Ramp Possible Fee	-27.98
Check	03/20/2017	8036	Dehlinger, Gary	Transfer March Lease Pmt from USCG to General Fund	-75.00
Transfer	03/22/2017			INV#DM00688421 -Cylinder/Equip Rental	923.24
Bill Pmt -Check	03/22/2017	8037	Eureka Oxygen Co.	IV#214801 WEATHER CAM NETWORK SPONSOR / DIGITAL	-138.56
Bill Pmt -Check	03/22/2017	8038	KDRV News Watch 12	STATEMENT DATE 2/28/17	-500.00
Bill Pmt -Check	03/22/2017	8039	Kerr's Ace Hardware Inc	LEASE#00040031070 Beachfront RV Park Digital Cable TV System	-256.40
Bill Pmt -Check	03/22/2017	8040	Lease Finance Partners	TEMPORARY FENCING AROUND THE GREEN BUILDING	-602.00
Bill Pmt -Check	03/22/2017	8041	Medford Fence Co		-4,900.00
Bill Pmt -Check	03/22/2017	8042	ORCCO		-444.50
Bill Pmt -Check	03/22/2017	8043	Pape Machinery Exchange	EQ#3601 Routine Maintenance	-573.86
Bill Pmt -Check	03/22/2017	8044	Stebbins Coffey & Collins	INV#16293 - Legal for Feb 17 concerning Commercial Retail Leases	-693.00
Bill Pmt -Check	03/22/2017	8045	South Coast Knight Security	March Security	-1,000.00
Bill Pmt -Check	03/22/2017	8046	Xerox Capital Services, LLC	IV#088319589 - W7970 PRINTER SER.BOW-592355	-846.39
Bill Pmt -Check	03/22/2017	8047	Western Communications	ACCT# 816180 Curry Coastal Pilot - Legal Notifications Feb 2017, includes lc	-481.66
Transfer	03/22/2017			Funds Transfer to pay Tank Testers bill 3694	-3,657.00
Check	03/24/2017	DEBIT	ADP	Advice of Debit #490093107 PAYROLL 3/15/17	-110.03
Bill Pmt -Check	03/27/2017	DEBIT	Pitney Bowes Global Lease	LEASE ACCT#0017098499 Postage Machine Lease 12/30/16-03/29/17	-415.41
Check	03/27/2017	8048	Dehlinger, Gary	Reimbursement for Parking at SDAO Conference 2/9 & 2/10	-83.95
Bill Pmt -Check	03/28/2017	8049	Oregon Secretary of State	Filing Fee Fiscal Year ending June 30, 2016	-250.00
General Journal	03/29/2017	PAY 3/29		Rec 03/29/2017 Payroll - INCLUDES US BANK SEP IRA PMT CHECK \$1334	-12,423.36
General Journal	03/29/2017	TAX 3/29		Rec 03/29/2017 Payroll Taxes	-4,617.12
Transfer	03/30/2017			Funds Transfer- Creating a sub account for FUEL; Amount is Fuel Revenue fr	-16,508.60
Bill Pmt -Check	03/30/2017	8051	Coos-Curry Electric Inc	ACCT # 67601- Final Bill/Ice House 67601015	-5,988.88
Bill Pmt -Check	03/30/2017	8052	Coos-Curry Electric Inc	ACCT # 67601-FINAL BILL/COLD STORAGE - 67601030	-307.12
Bill Pmt -Check	03/30/2017	8053	Spec Dist Assoc of OR- Healthcare	Customer #: 03-0016414 - APRIL PREMIUM	-4,953.24
General Journal	03/30/2017	Tran 3-30		To transfer to Debt Service funds for 1st QTR Payment	-29,000.00
Bill Pmt -Check	03/30/2017	8054	Spec Dist Assoc of OR- Prop & Cas	Policy#31P16414-203 Customer ID: 01-16414 - MAR '17 Property/Casualty	-5,948.35
Total 1002 - General Funds Ckg 3634					-226,675.83
Total 1002 - General Funds Ckg 3634					-226,675.83
Total 1001 - CASH & CASH EQUIVALENTS - Fuel					-15,596.51
Total 1001 - CASH & CASH EQUIVALENTS					-242,272.34

## OLD BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Vendors at the Beachfront RV Park*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Port received request from public to setup hot dog stand at Beachfront RV Park.
- Beachfront RV Park follows Oregon Parks and Recreation regulations.
- Port has received State grants for Beachfront RV Park in the past and must follow the guidelines of those grants. Any funds generated by concessions stands must stay within the Beachfront RV Park account and not used for other Port projects or funds.

### DOCUMENTS

- Board recommended to review the Oregon Parks and Recreation ground lease, attached (38 pages).

### COMMISSION ACTION

- Requesting Board direction to develop a concession policy or leave existing policy of no concessions at the Beachfront RV Park.

## GROUND LEASE

Field Code Changed

DATE: \_\_\_\_\_, 2013.

PARTIES: XXXXXXX, a political subdivision of the State of Oregon,  
("Lessor")

and

XXXXXXXX RV, LLC, LIMITED, an Oregon Limited Liability Company,  
("Lessee")

### RECITALS:

A. Lessor is the owner of certain property known as the "XXXXXXXX XXXXXXXX" which property is located at I Oregon. The property which is subject to this Ground Lease is comprised of approximately 17 usable acres which is a part of the XXXXXXXX XXXXXXXX.

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B. Portions of Lessor's property were acquired with Federal Land and Water Conservation Funds for the purpose of providing public outdoor recreation. Lessor and Lessee recognize that full compliance with provisions of the Land and Water Conservation Fund Act and implementing guidelines (36 CFR 59) is required under this lease.

C. Lessee is a limited liability company organized and operating under the laws of the State of Oregon that proposes to develop and construct on the subject property a high quality outdoor recreational vehicle park with and/or all of the following amenities, concrete RV pads with full hook-ups consisting of water, sewer, satellite and/or cable TV, blue tooth, wifi, propane or natural gas, and power, bath and laundry facilities, manager quarters, docks, flag poles, swimming pool or pools, hot tubs/spas, fire places and fire pits, BBQ's, horse shoe pits, shuffle boards, 24-hour security perimeter with fencing and gate entry a convenience store, that may include gift shop, food, Oregon Lottery, liquor, wine and beer sales, sales of Oregon fishing licenses, and RV related products and common stock items. The following recreational facilities may be included in the park for patron use subject to review and approval by the National Parks

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**Comment [v1]:** Fencing of whole property and excluding the public will not be allowed. Fencing the RV park grounds for security would likely be allowed

Service and Oregon State Parks and Recreation: clubhouse, with sit down or take-out food, work out facilities, pool tables, arcade games, vending machines and movie area, modular day and night accommodation facilities; and, outdoor gathering areas,

IN CONSIDERATION OF THE TERMS AND OBLIGATIONS HEREIN SET FORTH,  
THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:

**1. AGREEMENT TO LEASE:**

Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor approximately seventeen (17) unimproved acres of the XXXXXXX Fairgrounds and Exposition Park which acreage is specifically depicted in the site plan attached hereto as Exhibit "A" and described in legal description Exhibit "B" attached hereto. The property depicted in Exhibit "A" and described in Exhibit "B" shall hereinafter be referred to as the "Subject Property".

**2. TERM:**

**2.1 Term.**

The term of this lease shall begin on a commencement date which shall hereafter be determined after all conditions have been satisfied. The parties hereto hereby designate the commencement date as follows: \_\_\_\_\_. After commencement date, the initial term of the lease shall be a period of twenty-five (25) years starting on the commencement date and ending on \_\_\_\_\_, 2038, unless it is extended or terminated sooner as provided in this lease.

**2.2 Extensions of Lease.**

Provided Lessee has not been in default under the Lease, Lessee may, by written notice to Lessor, given not less than one hundred eighty (180) days prior to the expiration of the initial term or any extended term as the case may be, extend this lease for one (1) additional

**Comment [v2]:** Plans will need to show that a "clubhouse" with all the named amenities is for the purpose of supporting outdoor recreation. This will not be allowed if used as a stand-alone indoor recreation facility. Formal review from the National Park Service is required for all restaurant type facilities to show that it is for the purpose of supporting outdoor recreation.

**Deleted:** kitchens, meeting facilities

**Comment [v3]:** If these facilities are simple "cabins", this is likely ok. If these facilities are luxury cabins, lodges, or motel style facilities, they will not be allowed under LWCF rules.

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~~term~~ of twenty-five~~s~~ (25). The Lease, if extended, shall commence immediately upon the expiration of the immediate preceding lease term. Extension of lease term by notice as provided above shall be irrevocable.

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### 3. **RENT:**

#### 3.1 **Base Rent.**

The base rent will be phased in to allow Lessee time in which to prepare drawings, plans, and secure permits to complete construction of the recreational vehicle park and related amenities. The base rent for the first 18 months shall be the sum of \$1.00 per month. The first 12 months following the construction period the base rent will be \$3,000 per month, the second 12 month period \$3,250 per month, the third 12 month period \$3,500 per month, the fourth 12 month period \$3,750 per month, and the fifth 12 month period \$4,000 per month. This will allow Lessee time to establish the business.

#### 3.2 **Adjustments to Base Rent.**

The base rent shall be adjusted as of the first day of each 12 month period following the first 18 months plus five years. The \$4,000 base rent shall be increased by a percentage equal to the percentage increase in the Consumer Price Index published by the United States Bureau of Labor Statistics. The comparison shall be made using the Index entitled "All Urban Consumers, All Items, for Portland, Oregon." The basic rent shall be annually adjusted by the Consumer Price Index (CPI-~~U~~), All Urban Consumers, U.S. City Average. The initial CPI-~~U~~ base will be that reported three (3) months prior to the adjusted date each year standing at 211.08; 1982 – 84 = 100. Annually, December 1<sup>st</sup> will be used to adjust basic rent. There shall be no reduction in the rent below the amount of the basic rental. In the event that there is no percentage change, or a negative percentage change, in the CPI-U during the previous year, the base rent will not be adjusted. If said index is changed or discontinued, the most nearly comparable official price

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index of the United States government shall be used for computing the forgoing adjustment of basic rent after converting the existing index as of the base date of the new index. Commencing 2019 and annually thereafter, the rent CPI-U adjustments will be as provided above, but in no event more than 3.75% for any adjustment date.

### 3.3 Percentage Rent.

Lessee ~~agrees to~~ pay Lessor during each lease year and each lease year of any extended term of this lease, as percentage rent, a percent of Lessee's adjusted gross receipts for each lease year. The percentage rent shall be due within thirty (30) days after the end of each 12 month period outlined in section 3.2 of the Lease based upon adjusted gross receipts from the immediate preceding year.

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3.3.1 "Adjusted gross receipts" means all amounts received by Lessee from the rental of any and all recreational vehicle spaces, from any and all sales of gifts in the gift shop as well as any and all sales in the convenience store, as well as all other income realized from the operation of the recreational vehicle park including services sold or any other business transacted, including credit transactions sold from the premises by Lessee or any other party after deducting therefrom any refunds and any sales taxes, any RV tax or City or County imposed overnight or camping or hospitality or hotel fee or tax. On State of Oregon price controlled items (lottery, fishing licenses, etc), adjusted gross is the amount Lessee receives after payments to the State of Oregon Lessee shall pay 4% to Lessor of share Lessee received, whether imposed under any existing or future rules, regulations, laws or ordinances.

3.3.2 Lessee shall keep accurate and proper books of account and other records pertaining to adjusted gross receipts from the Premises and render monthly statements of the adjusted gross receipts on the last day of each month for preceding month and a

statement of percentage rents due. The books and records shall be kept or made available at a location reasonably accessible to Lessor, who may inspect all such books and records and copies of Lessee's LLC tax returns for the relevant year's at all reasonable times to verify Lessee's adjusted gross receipts. Lessee shall keep books and records for a minimum of three (3) years after the close of each lease year. Lessee hereby specifically authorizes whoever may be doing the bookkeeping or accounting for Lessee to provide Lessor with monthly and annual statements of adjusted gross receipts of operations on the Subject Property. Lessor may from time to time require Lessee to keep such other books of accounting records pertaining to the gross receipts that Lessor deems reasonable and appropriate to verify the amount of adjusted gross receipts.

3.3.3 Lessee agrees to pay Lessor percentage rent as follows:

- a) 3% of annual gross receipts if total is \$249,999 or less;
- b) 5% of annual gross receipts if total is between \$250,000 and \$749,999;
- c) 7% of annual gross receipts if total is between \$750,000 and \$1,249,999;
- and
- d) 9% of annual gross receipts is \$1,250,000 or greater.

3.3.4 At any time after Lessee's statement of receipts and rent is due, whether or not it has been submitted and whether or not Lessor has accepted a deficiency payment, Lessor may request an 'audit of Lessee's adjusted gross receipts. The auditor shall have access to all of Lessee's records and shall take such steps as the auditor deems necessary to make a certified audit. Any deficiency disclosed by such audit shall be paid to the Lessor forthwith with interest at the rate of 6% per annum since the date it is originally due. If any such audit shall disclose that gross sales have been understated for any

**Deleted:** No percentage rent shall become due until such time that the percentage of adjusted gross receipts indicated above exceeds the basic rent payable for that lease year. At such time that the percentage rent indicated above exceeds the basic rent paid for that lease year, the percentage rent owed shall then be paid on the last day of each month in respect to the percentage rent that became due for the preceding month.

lease year by more than 2%, then in addition Lessee shall reimburse Lessor for the actual cost of the audit, including a reasonable fee for the time of any county employee who assists with the audit.

3.3.5 Commencing with the second year of the lease, the Lessee shall occupy the Premises continuously for the purposes stated in this lease and carry on business during the hours customary in comparable businesses similarly situated, with adequate personnel. ~~With Lessor's prior approval, Lessee may close proposed RV Park for~~ brief periods when reasonably necessary for repairs and/or remodeling when necessary, or other legitimate purposes related to the business carried on or when closure is a result of a labor dispute, however caused, or other factors not within Lessee's control.

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#### 3.4 Additional Rent.

All property taxes and all other required City, State, and Federal taxes, insurance, utility charges which Lessee is required to pay by this lease and any other sum which Lessee is required to pay to Lessor or third party shall be additional rent.

#### 3.5 Rent Abatement.

In the event that access or events prevent the Premises to not be accessible because of events outside the control of Lessee, rent shall abate for that period of time that Lessee is not able to fully operate the premises. Rents shall be abated for that period of time Lessee is impeded from being operational and/or accessible.

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#### 3.6 Late Charge.

In the event any rent is not paid within 14 days of the date it becomes due, a late charge equal to 5% of the delinquent rent shall also become due and payable.

#### 4. USE OF PREMISES:

4.1 Portions of Premises were acquired with Federal Land and Water Conservation Funds for the purpose of providing public outdoor recreation. Lessor and Lessee recognize that full compliance with provisions of the Land and Water Conservation Fund Act and implementing guidelines (36 CFR 59) is required through the term of this Lease.

Lessee shall be required to identify Premises as publicly owned and operated as a public outdoor recreation facility in on-Premises signing and in all literature and advertising and shall identify in all public information that the Premises is operated by Lessee. Signs posted on-site shall be reviewed by Lessor prior to installation.

4.2 Lessee shall utilize and permit the use of the Subject Property only for the development and construction, maintenance and operation of a quality outdoor recreational vehicle park with overnight or day accommodation facilities consisting of recreational amenities such as concrete RV pads with full hook-ups consisting of water, sewer, satellite and/or cable TV, blue tooth, wifi, propane or natural gas, and power, bath and laundry facilities, manager quarters, docks, flag poles, swimming pool or pools, hot tubs/spas, fire places and fire pits, BBQ's, horse shoe pits, shuffle boards, 24-hour security perimeter with fencing and gate entry a convenience store, that may include gift shop, food, Oregon Lottery, liquor, wine and beer sales, sales of Oregon fishing licenses, and RV related products and common stock items. The following recreational facilities may be included in the park for patron use subject to review and approval by the National Parks Service and Oregon State Parks and Recreation: clubhouse, with sit down or take-out food, work out facilities, pool tables, arcade games, vending machines and movie area, modular day and night accommodation facilities; and, outdoor gathering areas.

4.3 Lessee may not use the leased Premises for any purpose other than the reasonable and customary use of quality outdoor recreation including a recreational vehicle park with associated

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**Comment [v4]:** Fencing of whole property and excluding the public will not be allowed. Fencing the RV park grounds for security would likely be allowed.

**Comment [v5]:** Plans will need to show that a "clubhouse" with all the named amenities is for the purpose of supporting outdoor recreation. This will not be allowed if used as a stand-alone indoor recreation facility. Formal review from the National Park Service is required for all restaurant type facilities to show that it is for the purpose of supporting outdoor recreation.

**Comment [v6]:** If these facilities are simple "cabins", this is likely ok. If these facilities are luxury cabins, lodges, or motel style facilities, they will not be allowed under LWCF rules.

**Deleted:** such as clubhouses with kitchens, meeting facilities, bath and laundry facilities, satellite tower and/or cell phone tower, solar powered facilities, manager quarters, guest accommodations or guest rooms, 24-hour security with gate entry, docks, RV wash, flag poles, concrete RV pads with full hook-ups consisting of water, sewer, satellite and/or cable TV, blue tooth, wifi, propane or natural gas, and power, entertainment facilities, convenience store, that may include gift shop, sit down or take-out food, Oregon Lottery, liquor, wine and beer sales, sales of Oregon fishing licenses, RV related products and common stock items. For its patron as well as related recreational facilities including but not limited to work out facilities, pool tables, arcade games, vending machines, movie area, swimming pool or pools, hot tubs/spas, outdoor gathering areas, fire places and fire pits, BBQ's, horse shoe pits, shuffle boards, and occasional small-scale live entertainment.

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overnight or day accommodation facilities. In the event Lessee uses or permits the leased Premises to be used in any manner other than as expressly permitted under this Lease, Lessee will be in breach of the Lease and subject to the default and cure provisions of Section 20 of the Lease.

4.4 In order to protect the public interest, and to ensure full compliance with provisions of the Land and Water Conservation Fund Act and it's implementing guidelines (36 CFR 59), Lessor and Lessee shall jointly review the Premises by Janaury 31 of each year of the Lease. This review shall determine compliance with Land and Water Conservation Fund Act requirements, public outdoor recreation use, and accessibility requirements are met. If Lessee is found to be in violation of these requirements, they shall be subject to termination following the guidelines of Section 20 and 21 of this Lease.

4.5 By January 31 of each year of the Lease, Lessee shall provide a fee schedule of all fees and rents charged at the RV park facility. These fees shall be competitive with other similar private RV park facilities located within 300 miles of Premises.

4.6 Lessee will make no unlawful, improper or offensive use of said Premises or any portion thereof, and during said term or any extension thereof will comply with all statutes of the United States and/or the State of Oregon and all ordinances, rules, regulations and laws of any other governmental authorities applicable to the Premises and the general use thereof.

4.7 Lessee shall at all times remain in full compliance with all Civil Rights and accessibility legislation including, but not limited to Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and with the Americans with Disabilities Act.

4.8 Lessor reserves the right from time to time to adopt and promulgate reasonable rules and regulations applicable to the Premises and/or the XXXXXXXX XXXXXXXX. Notice

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of such rules and regulations and amendments and supplements, if any, shall be given to the Lessee, and Lessee agrees thereupon to comply with and observe all such rules, regulations, amendments thereto and supplements thereof. Lessee's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this lease in the manner as if the same were contained herein as covenants. Notwithstanding the above rules and regulations imposed cannot be onus or a material change the Lease Agreement or Lease term.

4.9 The term "Environmental Law" means any federal, state or local law, statute, ordinance, regulation or order pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances. The term "Hazardous Substances" shall mean any hazardous or toxic substances, materials or wastes, pollutants, or contaminants, as defined, listed or regulated currently or in the future by an Environmental Law or by common law decision, including without limitation: (1) chlorinated solvents, (2) petroleum products or byproducts, (3) asbestos, (4) polychlorinated biphenyls, and (5) urca-formaldehyde. Lessor or Lessee shall not cause or permit the use, generation, manufacture, production, storage, release, discharge or disposal of on, under or from the Premises of any Hazardous Substance. Lessee represents and warrants its present and intended use of the Premises will not result in the disposal or release of any Hazardous Substances on or into the Premises. Lessee or Lessor shall give prompt written notice to the other party of: (1) any proceeding in inquiry by any governmental authority with respect to the presence of any Hazardous Substance on or in proximity to the Premises including areas of the fairgrounds or relating to any loss or injury resulting from any Hazardous Substances; or (2) all claims made or threatened by any third party against Lessee or the Premises relating to any loss or injury resulting from any Hazardous Substance. Lessee and Lessor shall protect, indemnify, defend (with counsel

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satisfactory to each party) and hold the other party's officers, employees, contractors and agents harmless from any claims, judgments, damages, penalties, fines, expenses, liabilities or losses arising during or after the lease term out of or in any way relating to the use, generation, manufacture, production, storage, release, threatened to release, discharge, disposal or presence of Hazardous Substances on or from the Premises, or a breach of the warranties or covenants of this Section 4.4, unless the Hazardous Substances are present as a result of the actions of Lessor. This indemnity shall include, without limitation, cost incurred in connection with: (1) Hazardous Substances present or suspected to be present in the soil, ground water or soil vapor on or under the Premises after the lease term commences; (2) Hazardous Substances that might flow, percolate, defuse, or in any way move on to or under the Premises after the lease term commences; or (3) Hazardous Substances present on or under the Premises as a result of any discharge, dumping, spillage (accidental or otherwise) onto the Premises during or after the lease term by any person or entity other than Lessor, its officers, employees or agents. This indemnity shall also specifically cover, without limitation, costs incurred in connection with the investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party because of the presence or suspected presence of Hazardous Substances in the soil, ground water, or soil vapor on or under the Premises, unless the Hazardous Substances are present solely as a result of the actions of Lessor. Such costs may include, but not be limited to, diminution in the value of the Premises, damages for the loss or restriction on use of rental able or usable area or of any amenity of the Premises, sums paid in settlements of claims, attorney fees, consultant fees and expert fees. The foregoing indemnity shall survive the termination of this lease and any transfer of all or any portion of the Premises.



~~4.10 At all times during this Lease, Lessee shall be registered, and in good standing, to do business in the State of Oregon.~~

**5. ACCESS:**

The Lessor shall allow the Lessee, its agents, employees, contractors, invitees and patrons access to the Premises over other land owned by the Lessor as depicted in the site plan attached hereto as Exhibit A. Lessor shall provide access to Lessee to all of the necessary and required power, water, sewer, phone, fiber optic cables, natural gas, and other utilities to the leased Premises over other property of Lessor in the locations and places as determined from time to time by the Lessor. Any improvements to the access, or costs to bring utilities to the Premises, shall be at Lessee's cost.

**Deleted:** The cost to bring adequate utilities to Lessee's property line shall become a credit against future rents due under this lease

5.1 Lessee shall have the right to shuttle visitors to and from events at the County XXXXXXXX without additional costs to Lessee or Lessee's patrons for transporting to the Entrance Gates.

5.2 Lessee will be permitted access to Bear Creek, bike paths, and ponds that are maintained by the Fairgrounds. ~~Lessee shall not have exclusive rights to these public facilities within the lease area and shall not take measures which would exclude public from their use.~~

**6. SECURITY**

For the recreational vehicle park security Lessor will allow Lessee to install ~~perimeter security fence, including~~ buoy lines on the water, and fencing along perimeters shown on Exhibit "C". ~~While a perimeter security fence is allowed, the Land and Water Conservation Fund Act strictly prohibit the exclusive use of properties acquired under this act and all property must be open for public outdoor recreation. Lessee will be allowed to charge a reasonable entry fee to the public to access properties Exhibit "C".~~

**7. TAXES, ASSESSMENTS AND UTILITIES:**

#### **7.1 Payment by Lessee.**

Lessee shall pay before delinquency all real and personal property taxes, assessments, system development charges and other charges of every description levied on or assessed against the Premises, improvements located on the Premises or personal property or fixtures located on the Premises during the lease term. Lessee shall make all payments directly to the taxing authority. If any such tax or assessment may be paid in installments, Lessee may elect to do so as long as each installment, together with interest, is paid before it becomes delinquent. Any such taxes, assessments or charges that accrue during the first year of the lease shall be the Lessee's sole responsibility; however, any taxes or assessments for tax years in which the lease expires shall be pro-rated between the parties on a daily basis as of the date of expiration.

#### **7.2 Right to Contest.**

Lessee may contest in good faith the validity, or amount, of any tax, assessment or charge in accordance with the procedures established by statute or administrative rule for such contest so long as the Premises are not subjected to any lien as a result of the contest. Lessee may prosecute such contest in the name of Lessor as Lessor's attorney-in-fact. All tax statements shall be at the sole expense of Lessee. Any return or rebate from any taxing authority on account of any tax which was originally paid by Lessee shall be the sole property of Lessee.

#### **7.3 Substitute Taxes.**

For purposes of Paragraph 7.1 above, real property taxes include any tax, levy or assessment enacted after the date of this lease in addition to or in substitution for all or part of ad valorem real property taxes, including without limitation any tax on rents from the Premises, the purpose of which is more closely related to that of an ad valorem or use tax than to an

income tax. All such taxes shall be paid by Lessee as provided above.

#### **7.4 Special Assessments.**

If an assessment for a public improvement is made against the Premises which may be paid in installments, Lessor shall cause such an assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Paragraph 7.1 above.

#### **7.5 Utilities.**

Lessee shall pay when due all charges for electricity, natural gas, water, sewage, telephone, refuse collection and all other services or utilities used on or in connection with the Premises.

### **8. DEVELOPMENT AND CONSTRUCTION**

#### **8.1 Lessee's Obligation to Construct.**

Lessee shall construct a high quality recreational vehicle park together with all of the facilities, buildings, and recreational amenities including, but not limited to, parking lots, fences, landscaping and all other improvements depicted in the ("Project Plans"). The entire Project, built pursuant to the approved plans and specifications, shall cost no less than \$5,000,000. The Project shall be erected wholly within the boundary lines of the Premises. Lessee shall commence construction of the Project within ninety (90) days after receiving all construction permits and construction financing. Lessee shall have the right to enter the Premises for purposes of construction upon execution of this lease; however, prior to the commencement of construction, Lessee shall comply with all conditions of construction specified in Paragraph 8.2 below. The construction of the Project is referred to in this lease as "Construction." If Lessee fails to start construction within twenty-four (24) months from the date this Lease has

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been fully executed, the Lessee shall be in default and subject to termination according to Sections 20 of this Lease.

## **8.2 Conditions of Construction.**

Prior to commencing of the Construction, and before any building materials have been delivered to the Premises, Lessee shall comply with each of the following conditions:

8.2.1 Deliver to the ~~XXXXXXX~~ Fair Board and Lessor for approval one set of preliminary construction plans and specifications prepared by an architect or engineer licensed in the state of Oregon which are sufficient to enable them to make an informed judgment about the design and quality of the Construction. Approval or disapproval shall be communicated to Lessee in the manner provided for notices within ~~sixty (60)~~ days after receipt of complete plans and specifications by Lessor. Any disapproval shall be accompanied by a statement of the reasons for such disapproval. Following any disapproval, Lessee may elect to revise the plans and specifications and resubmit them to Lessor pursuant to this paragraph, or to contest the reasonableness of the disapproval. Lessee acknowledges that all plans and specifications will be provided to the National Park Service and Oregon State Parks and Recreation for comment. In no case shall Lessee commence construction without receiving final written approval from Lessor. Final working drawings and the Construction work shall conform in all significant respect with the approved preliminary plans and specifications except as otherwise authorized in writing by Lessor. Written approval from Lessor approving construction plans and specifications must be obtained prior to application for any

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building or similar permits.

8.2.2 Deliver to Lessor true copies of the commitments for both interim and permanent financing of the Construction, together with the written approval of the plans and specifications by the financial institution issuing the construction loan commitment.

8.2.3 Furnish Lessor a performance bond, issued in a form approved by Lessor, by a responsible surety company licensed to do business in Oregon in an amount not less than \$1,000,000. Under the bond, the surety company shall guarantee to Lessor full and complete performance of all the terms, conditions and covenants herein to be performed on the part of Lessee, including the payment of rents, fees, late charges, as well as any and all other payments. The bond shall indemnify Lessor against all loss, cost, expense and liability arising out of or connected with the Construction and shall secure the completion of the Construction free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen. Said bond shall be maintained at the cost of Lessee throughout the existence of this Lease or as earlier refunded as described below. Said surety shall give Lessor at least thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without Lessor's prior written consent shall constitute a default under this Lease.

8.2.4 Deliver to Lessor such other proofs and copies as Lessor shall reasonably request, including without limitation proof that workers' compensation insurance has been procured to cover all persons employed in connection with the Construction, proof of issuance of all building and other permits required for the Construction, and copies of Lessee's contract with the general contractor or with subcontractors for the

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**Deleted:** or deposit an equivalent amount of cash into an escrow account from which withdrawals may not be made without the prior written consent of Lessor. If Lessee elects to obtain a bond, the bond shall indemnify Lessor against all loss, cost, expense and liability arising out of or connected with the Construction and shall secure the completion of the Construction free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen

**Deleted:** If Lessee elects to deposit cash into an account, the account shall be established in a form and with a bank or other financial institution reasonably acceptable to Lessor and Lessee, and shall bear interest on behalf of Lessee.

Construction.

8.2.5 Shall post a "Notice of Nonresponsibility" in a conspicuous place on the premises or improvement, which notice shall indicate XXXXXXXX shall not be responsible for costs of construction or any construction liens. This notice shall be maintained in place throughout the construction period.

8.2.6 Comply with paragraph 16.3 below.

**8.3 Completion of Construction.**

Once Construction has begun, Lessee shall prosecute it to completion with diligence. All work shall be performed in a good and workmanlike manner and shall comply with all applicable governmental permits, laws, ordinances and regulations. Lessee shall pay or cause to be paid the total cost of the Construction. The project shall be ready for use within eighteen (18) months after commencement of Construction. The project shall be deemed completed upon completion of the project in accordance with the approved plans and specifications and the issuance of an occupancy permit.

8.4 Lessor and its agents, employees, and representatives, shall at all times, without advance notice, have the right to come upon Premises for the purposes of inspecting the construction of the project.

**8.5 Failure to Construct.**

Lessee acknowledges that a substantial part of the consideration to Lessor for entering into this lease is construction of the Project, that Lessor would not have entered into this lease without the agreement by Lessee to construct the Project and that any failure by Lessee to timely construct the Project will result in damage to Lessor in an amount which

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would be very difficult to ascertain. It is therefore agreed that if Lessee fails to commence Construction as provided in Paragraph 8.1, or complete construction as provided in Paragraph 8.3, the Lessor may immediately terminate this lease by written notice to the Lessee.

#### **8.6 Phasing the Project.**

Lessee may develop and construct the RV Park in phases. Phasing plans will be submitted for approval and will clearly establish the number of RV sites and amenities to be completed in each phase and shall become part of this agreement.

#### **8.7 "As Built" Plans and Construction and/or Alteration Costs**

Within ninety (90) days following completion of any substantial improvement within the leased Premises, LESSEE shall furnish Lessor a complete set of reproducible "As-Built" plans.

### **9. MAINTENANCE, ALTERATIONS, RECONSTRUCTION, SIGNS:**

#### **9.1 Maintenance.**

Lessee shall maintain to the satisfaction of Lessor the Premises and all improvements constructed thereon in a safe condition, and in high quality condition, and repair the Premises throughout the term of this lease, ordinary wear and tear excepted, and in compliance with all zoning, building, fire, health and safety codes and all other applicable laws, rules, regulations and ordinances of federal, state, county, municipal, or other governmental agencies having or claiming jurisdiction.

#### **9.2 Alterations.**

After construction of the Project is completed, Lessee may from time to time construct, improve, demolish, remove, replace, alter, reconstruct, remodel or add to any existing improvements in whole or in part ("alterations") as Lessee shall deem necessary or desirable

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on the following conditions:

9.2.1 No structures, capital improvements, or facilities shall be constructed, erected, altered, removed or made within the leased Premises without prior written consent of Lessor which consent may be withheld or conditioned in Lessor's absolute discretion. Any conditions relating to the manner, method, design and construction of said structures, improvements, or facilities fixed by Lessor shall be conditions hereof as though originally stated herein.

9.2.2 Plans and specifications are submitted to and approved by the Lessor. Lessee acknowledges that all plans and specifications will be provided to the National Park Service and Oregon State Parks and Recreation for comment. In no case shall Lessee commence construction without receiving final written approval from Lessor

9.2.3 The value of the improvements on the Premises upon completion of such alterations shall equal or exceed the value of the improvements on the Premises just prior to such work.

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9.2.4 All such work shall be done in a good and workmanlike manner in compliance with all applicable zoning, building, fire health and safety codes and all other laws, ordinances, orders and requirements of all authorities having or claiming jurisdiction.

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### **9.3 Reconstruction After Damage.**

9.3.1 If any building or other improvement on the Premises is damaged or destroyed by fire or any other cause at any time during the lease term, whether or not covered by insurance, and paragraph 9.3.3 does not apply, Lessee shall promptly repair the damage and restore the improvement. The complete repair,

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restoration or replacement shall be equal in value, quality and use to the condition of the improvement immediately before the damage.

9.3.2 Lessee shall not be entitled to any abatement of rent on account of any damage to or destruction of the building or other improvements on the Premises, nor shall any other obligations of Lessee under this lease be altered or terminated except as specifically provided to the contrary.

#### 9.4 Work Deemed to be Construction.

Any maintenance, alterations, reconstruction, razing or other work undertaken as a single project, the cost of which is estimated to equal or exceed \$50,000, shall be deemed to be Construction and shall be subject to the conditions of Construction specified in Section 8, above.

#### 9.5 Signs.

Lessor's written approval must be obtained before any sign is placed on the subject property; however, it shall be a condition preceded to the commencement of this lease that Lessee be entitled to properly sign the Subject Property which shall be visible from the Interstate 5 freeway, with a freestanding freeway sign, which shall be subject to approval by the City of Central Point pursuant to the sign code of that city.

9.5.1 Lessee shall be required to post signs on the Premises identify Premises as the property of Lessor and to also identify Premises as publicly owned and operated as a public outdoor recreation facility. Sign shall also note that Premises is operated by Lessee. Signs posted on-site shall be reviewed by Lessor prior to installation.

XXXXXXXXXXXXXXXXX 10. MARKETING:

**Deleted:** 9.3.2 If a building on the Premises is damaged during the last two (2) years of the original or any renewal lease term, to the extent that the estimated reasonable cost of restoring the building equals or exceeds 40% of the fair market value of the building immediately prior to the damage, Lessee shall repair, restore and replace as provided in paragraph 9.3.1, or Lessee may, by notice to Lessor given within forty-five (45) days after the date of damage, elect instead to terminate this lease. If the lease is terminated, the Lessor may either require Lessee to turn over all insurance proceeds received on account of damage to the building or require Lessee, at Lessee's cost, to restore the Premises within ninety (90) days to its condition on the date the lease was entered into. Notwithstanding the above, if no insurance proceeds are available as a result of Lessee's failure to comply with Section 16.1, then this lease shall not terminate and Lessor may require the Lessee to repair, restore and replace the improvements on the Premises as provided in Paragraph 9.3.1

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**Deleted:** paragraphs 8.2 and 8.3

**Comment (v7):** Lessor cannot agree to a condition we have no control over. The blue travel information signs are wholly controlled by the Travel Information Council (TIC) and Lessor has no influence on that process

**Deleted:** 9.5.1 Lessee shall be a part

**Deleted:** of existing pylon signs on I-5 and exits and other existing sign locations and in the future when new opportunities are available for the

**Deleted:** including but not limited to prominent directional signage, such signs shall be constructed at no cost to Lessor

Lessee will get the same benefits as other tenants that lease from the Fairgrounds in regards to marketing, website exposure, preferred marketing benefits for events and exposure for the fair, and pre-marketing benefits for the fair and other events. County will include as part of its overall marketing plan the RV Park and include it in all appropriate marketing events. For marketing purposes, the Lessee's phone number, email, and website will be mentioned in advertising sponsored by the XXXXXXXX ~~XXXXXXX~~; this includes being prominently displayed on the Fairgrounds main website and the County website. ~~While Lessee is entitled to benefits Lessor completes in regards to marketing, website exposure, and preferred marketing benefits for events and exposure for the fair and other events, Lessor is under no obligation to provide marketing at any established levels.~~

Lessee will have the authority to advertise, promote, and market the RV Park independent from XXXXXXXX XXXXXXXX. Lessee will have the right to participate and/or be a part of marketing planning and events scheduled by XXXXXXXX ~~XXXXXXX~~. Fairgrounds will provide Lessee with all calendar events that are planned and anticipated to be planned. Lessee can participate with any marketing, promotion, or other committee structure that is developed from time to time to promote the ~~XXXXXXX~~ Fairgrounds or activities at fairgrounds.

**11. NOISE, DUST, AND ODORS:**

Lessor ~~acknowledges that because of the close location of the leased premises to the XXXXXXXX ~~XXXXXXX~~, noise, vibration, odor, light, fumes, and dust may impact the peaceful enjoyment of the facilities. Lessee hereby waives any and all right and remedies against Lessor arising out of any noise, vibration, odor, light, fumes, dust or interference caused by the ordinary operation of the XXXXXXXX.~~

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**Deleted:** abatement procedures as normal. These procedures are for the peaceful enjoyment of the facilities

**12. LAKES/PONDS:**

Lessor shall ~~not be required to maintain water quality and /or water levels to any specified levels. Lessor and Lessee agree to work cooperatively to complete the~~ proper abatement procedures for noxious insects, algae, ~~or pests if needed,~~

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### 13. FAIRGROUND CAMPERS AND RV'S

Lessor agrees that no other RV park ~~is~~ allowed at the Fairground properties. Exclusive rights for Lessee shall allow Lessee unfettered ability to provide ~~RV park~~ services as outlined in this agreement and Lessor shall not allow other competing services on fairgrounds or adjacent property or property in close proximity that the County owns or may own in the future. ~~Lessor may allow RV camping on Expo grounds for participants in youth animal activities such as 4-H shows or youth equestrian events.~~

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### 14. OWNERSHIP OF THE IMPROVEMENTS:

All improvements constructed on the Premises by Lessee shall be owned by Lessee until expiration or sooner termination of this lease. All improvements located on the Premises at the expiration or sooner termination of this lease shall become the property of Lessor, free and clear of all claims of Lessee or anyone claiming under Lessee, and Lessee shall indemnify and defend Lessor against all liability and loss arising from such claims. Nothing in this Paragraph 14 shall alter other provisions of this lease, including without limitation restrictions on removal or alteration of the building on the Premises.

### 15. FINANCING. ASSIGNMENT. SUBLETTING:

#### 15.1 Lessee's Right to Mortgage the Leasehold.

Lessee may at any time and from time to time subject the leasehold estate to one or more mortgages or other liens as security for a loan or loans or other obligations of Lessee, provided that:

15.1.1 The mortgage or other lien shall be subject to all of the terms and conditions of this Lease and to the rights and interest of Lessor; and

15.1.2 Lessee shall promptly notify Lessor of the creation of each such mortgage or other lien and deliver to Lessor a true copy of the note and mortgage or other lien documents; and

15.1.3 Lessee must obtain written Lessor approval prior to obtaining a mortgage. The total amount of mortgages shall not exceed 80% MAI approved market value without written approval of Lessor. Should the Lessor consent to any mortgage, lien, or encumbrance, such consent shall not constitute a waiver of any of the terms, covenant, or conditions of this Lease or be construed as Lessor's consent to any further mortgage, lien or encumbrance.

15.1.4 Notwithstanding anything herein to the contrary, Lessor shall permit the construction lender and its successors and assigns, as mortgagee to assume all of Lessee's obligations under this lease in the event that Lessee defaults under any leasehold mortgage with the Bank.

15.1.5 Lessor agrees to subordinate its interest in the land in order to assist Lessee in securing a construction loan. In such event, the amount of subordination shall not exceed 80% MAI approved market value and the term of the loan shall be no longer than the end of the term of the lease or extensions of the lease.

#### **15.2 Assignment and Sublease.**

Lessee shall not assign, sublease or otherwise transfer Lessee's interest in this lease, or the estate created by this lease, without the prior written consent of Lessor which shall not be unreasonably withheld. No assignment shall be allowed until completion of Construction of the

Project. In the event of the assignment of this lease the assigner shall not have any rights or obligations or liabilities to XXXXXXX Fair or the County.

**16. INSURANCE:**

**16.1 Fire and Hazard Insurance.**

Lessee shall, throughout the lease term, keep the Project and all other buildings on the Premises insured against loss by fire and other hazards covered by a standard form of fire insurance policy with extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance shall be not less than replacement cost of the insured improvements. The Lessor shall be named as a co-insured. Lessee shall also maintain insurance insuring the personal property of the Lessee located on the Premises against such risks.

**16.2 Proceeds of Fire and Hazard Insurance.**

16.2.1 The proceeds of the policies described above shall be used to repair, restore and replace any damaged or destroyed improvements as provided in paragraph 9.3. Lessor shall cooperate fully with Lessee to obtain the largest possible recovery, but Lessor shall have no expense or cost in that connection.

16.2.2 All policies described in paragraph 16.1 shall provide that the proceeds shall be paid to any institutional leasehold mortgagee and shall be released by it monthly for repair, restoration and reconstruction of improvements on architect's certificates or other requirements reasonably satisfactory to it. The process shall be used to repair, restore and replace any damaged or destroyed improvements as provided in paragraph 9.3. If there is no institutional leasehold mortgagee, proceeds shall be payable to Lessor to hold for repair, restoration or reconstruction of the improvements.

**16.3 Builder's Risk Insurance.**

Before commencement of any Construction described in paragraphs 8.1 or 9.4, Lessee shall procure and maintain in force until completion and acceptance of the improvement an all risk builder's insurance policy including vandalism and malicious mischief in form reasonably acceptable to Lessor. Such insurance shall cover the improvements in place and all materials and equipment at the jobsite with limits of not less than \$\_\_\_\_\_ per loss.

#### **16.4 Public Liability Insurance.**

LESSEE shall obtain, and cause Lessor, its agents, employees, officers, boards and commissions to be named as additional insured on policies or insurance for liability and property damage to protect the Lessor against the hazards that may be created in the performance of services authorized by this Lease.

A. General Liability subject to the combined single limits of \$2,000,000 per occurrence.

B. Automobile Liability subject to the combined single limits per occurrence of \$1,000,000.

C. Property Insurance on a replacement cost basis covering Special Form Perils.

The initial insurance rates are set forth in this section but may be adjusted periodically by order of the XXXXXXXX Board of Commissioners as determined by its then current county insurance carrier requirements, based upon industry-standard liability adjustments. The adjustment decision shall be reasonable and shall not be arbitrary or capricious.

#### **16.5 Certificate of Insurance.**

A certificate evidencing such insurance coverage shall be filed with Lessor upon execution of this Lease, and such certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Lessor. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be filed with Lessor. If such insurance coverage is canceled or reduced, Lessee shall, within fifteen (15) days after receipt of written notice from Lessor of such cancellation or reduction in coverage, file with Lessor a certificate showing that the required insurance has been reinstated or provided through an insurance company or companies.

In the event that Lessee shall at any time fail to furnish Lessor with the certificate or certificates required, Lessor, upon written notice to Lessee of its intention to do so, shall have the right to secure the required insurance, at the cost and expense of Lessee, and Lessee agrees to reimburse Lessor promptly for the cost thereof and ten percent (10%) for cost of administration.

#### **16.5 General Insurance Provisions.**

##### **16.5.1 All policies of insurance which Lessee is required by this lease to carry shall:**

16.5.1(a) Provide that the insurer waives the right of subrogation against Lessor and that any loss shall be payable notwithstanding any negligence or affirmative act of Lessor.

16.5.1(b) Be issued by a responsible insurance company which is licensed to practice in the state of Oregon.

16.5.1(c) Be primary policies.

16.5.1(d) Be evidenced by certificates furnished to Lessor bearing

**Deleted:** Lessee shall procure and continuously maintain during the term of this lease public liability and property damage insurance with initial limits of not less than \$\_\_\_\_\_ for injury to one person, \$\_\_\_\_\_ for any one accident or occurrence and \$\_\_\_\_\_ for property damage. Lessor may, by written notice to Lessee, demand that the limits of such insurance be raised to amounts specified in the notice, and Lessee shall, at the next succeeding policy renewal date, but not later than six (6) months after the date of the notice, raise the limits to those specified in the notice. All limits demanded by Lessor shall be commercially reasonable as of the date of the notice for the use Lessee is then making of the Premises and improvements. The insurance shall be in a form sufficient to protect Lessor and Lessee against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Premises or improvements on the Premises.

endorsements requiring ten (10) days' written notice to Lessor prior to any change or cancellation of the policies.

16.5.2 In the event that Lessee does not obtain any policy of insurance required under this lease, Lessor may, but is not required to, obtain any such policy of insurance, and Lessee shall reimburse Lessor for the costs of any such insurance, along with interest at the maximum rate permitted by law.

**17. CONDEMNATION:**

**17.1 Total or Substantial Taking.**

17.1.1 A taking or condemnation shall be considered to be total or substantial if it includes all of the Premises or so much of the Premises that a reasonable amount of reconstruction would not make the land and improvements a practical development and reasonably suited for the uses and purposes for which the Premises were used just prior to the condemnation or so much of the Premises that Lessee's business on the Premises could not be operated at a level of profit reasonably close to that existing before the taking.

17.1.2 In the event of a total or substantial taking, the lease shall terminate as of the date title or possession passes to the condemning authority. All rent, additional rent and other charges payable by Lessee under this lease shall be pro-rated as of the date of termination.

17.1.3 In the event of any taking or appropriation whatsoever or purchase by the condemnor in lieu thereof, Lessee shall be entitled to that portion of any and all awards and/or settlements or purchase price (hereinafter referred to as the "condemnation proceeds") attributable to the value of the trade fixtures and equipment and business



value, and Lessor shall be entitled to all portions of the award settlement or purchase price attributed to the value of the land. That portion of the condemnation proceeds attributed to the building and other permanent improvements shall be shared by the parties as follows: condemnation proceeds attributed to damage to the permanent improvements constructed by the Lessee shall be shared by Lessor and Lessee as follows:

- 1) the gross amount of condemnation proceeds attributable to damage to permanent improvements shall be divided by 40 and the resulting quotient shall be referred to as the amortized annual value or AAV; 2) the number of years remaining in the lease term (referred to as the remaining term) shall be determined by subtracting from 40 the number of years and partial years (expressed in a fraction) that have elapsed in the lease term; 3) Lessee shall be entitled to that portion of the condemnation proceeds attributable to improvements equal to the product of the AAV multiplied by the remaining term; and 4) Lessor shall be entitled to the remainder of the condemnation proceeds.

#### **17.2 Partial Taking.**

17.2.1 This paragraph 17.2 shall apply to any taking or condemnation which is not subject to paragraph 17.1.

17.2.2 Lessor shall be entitled to receive the portion of the award which represents the value of the land and the Lessee shall be entitled to that portion of the award attributed to the value of the trade fixtures and equipment in business value.

17.2.3 Lessee shall promptly restore the building and all improvements on the Premises as nearly as reasonably possible to the condition existing prior to the taking or a condemnation. The award balance shall be used for such repair and restoration. To the extent that the award balance is insufficient for that purpose, Lessee shall nevertheless

make such repairs and restorations at Lessee's expense. If there are any award proceeds remaining after repair and restoration, the remaining proceeds shall be divided between the Lessor and Lessee in such a manner that the Lessee shall be entitled to that portion of the award balance equal to the product of the AAV multiplied by the remaining term, and Lessor shall be entitled to the remainder.

17.2.4 Basic rent shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

### **17.3 Participation and Proceedings.**

Either party receiving any notice of intended taking, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation shall promptly give the other party notice of such receipt. Lessor, Lessee and any leasehold mortgagee shall have the right to represent its respective interest in each such proceeding or negotiation and to make full proof of its claims. No sale, transfer, agreement or settlement with the condemning authority shall be made without the consent of Lessor and Lessee. For purposes of this lease, taking or condemnation includes a sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power. ~~XXXXXXX~~ Fairgrounds will not eliminate ponds.

## **18. LIENS AND INDEMNITY:**

### **18.1 Liens.**

Lessee shall pay as due all claims for work done and for services rendered or materials furnished to the Premises or in respect to construction of the project and shall keep the Premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the costs as additional rent. Any amount so added shall bear

interest at the rate of 8 % per annum from the date expended by Lessor and shall be payable upon demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.

**18.2 Indemnification.**

Lessee shall indemnify and defend Lessor from any claim, loss or liability arising out of or relating to any activity of Lessee on the Premises or any condition of the Premises in possession or under the control of Lessee, including any such claim, loss or liability which may be caused or contributed to in whole or in part by Lessor's own negligence. Lessor shall have no liability to Lessee for any loss or damage caused by third parties or by any condition of the Premises.

**19. DEFAULT:**

Time is of the essence of this Agreement. Each of the following events shall be a default by Lessee and a breach of this lease:

**19.1 Failure to Pay Rent.**

Failure of Lessee to pay any basic rent, percentage rent or other rent payment within fifteen (15) days after it is due.

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**19.2 Abandonment.**

The vacating or abandonment of the Premises by Lessee for a period of sixty (30) consecutive days.

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**19.3 Unauthorized Conveyance.**

Any attempt by Lessee to assign this Lease or sublet the Premises or any portion thereof without the approval of Lessor.

**19.4 Other Performance Failures.**

Failure of Lessee to perform any other term, condition or covenant of this lease, (including but not limited to Lessee's failure to obtain or maintain all insurance policies required under this lease) within twenty (20) days after written from Lessor specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the 20-day period, the failure shall not be a default if Lessee begins correction of the failure within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.

**19.5 Attachment.**

Attachment, execution, levy or other seizure by legal process of any right or interest of Lessee under this lease, if not released within thirty (30) days, provided that the foreclosure of any mortgage permitted by this lease relating to construction of improvements on the Premises shall not be construed to be a default within the meaning of this subsection.

**19.6 Bankruptcy.**

An assignment by Lessee for the benefit of creditors, the filing by Lessee of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing, the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate, or of Lessee's operations on the Premises for any reason. For purposes of this paragraph, the term bankruptcy includes all arrangements and chapters in the Bankruptcy Code.

**20. REMEDIES ON DEFAULT:**

Upon default, Lessor may elect any one or more of the following remedies without any notice or demand whatsoever:

**20.1 Terminate this lease, in which event Lessee shall immediately surrender the**

Premises to Lessor. If Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the demise Premises and expel or remove Lessee and any other person who may be occupying said Premises or any part thereof, and Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination, whether through inability to relet the Premises or otherwise.

**20.2** Enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying said Premises or any part thereof and relet the Premises and receive the rent therefore, and Lessee agrees to pay to Lessor on demand any deficiency that may arise by reason of such reletting and any damages resulting from the inability to relet.

**20.3** Enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying said Premises or any part thereof and demand and receive from tenant lump sum damages in an amount by which the rent provided for herein for the entire remainder of the term, discounted to its present cash value at the time of such re-entry, exceeds the fair rental value of the leased premises for the remainder of the term as of the time of said re-entry, discounted to its present cash values and an 8% per annum discount rate.

**20.4** Enter upon the Premises and do whatever Lessee is obligated to do under the terms of this lease and Lessee agrees to reimburse Lessor on demand for all expenses which Lessor may incur to effect compliance with Lessee's obligations under this lease. The Lessee further agrees that the Lessor shall not be liable for any damage resulting to the Lessee from such action caused by the negligence of Lessor.

**20.5** Lessor may also elect to use all or any part of Lessee's personal property and trade fixtures remaining on the Premises without compensation to Lessee and without liability for use

or damage; or Lessor may store all or any of Lessee's personal property and trade fixtures for the account and at the cost of Lessee. The election of one remedy for any one item shall not preclude an election of any other remedy for another item or for the same item at a later time.

**20.6** Lessor shall have the right to the appointment of a receiver to use, operate, manage, control and conduct business on the Premises and make expenditures for all maintenance and improvements as in its judgment are proper.

**20.7** The term "damage" or "damages" wherever used in Section 15 shall include but not be limited to: the reasonable cost of recovering possession of the Premises and reasonable attorney fees and costs, including reasonable charges for the time of any attorneys who are employees of; all reasonable costs incurred by Lessor in the appointment of and performance by receiver to protect the Premises or Lessor's interest under this lease; any costs incurred to relet the Premises; any unpaid rents which had been earned at the time of termination; the unpaid rents payable by Lessee herein for the balance of the lease term after the date of termination less the rents received by Lessor from re-renting the Premises; and any leasing commission paid by Lessor applicable to the unexpired term of this lease period. In computing damages connected with lost rents, the percentage rent component for the remainder of the lease term will be regarded as the higher of 1) the average gross receipts for the twelve (12) calendar months immediately preceding the default for which the Lessee was operating and making reports or 2) the average gross receipts for the prior twenty- four (24) calendar months immediately preceding the default and in which the Lessee was operating and making reports. In addition, the annual gross receipts figure so determined shall be adjusted to reflect an annual increase at the rate of 3%, which the parties agree is a fair and reasonable estimate of the increase in gross receipts expected to occur over the lease term. Provided CPI increase is this much or greater. Any

damage computation shall assume the percentage rent would have been paid during the remainder of the lease term based upon such adjusted average annual gross receipts.

**20.8** Lessor may pursue any of the foregoing remedies singly or cumulatively and in addition to any other remedies provided by law. Pursuit of any remedy herein provided shall not constitute a forfeiture or waiver of any rent due to Lessor hereunder or of any damage accruing to Lessor by reason of the violation of any of the terms, conditions and covenants herein contained nor shall any termination and cancellation include a cancellation of Lessee's obligation hereunder for any deficiency or damage upon reletting subsequent to said termination or cancellation, such obligations being independent and covenants surviving said termination or cancellations.

**21. SURRENDER ON TERMINATION:**

**21.1 Surrender.**

Upon expiration of the lease term or renewal term, Lessee shall surrender possession of the Premises to Lessor, including all improvements then located on the Premises, free of occupants and broom clean, all in good condition except for reasonable wear and tear since the last necessary restoration, repair or reconstruction made by Lessee pursuant to this lease. All property that Lessee is required to surrender shall become Lessor's property at the date of expiration of this lease. Lessee is not required to surrender Lessee's trade fixtures, machinery and equipment, but if Lessee abandons said property, it shall, at Lessor's election, become Lessor's property on the date of expiration or termination of this lease. Lessee shall be required to repair any damage to the improvements caused by removal of Lessee's trade fixtures, machinery and equipment.

**21.2 Holdover.**

Failure by Lessee to vacate the Premises at the time specified in this lease shall not constitute a renewal or extension or give Lessee any rights in or to the Premises or any improvements. Upon such a holdover, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the failure or delay of Lessee to timely surrender the Premises, including, without limitation, claims made by any succeeding tenant founded on or resulting from Lessee's failure to so surrender. Lessee shall also be obligated to perform all terms and conditions of this lease during any holdover period, including the obligation to pay percentage rent and to pay basic rent equal to 10% of the amount of basic rent last due.

**22. NONDISCRIMINATION:**

Lessor shall comply with all applicable requirements of federal and state civil rights and rehabilitation laws.

**23. ADDITIONAL CONDITIONS TO LEASE:**

**23.1**

**23.1** Lessor agrees to refrain from providing or leasing other property contained within the XXXXXXXX XXXXXXXX or adjacent properties by Lessor which would be leased to other recreational vehicle park operators.

**23.2** Lessor agrees to provide mutual benefits to Lessee that are offered to other Lessees of Lessor at the XXXXXXXX XXXXXXXX such as media advertising, promotional inducements and other intangible benefits as they may become available.

**23.3** Subject Property is bounded by ponds within the complex to the north and the south of the Subject Property. These ponds will be a recreational amenity and attractions for patrons of the recreational vehicle park. Lessor agrees to continue to maintain these ponds in the same manner in which they are now being maintained during the term of this lease. The ponds

**Comment [v8]:** Storage of RV's is not an allowed use of LWCF property and will not be allowed.

**Deleted:** In addition to the Subject Property being leased by Lessee from Lessor, Lessee may need to have additional property which would be set aside for storage of recreational vehicles

**Deleted:** in connection with the business usage of Lessee. In such case, Lessor agrees to negotiate with Lessee relating to providing additional property for this purpose and shall include any such agreement in an addendum attached to this lease to be approved by both parties

**Deleted: 2**

**Deleted: 3**

**Deleted: 4**



will be available to the patrons in the same manner as they are presently available to members of the public.

23.4 Lessor agrees to maintain the county roadways that lead up to the proposed entrance of the recreational vehicle park during the entire term of this lease in a safe condition that provide access to and from the leased premises during the term of this lease.

Deleted: 5

Deleted: good

23.5 Lessee shall have no responsibility to construct or maintain offsite improvements or participate in the cost of maintenance of such improvements specified within this lease.

Deleted: 6

23.6 In the event Lessor discontinues this location as the designated fairgrounds or no longer sponsors the fairgrounds activities Lessee will have the following options A) continue leasing as it currently does from XXXXXXXX subject to a reduction in rent to reflect the fairgrounds are no longer located at this site, B) if the County decides to sell the property, Lessee will have right of first refusal to purchase the property, C) terminate the lease agreement and receive termination benefits from the County calculated based on the value of the Lessee's improvements.

Deleted: 7

#### 23.7 Modification.

Deleted: 8

Lessor and Lessee shall from time to time wish to make modifications to this lease. In the event one party proposes to make a proposal to the other party for a lease modification, both parties agree that they will make themselves available to discuss the need and consequences for such modification and shall also determine any economic modifications that may need to be made. Parties will together in good faith to attempt to come to a mutual acceptable agreement.

#### 24. MISCELLANEOUS:

##### 24.1 Nonwaiver.

Waiver by either party of strict performance of any provision or term of this lease shall

not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provision.

#### **24.2 Amendments.**

This lease, including the exhibits and memoranda if any attached hereto and forming a part hereof, represents the complete agreement and understanding between the parties. No subsequent alteration, change or amendment to this lease shall be binding upon the parties unless reduced to writing and signed by them. It is mutually agreed by Lessor and Lessee that there are not verbal agreements, representations, warranties, or other understandings affecting this Lease.

#### **24.3 Notices.**

All notices under this lease shall be effective on the date of deposit as registered/or certified mail, return receipt requested, postage prepaid and addressed to Lessor or: Lessee at the addresses stated below, or to such other address as either party may specify by notice to the other party:

LESSOR: XXXXXXXX; and XXXXXXXX XXXXXXXX,

LESSEE: \_\_\_\_\_

#### **24.4 Attorney Fees.**

If suit or action is instituted to collect rent, to enforce this lease, or in connection with any claim or controversy arising out of this lease, or in connection with any claim or controversy arising out of this lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action. If arbitration is instituted in connection with any claim or controversy arising out of this lease, attorney fees may be awarded by the arbitrators as they may decide, and if so awarded shall be a part of the arbitrator's decision on which judgment may be rendered. The Lessor shall

also have the right to include as part of the attorney fees a reasonable charge for the time of any attorneys who are employees of XXXXXXXX.

**24.5 Severability.**

The invalidity of illegality of any provision of this lease shall not affect the remainder of the lease. .

**24.6 Governing Law.**

This lease and the parties' rights under it shall be construed and regulated by the laws of the state of Oregon.

**24.7 Memorandum of Lease.**

At the request of either party, the parties will execute and acknowledge a memorandum of lease in recordable form which shall include a legal description of the Premises and the term of the lease, and either party may record the memorandum.

**24.8 Relationship of the Parties.**

It is understood and agreed that the relationship of the parties hereto is strictly that of Lessor and Lessee and that the Lessor has no ownership in Lessee's enterprise and that this lease shall not be construed as creating a joint venture or a partnership or the relationship of principal and agent between the parties. Lessee is not and shall not be deemed to be an agent or representative of Lessor. Lessor is not and shall not be deemed to be an agent or representative of Lessee.

**24.9 Entry and Inspection.**

The Lessee shall permit Lessor and its agents to enter the Premises at reasonable times for the purpose of ensuring Lessee's full and faithful performance of this lease or for any lawful purpose permitted herein.

**24.10 Statutory Disclaimer.**

**THIS INSTRUMENT WILL NOT ALLOW THE USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE ENTERING INTO OR ACCEPTING THIS LEASE, THE PERSON ACQUIRING FEE TITLE TO PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY OF APPROVED USES.**

**IN WITNESS WHEREOF, the parties set their hands on the date indicated.**

LESSOR:

XXXXXXX

Approval as to Form:

By:

XXXXXXX Administrator

County Counsel

LESSEE:

By:

XXXXXXX RV, LLC

## OLD BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Moorage License Agreement*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Staff could only find Resolution 106 from Jan 31, 1981, that shows establishing a Moorage License Agreement, but the resolution was never signed.
- Current Moorage License Application was modified to increase additional information from the owner and/or operator of the boat as well as detailed information on type of boat and business.
- General terms and conditions remain the same.
- Add Marina BMP information as required by OSMB Clean Harbors.
- Add section for staff to send out renewals 60 days prior to expiration date and the moorage license will be terminated if agreement is not signed 30 days passed the renewal date.

### DOCUMENTS

- Proposed moorage agreement, BMP and general terms and conditions (4 pages)

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT MOORAGE LICENSE AGREEMENT, BMP AND GENERAL TERMS AND CONDITIONS AS PRESENTED.



**Proposed**

## MOORAGE LICENSE APPLICATION

Slip No.: \_\_\_\_\_ Permit No.: \_\_\_\_\_

**BILL TO:** ☐ Owner ☐ Operator

### BOAT OWNER:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Cell Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email: \_\_\_\_\_

### BOAT OPERATOR:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email: \_\_\_\_\_

Driver's License Verification: ☐ Yes ☐ No

Boaters License Verification: ☐ Yes ☐ No

### IN CASE OF EMERGENCY PLEASE NOTIFY:

(When Owner/operator is away and cannot be reached)

Name \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

### INSURANCE INFORMATION:

Insurance Co.: \_\_\_\_\_

Policy #: \_\_\_\_\_

Exp. Date: \_\_\_\_\_

### BOAT INFORMATION:

Boat Name \_\_\_\_\_

Reg / Doc #: \_\_\_\_\_

Length Overall: \_\_\_\_\_ Beam: \_\_\_\_\_ Draft: \_\_\_\_\_

Year: \_\_\_\_\_ Make: \_\_\_\_\_

Home Port: \_\_\_\_\_

Check all that apply: ☐ Sail ☐ Inboard ☐ Outboard

☐ Gas ☐ Diesel ☐ Port-a-potty ☐ Type I MSD

☐ Type II MSD ☐ Type III MSD ☐ Other/None

☐ Recreational ☐ Commercial ☐ Charter

### MOORAGE LICENSE TERM & TYPE:

From \_\_\_\_\_ To \_\_\_\_\_

Type: ☐ Recreational ☐ Commercial ☐ Annual

☐ Semi Annual ☐ Monthly ☐ Weekly ☐ Daily

☐ Transient Other \_\_\_\_\_

Fee\*: \_\_\_\_\_

This moorage license application is subject to the terms and conditions set forth on the moorage license agreement and to the Port of Brookings Harbor ordinances, presently in effect or that become in effect in the future. The Port of Brookings Harbor assumes no responsibility for the vessel, its equipment or for injury to the owner, employees, guests or agents.

Renewal moorage license application will be sent out 60 days prior to expiration date. Fees for moorage are due and payable in advance for the entire term. Signed documents must be presented to the Port 30 days after the moorage license agreement begins. Moorage agreements that are not signed will be terminated.

Permission to "liveaboard" must be specifically authorized in writing by the Port of Brookings Harbor by separate agreement.

\*Moorage charges are payable in advance. Moorage agreement automatically reverts to a monthly rate in not paid in full within 30 days. Past due accounts will be assessed a late charge of 1.5% per month (18% per annum). In the event, suit or auction 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 Return Payment.

Owner/Operator:

Port of Brookings Harbor Representative:

\_\_\_\_\_ by the Board of Commissioners

Date

Resolution No.

**PORT OF BROOKINGS HARBOR  
MARINA BEST MANAGEMENT PRACTICES**

**ENGINES AND BILGES**

- Use absorbent bilge pads or socks to soak up oil and fuel.
- Recycle and/or dispose of petroleum products properly.
- Dispose of used oil filters properly and make sure they are thoroughly drained.
- Do NOT discharge bilge water if there is a sheen to it.
- Do NOT dispose of any fuels or used oil in the marina's dumpsters.
- Contact the Port Office for the nearest oil recycling locations.
- Fueling of boats inside marina slips is prohibited.

**PAINTING AND VARNISHING**

- It is prohibited to do any in-water hull scraping or any process that occurs underwater which removes paint from the boat hull.
- Limit the amount of open solvents or paints on dock to one gallon or less.
- Always mix paints and epoxy over tarp.
- Always use a drip pan and/or drop cloth (tarp) when painting.
- Spray painting is not allowed within the marina.
- Do NOT dispose of paints or solvents in the marina's dumpster.

**SURFACE PREPARATION**

- Use biodegradable, non-toxic, phosphate free cleaners and/or soaps.
- Liberally use tarps to capture all scrapings, debris and drips or use a vacuum sander.
- Stretch tarps between the side of the boat and the dock when working over the water.

**SEWAGE**

- Untreated sewage should never be discharged directly overboard.
- Store sewage in holding tanks and dispose of properly at pump-out stations.
- Ensure Marina Sanitation Devices (MSD's) Type I and II systems are working properly and discharge the treated waste only when your boat is underway (in coastal waters and rivers navigable from the ocean). DO NOT DISCHARGE ANY MSD while moored in the marina or at any time on inland lakes and reservoirs.
- Type III MSD's are NOT treatment systems; they are only holding tanks and are always required to use pump-out stations.
- Use shore-side facilities as often as possible.

**SOLID WASTE DISPOSAL**

- Pets must remain on a leash at all times and immediately pick up after your pet and dispose of the waste in a garbage receptacle.
- Harvested fish must be cleaned using the designated fish cleaning stations. All solid fish waste must be disposed of into garbage receptacles as it is illegal to dispose of fish carcasses in Oregon waterways.
- Dispose of all garbage in the proper shore-side receptacles.
- Recycle all plastics, newspapers, cardboard and aluminum in appropriate receptacles.

\*No open burning is allowed in the marina from petroleum-containing waste or garbage that would generate black smoke or noxious fumes.

\*For Safety reasons, unattended storage items are not allowed on marina docks.

**ALL HAZARDOUS WASTE MUST BE DISPOSED OF PROPERLY. CONTACT THE PORT OFFICE  
FOR MORE INFORMATIONS AT: (541) 469-2218**

**Thank you for helping us to protect the environment and keep a clean and enjoyable facility!**

\_\_\_\_\_ by the Board of Commissioners

Date

Resolution No.

## Moorage License Agreement General Terms and Conditions

1. **MOORAGE OR STORAGE SPACE:** The Port of Brookings-Harbor ("Port") grants to the designated Owner/Operator ("Licensee") a license for moorage of the designated vessel in the moorage space identified on the front of this Agreement and/or for the use of certain lots identified herein for the purpose of boat, trailer or gear storage. The Port reserves the right in its sole discretion and without notice to reassign any vessel or the stored material to an alternate site of the Port's choosing, permanently or temporarily, to accommodate emergency situations, repairs or administrative needs.
2. **FEES & CHARGES: FEES ARE BASED ON SIZE OF SLIP OR LENGTH OF BOAT, WHICH IS THE GREATER.** Fees for moorage and yard storage are due and payable in advance for the entire term of this Agreement and is **NON-REFUNDABLE**. Payment plans may be arranged in advance and in writing under certain circumstances. In addition to items covers specifically in this Agreement, Licensee agrees to pay whatever other fees or charges for additional services provided by the Port. The Port shall have right to recover any and all costs associated with the collection of any sums hereunder, whether or not suit is filed, or incurred in the salvage, termination, removal or sale of the vessel or personal property pursuant to this Agreement or any applicable Port ordinance. All rentals which are thirty (30) days past due shall accrue a late payment charge of \$1.00 or 1.5% (18.0% APR), whichever is greater.
3. **UTILITIES:** The Port does not guarantee the functionality, continuity or characteristics of the electricity or water provided by the Port. All risk associated with electricity supply, including risk to any of the vessel's electrical components or circuitry is entirely at Licensee's risk. Licensee is responsible for all utility charges incurred during the term of moorage, whether the vessel is physically in the assigned slip or not.
4. **RULES AND REGULATIONS:** Licensee agrees to comply at all times with any and all rules and regulations promulgated by any federal, state, local or this Port. Further, Licensee agrees to abide by special requests made in the interests of public or vessel safety by the Harbor Master or his designee. It is Licensee's responsibility to stay abreast of all rules and regulations concerning vessel use and the use of Port facilities. A copy of the Port's rules and regulations are available from the Port office.
5. **INSURANCE:** Licensee agrees to provide a marine/watercraft insurance policy with general liability limits of at least \$500,000. The Port of Brookings Harbor shall be named as additional insured. A copy of said insurance shall be provided to the Port. Failure to provide or keep in force such insurance shall be construed as a default of this Agreement and the Port will exercise its right to terminate.
6. **VESSEL ACCESS:** Licensee grants the Port free access at all times to the vessel for purpose of inspection for compliance with this Agreement or with Port ordinances, movement of the vessel, fighting fire or other casualty, or at the discretion of the Port, the prevention of any casualty or potential hazard. The Port assumes no responsibility for any damage that may occur arising from the assertion of this right.
7. **WAIVER OF RESPONSIBILITY:** The obligation of the Port under this Agreement is limited to furnishing that portion of dock or land space reasonably necessary for vessel moorage or placement of Licensee's personal property. The Port does not accept vessels or personal property for storage and accepts no responsibility or liability for the safe keeping thereof, including, loss of any kind, theft or damage of any kind or cause. Licensee is fully responsible for himself, his family, his employees or invitees to the Port's premises and agrees to hold the Port harmless and free from claim for any damages, injury or loss resulting from the acts or failure to act of Licensee, his family, his employees or invitees.
8. **ACCEPTANCE OF PREMISES:** Licensee acknowledges he has inspected the premises for use under this Agreement and accepts them in their present "AS-IS" condition. Licensee agrees to keep the assigned premises neat, clean, free of hazardous or flammable materials and to preserve the assigned space in as good condition and repair as is now or may be put hereafter by the Port.
9. **CONDITION OF VESSEL:** Licensee shall keep the vessel in seaworthy condition and fully operable at all times while in the water and shall secure and otherwise attend to the needs of the vessel. Failure to do so may result in the vessel being deemed a hazardous vessel in accordance with Port ordinance and removed at Licensees risk and expense. Licensee understands that this action is taken to protect the Port and does not imply any responsibility for storage on the part of the Port.
10. **ASSIGNMENT, TRANSFER AND SUB-LEASE:** This license is not assignable, transferable to any other party. Licensee may replace vessel with another of like size but must notify the Port immediately of the vessels particulars. Licensee may change operators but must notify the Port within 5 days with the particulars of the new operator, including name, address and telephone. Licensee must notify the Port within 10 days of the sale of the vessel and the vessel must be removed or the new owner must make application for a new license which may or may not be granted by the Port, at the Ports sole discretion.
11. **MOORAGE RENEWAL AND TERMINATION:** Vessels or personal property remaining on the Port's premises after the expiration of this license shall be deemed abandoned and subject to removal or sale by the Port. Port may, upon 30 days written notice cancel long

\_\_\_\_\_ by the Board of Commissioners  
Date  
Resolution No.



term moorage licenses for repeated violations of Port ordinances, rules or regulations.

**12. PORT'S RIGHTS UPON NON-PAYMENT OR**

**ABANDONMENT:** Any vessel or personal property deemed to be abandoned for any of the reasons stated herein is subject to seizure by the Port. A vessel or personal property shall be deemed abandoned thirty (30) days from the due date of payment or the failure to renew and prepay the license. Port may chain, lock or remove the vessel or the personal property from its assigned location on the Port premises at its sole discretion and refuse access by Licensee to such property until all accounts are paid in full including the Ports costs of seizure, including attorney fees and other costs of collection. The Port shall not be responsible for any loss or damage to the vessel or personal property so seized during the entire time said vessel or personal property remains in the Port's possession. At any time following the date of seizure the Port's, in its sole discretion, may offer for sale to the highest bidder, upon public notice in accordance with the Port's ordinance, the vessel or property so seized.

**13. CHANGE OF ADDRESS:** Licensee is responsible to notify the Port of any change of mail or email address or change of telephone number. All billings will be deemed delivered when mailed to the address of record supplied by Licensee.

**14. NON-WAIVER AND JURISDICTION:** The failure of the Port to enforce all or any part of this Agreement shall not constitute a waiver of any rights, including that which may have failed to enforce, the Port may have under this Agreement and it. This Agreement shall be construed under the laws of the State of Oregon.

**15. "LESSEE" FURTHER AGREES:**

- No moorage will be allowed unless designated by the Port Manager or his representative. The right is reserved to refuse moorage if in the best interest of the "PORT".
- Departure from or cancellation of moorage or repair or storage yard space will not be recognized unless the

"PORT" office is notified by the owner or operator and a record is made of same.

- Yearly moorage rates are described as paid in advance for one full year.
- All moorage rates will be paid according to overall length of "VESSEL" or length of finger dock, whichever is greater.
- Yearly moorage rates not renewed by full payment within thirty (30) days of due date become delinquent and automatically revert to the monthly rate charge.
- All rentals which are thirty (30) days past due shall accrue a late payment charge of \$1.00 or 1.5% (18.0% APR), whichever is greater.
- All rates and charges of any "PORT" facilities or services are considered on a NO REFUND basis.
- Personal subleasing of any "PORT" facilities is prohibited.
- Failure to pay for charges or misuse of "PORT" facilities may result in relinquishing all privileges or access to facilities and service of the Port of Brookings Harbor.
- The storage is a matter of license to use space rather than a bailment. "LESSEE" agrees to hold "PORT" harmless from any responsibility for preservation, security, or protection of items stored within the storage facility.
- No fabrication or repair of hull, wheelhouse cabin or deck gear.
- No sandblasting, welding or fiber glassing.
- No exterior painting of hull, cabin, deck gear or trailers.
- No storage of hazardous materials or chemicals.
- All items to be stored must be kept on board "VESSEL".
- No storage of miscellaneous gear will be allowed on the ground around "VESSEL". (Exception) Sailboat masts not attached to "VESSEL" may be stored adjacent to "VESSEL".
- No electrical service is available in storage yard without prior arrangements made with Harbormaster or Port Manager. Additional fees will be charged for this service.
- Moorage holder further agrees that before over the water "VESSEL" maintenance and repairs take place at the Port of Brookings Harbor, the "PORT" will be immediately contacted to ensure conformity with the State of Oregon Best Management Practices.

**I AGREE TO THE TERMS AND CONDITIONS OF THIS DOCUMENT.**

Owner/Operator:

Port of Brookings Harbor Representative:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ by the Board of Commissioners  
Date  
Resolution No.

# OLD BUSINESS AGENDA ITEM

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**DATE:** April 12, 2017  
**RE:** Port of Brookings Harbor Rates (Includes All Rates)  
**TO:** Port of Brookings Harbor Board of Commissioners  
**ISSUED BY:** Gary Dehlinger, Port Manager

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## OVERVIEW

- Port of Brookings Harbor current rates are broken up in multiple areas and resolutions which makes it very difficult to apply, review and update.
- All Port of Brookings Harbor rates are now located within this new document.
- Rates to be reviewed and adjusted at least annually between the months of January and no later than March so that budgetary figures can be made.
- Any new or adjusted rates can be added or changed throughout the year as approved by the Board.
- Changes / Adds / Rate Increases as follows:
  - Changed 1-hour minimum hourly charge to 30-minutes. Any activity over 30-minutes will be charged full hourly rate. Under 30-minutes will be charged half the hourly rate.
  - Add Port Truck rate, page 1
  - Add Fueling over the steel wall, page 1
  - Add Boat / Trailer Storage, per day rate, page 1
  - Add Wood Work Barge rate, page 1
  - Add Clean-Up rate, page 1
  - Add Disposal of Net & Gear rate, page 1
  - Add Garbage rate, page 2
  - Add Emergency call-out labor rate, page 2
  - Change Haul-Out greater than 40 foot to 41 foot, page 2
  - Add Trolling Pole rate, page 2
  - Increased all shore power and water Moorage rates by 5%, page 3
  - Changed all shore power and water Sport Moorage rates to be equal in both Basins, page 3
  - Changed all shore power and water Sport Moorage rates, took the average between Basin 1 and 2 for each category to establish new rates, page 3. Because of the disparity between the two basins rates and rates not being equal throughout the footages, rates increase by average from 3.8% to 12.24%.

- Add new shore water Sport Moorage rates, took the average of current rates between Basin 1 and 2 for each category to establish new rates, page 3. Because of the disparity between the two basins rates and rates not being equal throughout the footages, rates increase/decreased by average from -1% to 5.98%.
- Change Dock Box rental to purchase by moorage holder. Port installs box at no charge and box leaves with moorage holder, page 3
- Add Line Replacement rate, page 3
- Add Semi-Annual for Commercial Moorage rates, page 3
- Add Section 4 Fuel pricing mark-up amounts, page 4
- Increased RV Park Daily rates \$1.00, page 4
- Increased RV Park Weekly rate \$5.00, page 4
- Add Holiday rates, page 4
- Increased Retail Center square footage rate, page 5
- Add Computer Time rate, page 5
- Add Faxes/Emails rate, page 5
- Add Long Distance Calls rate page 5
- Add Lamination rate, page 5
- Add Notice Posting rate, page 5
- Add Failure to Register rate, page 5
- Add Impound Seizure Fee for Vessels rate, page 6
- Add Impound Seizure Fee for Vehicles rate, page 6
- Add Vessel Moving rate, page 6
- Add Electrical and Water Meter Readings rate, page 6
- Changed Moorage calculation sheets to show each footage rate with no rounding from 20 to 100-foot vessel.
- Port Public Hoist rates will be added when Bandon Pacific commercial receiving docks are repaired.
- Poundage Fees will be added when/if approved by Board.

## DOCUMENTS

- Draft Port of Brookings Harbor Rates (13 pages).
- Work sheets and comparison moorage rates of ports (10 pages).

## RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE NEW RATE FORMAT FOR THE PORT OF BROOKINGS HARBOR AND REVIEW RATES AT LEAST ANNUALLY BETWEEN THE MONTHS OF JANUARY AND MARCH FOR BUDGETARY PURPOSES.

# PORT OF BROOKINGS HARBOR RATES

**DRAFT**

SECTION 1	SERVICE RATES	PAGE 1
SECTION 2	BOAT YARD	PAGE 2
SECTION 3	MOORAGE	PAGE 3
SECTION 4	FUEL	PAGE 4
SECTION 5	RV PARK	PAGE 4
SECTION 6	COMMERCIAL RETAIL	PAGE 5
SECTION 7	CIVIL PENALTIES	PAGE 5
SECTION 8	ADMINISTRATIVE FEES	PAGE 5
SECTION 9	INSURANCE CERTIFICATE LIMITS	PAGE 6
	SPORT BASIN 1 AND 2 CALCULATED RATES PER LENGTH	APPENDIX A
	SPORT BASIN 1 <u>WATER ONLY</u> CALCULATED RATES PER LENGTH	APPENDIX B
	COMMERCIAL BASIN 1 AND 2 CALCULATED RATES PER LENGTH	APPENDIX C

# PORT OF BROOKINGS HARBOR

# DRAFT

## Section 1. Service Rates

Rates apply to all Port of Brookings Harbor locations unless otherwise noted. Rates become effective July 1, 2017. Port owned equipment to be operated by port personnel. **30-minute minimum on all hourly rates.** All port equipment rates include operator.

A. <u>Forklift, 5 ton capacity</u>		
per hour	\$	60.00
B. <u>Port Truck</u>		
per hour	\$	60.00
C. <u>Backhoe</u>		
per hour	\$	90.00
D. <u>Boat Tow</u>		
per hour	\$	120.00
E. <u>Port Boat</u>		
per hour	\$	120.00
F. <u>Boat Pump Out</u>		
per hour	\$	100.00
G. <u>Boat Pump - Loan</u>		
per day	\$	60.00
H. <u>Hydraulic Crane, 15 ton capacity</u>		
per hour	\$	120.00
I. <u>Welding Machine</u>		
per hour	\$	60.00
J. <u>Welder Plug</u>		
per day	\$	20.00
K. <u>Fueling Over the Dock</u>		
per gallon	\$	0.06
L. <u>Pump / Line Service</u>		
per hour	\$	100.00
M. <u>Boat / Trailer Storage</u>		
1) Unsecured Area		
per day	\$	2.00
per month	\$	30.00
2) Secured Area		
per day	\$	3.00
per month	\$	58.00
N. <u>Gear Storage</u>		
per SF per month	\$	0.09
O. <u>Wood Work Barge</u>		
per day	\$	10.00
P. <u>Clean-Up</u>		
Fees will be charged for each man-hour at established rates		
Equipment charges are extra		
Q. <u>Disposal Fees</u>		
1) Waste Oil	No Charge	
2) Oil-Water Mix	No Charge	
3) Net / Gear Disposal		
per pound	\$	0.16

# PORT OF BROOKINGS HARBOR

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4) Garbage, per pound	\$	0.11
<b>R. Port Labor</b>		
1) Includes administration staff		
per hour	\$	100.00
2) Overtime, any service required outside established working hours		
per hour	\$	120.00
3) Emergency call-out		
Any services requiring a port employee NOT currently on duty to report to duty after hours will be charged twice the normal rate		
per hour	\$	200.00
<b>S. Keys / Cards</b>		
Deposit Fee	\$	20.00
<b>T. Permit to Sell Fish from Boat, per year</b>	\$	100.00

## Section 2. Boat Yard

A routine maintenance haul-out or launch is not an emergency. An emergency situation exists only when a vessel is distressed to the degree that it is taking on water at a rate that will cause damage that can be prevented by removing the vessel from the water.

Haul-out and repair yard charges must be paid in full prior to launch or at the end of each 30 days the vessel remains in the repair yard. Haul-out includes one hour of in strap for boat wash. 1-hour minimum on hourly rates.

Yard days may be reduced due to inclement weather by port manager approval. No long term storage rates for boats in the boat yard. All boats in storage yard charged as stated below.

<b>A. Haul Out, 50 ton capacity, 28 foot minimum</b>		
1) Round Trip, per foot		
less than 40 foot	\$	9.00
2) greater than 41 foot	\$	11.00
3) One Way Trip		
60% of Round Trip		Calculate
<b>B. Remain In Strap, after hour</b>		
per hour	\$	185.00
<b>C. Lift to Trailer</b>		
per hour	\$	185.00
<b>D. Moving After Being Blocked</b>		
per hour	\$	185.00
<b>E. Yard Days</b>		
First and last day no charge		
per foot per day	\$	1.00
<b>F. Boat Wash (pressure washer)</b>		
per foot	\$	1.50
<b>G. Scaffolding (if available)</b>		
per week	\$	165.00
<b>H. Stepping Mast One Way</b>		
per hour	\$	180.00
<b>I. Boat Stands for Boat Storage</b>		
per stand per month	\$	12.00
<b>J. Trolling Pole Storage</b>		
per month	\$	50.00

# PORT OF BROOKINGS HARBOR

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## Section 3a. Sport Moorage with Power & Water

Per linear foot. All charges for greater length between dock and boat. \*See appendix for calculated rates based on length.

### A. Moorage with Power & Water, per linear foot

1) Daily	\$	0.58
2) Weekly	\$	3.46
3) Calendar Month	\$	10.39
4) Semi-Annual	\$	23.59
5) Annual	\$	41.42
6) Live aboard. Monthly rate by agreement only.		
a) First person	\$	55.25
b) Each additional	\$	50.00

### B. Charter Boats

Charter License		
per person	\$	50.00

### C. Dock Box

Purchase (at cost)

### D. Line Replacement, Hourly labor rate, half hour minimum

per foot, per time	\$	1.00
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### E. Launch Fee

1) Daily	\$	5.00
2) Annual		
a) Jan - June, to remainder of year	\$	105.00
b) July - Sept, to remainder of year	\$	75.00
c) Oct - Dec, to remainder of year	\$	45.00

## Section 3b. Sport Moorage with Water Only

Per linear foot. All charges for greater length between dock and boat. \*See appendix for calculated rates based on length.

### A. Moorage, per linear foot

1) Daily	\$	0.55
2) Weekly	\$	3.30
3) Calendar Month	\$	9.89
4) Semi-Annual	\$	22.46
5) Annual	\$	39.45

## Section 3c. Commercial and Charter Rates

Per linear foot. All charges for greater length between dock and boat. \*See appendix for calculated rates based on length.

### A. Moorage, per linear foot

1) Daily	\$	0.56
2) Weekly	\$	3.37
3) Calendar Month	\$	10.12
4) Semi-Annual	\$	19.35
5) Annual	\$	34.02

**Section 4. Fuel**

Fuel pricing will be adjusted per purchase price. No discounts for credit card or charge purchases. Schedule below is mark-up above fuel purchase price.

**A. Diesel, ULSD #2 Marine Blend**

1) Under 100 gallons	\$	0.58
2) Over 100 gallons	\$	0.43
3) Over 500 gallons	\$	0.38
4) Over 1000 gallons	\$	0.33
5) Over 2000 gallons	\$	0.28
6) Over 3000 gallons	\$	0.23

**B. 92 Pre Non Ethanol Gasoline**

per gallon	\$	1.18
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**Section 5. RV Park**

Reservations can be made online, by phone or in person.

**A. Peak Season (Summer), April 1 - October 31****1) Daily**

• Pull thru full hook-up	\$	53.00
• Back in full hook-up	\$	45.00
• Partial hook-up	\$	37.00
• Dry Camping	\$	33.00
• Tent Sites	\$	28.00

**2) Weekly**

• Pull thru full hook-up	\$	311.00
• Back in full hook-up	\$	269.00
• Partial hook-up	\$	221.00
• Dry Camping	\$	197.00
• Tent Sites	\$	197.00

**B. Off Season (Winter), Nov 1 - March 31****1) Daily**

• Pull thru full hook-up	\$	36.00
• Back in full hook-up	\$	29.00
• Partial hook-up	\$	26.00
• Dry Camping	\$	24.00
• Tent Sites	\$	24.00

**2) Weekly**

• Pull thru full hook-up	\$	215.00
• Back in full hook-up	\$	173.00
• Partial hook-up	\$	155.00
• Dry Camping	\$	143.00
• Tent Sites	\$	143.00

**C. Holidays, 3 night minimum****1) Daily**

• Pull thru full hook-up	\$	96.00
• Back in full hook-up	\$	85.00



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• Partial hook-up		\$	55.00
• Dry Camping		\$	47.00
• Tent Sites		\$	39.00
D. <u>Laundry Machines</u>			
per load		\$	2.00
E. <u>Showers</u>		\$	0.50

## Section 6. Commercial Retail

A. <u>Warehouse - Shop</u>			
per square foot		\$	0.50
B. <u>Warehouse - Storage</u>			
per square foot		\$	0.40
C. <u>Commercial Docks</u>			
per square foot		\$	0.63
D. <u>Surfaced Concrete</u>			
per square foot		\$	0.50
E. <u>Surfaced Asphalt</u>			
per square foot		\$	0.30
F. <u>Retail Center</u>			
per square foot		\$	1.07

## Section 7. Civil Penalties

A. Failure to pay launch fee		\$	25.00
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## Section 8. Administration Fees

Staff 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, per page
- 2) Copies of Sound Recordings
- 3) Copies of Port By-Laws, Codes
- 4) Copies of Nonstandard documents

**.25**  
**10.00**  
**20.00**  
**20.00**

### B. Research

Written request required. Hourly rate, half hour minimum

### C. Computer Time

Port operator. Hourly rate, half hour minimum

### D. Faxes/Emails. Per page

- 1) Local
- 2) Long Distance
- 3) Incoming
- 4) Copies

### E. Long Distance Phone Calls

### F. Lamination, per page, letter size

### G. Notice Posting. For non-payment of lease or moorage

### H. Failure to Register. For research related to unregistered boats

### I. Returned Check Fee

### J. Per Annum Interest Rate. Applied to past due accounts

Adopted and Approved by Board

Date

Effective July 1, 2017

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# PORT OF BROOKINGS HARBOR

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K. <u>POV Mileage Reimbursement Rate (IRS)</u>	current
L. <u>Impound Seizure Fee. Vessel impounding</u>	\$ 750.00
M. <u>Property Ground Event Use</u>	
1) Boardwalk Retail, per day	\$ 300.00
2) Boardwalk Retail / Parking Lot, per day	\$ 600.00
3) Kite Field, per day	\$ 300.00
4) RV Park Picnic Area, per day	\$ 125.00
5) Parking Lot behind Mainbrace	\$ 300.00
6) Parking Lot at Boat Wash	\$ 300.00
7) Saturday Market, per vender	\$ 10.00
8) Car Shows, per vehicle	\$ 5.00
N. <u>Impound Seizure Fee. Car / Truck / Trailer</u>	\$ 100.00
O. <u>Vessel Moving</u>	
per hour, does not include port boat tow rate	\$ 100.00
P. <u>Background Check</u>	\$ 25.00
Q. <u>Credit Check</u>	\$ 35.00
R. <u>Electrical and Water Meter Readings</u>	
1) Monthly Meter Reading Charge	\$ 1.00
2) Coos Curry Electrical Rate, Plus	\$ 0.01
3) Harbor Water Rate, Plus	
4) Harbor Sanitary Rate, Plus	

## Section 9. Insurance Certificate Limits

Effective July 1, 2016. Additional coverages may be required based upon business type and Port's discretion. A certificate naming the Port as an additional insured is also required.

A. <u>Leases / Tenants</u>	
1) General Liability, Each Occurrence	\$2MM
2) Damage to Rented Premises (each occurrence)	\$ 300,000.00
3) Medical Expenses (any one person)	\$ 5,000.00
4) Personal and Adverse Injury	\$2MM
5) General Aggregate	\$2MM
6) Products - Comp/Op Aggregate	\$2MM
B. <u>Moorage / Vessels</u>	
1) Commercial Vessels	
a. General Liability	
• Protection and Indemnity/Wreck Removal	\$ 250,000.00
• Pollution Coverage	\$ 300,000.00
• Combine Coverage/Wreck Removal	\$ 600,000.00
2) Recreational Vessels	
a. General Liability	
• Ocean Marine Liability/Wreck Removal	\$ 300,000.00
• Pollution Coverage	\$ 300,000.00
or Watercraft Liability, specifically includes wreck removal and pollution. Umbrella clauses must identify boats exceeding 25 feet	\$ 500,000.00
3) Charter / Guide Vessels	
a. General Liability	\$1.7MM

## SPORT BASIN 1 AND 2 CALCULATED RATES PER LENGTH - APPENDIX A

LIVE ABOARD FEE ADDITIONAL: 1st Person \$55.25 per month, Each Additional Person \$50.00

NOTE: Rates are based on vessel length or slip length - whichever is greater

Price includes shore water

Electric billed monthly, separately from moorage rates

LENGTH	DAILY	WEEKLY	CALENDAR MONTH	SEMI-ANNUAL	ANNUAL
20	11.60	69.20	207.80	471.80	828.40
21	12.18	72.66	218.19	495.39	869.82
22	12.76	76.12	228.58	518.98	911.24
23	13.34	79.58	238.97	542.57	952.66
24	13.92	83.04	249.36	566.16	994.08
25	14.50	86.50	259.75	589.75	1035.50
26	15.08	89.96	270.14	613.34	1076.92
27	15.66	93.42	280.53	636.93	1118.34
28	16.24	96.88	290.92	660.52	1159.76
29	16.82	100.34	301.31	684.11	1201.18
30	17.40	103.80	311.70	707.70	1242.60
31	17.98	107.26	322.09	731.29	1284.02
32	18.56	110.72	332.48	754.88	1325.44
33	19.14	114.18	342.87	778.47	1366.86
34	19.72	117.64	353.26	802.06	1408.28
35	20.30	121.10	363.65	825.65	1449.70
36	20.88	124.56	374.04	849.24	1491.12
37	21.46	128.02	384.43	872.83	1532.54
38	22.04	131.48	394.82	896.42	1573.96
39	22.62	134.94	405.21	920.01	1615.38
40	23.20	138.40	415.60	943.60	1656.80
41	23.78	141.86	425.99	967.19	1698.22
42	24.36	145.32	436.38	990.78	1739.64
43	24.94	148.78	446.77	1014.37	1781.06
44	25.52	152.24	457.16	1037.96	1822.48
45	26.10	155.70	467.55	1061.55	1863.90
46	26.68	159.16	477.94	1085.14	1905.32
47	27.26	162.62	488.33	1108.73	1946.74
48	27.84	166.08	498.72	1132.32	1988.16
49	28.42	169.54	509.11	1155.91	2029.58
50	29.00	173.00	519.50	1179.50	2071.00
51	29.58	176.46	529.89	1203.09	2112.42
52	30.16	179.92	540.28	1226.68	2153.84
53	30.74	183.38	550.67	1250.27	2195.26
54	31.32	186.84	561.06	1273.86	2236.68
55	31.90	190.30	571.45	1297.45	2278.10
56	32.48	193.76	581.84	1321.04	2319.52
57	33.06	197.22	592.23	1344.63	2360.94
58	33.64	200.68	602.62	1368.22	2402.36
59	34.22	204.14	613.01	1391.81	2443.78
60	34.80	207.60	623.40	1415.40	2485.20
61	35.38	211.06	633.79	1438.99	2526.62
62	35.96	214.52	644.18	1462.58	2568.04
63	36.54	217.98	654.57	1486.17	2609.46
64	37.12	221.44	664.96	1509.76	2650.88
65	37.70	224.90	675.35	1533.35	2692.30
66	38.28	228.36	685.74	1556.94	2733.72
67	38.86	231.82	696.13	1580.53	2775.14
68	39.44	235.28	706.52	1604.12	2816.56
69	40.02	238.74	716.91	1627.71	2857.98

## SPORT BASIN 1 AND 2 CALCULATED RATES PER LENGTH - APPENDIX A

LIVE ABOARD FEE ADDITIONAL: 1st Person \$55.25 per month, Each Additional Person \$50.00

NOTE: Rates are based on vessel length or slip length - whichever is greater

Price includes shore water

Electric billed monthly, separately from moorage rates

LENGTH	DAILY	WEEKLY	CALENDAR MONTH	SEMI-ANNUAL	ANNUAL
70	40.60	242.20	727.30	1651.30	2899.40
71	41.18	245.66	737.69	1674.89	2940.82
72	41.76	249.12	748.08	1698.48	2982.24
73	42.34	252.58	758.47	1722.07	3023.66
74	42.92	256.04	768.86	1745.66	3065.08
75	43.50	259.50	779.25	1769.25	3106.50
76	44.08	262.96	789.64	1792.84	3147.92
77	44.66	266.42	800.03	1816.43	3189.34
78	45.24	269.88	810.42	1840.02	3230.76
79	45.82	273.34	820.81	1863.61	3272.18
80	46.40	276.80	831.20	1887.20	3313.60
81	46.98	280.26	841.59	1910.79	3355.02
82	47.56	283.72	851.98	1934.38	3396.44
83	48.14	287.18	862.37	1957.97	3437.86
84	48.72	290.64	872.76	1981.56	3479.28
85	49.30	294.10	883.15	2005.15	3520.70
86	49.88	297.56	893.54	2028.74	3562.12
87	50.46	301.02	903.93	2052.33	3603.54
88	51.04	304.48	914.32	2075.92	3644.96
89	51.62	307.94	924.71	2099.51	3686.38
90	52.20	311.40	935.10	2123.10	3727.80
91	52.78	314.86	945.49	2146.69	3769.22
92	53.36	318.32	955.88	2170.28	3810.64
93	53.94	321.78	966.27	2193.87	3852.06
94	54.52	325.24	976.66	2217.46	3893.48
95	55.10	328.70	987.05	2241.05	3934.90
96	55.68	332.16	997.44	2264.64	3976.32
97	56.26	335.62	1007.83	2288.23	4017.74
98	56.84	339.08	1018.22	2311.82	4059.16
99	57.42	342.54	1028.61	2335.41	4100.58
100	58.00	346.00	1039.00	2359.00	4142.00

## SPORT BASIN 1 WATER ONLY CALCULATED RATES PER LENGTH - APPENDIX B

LIVE ABOARD FEE ADDITIONAL: 1st Person \$55.25 per month, Each Additional Person \$50.00

NOTE: Rates are based on vessel length or slip length - whichever is greater  
Price includes shore water

LENGTH	DAILY	WEEKLY	CALENDAR MONTH	SEMI-ANNUAL	ANNUAL
20	11.00	66.00	197.80	449.20	789.00
21	11.55	69.30	207.69	471.66	828.45
22	12.10	72.60	217.58	494.12	867.90
23	12.65	75.90	227.47	516.58	907.35
24	13.20	79.20	237.36	539.04	946.80
25	13.75	82.50	247.25	561.50	986.25
26	14.30	85.80	257.14	583.96	1025.70
27	14.85	89.10	267.03	606.42	1065.15
28	15.40	92.40	276.92	628.88	1104.60
29	15.95	95.70	286.81	651.34	1144.05
30	16.50	99.00	296.70	673.80	1183.50
31	17.05	102.30	306.59	696.26	1222.95
32	17.60	105.60	316.48	718.72	1262.40
33	18.15	108.90	326.37	741.18	1301.85
34	18.70	112.20	336.26	763.64	1341.30
35	19.25	115.50	346.15	786.10	1380.75
36	19.80	118.80	356.04	808.56	1420.20
37	20.35	122.10	365.93	831.02	1459.65
38	20.90	125.40	375.82	853.48	1499.10
39	21.45	128.70	385.71	875.94	1538.55
40	22.00	132.00	395.60	898.40	1578.00
41	22.55	135.30	405.49	920.86	1617.45
42	23.10	138.60	415.38	943.32	1656.90
43	23.65	141.90	425.27	965.78	1696.35
44	24.20	145.20	435.16	988.24	1735.80
45	24.75	148.50	445.05	1010.70	1775.25
46	25.30	151.80	454.94	1033.16	1814.70
47	25.85	155.10	464.83	1055.62	1854.15
48	26.40	158.40	474.72	1078.08	1893.60
49	26.95	161.70	484.61	1100.54	1933.05
50	27.50	165.00	494.50	1123.00	1972.50
51	28.05	168.30	504.39	1145.46	2011.95
52	28.60	171.60	514.28	1167.92	2051.40
53	29.15	174.90	524.17	1190.38	2090.85
54	29.70	178.20	534.06	1212.84	2130.30
55	30.25	181.50	543.95	1235.30	2169.75
56	30.80	184.80	553.84	1257.76	2209.20
57	31.35	188.10	563.73	1280.22	2248.65
58	31.90	191.40	573.62	1302.68	2288.10
59	32.45	194.70	583.51	1325.14	2327.55
60	33.00	198.00	593.40	1347.60	2367.00
61	33.55	201.30	603.29	1370.06	2406.45
62	34.10	204.60	613.18	1392.52	2445.90
63	34.65	207.90	623.07	1414.98	2485.35
64	35.20	211.20	632.96	1437.44	2524.80
65	35.75	214.50	642.85	1459.90	2564.25
66	36.30	217.80	652.74	1482.36	2603.70
67	36.85	221.10	662.63	1504.82	2643.15
68	37.40	224.40	672.52	1527.28	2682.60
69	37.95	227.70	682.41	1549.74	2722.05
70	38.50	231.00	692.30	1572.20	2761.50



## SPORT BASIN 1 WATER ONLY CALCULATED RATES PER LENGTH - APPENDIX B

LIVE ABOARD FEE ADDITIONAL: 1st Person \$55.25 per month, Each Additional Person \$50.00

NOTE: Rates are based on vessel length or slip length - whichever is greater  
Price includes shore water

LENGTH	DAILY	WEEKLY	CALENDAR MONTH	SEMI-ANNUAL	ANNUAL
71	39.05	234.30	702.19	1594.66	2800.95
72	39.60	237.60	712.08	1617.12	2840.40
73	40.15	240.90	721.97	1639.58	2879.85
74	40.70	244.20	731.86	1662.04	2919.30
75	41.25	247.50	741.75	1684.50	2958.75
76	41.80	250.80	751.64	1706.96	2998.20
77	42.35	254.10	761.53	1729.42	3037.65
78	42.90	257.40	771.42	1751.88	3077.10
79	43.45	260.70	781.31	1774.34	3116.55
80	44.00	264.00	791.20	1796.80	3156.00
81	44.55	267.30	801.09	1819.26	3195.45
82	45.10	270.60	810.98	1841.72	3234.90
83	45.65	273.90	820.87	1864.18	3274.35
84	46.20	277.20	830.76	1886.64	3313.80
85	46.75	280.50	840.65	1909.10	3353.25
86	47.30	283.80	850.54	1931.56	3392.70
87	47.85	287.10	860.43	1954.02	3432.15
88	48.40	290.40	870.32	1976.48	3471.60
89	48.95	293.70	880.21	1998.94	3511.05
90	49.50	297.00	890.10	2021.40	3550.50
91	50.05	300.30	899.99	2043.86	3589.95
92	50.60	303.60	909.88	2066.32	3629.40
93	51.15	306.90	919.77	2088.78	3668.85
94	51.70	310.20	929.66	2111.24	3708.30
95	52.25	313.50	939.55	2133.70	3747.75
96	52.80	316.80	949.44	2156.16	3787.20
97	53.35	320.10	959.33	2178.62	3826.65
98	53.90	323.40	969.22	2201.08	3866.10
99	54.45	326.70	979.11	2223.54	3905.55
100	55.00	330.00	989.00	2246.00	3945.00

**COMMERCIAL BASIN 1 AND 2 CALCULATED RATES PER LENGTH - APPENDIX C**

**DRAFT**

**LIVE ABOARD FEE ADDITIONAL: 1st Person \$55.25 per month, Each Additional Person \$50.00**

**NOTE: Rates are based on vessel length or slip length - whichever is greater**

Price includes shore water

Electric billed monthly, separately from moorage rates

LENGTH	DAILY	WEEKLY	CALENDAR MONTH	SEMI-ANNUAL	ANNUAL
20	11.20	67.40	202.40	387.00	680.40
21	11.76	70.77	212.52	406.35	714.42
22	12.32	74.14	222.64	425.70	748.44
23	12.88	77.51	232.76	445.05	782.46
24	13.44	80.88	242.88	464.40	816.48
25	14.00	84.25	253.00	483.75	850.50
26	14.56	87.62	263.12	503.10	884.52
27	15.12	90.99	273.24	522.45	918.54
28	15.68	94.36	283.36	541.80	952.56
29	16.24	97.73	293.48	561.15	986.58
30	16.80	101.10	303.60	580.50	1020.60
31	17.36	104.47	313.72	599.85	1054.62
32	17.92	107.84	323.84	619.20	1088.64
33	18.48	111.21	333.96	638.55	1122.66
34	19.04	114.58	344.08	657.90	1156.68
35	19.60	117.95	354.20	677.25	1190.70
36	20.16	121.32	364.32	696.60	1224.72
37	20.72	124.69	374.44	715.95	1258.74
38	21.28	128.06	384.56	735.30	1292.76
39	21.84	131.43	394.68	754.65	1326.78
40	22.40	134.80	404.80	774.00	1360.80
41	22.96	138.17	414.92	793.35	1394.82
42	23.52	141.54	425.04	812.70	1428.84
43	24.08	144.91	435.16	832.05	1462.86
44	24.64	148.28	445.28	851.40	1496.88
45	25.20	151.65	455.40	870.75	1530.90
46	25.76	155.02	465.52	890.10	1564.92
47	26.32	158.39	475.64	909.45	1598.94
48	26.88	161.76	485.76	928.80	1632.96
49	27.44	165.13	495.88	948.15	1666.98
50	28.00	168.50	506.00	967.50	1701.00
51	28.56	171.87	516.12	986.85	1735.02
52	29.12	175.24	526.24	1006.20	1769.04
53	29.68	178.61	536.36	1025.55	1803.06
54	30.24	181.98	546.48	1044.90	1837.08
55	30.80	185.35	556.60	1064.25	1871.10
56	31.36	188.72	566.72	1083.60	1905.12
57	31.92	192.09	576.84	1102.95	1939.14
58	32.48	195.46	586.96	1122.30	1973.16
59	33.04	198.83	597.08	1141.65	2007.18
60	33.60	202.20	607.20	1161.00	2041.20
61	34.16	205.57	617.32	1180.35	2075.22
62	34.72	208.94	627.44	1199.70	2109.24
63	35.28	212.31	637.56	1219.05	2143.26
64	35.84	215.68	647.68	1238.40	2177.28
65	36.40	219.05	657.80	1257.75	2211.30
66	36.96	222.42	667.92	1277.10	2245.32
67	37.52	225.79	678.04	1296.45	2279.34
68	38.08	229.16	688.16	1315.80	2313.36
69	38.64	232.53	698.28	1335.15	2347.38

## COMMERCIAL BASIN 1 AND 2 CALCULATED RATES PER LENGTH - APPENDIX C

LIVE ABOARD FEE ADDITIONAL: 1st Person \$55.25 per month, Each Additional Person \$50.00

NOTE: Rates are based on vessel length or slip length - whichever is greater

Price includes shore water

Electric billed monthly, separately from moorage rates

70	39.20	235.90	708.40	1354.50	2381.40
71	39.76	239.27	718.52	1373.85	2415.42
72	40.32	242.64	728.64	1393.20	2449.44
73	40.88	246.01	738.76	1412.55	2483.46
74	41.44	249.38	748.88	1431.90	2517.48
75	42.00	252.75	759.00	1451.25	2551.50
76	42.56	256.12	769.12	1470.60	2585.52
77	43.12	259.49	779.24	1489.95	2619.54
78	43.68	262.86	789.36	1509.30	2653.56
79	44.24	266.23	799.48	1528.65	2687.58
80	44.80	269.60	809.60	1548.00	2721.60
81	45.36	272.97	819.72	1567.35	2755.62
82	45.92	276.34	829.84	1586.70	2789.64
83	46.48	279.71	839.96	1606.05	2823.66
84	47.04	283.08	850.08	1625.40	2857.68
85	47.60	286.45	860.20	1644.75	2891.70
86	48.16	289.82	870.32	1664.10	2925.72
87	48.72	293.19	880.44	1683.45	2959.74
88	49.28	296.56	890.56	1702.80	2993.76
89	49.84	299.93	900.68	1722.15	3027.78
90	50.40	303.30	910.80	1741.50	3061.80
91	50.96	306.67	920.92	1760.85	3095.82
92	51.52	310.04	931.04	1780.20	3129.84
93	52.08	313.41	941.16	1799.55	3163.86
94	52.64	316.78	951.28	1818.90	3197.88
95	53.20	320.15	961.40	1838.25	3231.90
96	53.76	323.52	971.52	1857.60	3265.92
97	54.32	326.89	981.64	1876.95	3299.94
98	54.88	330.26	991.76	1896.30	3333.96
99	55.44	333.63	1001.88	1915.65	3367.98
100	56.00	337.00	1012.00	1935.00	3402.00



## MOORAGE RATE COMPARISON TO OTHER PORTS

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Daily	Daily		Daily		Daily		Daily		Daily		Daily	
0.60	0.63	20	12	0.60	11.60	8	(4)			20	8	15	3		
0.59	0.62	22	13	0.65	12.76	9	(4)			20	7	15	2		
0.58	0.61	24	14	0.70	13.92	9	(5)	10	(4)	20	6	15	1	15	1
0.63	0.67	30	19	0.95	17.40	10	(9)	11	(8)	20	1	16	(3)	19	0
0.55	0.58	40	22	1.10	23.20		(22)	13	(9)	25	3	20	(2)	26	4
0.56	0.59	41	23	1.15	23.78	12	(11)			30	7	20	(3)	26	3
0.55	0.58	42	23	1.15	24.36					30	7	20	(3)	27	4
0.53	0.56	43	23	1.15	24.94					30	7	20	(3)	28	5
0.52	0.55	44	23	1.15	25.52					30	7	20	(3)	28	5
0.51	0.54	45	23	1.15	26.10					30	7	20	(3)	29	6
0.56	0.59	Average	19.50		20.36	4.41%									

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Weekly	Weekly		Weekly		Weekly		Weekly		Weekly		Weekly	
3.60	3.78	20	72	3.60	69.20	48	(24)			120	48	103	31		
3.55	3.72	22	78	3.90	76.12	54	(24)			120	42	103	25		
3.50	3.68	24	84	4.20	83.04	54	(30)	60	(24)	120	36	103	19	92	8
3.80	3.99	30	114	5.70	103.80	60	(54)	66	(48)	120	6	110	(4)	115	1
3.30	3.47	40	132	6.60	138.40		(132)	78	(54)	150	18	139	7	153	21
3.37	3.53	41	138	6.90	141.86	72	(66)			150	12	139	1	157	19
3.29	3.45	42	138	6.90	145.32					150	12	139	1	160	22
3.21	3.37	43	138	6.90	148.78					150	12	139	1	164	26
3.14	3.29	44	138	6.90	152.24					150	12	139	1	168	30
3.07	3.22	45	138	6.90	155.70			84	(54)	150	12	139	1	172	34
3.38	3.55	Average	117.00		121.45	3.80%									

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Monthly	Monthly		Monthly		Monthly		Monthly		Monthly		Monthly	
10.80	11.34	20	216	10.80	207.80	144	(72)			400	184	142	(74)		
10.64	11.17	22	234	11.70	228.58	162	(72)			400	166	157	(77)		
10.50	11.03	24	252	12.60	249.36	162	(90)	180	(72)	400	148	171	(81)	235	(17)
11.40	11.97	30	342	17.10	311.70	180	(162)	198	(144)	400	58	214	(128)	294	(48)
9.90	10.40	40	396	19.80	415.60			234	(162)	475	79	285	(111)	392	(4)
10.10	10.60	41	414	20.70	425.99	216	(198)			475	61	292	(122)	401	(13)
9.86	10.35	42	414	20.70	436.38					475	61	299	(115)	411	(3)

## MOORAGE RATE COMPARISON TO OTHER PORTS

9.63	10.11	43	414	20.70	446.77					475	61	306	(108)	421	7
9.41	9.88	44	414	20.70	457.16					475	61	313	(101)	431	17
9.20	9.66	45	414	20.70	467.55			252	(162)	475	61	320	(94)	441	27
		Liveaboards	37			300	No				No			50	

10.14 10.65 Average 351.00 364.69 3.90%

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City		Salmon Harbor		Garibaldi		Charleston		Newport	
		Boat Length	Semi Annual	Semi Annual		Semi Annual	Difference	Semi Annual	Difference	Semi Annual	Difference	Semi Annual	Difference	Semi Annual	Difference
22.55	23.68	20	451	22.55	471.80					850	399	618	167		
22.41	23.53	22	493	24.65	518.98					850	357	680	187		
22.50	23.63	24	540	27.00	566.16					850	310	742	202	865	325
22.40	23.52	30	672	33.60	707.70					850	178	927	255	1,081	409
		40								1,100				1,442	
		41								1,100				1,478	
		42								1,100				1,514	
		43								1,100				1,550	
		44								1,100				1,586	
		45								1,100				1,622	

22.46 23.59 Average 539.00 566.16 5.03%

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City		Salmon Harbor		Garibaldi		Charleston		Newport	
		Boat Length	Yearly	Yearly		Yearly	Difference	Yearly	Difference	Yearly	Difference	Yearly	Difference	Yearly	Difference
37.25	39.11	20	745	37.25	828.40	432	(313)	935	190	845	100	1,025	280		
37.27	39.14	22	820	41.00	911.24	486	(334)	1,012	192	845	25	1,127	307		
37.29	39.16	24	895	44.75	994.08	486	(409)	1,089	194	845	(50)	1,230	335	1,368	473
37.17	39.03	30	1,115	55.75	1,242.60	540	(575)	1,321	206	1,123	8	1,537	422	1,711	596
37.25	39.11	40	1,490	74.50	1,656.80			1,708	218	1,123	(367)	2,050	560	2,281	791
37.20	39.05	41	1,525	76.25	1,698.22	648	(877)	1,746	221			2,101	576	2,338	813
37.14	39.00	42	1,560	78.00	1,739.64			1,785	225			2,152	592	2,395	835
37.21	39.07	43	1,600	80.00	1,781.06			1,824	224			2,203	603	2,452	852
37.27	39.14	44	1,640	82.00	1,822.48			1,862	222			2,255	615	2,509	869
37.22	39.08	45	1,675	83.75	1,863.90			1,901	226			2,306	631	2,566	891

37.23 39.09 Average 1,306.50 1,453.84 11.12%

## MOORAGE RATE COMPARISON TO OTHER PORTS

Docks: C, D, E, F, G, H, I, J, N, O, P, Q

Current Rate 5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
Boat Length		Daily	Daily		Daily		Daily		Daily		Daily		Daily	
0.63	0.66	24	15	0.75	13.92		10	(5)	20	5	15	(0)	15	0
0.60	0.63	25	15	0.75	14.50	9	10	(5)	20	5	15	(0)	16	1
0.58	0.61	26	15	0.75	15.08	10	10	(5)	20	5	15	(0)	17	2
0.56	0.58	27	15	0.75	15.66	10	10	(5)	20	5	15	(0)	17	2
0.54	0.56	28	15	0.75	16.24	10	10	(5)	20	5	15	(0)	18	3
0.52	0.54	29	15	0.75	16.82	10	10	(5)	20	5	15	(0)	19	4
0.67	0.70	30	20	1.00	17.40	10	11	(9)	20	-	16	(4)	19	(1)
0.65	0.68	31	20	1.00	17.98	11	11	(9)	20	-	16	(4)	20	(0)
0.63	0.66	32	20	1.00	18.56	11	11	(9)	20	-	16	(4)	20	0
0.61	0.64	33	20	1.00	19.14	11	11	(9)	20	-	16	(4)	21	1
0.59	0.62	34	20	1.00	19.72	12	11	(9)	20	-	16	(4)	22	2
0.57	0.60	35	20	1.00	20.30	12	12	(8)	20	-	16	(4)	22	2
0.56	0.58	36	20	1.00	20.88	12	12	(8)	20	-	16	(4)	23	3
0.54	0.57	37	20	1.00	21.46	12	12	(8)	20	-	16	(4)	24	4
0.53	0.55	38	20	1.00	22.04	12	12	(8)	20	-	16	(4)	24	4
0.51	0.54	39	20	1.00	22.62	12	12	(8)	20	-	16	(4)	25	5
0.60	0.63	40	24	1.20	23.20	12	13	(11)	20	(4)	20	(4)	26	2
0.59	0.61	41	24	1.20	23.78	12	13	(11)	20	(4)	20	(4)	26	2
0.57	0.60	42	24	1.20	24.36	12	13	(11)	20	(4)	20	(4)	27	3
0.56	0.59	43	24	1.20	24.94	12	13	(11)	20	(4)	20	(4)	28	4
0.55	0.57	44	24	1.20	25.52	12	13	(11)	20	(4)	20	(4)	28	4
0.53	0.56	45	24	1.20	26.10		14	(10)	20	(4)	20	(4)	29	5
0.52	0.55	46	24	1.20	26.68		14	(10)	20	(4)	20	(4)	29	5
0.51	0.54	47	24	1.20	27.26		14	(10)	20	(4)	20	(4)	30	6
0.50	0.53	48	24	1.20	27.84		14	(10)	20	(4)	20	(4)	31	7
0.49	0.51	49	24	1.20	28.42		14	(10)	20	(4)	20	(4)	31	7
0.56	0.59	50	28	1.40	29.00		15	(13)	20	(8)	23	(5)	32	4
0.55	0.58	51	28	1.40	29.58		15	(13)	20	(8)	23	(5)	33	5
0.54	0.57	52	28	1.40	30.16		15	(13)	20	(8)	23	(5)	33	5
0.53	0.55	53	28	1.40	30.74		15	(13)	20	(8)	23	(5)	34	6
0.52	0.54	54	28	1.40	31.32		15	(13)	20	(8)	23	(5)	35	7
0.51	0.53	55	28	1.40	31.90		16	(12)	20	(8)	23	(5)	35	7
0.50	0.53	56	28	1.40	32.48		16	(12)	20	(8)	23	(5)	36	8
0.49	0.52	57	28	1.40	33.06		16	(12)	20	(8)	23	(5)	36	8
0.48	0.51	58	28	1.40	33.64		16	(12)	20	(8)	23	(5)	37	9
0.47	0.50	59	28	1.40	34.22		16	(12)	20	(8)	23	(5)	38	10
0.46	0.49	69	32	1.60	40.02		17	(15)	30	(2)	25	(7)	44	12
0.44	0.47	79	35	1.75	45.82		19	(16)	30	(5)	30	(5)	51	16
0.42	0.44	89	37	1.85	51.62				30	(7)	30	(7)	57	20
0.39	0.41	99	39	1.95	57.42				30	(9)	30	(9)	63	24
0.42	0.44	100	42	2.10	58.00				30	(12)	30	(12)	64	22
0.54	0.56	Average		24.27			27.30	12.24%						

Docks: C, D, E, F, G, H, I, J, N, O, P, Q

Current Rate 5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
Boat Length		Weekly	Weekly		Weekly		Weekly		Weekly		Weekly		Weekly	
3.75	3.94	24	90	4.50	83.04	54	60	(36)	120	30	105	15	92	2
3.60	3.78	25	90	4.50	86.50	54	60	(36)	120	30	105	15	96	6
3.46	3.63	26	90	4.50	89.96	60	60	(30)	120	30	105	15	99	9
3.33	3.50	27	90	4.50	93.42	60	60	(30)	120	30	105	15	103	13
3.21	3.38	28	90	4.50	96.88	60	60	(30)	120	30	105	15	107	17
3.10	3.26	29	90	4.50	100.34	60	60	(30)	120	30	105	15	111	21
4.00	4.20	30	120	6.00	103.80	60	66	(54)	150	30	112	(8)	115	(5)
3.87	4.06	31	120	6.00	107.26	66	66	(54)	150	30	112	(8)	118	(2)
3.75	3.94	32	120	6.00	110.72	66	66	(54)	150	30	112	(8)	122	2
3.64	3.82	33	120	6.00	114.18	66	66	(54)	150	30	112	(8)	126	6
3.53	3.71	34	120	6.00	117.64	72	66	(54)	150	30	112	(8)	130	10
3.43	3.60	35	120	6.00	121.10	72	66	(54)	150	30	112	(8)	134	14
3.33	3.50	36	120	6.00	124.56	72	72	(48)	150	30	112	(8)	138	18
3.24	3.41	37	120	6.00	128.02	72	72	(48)	150	30	112	(8)	141	21
3.16	3.32	38	120	6.00	131.48	72	72	(48)	150	30	112	(8)	145	25
3.08	3.23	39	120	6.00	134.94	72	72	(48)	150	30	112	(8)	149	29
3.60	3.78	40	144	7.20	138.40	72	78	(66)	150	6	140	(4)	153	9
3.51	3.69	41	144	7.20	141.86	72	78	(66)	150	6	140	(4)	157	13
3.43	3.60	42	144	7.20	145.32	72	78	(66)	150	6	140	(4)	160	16
3.35	3.52	43	144	7.20	148.78	72	78	(66)	150	6	140	(4)	164	20
3.27	3.44	44	144	7.20	152.24	72	78	(66)	150	6	140	(4)	168	24



## MOORAGE RATE COMPARISON TO OTHER PORTS

3.20	3.36	45	144	7.20	155.70			84	(60)	150	6	140	(4)	172	28
3.13	3.29	46	144	7.20	159.16			84	(60)	150	6	140	(4)	176	32
3.06	3.22	47	144	7.20	162.62			84	(60)	150	6	140	(4)	180	36
3.00	3.15	48	144	7.20	166.08			84	(60)	150	6	140	(4)	183	39
2.94	3.09	49	144	7.20	169.54			84	(60)	150	6	140	(4)	187	43
3.36	3.53	50	168	8.40	173.00			90	(78)			161	(7)	191	23
3.29	3.46	51	168	8.40	176.46			90	(78)			161	(7)	195	27
3.23	3.39	52	168	8.40	179.92			90	(78)			161	(7)	199	31
3.17	3.33	53	168	8.40	183.38			90	(78)			161	(7)	202	34
3.11	3.27	54	168	8.40	186.84			90	(78)			161	(7)	206	38
3.05	3.21	55	168	8.40	190.30			96	(72)			161	(7)	210	42
3.00	3.15	56	168	8.40	193.76			96	(72)			161	(7)	214	46
2.95	3.09	57	168	8.40	197.22			96	(72)			161	(7)	218	50
2.90	3.04	58	168	8.40	200.68			96	(72)			161	(7)	222	54
2.85	2.99	59	168	8.40	204.14			96	(72)			161	(7)	225	57
2.78	2.92	69	192	9.60	238.74			108	(84)			175	(17)	264	72
2.66	2.79	79	210	10.50	273.34			114	(96)			210	-	302	92
2.49	2.62	89	222	11.10	307.94							210	(12)	340	118
2.36	2.48	99	234	11.70	342.54							210	(24)	378	144
2.52	2.65	100	252	12.60	346.00							210	(42)	382	130

3.21 3.37 Average 145.61 162.87 11.85%

Docks: C, D, E, F, G, H, I, J, N, O, P, Q

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
Boat Length		Monthly	Monthly		Monthly			Monthly		Monthly		Monthly		Monthly	
11.25	11.81	24	270	13.50	249.36	162	(108)	180	(90)	400	130	171	(99)	235	(35)
10.80	11.34	25	270	13.50	259.75	162	(108)	180	(90)	400	130	178	(92)	245	(25)
10.38	10.90	26	270	13.50	270.14	180	(90)	180	(90)	400	130	185	(85)	255	(15)
10.00	10.50	27	270	13.50	280.53	180	(90)	180	(90)	400	130	192	(78)	264	(6)
9.64	10.13	28	270	13.50	290.92	180	(90)	180	(90)	400	130	199	(71)	274	4
9.31	9.78	29	270	13.50	301.31	180	(90)	180	(90)	400	130	206	(64)	284	14
12.00	12.60	30	360	18.00	311.70	180	(180)	198	(162)	400	40	214	(146)	294	(66)
11.61	12.19	31	360	18.00	322.09	198	(162)	198	(162)	400	40	221	(139)	303	(57)
11.25	11.81	32	360	18.00	332.48	198	(162)	198	(162)	400	40	228	(132)	313	(47)
10.91	11.45	33	360	18.00	342.87	216	(144)	198	(162)	400	40	235	(125)	323	(37)
10.59	11.12	34	360	18.00	353.26	216	(144)	198	(162)	400	40	242	(118)	333	(27)
10.29	10.80	35	360	18.00	363.65	216	(144)	216	(144)	400	40	249	(111)	343	(17)
10.00	10.50	36	360	18.00	374.04	216	(144)	216	(144)	400	40	256	(104)	352	(8)
9.73	10.22	37	360	18.00	384.43	216	(144)	216	(144)	400	40	263	(97)	362	2
9.47	9.95	38	360	18.00	394.82	216	(144)	216	(144)	400	40	271	(89)	372	12
9.23	9.69	39	360	18.00	405.21	216	(144)	216	(144)	400	40	278	(82)	382	22
10.80	11.34	40	432	21.60	415.60	216	(216)	234	(198)	400	(32)	285	(147)	392	(40)
10.54	11.06	41	432	21.60	425.99	216	(216)	234	(198)	475	43	292	(140)	401	(31)
10.29	10.80	42	432	21.60	436.38	216	(216)	234	(198)	475	43	299	(133)	411	(21)
10.05	10.55	43	432	21.60	446.77	216	(216)	234	(198)	475	43	306	(126)	421	(11)
9.82	10.31	44	432	21.60	457.16	216	(216)	234	(198)	475	43	313	(119)	431	(1)
9.60	10.08	45	432	21.60	467.55			252	(180)	475	43	320	(112)	441	9
9.39	9.86	46	432	21.60	477.94			252	(180)	475	43	328	(104)	450	18
9.19	9.65	47	432	21.60	488.33			252	(180)	475	43	335	(97)	460	28
9.00	9.45	48	432	21.60	498.72			252	(180)	475	43	342	(90)	470	38
8.82	9.26	49	432	21.60	509.11			252	(180)	475	43	349	(83)	480	48
10.08	10.58	50	504	25.20	519.50			270	(234)			356	(148)	490	(15)
9.88	10.38	51	504	25.20	529.89			270	(234)			363	(141)	499	(5)
9.69	10.18	52	504	25.20	540.28			270	(234)			370	(134)	509	5
9.51	9.98	53	504	25.20	550.67			270	(234)			377	(127)	519	15
9.33	9.80	54	504	25.20	561.06			270	(234)			384	(120)	529	25
9.16	9.62	55	504	25.20	571.45			288	(216)			392	(112)	538	34
9.00	9.45	56	504	25.20	581.84			288	(216)			399	(105)	548	44
8.84	9.28	57	504	25.20	592.23			288	(216)			406	(98)	558	54
8.69	9.12	58	504	25.20	602.62			288	(216)			413	(91)	568	64
8.54	8.97	59	504	25.20	613.01			288	(216)			420	(84)	578	74
8.35	8.77	69	576	28.80	716.91			324	(252)			491	(85)	676	100
7.97	8.37	79	630	31.50	820.81			342	(288)			562	(68)	773	143
7.48	7.86	89	666	33.30	924.71							634	(32)	871	205
7.09	7.45	99	702	35.10	1,028.61							705	3	969	267
7.56	7.94	100	756	37.80	1,039.00							712	(44)	979	223

9.64 10.12 Average 436.83 489.09 11.96%

Docks: C, D, E, F, G, H, I, J, N, O, P, Q

## MOORAGE RATE COMPARISON TO OTHER PORTS

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Yearly	Yearly		Yearly		Yearly		Yearly		Yearly		Yearly	
41.67	43.75	24	1,000	50.00	994.08	486		1,089	89	845	(155)	1,181	181	1,368	368
41.60	43.68	25	1,040	52.00	1,035.50	486		1,128	88	845	(195)	1,230	190	1,426	386
41.73	43.82	26	1,085	54.25	1,076.92	540		1,167	82	845	(240)	1,279	194	1,483	398
41.67	43.75	27	1,125	56.25	1,118.34	540		1,205	80	845	(280)	1,328	203	1,540	415
41.61	43.69	28	1,165	58.25	1,159.76	540		1,244	79	845	(320)	1,378	213	1,597	432
41.72	43.81	29	1,210	60.50	1,201.18	540		1,283	73	845	(365)	1,427	217	1,654	444
41.67	43.75	30	1,250	62.50	1,242.60	540	(710)	1,321	71	1,123	(127)	1,476	226	1,711	461
41.61	43.69	31	1,290	64.50	1,284.02	594	(696)	1,360	70	1,123	(167)	1,525	235	1,768	478
41.72	43.80	32	1,335	66.75	1,325.44	594	(741)	1,398	63	1,123	(212)	1,574	239	1,825	490
41.67	43.75	33	1,375	68.75	1,366.86	648	(727)	1,437	62	1,123	(252)	1,624	249	1,882	507
41.62	43.70	34	1,415	70.75	1,408.28	648	(767)	1,476	61	1,123	(292)	1,673	258	1,939	524
41.71	43.80	35	1,460	73.00	1,449.70	648	(812)	1,514	54	1,123	(337)	1,722	262	1,996	536
41.67	43.75	36	1,500	75.00	1,491.12	648	(852)	1,553	53	1,123	(377)	1,771	271	2,053	553
41.62	43.70	37	1,540	77.00	1,532.54	648	(892)	1,592	52	1,123	(417)	1,820	280	2,110	570
41.71	43.80	38	1,585	79.25	1,573.96	648	(937)	1,630	45	1,123	(462)	1,870	285	2,167	582
41.67	43.75	39	1,625	81.25	1,615.38	648	(977)	1,669	44	1,123	(502)	1,919	294	2,224	599
41.63	43.71	40	1,665	83.25	1,656.80	648	(1,017)	1,708	43	1,123	(542)	1,968	303	2,281	616
41.71	43.79	41	1,710	85.50	1,698.22	648	(1,062)	1,746	36			2,017	307	2,338	628
41.67	43.75	42	1,750	87.50	1,739.64	648	(1,102)	1,785	35			2,066	316	2,395	645
41.63	43.71	43	1,790	89.50	1,781.06	648	(1,142)	1,824	34			2,116	326	2,452	662
41.70	43.79	44	1,835	91.75	1,822.48	648	(1,187)	1,862	27			2,165	330	2,509	674
41.67	43.75	45	1,875	93.75	1,863.90			1,901	26			2,214	339	2,566	691
41.63	43.71	46	1,915	95.75	1,905.32			1,939	24			2,263	348	2,623	708
41.70	43.79	47	1,960	98.00	1,946.74			1,978	18			2,312	352	2,680	720
41.67	43.75	48	2,000	100.00	1,988.16			2,017	17			2,362	362	2,737	737
41.63	43.71	49	2,040	102.00	2,029.58			2,055	15			2,411	371	2,794	754
41.70	43.79	50	2,085	104.25	2,071.00			2,094	9			2,460	375	2,851	766
41.67	43.75	51	2,125	106.25	2,112.42			2,133	8			2,509	384	2,908	783
41.63	43.72	52	2,165	108.25	2,153.84			2,171	6			2,558	393	2,965	800
41.70	43.78	53	2,210	110.50	2,195.26			2,210	-			2,608	398	3,022	812
41.67	43.75	54	2,250	112.50	2,236.68			2,249	(1)			2,657	407	3,079	829
41.64	43.72	55	2,290	114.50	2,278.10			2,287	(3)			2,706	416	3,136	846
41.70	43.78	56	2,335	116.75	2,319.52			2,326	(9)			2,755	420	3,193	858
41.67	43.75	57	2,375	118.75	2,360.94			2,364	(11)			2,804	429	3,250	875
41.64	43.72	58	2,415	120.75	2,402.36			2,403	(12)			2,854	439	3,307	892
41.69	43.78	59	2,460	123.00	2,443.78			2,442	(18)			2,903	443	3,364	904
41.67	43.75	69	2,875	143.75	2,857.98			2,828	(47)			3,395	520	3,934	1,059
41.65	43.73	79	3,290	164.50	3,272.18			3,215	(75)			3,887	597	4,505	1,215
41.69	43.77	89	3,710	185.50	3,686.38			2,558	(1,152)			4,379	669	5,075	1,365
41.67	43.75	99	4,125	206.25	4,100.58			2,596	(1,529)			4,871	746	5,645	1,520
41.67	43.75	100	4,167	208.35	4,142.00			3,987	(180)			4,920	753	5,702	1,535
41.67	43.75	Average	1,961.39		1,949.77	-0.60%									



## MOORAGE RATE COMPARISON TO OTHER PORTS

Docks: N, O, P, Q

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%		Crescent City	Difference	Salmon Harbor	Difference	Ganibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Daily	Daily		Daily		Daily		Daily		Daily		Daily	
0.63	0.66	24	15	0.75								15	(0)	11	(4)
0.60	0.63	25	15	0.75								15	(0)	11	(4)
0.58	0.61	26	15	0.75								15	(0)	12	(3)
0.56	0.58	27	15	0.75								15	(0)	12	(3)
0.54	0.56	28	15	0.75								15	(0)	13	(2)
0.52	0.54	29	15	0.75								15	(0)	13	(2)
0.67	0.70	30	20	1.00		19	(1)					16	(4)	14	(7)
0.65	0.68	31	20	1.00		19	(1)					16	(4)	14	(6)
0.63	0.66	32	20	1.00		19	(1)					16	(4)	14	(6)
0.61	0.64	33	20	1.00		19	(1)					16	(4)	15	(5)
0.59	0.62	34	20	1.00		19	(1)					16	(4)	15	(5)
0.57	0.60	35	20	1.00		19	(1)					16	(4)	16	(4)
0.56	0.58	36	20	1.00		19	(1)					16	(4)	16	(4)
0.54	0.57	37	20	1.00		19	(1)					16	(4)	17	(3)
0.53	0.55	38	20	1.00		19	(1)					16	(4)	17	(3)
0.51	0.54	39	20	1.00		19	(1)					16	(4)	18	(2)
0.60	0.63	40	24	1.20		25	1					20	(4)	18	(6)
0.59	0.61	41	24	1.20		25	1					20	(4)	18	(6)
0.57	0.60	42	24	1.20		25	1					20	(4)	19	(5)
0.56	0.59	43	24	1.20		25	1					20	(4)	19	(5)
0.55	0.57	44	24	1.20		25	1					20	(4)	20	(4)
0.53	0.56	45	24	1.20		25	1					20	(4)	20	(4)
0.52	0.55	46	24	1.20		25	1					20	(4)	21	(3)
0.51	0.54	47	24	1.20		25	1					20	(4)	21	(3)
0.50	0.53	48	24	1.20		25	1					20	(4)	22	(2)
0.49	0.51	49	24	1.20		25	1					20	(4)	22	(2)
0.56	0.59	50	28	1.40		32	4					23	(5)	23	(6)
0.55	0.58	51	28	1.40		32	4					23	(5)	23	(5)
0.54	0.57	52	28	1.40		32	4					23	(5)	23	(5)
0.53	0.55	53	28	1.40		32	4					23	(5)	24	(4)
0.52	0.54	54	28	1.40		32	4					23	(5)	24	(4)
0.51	0.53	55	28	1.40		32	4					23	(5)	25	(3)
0.50	0.53	56	28	1.40		32	4					23	(5)	25	(3)
0.49	0.52	57	28	1.40		32	4					23	(5)	26	(2)
0.48	0.51	58	28	1.40		32	4					23	(5)	26	(2)
0.47	0.50	59	28	1.40		32	4					23	(5)	27	(1)
0.46	0.49	69	32	1.60		37	5					25	(7)	31	(1)
0.44	0.47	79	35	1.75		44	9					30	(5)	36	1
0.42	0.44	89	37	1.85								30	(7)	40	3
0.39	0.41	99	39	1.95								30	(9)	45	6
0.42	0.44	100	42	2.10								30	(12)	45	3

0.54 0.56 Average

Docks: N, O, P, Q

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%		Crescent City	Difference	Salmon Harbor	Difference	Ganibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Weekly	Weekly		Weekly		Weekly		Weekly		Weekly		Weekly	
3.75	3.94	24	90	4.50								105	15		(90)
3.60	3.78	25	90	4.50								105	15		(90)
3.46	3.63	26	90	4.50								105	15		(90)
3.33	3.50	27	90	4.50								105	15		(90)
3.21	3.38	28	90	4.50								105	15		(90)
3.10	3.26	29	90	4.50								105	15		(90)
4.00	4.20	30	120	6.00								112	(8)		(120)
3.87	4.08	31	120	6.00								112	(8)		(120)
3.75	3.94	32	120	6.00								112	(8)		(120)
3.64	3.82	33	120	6.00								112	(8)		(120)
3.53	3.71	34	120	6.00								112	(8)		(120)
3.43	3.60	35	120	6.00								112	(8)		(120)
3.33	3.50	36	120	6.00								112	(8)		(120)
3.24	3.41	37	120	6.00								112	(8)		(120)
3.16	3.32	38	120	6.00								112	(8)		(120)
3.08	3.23	39	120	6.00								112	(8)		(120)
3.60	3.78	40	144	7.20								140	(4)		(144)
3.51	3.69	41	144	7.20								140	(4)		(144)
3.43	3.60	42	144	7.20								140	(4)		(144)
3.35	3.52	43	144	7.20								140	(4)		(144)
3.27	3.44	44	144	7.20								140	(4)		(144)

## MOORAGE RATE COMPARISON TO OTHER PORTS

3.20	3.36	45	144	7.20							140	(4)		(144)
3.13	3.29	46	144	7.20							140	(4)		(144)
3.06	3.22	47	144	7.20							140	(4)		(144)
3.00	3.15	48	144	7.20							140	(4)		(144)
2.94	3.09	49	144	7.20							140	(4)		(144)
3.36	3.53	50	168	8.40							161	(7)		(168)
3.29	3.46	51	168	8.40							161	(7)		(168)
3.23	3.39	52	168	8.40							161	(7)		(168)
3.17	3.33	53	168	8.40							161	(7)		(168)
3.11	3.27	54	168	8.40							161	(7)		(168)
3.05	3.21	55	168	8.40							161	(7)		(168)
3.00	3.15	56	168	8.40							161	(7)		(168)
2.95	3.09	57	168	8.40							161	(7)		(168)
2.90	3.04	58	168	8.40							161	(7)		(168)
2.85	2.99	59	168	8.40							161	(7)		(168)
2.78	2.92	69	192	9.60							175	(17)		(192)
2.66	2.79	79	210	10.50							210	-		(210)
2.49	2.62	89	222	11.10							210	(12)		(222)
2.36	2.48	99	234	11.70							210	(24)		(234)
2.52	2.65	100	252	12.60							210	(42)		(252)

3.21 3.37 Average

Docks: N, O, P, Q

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%		Crescent City	Difference	Salmon Harbor	Difference	Gambaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Monthly	Monthly		Monthly		Monthly		Monthly		Monthly		Monthly	
11.25	11.81	24	270	13.50								171	(99)	198	(72)
10.80	11.34	25	270	13.50								178	(92)	206	(64)
10.38	10.90	26	270	13.50								185	(85)	215	(56)
10.00	10.50	27	270	13.50								192	(78)	223	(47)
9.64	10.13	28	270	13.50								199	(71)	231	(39)
9.31	9.78	29	270	13.50								206	(64)	239	(31)
12.00	12.60	30	360	18.00		285	(75)					214	(148)	248	(113)
11.61	12.19	31	360	18.00		285	(75)					221	(139)	256	(104)
11.25	11.81	32	360	18.00		285	(75)					228	(132)	264	(96)
10.91	11.45	33	360	18.00		285	(75)					235	(125)	272	(88)
10.59	11.12	34	360	18.00		285	(75)					242	(118)	281	(80)
10.29	10.80	35	360	18.00		285	(75)					249	(111)	289	(71)
10.00	10.50	36	360	18.00		285	(75)					256	(104)	297	(63)
9.73	10.22	37	360	18.00		285	(75)					263	(97)	305	(55)
9.47	9.95	38	360	18.00		285	(75)					271	(89)	314	(47)
9.23	9.69	39	360	18.00		285	(75)					278	(82)	322	(38)
10.80	11.34	40	432	21.60		380	(52)					285	(147)	330	(102)
10.54	11.06	41	432	21.60		380	(52)					292	(140)	338	(94)
10.29	10.80	42	432	21.60		380	(52)					299	(133)	347	(86)
10.05	10.55	43	432	21.60		380	(52)					306	(126)	355	(77)
9.82	10.31	44	432	21.60		380	(52)					313	(119)	363	(69)
9.60	10.08	45	432	21.60		380	(52)					320	(112)	371	(61)
9.39	9.86	46	432	21.60		380	(52)					328	(104)	380	(53)
9.19	9.65	47	432	21.60		380	(52)					335	(97)	388	(44)
9.00	9.45	48	432	21.60		380	(52)					342	(90)	396	(36)
8.82	9.26	49	432	21.60		380	(52)					349	(83)	404	(28)
10.08	10.58	50	504	25.20		475	(29)					356	(148)	413	(92)
9.88	10.38	51	504	25.20		475	(29)					363	(141)	421	(83)
9.69	10.18	52	504	25.20		475	(29)					370	(134)	429	(75)
9.51	9.98	53	504	25.20		475	(29)					377	(127)	437	(67)
9.33	9.80	54	504	25.20		475	(29)					384	(120)	446	(59)
9.16	9.62	55	504	25.20		475	(29)					392	(112)	454	(50)
9.00	9.45	56	504	25.20		475	(29)					399	(105)	462	(42)
8.84	9.28	57	504	25.20		475	(29)					406	(98)	470	(34)
8.69	9.12	58	504	25.20		475	(29)					413	(91)	479	(26)
8.54	8.97	59	504	25.20		475	(29)					420	(84)	487	(17)
8.35	8.77	69	576	28.80		570	(6)					491	(85)	569	(7)
7.97	8.37	79	630	31.50		665	35					562	(68)	652	22
7.48	7.86	89	666	33.30								634	(32)	734	88
7.09	7.45	99	702	35.10								705	3	817	115
7.56	7.94	100	756	37.80								712	(44)	825	69

9.64 10.12 Average

Docks: N, O, P, Q

## MOORAGE RATE COMPARISON TO OTHER PORTS

Current Rate	5% Increase	Boat Length	POBH Current Rate	BOBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Ganbaldi	Difference	Charleston	Difference	Newport	Difference
			Yearly	Yearly		Yearly		Yearly		Yearly		Yearly		Yearly	
32.29	33.91	24	775	38.75	816.48			1,113	338	845	70	1,181	406	997	222
32.40	34.02	25	810	40.50	850.50			1,151	341	845	35	1,230	420	1,039	229
32.50	34.13	26	845	42.25	884.52			1,189	344	845	-	1,279	434	1,081	236
32.41	34.03	27	875	43.75	918.54			1,226	351	845	(30)	1,328	453	1,122	247
32.32	33.94	28	905	45.25	952.56			1,264	359	845	(60)	1,378	473	1,164	259
32.41	34.03	29	940	47.00	986.58			1,302	362	845	(95)	1,427	487	1,205	265
32.50	34.13	30	975	48.75	1,020.60	1,890	915	1,339	364	1,123	148	1,476	501	1,247	272
32.42	34.04	31	1,005	50.25	1,054.62	1,890	885	1,377	372	1,123	118	1,525	520	1,288	283
32.34	33.96	32	1,035	51.75	1,088.64	1,890	855	1,415	380	1,123	88	1,574	539	1,330	295
32.42	34.05	33	1,070	53.50	1,122.66	1,890	820	1,452	382	1,123	53	1,624	554	1,371	301
32.35	33.97	34	1,100	55.00	1,156.68	1,890	790	1,490	390	1,123	23	1,673	573	1,413	313
32.43	34.05	35	1,135	56.75	1,190.70	1,890	755	1,528	393	1,123	(12)	1,722	587	1,455	320
32.36	33.98	36	1,165	58.25	1,224.72	1,890	725	1,565	400	1,123	(42)	1,771	608	1,496	331
32.43	34.05	37	1,200	60.00	1,258.74	1,890	690	1,603	403	1,123	(77)	1,820	620	1,538	338
32.37	33.99	38	1,230	61.50	1,292.76	1,890	660	1,641	411	1,123	(107)	1,870	640	1,579	349
32.44	34.06	39	1,265	63.25	1,326.78	1,890	625	1,678	413	1,123	(142)	1,919	654	1,621	356
32.50	34.13	40	1,300	65.00	1,360.80	2,520	1,220	1,716	416	1,123	(177)	1,968	668	1,662	362
32.44	34.06	41	1,330	66.50	1,394.82	2,520	1,190	1,754	424			2,017	687	1,704	374
32.38	34.00	42	1,360	68.00	1,428.84	2,520	1,160	1,791	431			2,066	706	1,746	386
32.44	34.06	43	1,395	69.75	1,462.86	2,520	1,125	1,829	434			2,116	721	1,787	392
32.39	34.01	44	1,425	71.25	1,496.88	2,520	1,095	1,867	442			2,165	740	1,829	404
32.33	33.95	45	1,455	72.75	1,530.90	2,520	1,065	1,904	449			2,214	759	1,870	415
32.39	34.01	46	1,490	74.50	1,564.92	2,520	1,030	1,942	452			2,263	773	1,912	422
32.45	34.07	47	1,525	76.25	1,598.94	2,520	995	1,980	455			2,312	787	1,953	428
32.40	34.02	48	1,555	77.75	1,632.96	2,520	965	2,017	462			2,362	807	1,995	440
32.35	33.96	49	1,585	79.25	1,666.98	2,520	935	2,055	470			2,411	826	2,036	451
32.40	34.02	50	1,620	81.00	1,701.00	3,150	1,530	2,093	473			2,460	840	2,078	458
32.35	33.97	51	1,650	82.50	1,735.02	3,150	1,500	2,130	480			2,509	859	2,120	470
32.40	34.02	52	1,685	84.25	1,769.04	3,150	1,465	2,168	483			2,558	873	2,161	476
32.36	33.98	53	1,715	85.75	1,803.06	3,150	1,435	2,206	491			2,608	893	2,203	488
32.41	34.03	54	1,750	87.50	1,837.08	3,150	1,400	2,244	494			2,657	907	2,244	494
32.36	33.98	55	1,780	89.00	1,871.10	3,150	1,370	2,281	501			2,706	926	2,286	506
32.41	34.03	56	1,815	90.75	1,905.12	3,150	1,335	2,319	504			2,755	940	2,327	512
32.37	33.99	57	1,845	92.25	1,939.14	3,150	1,305	2,357	512			2,804	959	2,369	524
32.41	34.03	58	1,880	94.00	1,973.16	3,150	1,270	2,394	514			2,854	974	2,410	530
32.37	33.99	59	1,910	95.50	2,007.18	3,150	1,240	2,432	522			2,903	993	2,452	542
32.39	34.01	69	2,235	111.75	2,347.38	3,780	1,545	2,809	574			3,395	1,160	2,868	633
32.41	34.03	79	2,560	128.00	2,687.58	4,410	1,850	3,185	625			3,887	1,327	3,283	723
32.42	34.04	89	2,885	144.25	3,027.78			3,572	687			4,379	1,494	3,699	814
32.42	34.05	99	3,210	160.50	3,367.98			3,947	737			4,871	1,661	4,114	904
32.40	34.02	100	3,240	162.00	3,402.00			3,987	747			4,920	1,680	4,156	916
32.40	34.02	Average	1,525.12		1,601.43	5.00%									



## MOORAGE RATE COMPARISON TO OTHER PORTS

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Daily	Daily		Daily		Daily		Daily		Daily		Daily	
0.60	0.63	20	12	0.60	11.00	8	(4)			20	8	15	3		
0.59	0.62	22	13	0.65	12.10	9	(4)			20	7	15	2		
0.58	0.61	24	14	0.70	13.20	9	(5)	10	(4)	20	6	15	1	15	1
0.63	0.67	30	19	0.95	16.50	10	(9)	11	(8)	20	1	16	(3)	19	0
0.55	0.58	40	22	1.10	22.00		(22)	13	(9)	25	3	20	(2)	26	4
0.56	0.59	41	23	1.15	22.55	12	(11)			30	7	20	(3)	26	3
0.55	0.58	42	23	1.15	23.10					30	7	20	(3)	27	4
0.53	0.56	43	23	1.15	23.65					30	7	20	(3)	28	5
0.52	0.55	44	23	1.15	24.20					30	7	20	(3)	28	5
0.51	0.54	45	23	1.15	24.75			14	(9)	30	7	20	(3)	29	6
0.56	0.59	Average	19.50		19.31	-1.00%									

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Weekly	Weekly		Weekly		Weekly		Weekly		Weekly		Weekly	
3.60	3.78	20	72	3.60	66.00	48	(24)			120	48	103	31		
3.55	3.72	22	78	3.90	72.60	54	(24)			120	42	103	25		
3.50	3.68	24	84	4.20	79.20	54	(30)	60	(24)	120	36	103	19	92	8
3.80	3.99	30	114	5.70	99.00	60	(54)	66	(48)	120	6	110	(4)	115	1
3.30	3.47	40	132	6.60	132.00		(132)	78	(54)	150	18	139	7	153	21
3.37	3.53	41	138	6.90	135.30	72	(66)			150	12	139	1	157	19
3.29	3.45	42	138	6.90	138.60					150	12	139	1	160	22
3.21	3.37	43	138	6.90	141.90					150	12	139	1	164	26
3.14	3.29	44	138	6.90	145.20					150	12	139	1	168	30
3.07	3.22	45	138	6.90	148.50			84	(54)	150	12	139	1	172	34
3.38	3.55	Average	117.00		115.83	-1.00%									

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Monthly	Monthly		Monthly		Monthly		Monthly		Monthly		Monthly	
10.80	11.34	20	216	10.80	197.80	144	(72)			400	184	142	(74)		
10.64	11.17	22	234	11.70	217.58	162	(72)			400	166	157	(77)		
10.50	11.03	24	252	12.60	237.36	162	(90)	180	(72)	400	148	171	(81)	235	(17)
11.40	11.97	30	342	17.10	296.70	180	(162)	198	(144)	400	58	214	(128)	294	(48)
9.90	10.40	40	396	19.80	395.60			234	(162)	475	79	285	(111)	392	(4)
10.10	10.60	41	414	20.70	405.49	216	(198)			475	61	292	(122)	401	(13)
9.86	10.35	42	414	20.70	415.38					475	61	299	(115)	411	(3)

## MOORAGE RATE COMPARISON TO OTHER PORTS

9.63	10.11	43	414	20.70	425.27				475	61	306	(108)	421	7	
9.41	9.88	44	414	20.70	435.16				475	61	313	(101)	431	17	
9.20	9.66	45	414	20.70	467.55			252	(162)	475	61	320	(94)	441	27
		Liveaboards	37			300	No				No		50		

10.14 10.65 Average 351.00 349.39 -0.50%

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Semi Annual	Semi Annual		Semi Annual		Semi Annual		Semi Annual		Semi Annual		Semi Annual	
22.55	23.68	20	451	22.55	449.20					850	399	618	167		
22.41	23.53	22	493	24.65	494.12					850	357	680	187		
22.50	23.63	24	540	27.00	539.04					850	310	742	202	865	325
22.40	23.52	30	672	33.60	673.80					850	178	927	255	1,081	409
		40								1,100				1,442	
		41								1,100				1,478	
		42								1,100				1,514	
		43								1,100				1,550	
		44								1,100				1,586	
		45								1,100				1,622	

22.46 23.59 Average 539.00 539.04 0.00%

Docks: A, B, C, D, E, F, G, H

Current Rate	5% Increase		POBH Current Rate	POBH Proposed Increase 5%	New POBH Rate	Crescent City	Difference	Salmon Harbor	Difference	Garibaldi	Difference	Charleston	Difference	Newport	Difference
		Boat Length	Yearly	Yearly		Yearly		Yearly		Yearly		Yearly		Yearly	
37.25	39.11	20	745	37.25	789.00	432	(313)	935	190	845	100	1,025	280		
37.27	39.14	22	820	41.00	867.90	486	(334)	1,012	192	845	25	1,127	307		
37.29	39.16	24	895	44.75	946.80	486	(409)	1,089	194	845	(50)	1,230	335	1,368	473
37.17	39.03	30	1,115	55.75	1,183.50	540	(575)	1,321	206	1,123	8	1,537	422	1,711	596
37.25	39.11	40	1,490	74.50	1,578.00			1,708	218	1,123	(367)	2,050	560	2,281	791
37.20	39.05	41	1,525	76.25	1,617.45	648	(877)	1,746	221			2,101	576	2,338	813
37.14	39.00	42	1,560	78.00	1,656.90			1,785	225			2,152	592	2,395	835
37.21	39.07	43	1,600	80.00	1,696.35			1,824	224			2,203	603	2,452	852
37.27	39.14	44	1,640	82.00	1,735.80			1,862	222			2,255	615	2,509	869
37.22	39.08	45	1,675	83.75	1,775.25			1,901	226			2,306	631	2,566	891

37.23 39.09 Average 1,306.50 1,384.70 5.98%

## OLD BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Liveaboard Agreement & Policy*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Staff could only find Resolution 116 from Dec 8, 1981, that shows establishing a Liveaboard rule, regulations, and rates but the resolution was never approved.
- Our current rates vary from \$36.50/month to \$55.25/month for no apparent reason.
- Update Port Ordinance Part III, Section 16 from "Live aboards must have permission after 72 hours" to "10 or more days in any 30-day period" to be consistent with new live aboard policy.

### DOCUMENTS

- Proposed liveaboard agreement & policy (5 pages)

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT LIVEABOARD AGREEMENT AND POLICY AND SET LIVEABOARD RATE AT \$55.25 PER MONTH FOR THE FIRST PERSON AND \$50.00 FOR ANY ADDITIONAL PERSONS.

4:30 PM

03/31/17

Accrual Basis

## Port of Brookings Harbor

## Item QuickReport

July 2016 through March 2017

Type	Date	Num	Name	Memo	Qty	U/M	Amount
<b>Service</b>							
<b>RESOURCE/INCOME ITEMS</b>							
<b>MOORAGE</b>							
Liveaboard (Liveaboard:)							
Credit Memo	07/26/2016	20163...	Johnston, Charles	Liveaboard:	1		447.00
Invoice	08/01/2016	20163...	Johnston, Charles	Liveaboard:	-1		-447.00
Invoice	08/01/2016	20163...	Cornell, Albert	Liveaboard:	-1		-447.50
Invoice	08/01/2016	20164...	Price, Arch	Liveaboard:	-1		-663.00
Invoice	10/01/2016	20165...	Quella, James	Liveaboard	-1		-447.00
Invoice	10/18/2016	20165...	Kramer, Leon	Annual Liveab...	-1		-438.00
Invoice	10/18/2016	20165...	Simpson, Charles A	annual Liveab...	-1		-625.25
Total Liveaboard (Liveaboard:)							-2,620.75
Total MOORAGE							-2,620.75
Total RESOURCE/INCOME ITEMS							
Total Service							-2,620.75
<b>TOTAL</b>							<b>-2,620.75</b>



## LIVEABOARD REGISTRATION AND AUTHORIZATION

Slip No.: \_\_\_\_\_ Moorage License Terms: \_\_\_\_\_ to \_\_\_\_\_  
(Term of Authorization for Liveaboard Use)

Name of Moorage Licensee: \_\_\_\_\_ ☐ Owner  
☐ Operator

Boat Name: \_\_\_\_\_ Doc/Registration No.: \_\_\_\_\_

Names of all persons who will be living aboard this vessel, also noting the relationship to the vessel owner:

Name: _____	Mailing Address: _____
Relationship: _____	Phone Number: _____
Name: _____	Mailing Address: _____
Relationship: _____	Phone Number: _____

License of vehicle that will be parked on Port property: \_\_\_\_\_ Permit #: \_\_\_\_\_

License #: \_\_\_\_\_ Year/Make/Model: \_\_\_\_\_ Color: \_\_\_\_\_

Select the type of marine sanitation devices that is used aboard your vessel:

☐ Port-a-potty ☐ Type I MSD ☐ Type II MSD ☐ Type III MSD ☐ Other: \_\_\_\_\_

MSD tank capacity: \_\_\_\_\_ Holding tank capacity: \_\_\_\_\_

Complete and sign registration on reverse side. Not valid for liveaboard authority until signed by the Port Manager.

**PORT OF BROOKINGS HARBOR  
LIVEABOARD REGISTRATION AND AUTHORIZATION**

According to the Clean Water Act, vessels are prohibited from discharging any sewage, whether treated by an MSD or not, into freshwater rivers. Sewage discharges have potentially wide-ranging impacts on all aquatic environments. The discharge of holding tanks within the marina is prohibited at all times. Vessel pump out stations are located at the Fuel Station and Sport Transient Dock.

Liveaboards will be given a Discharge Monitoring Report to use during the term of their Agreement. It is the Liveaboards responsibility to report the vessel pump out activity to the Port Office by the first of every month. A complete Discharge Monitoring Report needs to be submitted at the end of liveaboard term in order for renewal to be considered. Failure to comply with submitting the Discharge Monitoring Report will result in the termination of this agreement.

In Consideration of the attached rules and regulations, and in accordance with the Port of Brookings Harbor Ordinances and Policies, I agree as follows:

- I will not rent or sub-license my boat. Only the persons named on this agreement will reside aboard this vessel.
- My vessel will remain capable of leaving the marina under its own power.
- I understand that the Port of Brookings Harbor does not guarantee the provision or condition of water, electricity, or other services.
- Discharge of any waste to the waters of the marina is prohibited. All liveaboard must comply with all laws, regulations and policies governing waste management.
- I understand that this registration is for a use authorization under my agreement to moor the vessel. Liveaboard authority terminates immediately upon termination of the moorage license agreement.
- I understand that this document is an authorization for the vessel used for temporary residential purposes only and not a floating home, or an agreement for floating home rental space.
- I understand and agree that the Port may terminate authorization to liveaboard at any time and that failure to comply with all port rules and regulations may result in termination of the liveaboard authorization and moorage license agreement.

Living aboard does not create residential tenancy and is not permitted without liveaboard authorization signed by the Port Manager.

Liveaboard Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Liveaboard Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Port Manager Authorization: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ by the Board of Commissioners

Date

Resolution No.

## LIVEABOARD POLICY

### **PURPOSE:**

Provide direction for implementation of Ordinance and State and Federal regulations when administering Live Aboard use of Port of Brookings Harbor moorage facilities.

### **DEFINITIONS:**

Live Aboard (Live Aboard Licensee – Hereafter referred to as a “LAL”) for the purpose of this policy shall be defined as any moorage customer who maintains a boat or vessel as their dwelling, for 10 or more days in any 30-day period.

Dwelling shall mean a boat or vessel that has sleeping, cooking and/or plumbing fixtures used for human occupancy and is used for temporary residential purpose.

Live Aboard is defined in the Port Ordinance as any person sleeping overnight, preparing food, or any other activity normally connected with temporary or permanent lodging. The use of the term ‘live-aboard’ in this policy is meant to be consistent with the definition in the Port Ordinance.

### **POLICY:**

The Port of Brookings Harbor shall permit a limited number of people the privileged of living aboard their vessels in the Port of Brookings Harbor operated marinas as a use subordinate to their moorage license agreements. The Port of Brookings Harbor may limit the number of vessels that have LAL’s within its marinas to a number which can be reasonably sustained by the marina facilities and which do not conflict with its berthing objectives.

The Port of Brookings Harbor marinas were designed for berthing commercial and recreational boats, not as a living facility. The Port of Brookings Harbor therefore allows LAL’s as an exception to the first objective for the marinas, and it is considered a privilege. The Port reserves the right to deny, suspend or cancel this privilege at will, if in the opinion of the Port Manager, LAL’s interfere with the primary objectives of the marina, individually or in the marina as a whole.

Any illegal activities committed by LAL’s and/or their guests may cause Liveaboard privileges to be revoked.

The Port may regularly inspect and document the use of vessels with LAL’s to verify compliance with all policies.

LAL use is restricted to full service docks.

LAL’s are required to have a LIVEABOARD REGISTRATION AND AUTHORIZATION on file in the Port Office. This authorization shall be kept current and run concurrently with the moorage license. Liveaboard authorizations are subordinate to and terminate upon the termination of the moorage license. Liveaboard authorizations terminate sale of the vessel.

If a new boat is purchased that replaces the boat registered under the liveaboard agreement, a new liveaboard authorization must be obtained. No subleasing of liveaboard authorizations is allowed. Failure to register for liveaboard use may result in termination of moorage license.

The Port Manager may limit the number of registered LAL’s on any one vessel. Only legal owners and identified family members residing with them, or operators or crew members designated by the legal owners, may register to liveaboard vessels. All persons authorized to liveaboard must be identified by name and relationship to vessel owner. No minor may be a registered liveaboard without his/her parent/guardian being a registered liveaboard on the same vessel.

Pets are allowed on vessels with LAL’s on a limited basis, with pre-approval from the Port Manager. All pet waste must be bagged and disposed of properly. Pets must be controlled by their owner and follow applicable City and State laws. Dogs must be on a leash when on Port Property.

\_\_\_\_\_ by the Board of Commissioners

Date

Resolution No.



As a condition of living aboard in the Port of Brookings Harbor, Lal's must report promptly to the Port staff any safety concerns or violations of Port of Brookings Harbor policies or other problems they may observe in the marina.

LAL's shall not engage in behavior that creates a nuisance, disturbs the peace or interferes with Port staff operations and the normal operations of commercial and recreation moorage in the marinas. LAL's are responsible for the behavior of their guests in the marina.

Quiet hours are 2200-0700 (10:00 pm – 7:00 am) on a daily basis. However, LAL's must understand that commercial fishing operations may take place at any hour of the day or night.

All boats, vessels and watercraft must be kept seaworthy at all times as defined by the moorage license and Port of Brookings Harbor policy, and must meet all Federal, State, and local laws, including but not limited to laws pertaining to: watercraft operations, navigation, licensing, vessel safety, and sanitation equipment.

A boat or vessel that is being used only to live aboard, and not maintained in operation order such that it is capable of being used as transportation on the water, is not eligible for moorage and must be made seaworthy within 30 days or it will be required to leave the Port.

All LAL's must understand and acknowledge that their vessel is a boat, not a "floating home" as defined by ORS 830.700 and the provisions or ORS 90.505 et. Seq. regarding "floating home" rentals space does not apply to liveaboard boats and vessels.

LAL's must establish an address other than the Port of Brookings Harbor Office or marinas at which to receive their mail. Permanent residential use of the marinas is prohibited. LAL's without a current permanent residence using Port of Brookings Harbor marinas for temporary residential purposes must designate their previous address as their permanent residence.

The vessel owner shall be responsible for and pay for all liveaboard fees for those registered and living aboard their vessel. These fees are subject to change and may be established by the Port of Brookings Harbor Board of Commissioners. The Port may require information on liveaboard applicant's credit, finances, or conduct. The Port will not treat this information as a public record and the Port will not release this information without the written consent of the applicant.

LAL's may use the public parking areas in common with other marina users. Liveaboard permit holders are subject to the same allocation of overnight automobile parking permit as other moorage licensees. While on Port property, vehicles must be legally registered, licensed, insured, include current applicable permits and be in running condition. Vehicle maintenance is prohibited in the designated overnight parking area.

The Port does not guarantee the continuity or characteristics of electrical service, or the quality or supply of water service. LAL's accept Port premises as-is and the Port is not obligated to install additional utilities or facilities to accommodate LAL's. The Port is not responsible for damages due to failure of services. LALs shall not affix or install any equipment to or on Port property without consent of the Port manager. Use of Port property and electrical and water service is at the Lal's own risk.

With the exception of loading and unloading, Lal's shall not leave items stored on Port docks. Access steps are allowed.

All LAL's must comply with all applicable Federal, State, and Local regulations pertaining to the discharge of wastes in Oregon marinas. LAL's must adhere to any applicable best management practices adopted (such as the Clean marina guidelines recognized by the Oregon Marine Board) or established by the Port of Brookings Harbor for vessel maintenance and repair, hazardous materials and waste, and sanitary waste. Pump out station(s) are available and should be used on a regular basis.

\_\_\_\_\_ by the Board of Commissioners

Date

Resolution No.



# OLD BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Commissioner Rules, Regulations, Duties and Responsibilities*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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## OVERVIEW

- Current Board Rules for commissioners behavior was approved in Resolution No. 229, dated October 18, 1993 and is no longer adequate.
- Bring Port of Brookings Harbor, Board of Commissioners and staff, to modern accepted Rules, Regulations, Duties and Responsibilities to follow.

## DOCUMENTS

- Draft Resolution No. 474 Commissioner Rules, Regulations, Duties and Responsibilities (23 pages).
- Resolution No. 229 Adopting Rules of Commissioner Behavior Among Member of the Board of Commissioners (3 pages).

## COMMISSION ACTION

- No action from the Board at this time.
- I am requesting comments / questions from the Board on the draft Resolution No. 474.

**PORT** **DRAFT**  
**OF**  
**BROOKINGS HARBOR**  
**COMMISSION**  
**RULES, REGULATIONS,**  
**DUTIES, AND**  
**RESPONSIBILITIES**

Adopted by the  
PORT OF BROOKINGS HARBOR  
BOARD OF COMMISSIONERS

DATE  
Resolution No:

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**DRAFT**

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## Introduction

The power and authority given a special service district, except as otherwise provided, shall be exercised by a board of directors. Each type of special district has its own statutes and requirements for board members. Some districts refer to board members as commissioners or directors. For the purpose of consistency throughout this material, district governing officials will be referred to as commissioners. Most districts require that commissioners either reside in the district that they represent for a specified period of time, or at least own property within the boundary of the district. The number of commissioners also varies as does the length of their terms.

District commissioners are public officials who must act in the best interests of the public and are accountable to the public through federal, state, and local laws. Governance is a heavy responsibility which must not be taken lightly. Public laws concerning district elections, public records and meetings, investment, and budgeting can be time consuming and often frustrating to understand. Commissioners can become objects of public scrutiny and criticism if affairs of their districts are not managed properly.

Acting as a commissioner can be a rewarding experience which brings a sense of pride in the knowledge that local services depend on the efficient and dependable operation of district services. Well informed commissioners should pay close attention to the needs of the population their districts serve and be aware of their many and important responsibilities.

A well formulated commission policy manual can assist commissioners in understanding their responsibilities and can also assist in orienting new commissioners.

# **Port of Brookings Harbor Commission Rules & Regulations**

## **RULES AND REGULATIONS**

1. The Port of Brookings Harbor Board of Commissioners shall operate directly under the general provisions for port districts and special districts established by the State of Oregon, and the following general operating procedures.
2. The rules and regulations are intended to provide a general understanding and a uniformity in the practices and procedures for the operation of the Port of Brookings Harbor District.
3. These rules and regulations express the judgement and will of the Port of Brookings Harbor Board of Commissioners and are binding on all members.
4. In the event that any part or parts of these rules and regulations are found to be in conflict with the law, then only such part or parts so found shall be null and void and the remainder thereof shall remain in full force and effect.

## **AMENDMENT OR SUSPENSION OF RULES**

1. The rules and regulations of the Port of Brookings Harbor Board of Commissioners may be amended or suspended by a majority of the Commissioners at any Commission meeting, provided that each Commissioner shall have been notified in writing of the proposed amendment or notice of the proposed suspension at least forty-eight (48) hours in advance of the meeting.
2. Where a new regulation replaces or amends an existing regulation, the Commission shall repeal the older one by direct action.
3. The Port Manager may, in case of emergency, suspend any part of these rules and regulations which may be in conflict with handling an emergency; provided, however, that the Port Manager shall report the fact of, and the reason for, such suspension at the next meeting of the Commission; and provided further that the suspension shall expire at the time of said report unless continued in effect by the Commission.
4. All previous policies not consistent with the articles of this policy document are hereby declared null and void. In any instance of conflict, this document will supersede past actions. Nothing herein is intended to over-ride the provisions of Federal, State, or local laws, and such laws take precedence in the event of conflict.

## Board of Commissioners Rules of Conduct

The Board of Commissioners of the Port of Brookings Harbor is committed to providing excellence in legislative leadership that results in the provision of the highest quality of services to its residents. To assist in the government of the behavior between and among members of the Board of Commissioners, the following rules shall be observed:

1. We, as a Board of Commissioners, value confirming the dignity of each individual Commissioner. We also recognize the importance of respecting the style, values, and opinions of one another. We encourage responsiveness and attentive listening in our communication.
2. We, as a Board of Commissioners, shall place the needs of the residents first.
3. We, as the Board of Commissioners, recognize that our primary responsibility is the formulation and evaluation of policy. Routine matters concerning the operational aspects of the District are to be delegated to professional staff members of the District.
4. We, as a Board of Commissioners, shall commit ourselves to emphasizing the positive, avoiding double talk, hidden agendas, gossip, talking behind people's backs, and other negative forms of interaction.
5. We, as a Board of Commissioners, commit ourselves to focusing on issues and not personalities. We will encourage the presentation of others' opinions. We will avoid cliques and voting blocks based on personalities rather than issues. We will make decisions only after all available findings of fact have been presented and discussed.
6. We, as a Board of Commissioners, when responding to citizen requests and concerns, shall be courteous, responding to individuals in a positive manner and routing their concerns and interests through appropriate channels.
7. We, as a Board of Commissioners, should avoid public "minority" opinion discussions except during Commission meetings where other Commission members may have the opportunity to observe all facets of the issue.
8. We, as a Board of Commissioners, commit to supporting Commission action. The role of the Commissioner is not to place barriers once a decision has been made by the Commission and is ready to be implemented. We acknowledge the right of individuals to disagree with ideas, without being disagreeable. Different points of view are healthy in contributing to the decision-making process.
9. We, as a Board of Commissioners, shall practice the following procedures in: 1) seeking clarification on informational items; 2) handling complaints; 3) handling items related to safety; 4) presenting items for discussion at Commission meetings and in other forums; and 5) seeking clarification for policy-related concerns.
  - a. Informational Items: Commissioners may directly approach professional staff members to obtain information needed to supplement, upgrade, or enhance their knowledge to improve legislative decision-making.

- b. Handling Complaints from Residents of the District: Complaints made to members of the Board of Commissioners should be directly referred to the Port Manager of the District, who will channel the complaint to the proper department for solution, and shall discuss the complaint at a regular meeting only after failure of administrative remedies or solutions.
  - c. Safety: Concerns for safety or hazards should be reported to the Port Manager or to the front desk at the Port office. Emergency situations should be dealt with immediately by seeking appropriate assistance.
  - d. Agenda Items: Commissioners wishing to have items placed on the Commission meeting agenda or at other Commission functions should present these to the Port Manager and/or the Commission Chair.
  - e. Policy-related Concerns: Policy-related questions, especially related to personnel, legal action, land acquisition and development, finances, and programming should be directed to the Port Manager and/or to a Commissioner when advisable.
10. We, as a Board of Commissioners, recognize the work of the District as a team effort. All individuals shall work together in a collaborative process, assisting each other and the Chair, in conducting the affairs of the District.
11. We, as a Board of Commissioners, shall each operate as part of the whole, issues will be brought to the attention of the Commission as a whole, rather than to individual members selectively.
12. We, as a Board of Commissioners, recognize that the Port Manager has been delegated executive responsibility and authority for properly discharging the required professional duties within limits of established Commission policy and applicable laws, and are encouraged to work with the Port manager, at our convenience, to discuss current issues, concerns and District projects.
13. We, as a Board of Commissioners, are responsible for monitoring the District's progress in attaining its goals and objectives, while pursuing its mission.
14. We, as a Board of Commissioners, when approached by professional staff members concerning policy within the District, shall direct inquiries to their supervisor. The chain of command should be followed.
15. We, as a Board of Commissioners, shall be prepared by reviewing District materials and will engage in a program of development directed toward improving our legislative decision-making capabilities.

## Compensation & Expenses

(Provided for informational purposes)

A district commissioner may not receive over \$50 per day or a portion thereof as compensation for services performed as a member of the governing body. Such compensation shall not be deemed lucrative. The governing body may provide for reimbursement of a member for actual and reasonable traveling and other expenses necessarily incurred by a member in performing official duties. (ORS 298.190)

Public officials in Oregon are prohibited from using their office in order to obtain financial gain for themselves, their relatives, or business with which they or any member of their household is associated. Commissioners devote a great deal of energy and time to the community. They must view their position as one of service and representation, not as an avenue toward financial gain.

## Financial Disclosure

(Provided for informational purposes)

Officers of special districts are not required to file financial records with a district unless the district is a metropolitan service district. However, a district may enact a resolution requiring its officials to disclose their financial records.

## Bonding

The Port of Brookings Harbor District shall require bond or irrevocable letter of credit of any member of the commission or any officer or employee of the district who is charged with possession and control of district funds and properties. The amount of the bond shall be fixed by the commission of the district. The premium shall be paid from the district funds. The letter of credit shall be issued by a commercial bank.

Under certain conditions, the amount of the bond can affect the frequency of a financial audit as required by the State of Oregon.



## Commissioner Liabilities

(Provided for informational purposes)

Governments are no longer governed by the principal of sovereign immunity, which in the past protected them from liability. This size of claims against governing bodies in the State of Oregon is limited by the Oregon Tort Claims Act. The act sets a limit of \$500,000 for each claim filed against a governing body. To protect themselves from liability, the Port of Brookings Harbor District provides Errors and Omissions Liability coverage.

District boards and their members can be held liable if a claim filed against the district meets any of the four following tests:

1. Violation of Duties: The violation must be clearly outside the scope of the districts' duties and responsibilities.
2. Cause and Effect: The Commission or the decisions of its members must be the cause of the injury. If the decision was not the substantial reason behind the injury, then the Commission cannot be held liable.
3. Breach of Duty: The District Commission must use reasonable care to prevent an injury if the potential for an injury is foreseeable. For example, liability can be found if an unsafe work area, that the Commission was informed of and failed to take any action against, was the cause of an accident. The court will follow the Prudent Person Rule when deciding if the District liable: "Would a reasonable person have known that if they failed to do something, an injury would occur?"
4. Injury of Damage: There must be injury or damage caused to the plaintiff in order for the District to be held liable for a tort. Potential injury or damage is not a substantial enough reason to sue the District.

## Discretionary Immunity

(Provided for informational purposes)

Source: *Special Districts Legal Counsel*  
*Bollinger, Hampton & Tarlow*  
*Risk Management Review, January 1991*

Under Oregon law, public bodies and their officers, employees and agents are immune from liability for "any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused". (ORS 30.265)

A discretionary (immune) act is an act in which a policy decision is made, while a ministerial (non-immune) act is an act which implements a policy decision which has already been made. In the real world, the distinction is often vague.

Not every exercise of judgement constitutes an exercise of "discretion". In deciding whether an act was the result of a delegation of responsibility for policy choices to a certain level of operations (discretionary), as distinguished from routine decisions which every employee must make in every action he or she takes (ministerial). For example, if an officer or committee had to decide whether to take one action versus another because of financial constraints, a discretionary action is usually present because a policy decision regarding financial priorities will have been made.

Similarly, the decision to choose one plan of a roadway over another plan is probably a discretionary act; most acts done in routine maintenance of a road would be ministerial.

Establishing that an act was discretionary allows a court to dismiss an action against the public body before trial. It is, therefore, well worth some planning to create a record which will help to prove the discretionary nature of acts of your district.

First, all decisions which actually are policy decisions should be made by the person or committee which has the duty and/or right to make such decisions. Do not allow policy to be made at an inappropriate level. Second, all decisions made should be documented and a synopsis of the discussions regarding the decision should be kept. Carefully written minutes of a meeting may be sufficient to accomplish this documentation.

If a claim is filed against your district, be aware of the discretionary immunity defense and provide a documentation of related decisions and actions to your attorney as soon as possible.

## Conflicts of Interest

(Provided for informational purposes)

A conflict of interest can arise anytime a public official takes any action or makes any decision or recommendation, which can be perceived as giving benefit or detriment to the official or the official's relative, or a business with which the official or the official's relative is associated, unless the benefit is a result of the following:

1. The commissioner is required to be a member of a certain business, organization, or occupation required as a prerequisite to holding the office or position on the commission.
2. The commissioner is part of a class which consists of all inhabitants of the state or a smaller class which is composed of large industry, occupational or other group, including one of which or in which the Commissioner, or the Commissioner's relative or business with the Commissioner or the Commissioner's relative is associated, is a member or is engaged. The Commission may, by rule, limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

If a conflict of interest does arise, the official **must** announce publicly the nature of the potential conflict of interest before taking any action thereon in the capacity of a public official. (ORS 244.120). Announcements regarding the conflict of interest must be made each time that it arises. If the issue is disclosed at several different commission meetings, then the conflict of interest must be disclosed each time.

**Simply declining to vote on a matter where a potential conflict of interest arises is not adequate. The conflict must be publicly declared and announced. The decision of whether or not to participate in the discussion of the matter resides with the commission. Failure to announce a conflict of interest is against the law and can result in civil penalties.**

The Oregon Ethics laws define "relative" to mean the spouse of the public official, any children of the public official or the public official's spouse, and brothers, sisters, or parents of the public official or the public official's spouse.

The Oregon Ethics laws also defines "business with which the person is associated" to mean any business of which the person or the person's relative is a director, officer, owner, or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1 ,000 or more at any point in the preceding calendar year.

## Code of Ethics

(Provided for informational purposes)

All public officials in Oregon should be aware of and follow the State of Oregon's Code of Ethics: (ORS 244.040)

The following actions are prohibited regardless of whether potential conflicts of interest are announced or disclosed pursuant to ORS 244.120:

1. No public official shall attempt to use or use official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses, or any relative of the public official, or for any business with which the public official or a relative of the public official is associated.
2. No public official or candidate for the office or a relative of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.
3. No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgement would be influenced thereby.
4. No public official shall attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.
5. No person shall offer during any calendar year any gifts with an aggregate value in excess of \$100 to any public official or candidate therefor or a relative of the public official or candidate if the person has a legislative or administrative interest in a governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.
6. No person shall attempt to represent or represent a client for a fee before the governing body of a district of which the person is a member. This does not apply to the person's employer, business partner or other associates.

## Harassment

The Port of Brookings Harbor District strongly disapproves of, and does not tolerate, harassment of any kind. Commissioners, as well as employees, must avoid offensive and inappropriate behavior and are also

responsible for assuring that the workplace of the Port of Brookings Harbor District is free from harassment at all times.

1. It is the policy of the Port that harassment on the basis of an employee's race, creed, color, national origin, age, sex, marital status, religious affiliation, or the presence of a physical, sensory, or mental disability, will not be permitted. Prohibited harassment includes comments, slurs, jokes, innuendos, cartoons, pranks, physical harassment, or any similar activities which are derogatory on the basis of the employee's protected class membership of which are promoted by the employee's protected class membership. Harassment also includes any negative actions toward an employee based upon that employee's participation in activities identified with, or promoting the interests of a protected group. Sexual harassment, whether on- or off-duty includes unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. In addition, all such sexual conduct, whether welcome or not, is absolutely prohibited while an employee or volunteer is on duty. No personnel decisions shall be based upon an employee's response to such harassment. The Port regards duty-related harassment as a serious transgression and reason for discipline or discharge.
2. Employees have the right to be free from such harassment, either from co-workers, supervisors or commissioners while on or off the job. Harassment is prohibited by state and federal anti-discrimination laws where:
  - a. Submission to such conduct is either explicitly or implicitly a term or condition of employment or volunteer status;
  - b. Submission to or rejection of such conduct by an individual is used as the basis for decisions relating to the individual's employment or volunteer status, or
  - c. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

## REPORTING HARASSMENT

1. Should an issue of harassment be raised, all related matters will be kept confidential to the extent possible throughout the investigation, counseling and disciplinary stages. Any employee receiving notice of harassment shall notify the Port Manager, in writing, who will then direct an investigation and insure that the charge is resolved appropriately.
2. Any employee who feels harassed under this policy or is aware of the harassment of another employee is urged to report this to an immediate supervisor, or the Port Manager. The report may be formal or informal. A formal report shall include a written statement. If the individual believes he or she is being harassed by the Port Manager, is uncomfortable in discussing the matter with the Port Manager, or if the Port Manager is unavailable, the person involved shall notify the chair of the Port Commission. No complainant shall be retaliated against in any way for complaining of harassment.

## INVESTIGATION OF COMPLAINTS

1. When the Port Manager or chair of the Port Commission is notified of alleged harassment, he or she will notify Port's legal counsel and will promptly investigate the complaint. The first pre-investigation step shall be to

inquire of all persons reporting as to whether the record now includes all allegations of harassment. The investigation will include interviews with the directly-involved parties, and where necessary, any other parties who may have observed the alleged harassment or who may be similarly situated with the complaining party (such as co-workers who may be able to testify to their experience with the person who is accused of the harassment).

2. The investigator shall cause the person accused of harassment to be advised of the allegations, and afford him or her an opportunity to reply to the allegations orally or in writing. The accused person shall also be advised that any retaliatory conduct by him or her shall be subject to disciplinary action regardless of the truthfulness of the allegations of harassment. The results of the investigation shall be reduced to writing. A finding shall be made that there is or is not reasonable cause for disciplinary action. Nothing in this section shall limit the authority of the Port to modify its policies or practices to correct any appearance of sexual harassment without finding reasonable cause for disciplinary action or taking any disciplinary action. The report will also include any recommendations to remedy any harm which was suffered if the evidence shows that the person alleged to have been affected by sexual harassment was injured or harmed.
3. A report which finds reasonable cause for disciplinary action will be maintained in the personnel file of any employee subject to discipline. The employee may place in the employee's personnel file a statement of rebuttal or correction. For the purpose of this section, a former employee may also present such statement.
4. Where a complaint cannot be substantiated, a general warning shall be made to all employees and volunteers regarding the possible ramifications of a substantiated harassment complaint and all employees and volunteers will be asked to review the sexual harassment policy.

## **Port of Brookings Harbor Commission Duties**

### **DUTIES OF THE DISTRICT COMMISSION**



Recognizing the legal definition of its duties, the Board of Commissioners, in providing adequate and suitable maritime and marine-related services for the citizens of the Port of Brookings Harbor District shall consider its major responsibilities to be:

1. To select and employ a professionally trained and experienced Port Manager to administer the District.
2. To interpret the needs and desires of the constituents of the Port of Brookings Harbor.
3. To provide for the preparation and subsequent adoption of an annual budget.
4. To approve preliminary and final project plans and specifications, as well as acquisition and disposal of Port property,
5. To provide District facilities, equipment and supplies for implementing the District's programs, operations and maintenance.
6. To formulate and approve Ordinances and Resolutions for the Port.
7. To determine questions of policy.
8. To consider and act upon recommendations of the Port Manager in all matters of policy, salary schedules or other personnel matters of significance.
9. To require reports by the Port Manager concerning the conditions, efficiency and needs of the Port of Brookings Harbor District.
10. To inform the public concerning the progress and needs of the District and to solicit and consider public opinion as it effects the programs and services provided by the District.
11. To implement all actions required by law.

## ORGANIZATION OF THE DISTRICT COMMISSION

1. The Commission shall consist of five members elected from within the Port District as provided for in ORS-777.135.
2. At the first Commission meeting in July of each year, there shall be elected a President, 1<sup>st</sup> Vice President, 2<sup>nd</sup> Vice President, Secretary, and Treasurer. Each officer so elected shall take office immediately and shall serve until the first Commission meeting of the following year, or until his/her successor is elected and qualified to serve.

It is acceptable for any person to fill the same office for consecutive years. A member shall be eligible for more than two consecutive terms as president. New members of the Commission shall begin at Treasurer. If there is more than one new member of the Commission at any time, the new members shall be designated to such offices as the Commission shall determine.

3. If the President should resign or for any reason be unable to fulfill his/her obligation during his/her term of office, the 1<sup>st</sup> Vice President shall automatically fill the position of President. In the event any other office becomes vacant, the position found vacant shall be filled at the next regular meeting of

the Board of Commissioners by nomination and vote of the remaining Commissioners. The member so elected shall hold that term of office only until July 1 next succeeding the next regular election held in this state.

4. The duties of the President shall be to preside at all meetings/work sessions of the Commission, to all documents which require a formal signature of the Commission, to create standing and special committees, and to appoint Commissioners to those standing and special committees. Commission concurrence will be requested on the creation of committees and the appointment to those committees. The President shall have a vote on all issues before the Commission and shall be called upon for the final individual vote on roll-call votes.
5. The 1<sup>st</sup> Vice President shall preside in the absence of the President and shall perform such other duties as may be assigned by the President. In the absence of the President and 1<sup>st</sup> Vice President, the 2<sup>nd</sup> Vice President shall perform the duties of the President.
6. A recording secretary who shall not be a member of the Board of Commissioners shall be hired to take the minutes of all Commission meetings and all informal minutes when requested by the President to do so.

## **MEETINGS OF THE DISTRICT COMMISSION**

1. The Commission shall establish a yearly calendar of regular monthly meeting dates and times at the first meeting of each new fiscal year. Regular meeting dates may be changed upon the majority vote of the Commission. Commission members shall attend all meetings faithfully except in cases of illness or when the absence has been approved by the President prior to such meeting(s).
2. Special meetings may be called by the President at any time or by any three members of the Commission. Notice thereof shall be given to every member not less than two (2) days in advance, if possible, unless such notice be waived by the members. No business shall be transacted at any special meeting which does not come within the purpose or purposes set forth in the call for the meeting, unless all the members of the Commission are present and agree to the consideration of the additional items.
3. All meetings of the Commission shall be subject to the State of Oregon Public Meetings statutes. (ORS 192.620).
4. A quorum shall consist of a majority of the Commission. If the scheduled meeting time arrives and a recognized quorum is not assembled, the meeting may be officially cancelled after a fifteen (15) minute waiting period.
5. At an appropriate time during each public meeting, the members of the general public in attendance at the meeting shall be offered an opportunity for comment, or to bring issues before the Commission that may otherwise not have been included on the agenda. (Limited to five minutes per individual unless arrangements are made with the Commission President in advance).

Additionally, Commissioners may present topics or issues to the Commission that may not have been included on the agenda during that portion of the meeting set aside for New Business. In either



instance, official action will be initiated only upon unanimous vote of the Commission to place the issue on the agenda for action at that time.

6. The order of business at a regular meeting of the Commission shall be:

- I. Call to Order
- II. Introductions
- III. Minutes
- IV. Financial Review & Payment of Bills
- V. Old Business
- VI. New Business
- VII. Hearings from Citizens
- VIII. Correspondence
- IX. Adjournment

7. Listed below is the procedure which allows for any orderly discussion of each issue:

- a. Staff report and recommendation
- b. Motion and second (if appropriate)
- c. Comments or questions of individual commissioners
- d. Public comment in support (if appropriate)
- e. Public comment in opposition (if appropriate)
- f. Additional comments of individual commissioners
- g. Action

## **MINUTES OF MEETINGS**

1. The official minutes of the Commission meetings, signed by the President and Secretary, shall be kept in accordance with the provisions of ORS 192.650 and shall be made available to citizens desiring to examine them, subject to the State of Oregon Public Records statutes and Administrative Policy.
2. Copies of the minutes shall be prepared as soon as practical after each meeting and shall be distributed to all Commissioners.

## **COMMITTEES**

1. Special committees may be created by the President, with concurrence by the Commission. Committee members will be appointed by the President, with concurrence by the Commission. Whenever desirable, the Commission will function as a committee of the whole. Other committee members may be selected from the public when deemed desirable. The President will set time lines for each committee.
2. The functions of a committee shall be those designated by title. It shall be the responsibility of a committee to study topics referred to it and to make recommendations to the Commission for final action.

3. Special committees (ad hoc) may be created by the Commission for special assignments. When so created, such committees shall be appointed by the President and shall terminate upon completion of their assignments, or they may be terminated by a majority vote of the Commission attending any regularly scheduled meeting.
4. The Port Manager shall be eligible to attend any meetings of any standing or special committee except when his/her employment is under consideration.
5. Standing committees may be created by the President, with concurrence by the Commission. Committee members will be appointed by the President, with concurrence by the Commission.
6. All special and standing committee meetings will be subject to the State of Oregon Public Meetings and Public Records statutes.

## **AUTHORITY OF MEMBERS**

1. The Commission shall not be bound in any way by any statements or action on the part of any individual Commissioner or employee, except when such statement or action is predicated on previous action taken or policy adopted by the Commission.
2. All business must be conducted at legal meetings. If a proposition or complaint comes to a Commissioner, he/she should be courteous, but should not commit the Commission. Routine matters should be referred to the Port Manager. Matters of policy should come before the Commission.
3. All District business brought to the attention of an individual Commission shall be handled in the following manner:
  - Be courteous to the constituent and determine whether the stated business shall be referred to the Port Manager or to the Commission.
  - Direct the constituent to either call the Port Manager or to appear at the next Commission meeting and discuss the matter with the entire Commission.
  - No District business decision is ever made by an individual Commissioner outside the official Commission meeting.

## **TRAINING, EDUCATION, AND CONFERENCES**

1. It is the policy of the Port of Brookings Harbor to encourage Commission development and excellence of performance by reimbursing expenses incurred for tuition, travel, and lodging as a result of training, educational courses, participation with professional organizations, and attendance at state, regional, and national conferences associated with the interests of the District.
2. The Administrative Assistant is responsible for registration and lodging arrangements for Commissioners attending state, regional, and national conferences. Commissioners will make their

own travel arrangements. Expense reporting forms will be forwarded to each Commissioner attending a conference.

3. When a Commissioner requests to attend a training or educational course, and that request is approved by the Board of Commissioners, the Administrative Assistant is responsible for the registration of the Commissioner.
4. Upon returning from conferences, seminars, workshops, etc., each Commissioner will either prepare a report or make a verbal report during the next Commission meeting detailing what was learned at the session(s) that will be of benefit to the District. Materials may be turned in to the Administrative Assistant to be included in the library at the Administrative office so that other Commissioners and staff may have access to them.
5. Commissioners are responsible for paying their own tuition for an educational course when requests are approved by the Board of Commissioners. Upon completion, of that course, the Commissioner will submit a request for reimbursement to the Administrative Assistant. The Administrative Assistant will fill out an authorization for payment, obtain the Port Manager's signature, and route the authorization to date services for processing. Copies of the authorization for payment will be forwarded to the Board of Commissioners.

## LEGAL COUNSEL

1. An attorney shall be selected by the Commission. The Port Manager and the President of the Commission may request any legal advice that may be needed in handling or in dealing with matters pertaining to the welfare of the Port of Brookings Harbor District. Individual Commissioners should direct requests through the Port Manager and/or the President. The adequacy and cost/benefit of Port Legal Counsel shall be reviewed every three years or less if circumstances so dictate.

## AUDITOR

1. An auditor shall be selected and appointed by the Commission and retained on a yearly retainer fee. The auditor must be a Certified Public Accountant and a member of the State Board of Accountancy roster authorized to conduct municipal audits. The Port Manager and the President of the Commission may request advice on any financial matters pertaining to the financial welfare of the Port of Brookings Harbor District. Individual Commissioners should direct requests through the Port Manager and/or the President. The adequacy and cost/benefit of the Port Auditor shall be reviewed every three years or less if circumstances so dictate.

## INSURANCE AGENT(S) OF RECORD

1. An Insurance Agent(s) of Record shall be selected and appointed by the Commission. The Port Manager and the President of the Commission may request advice that may be needed in handling or in dealing with insurance matters pertaining to the welfare of the Port of Brookings Harbor District. Individual Commissioners should direct requests through the Port Manager and/or the President. Request for proposals for Insurance Agent of Record shall be solicited every three years.

## BANKING SERVICES

1. Request for Proposals for Banking Services shall be solicited every three years. The Port Manager and the President of the Commission may request advice that may be needed for decisions regarding the finances of the Port of Brookings Harbor District. Individual Commissioners should direct requests through the Port Manager and/or the President.

## Port of Brookings Harbor Commission Responsibilities

### 1. Communications

Develop regular channels of communication with commissioners and the staff.

Schedule regular meetings between the commission president and the Port Manager, the commission president and other commissioners.

Encourage participation of staff members on appropriate committees.

Develop procedures for bringing staff opinions and recommendations to the commission, as well as commission opinions and decisions to the staff.

Invite clients, other local governments, and groups to commission or committee meetings or other types of commission sponsored assemblies to explore and develop approaches to common concerns.

Recognize that information obtained at commission meetings may be non-public and confidential, making disclosure a breach of trust.

Make use of educational sessions, workshops and seminars to further understanding of issues.

Respect the opinion of other members and accept the principle of majority rule in commission decisions.

## 2. Financial

Approve the annual budget.

Monitor district finances and the budget, settling policy or taking action to ensure the fiscal integrity of the organization.

## 3. Policies. Objectives. and Plans

Approve the annual strategic plan or plan of operations.

Approve policies for the organization.

A commissioner's basic function is policy making not administrative.

Develop and approve long-range plan of growth and development for the organization.

Approve specific important projects.

Approve any significant departure from established plans or policy.

Receive and pass on committee or other planning body recommendations.

Ensure that program objectives are assigned to the proper planning or implementing subgroups.

Where applicable, bring other local governments or community groups into the planning and decision-making process.

Approve contracts binding the organization.

Approve major changes in the district's organization or structure.

Approve commission plans of action.

Pass district resolutions.

#### 4. Management

Select the district president and other officers.

Hire the Port Manager.

Define the duties and responsibilities for the president, Port Manager, officers, and major committee chairpersons.

Select legal counsel and consultants for the commission.

Authorize officers or commission agents to enter into contracts or to sign other written instruments and to take financial actions.

Approve the plan, form and amount of management compensation, that is, salaries, bonuses, vacation, travel, and so on.

Evaluate the performance of the Port Manager.

Approve the form and amount of reimbursement for commissioners.

Approve programs for management development.

Provide advice and consultation to management on matters within the purview of the commissioner's responsibilities.

Recognize that the Port Manager should have full administrative authority for properly discharging the duties of managing the operation within the limits of the established commission policy.

Give the Port Manager the respect and consideration due dedicated people in their community service role.

#### 5. Employee Relations

Approve any employee benefit plans.

Insist that personnel complaints go through a proper chain of command. If not resolved, only then should the commission get involved.

Approve contracts with and between any unions involved with the organization.

Do not allow personnel problems other than problems with the Port Manager to be brought into commission considerations.

6. Control

Identify types of information needed by the commission to analyze effectively the district's directions and achievement. Create a process for collecting and analyzing information.

Participate in regular physical visits to district assets.

Realize that the citizens within the boundaries of the district are the true "owners" of the district.

Review and assess the organization's performance against objectives, resources, plans, policies, and services rendered,

Analyze major "shortfalls" in achievement.

Identify obstacles, sense changing needs, propose new directions or goals.

Insure that the district is in compliance with all federal, state, and local laws.

7. Board of Commissioners

Motivate commissioners to accept positions of leadership and responsibility.

Appoint, change; or abolish committees of the commission.

Appoint, compensate outside auditors and legal counsel.

Approve contracts for professional services required by and for the commission.

Do not make commitments on any matter that should come before the commission as a whole.

Recognize that an individual commissioner has no legal status to act for the entire commission.

Realize that if a quorum of the commission meets, then the meeting is considered a public meeting and must comply with all the requirements of the Oregon Public Meetings Laws.

Discussions on matters of overall policy outside of regular commission meetings can violate the open meetings law.

8. Public Accountability

Encourage members of the public to attend open meetings.

Establish a place on meeting agendas for comments and presentations by members of the public.

Keep the public informed on all district matters.

Make decisions based on the wishes and needs of the public.

Spend the district's money with prudence and trust.

Place the needs of the public above the ambitions of the commission or the district.



PORT OF BROOKINGS HARBOR  
CURRY COUNTY, OREGON

RESOLUTION NO. 229

A RESOLUTION ESTABLISHING AND ADOPTING RULES  
OF COMMISSIONER BEHAVIOR AMONG MEMBERS OF THE  
BOARD OF COMMISSIONERS

WHEREAS, the Board of Commissioners is committed to providing excellence in legislative leadership that results in the provision of the highest quality of service to its residents; and

WHEREAS, in order to assist in the government of the behavior between and among members of the Board of Commissioners; and

WHEREAS, the following rules are necessary to establish and adopt a clearly defined policy for Commissioner interaction; and

WHEREAS, the Board of Commissioners do establish the following fourteen rules:

1. We, as a Board of Commissioners, value confirming the dignity of each individual Board member. We also recognize the importance of respecting individual styles, values, and opinions. We encourage responsiveness and attentive listening in our communications.
2. We, as a Board of Commissioners, shall place the needs of the residents first.
3. We, as a Board of Commissioners, recognize that our primary responsibility is the formulation and evaluation of policy. Routine matters concerning the operational aspects of the District are to be delegated to professional staff members of the agency.
4. We, as a Board of Commissioners, shall commit ourselves to emphasizing the positive and avoiding double talk, hidden agendas, gossip, talking behind people's backs, and other negative forms of interaction.
5. We, as a Board of Commissioners, commit ourselves to focusing on issues and not personalities. We will encourage the presentation of other opinions. We will avoid cliques and voting blocks based on personalities rather than issues.

6. We, as a Board of Commissioners, commit to supporting Board action. The role of the Board member is not to place barriers once a decision has been made by the Board and is ready to be implemented. We acknowledge the right of individuals to disagree with ideas, without being disagreeable. Different points of view are healthy in contributing to the decision-making process.
7. We, as a Board of Commissioners, shall practice the following procedures in: 1) seeking clarification on informational items; 2) handling complaints; 3) handling items related to safety; 4) presenting items for discussion at Board meetings and in other forums; and 5) seeking clarification for policy-related concerns.
  - \* Informational Items. Board members may directly approach professional staff members to obtain information needed to supplement, upgrade, or enhance their knowledge to improve legislative decision-making.
  - \* Handling Complaints from Residents of the District. Complaints made to members of the Board of Commissioners should be referred to the Manager and/or Board of Commissioners at the Commission meetings.
  - \* Safety. Concerns for safety or hazards should be reported to the Manager or the front desk at the administrative office. Emergency situations should be dealt with immediately by seeking appropriate assistance.
  - \* Agenda Items. Board members wishing to have items placed on the Board meeting agenda or at other Board functions should present these to the Port Manager and/or the Board Chair.
  - \* Policy-related Concerns. Policy-related questions, especially related to personnel, legal action, land acquisition and development, finances, and programming, should be directed to the Port Manager and/or to a Board member when advisable.
8. We, as a Board of Commissioners, when approached by professional staff members concerning policy within the District, shall direct inquiries to their supervisor. The Chain of Command shall be followed.

9. We, as Board of Commissioners, recognize the work of the District as a team effort. All individuals shall work together in a collaborative process, assisting each other and the Chair in conducting the affairs of the Port.
10. We, as a Board of Commissioners, when responding to citizen requests and concerns, shall be courteous, responding to individuals in a positive manner and routing their concerns and interests through appropriate channels.
11. We, as a Board of Commissioners, are encouraged to work with the Port Manager at a convenient time for both to discuss current issues, concerns and Port projects.
12. We, as a Board of Commissioners, shall each operate as part of the whole. Issues will be brought to the attention of the Board as a whole rather than to individual members selectively.
13. We, as a Board of Commissioners, are responsible for monitoring the Port's progress in attaining its goal and objectives while pursuing its mission.
14. We, as a Board of Commissioners, shall be prepared by reviewing Port materials and will engage in a program of development directed toward improving our legislative decision-making capabilities.

NOW, THEREFORE, BE IT RESOLVED by a majority vote that the Port of Brookings Harbor Board of Commissioners do hereby confirm, adopt and ratify the fourteen Commission rules as stated.

PASSED AND ADOPTED by the Board of Commissioners this 18th day of October, 1993.

  
S. John Zia, President

ATTEST:

  
Edmund Gray, Secretary

## OLD BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *SDIS Board Practices Assessment*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- SDIS is providing Board Practices Assessment to all SDAO members.
- Port of Brookings Harbor Board is interested in BPA and directed port manager to provide cost information.
- Member districts receive eight hours of free consulting service each year. There is no estimated costs for this service.

### DOCUMENTS

- Email from Rob Mills/SDAO Consulting Services (1 page).

### COMMISSION ACTION

- I am requesting Board direction to schedule BPA.
- Board will need to coordinate for a 90-minute meeting with SDAO consultant.

**Gary**

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**From:** Rob Mills <rob@srwd.org>  
**Sent:** Tuesday, March 28, 2017 9:18 AM  
**To:** gary@portofbrookingsharbor.com  
**Cc:** George Dunkel  
**Subject:** Special District Board Practices Assessment (BPA)

Hello Gary -

George Dunkel forwarded to me your inquiry about cost and scheduling the Board Practices Assessment. As a member district you are entitled to eight hours of free consulting service each year so there would be no direct cost to you for participating in the BPA. To schedule the BPA, please send me a few possible dates/times that would work best for your board, then we can coordinate our calendars to schedule the 90-minute meeting. My schedule varies but it's usually not a problem accommodating a district's preferred date. Thanks for your interest in the BPA. I look forward to hearing from you.

Rob Mills  
SDAO Consulting Services  
Seal Rock, OR  
541/563-7690

## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*

**RE:** *Auction Agreement with Bendis Company, Inc. to sell Port surplus equipment and materials.*

**TO:** *Port of Brookings Harbor Board of Commissioners*

**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Bendis Company, Inc. been in business since 1984 providing services to government and private companies. Very high reputation in the industry and the experience of on-site live auction combined with internet bidding will benefit the Port successfully selling the equipment at the highest dollar value.
- We will inquire with other Ports in the area to see if they would like to add equipment to this auction. If other Ports include any equipment, auction costs would be shared.
- Auction date is scheduled for May 13<sup>th</sup> at 10am.

### DOCUMENTS

- Draft Auction Agreement attached (5 pages)
- Draft Auction Agreement was reviewed, modified and approved by Jim Coffey/Port Lawyer.
- Approved Port Surplus List (2 pages)

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE AUCTION AGREEMENT WITH BENDIS COMPANY, INC. TO SELL PORT SURPLUS EQUIPMENT AND MATERIALS ON MAY 13, 2017.

DRAFT

## AUCTION AGREEMENT

BENDIS COMPANIES, INC. now and hereinafter referred to as (Bendis) and the undersigned (Seller) agrees as follows:

1. AGENCY, Seller hereby appoints Bendis as its agent to conduct a Public Auction of personal property described below. Bendis shall be an independent contractor. Seller authorizes and confers upon Bendis the power to take all actions on its behalf necessary to complete the auction, including but not limited to publication and recordation of a "Notice of Intent to Sell at Public Auction Sale" in compliance with the Bulk Sales Law, giving any other notice or filing any documents that may be required by law, accepting cash or checks on behalf of Seller in payment for Property sold, signing on behalf of Seller as the registered and/or legal owner of any motor vehicle sold to effect a transfer, and satisfy or compromising secured parties who hold or assert a lien in any Property sold at auction. Seller hereby agrees to sell the Property to the highest bidder, with no minimum, reservation, buy-backs or persons bidding for Seller.

1. (a) Bendis shall be and remain an original and independent party hereunder, and all matters to be performed by Bendis shall be in its own separate business, under its management, supervision and direction. Bendis shall employ, pay from his own funds and discharge all persons engaged in the performance of the auction, and all such persons shall be and remain the sole employees of Bendis. Bendis shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation insurance costs, unemployment taxes and state and federal income taxes. Nothing contained in this Contract is intended to create a joint venture or to constitute either Party as agent (for any purpose) of the other.

2. TIME AND PLACE. The auction shall occur on or about May 13, 2017 @ 10:00 AM. Location: 16060 Lower Harbor Road, City of Brookings, State of OR 97415. None of the Property may be sold before the auction without the written consent of both parties, in which case the sales proceeds shall be treated as part of the gross proceeds of the auction. All of the Property shall be at the auction site fourteen (14) days prior to sale date, and in the event of a failure of Seller to deliver said Property, or if Seller shall breach this contract, Seller agrees to pay the advertising and other costs as provided below and said commission based on market value of said Property.

### 3. COMMISSION AND EXPENSES.

(a) Bendis shall receive as commission twenty percent (20%) of the gross sales proceeds from the Property plus a 10% Buyer's Premium payable by the buyer's.

(b) Bendis Companies shall be responsible for preparing, and promoting the auction. Bendis shall prepare and mail fliers and prepare and submit newspaper and other media releases.

(c) The Seller agrees to pay the sum of (Not to exceed \$2,000) for other expenses incurred by Bendis for the purpose of preparing for, promoting and conducting the auction.

(d) Bendis will be reimbursed for the cost of UCC Filing Search if required.

4. PROPERTY. The property ("Property") subject to this agreement is located at Port of Brookings, City of Brookings, State of OR 97415.

Vehicles will not be offered at auction unless the Certificate of Ownership and all other documents necessary to effect a transfer of title for Motor Vehicles, Trailers and Towable Forklifts are submitted to Bendis at least two (2) days prior to the sale. The Seller agrees to pay advertising and all other costs as provided above on any Property withdrawn from the sale by Bendis as a result of the failure by the Seller to submit the required documents specified above.

The Property is described in a general manner as follows: Vessels, Trucks, Trailers, Boat Parts, Truck Crane, Jet Floats, Scaffolding etc.

5. REPRESENTATIONS AND INDEMNITY BY SELLER. Seller represents and warrants that title to the Property is, and will be at the time of auction, free and clear of any and all liens, security interests, encumbrances, rights and claims except as otherwise disclosed in writing by Seller to Bendis within five (5) days after Seller's execution of this agreement and other than those of Bendis pursuant to this Agreement. Seller represents and warrants that all Property subject to this Agreement is covered by insurance against normally insurable risks, and such insurance will be maintained until delivery of the subject assets to a purchaser. Bendis shall be deemed an additional insured under Seller's insurance policies. Seller further represents and warrants that Seller has used no other business name or address other than the name and address specified in this Agreement.

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Seller hereby indemnifies, defends and holds Bendis harmless from and against any and all losses, costs, expenses, demands, claims, causes of action, and liabilities (including without limitation, reasonable attorney's fees) (collectively "losses and liabilities") related directly or indirectly to, arising out of, or in connection with this Agreement and/or the Property, including, without limitation, any dispute with respect to the ownership and/or right to possession of the Property and/or the sales proceeds, whether or not Bendis becomes involved in an action for interpleader or other legal proceeding. Without limiting the generality of the foregoing indemnity, Seller agrees that said indemnity shall cover any and all losses and liabilities arising out of or in connection with death or injury to person or damage to Property caused, wholly or in part, by defects in or the condition of the Property, including without limitation product's liability.

## 6. GENERAL PROVISIONS.

This auction will be conducted pursuant to Section 2328 of the Commercial Code, Section 535 of the Penal Code.

(a) Both parties waive all rights for damage to the Property of each party resulting from negligence of the other party where such damages would normally be covered by fire, extended coverage, or other insurance's. This waiver does not apply to willful acts of either party.

Bendis hereby indemnifies, defends and holds Seller harmless from and against any and all losses, costs, expenses, demands, claims, causes of action, and liabilities (including without limitation reasonable attorney fees) (collectively "losses and liabilities") related directly or indirectly to, arising out of, or in connection with this Agreement and/or the Property, including, without limitation any and all loss, damage, liability, claims, demands, or costs resulting from injury or harm to persons or property (including, without limitation, the Bendis' employees or property) to the extent arising out of or in any way connected with the Bendis' negligent performance of the terms of this Agreement. Bendis' activities shall be deemed to include those of any subcontractors.

(b) Bendis is authorized to satisfy or take assignment of the interests of secured parties, but nothing herein shall obligate Bendis to acquire the interest of a secured party, unless Bendis elects to do so in its sole and absolute discretion.

(c) Seller agrees and warrants to Bendis that Seller shall be fully responsible for any and all sums owed to secured parties for equipment sold. In the event that the net proceeds from the sale of equipment are not sufficient to fully pay any such sums owing secured parties, Seller shall immediately pay the deficit to Bendis. Net proceeds are defined as a gross sales less commission and expenses.

(d) Seller authorizes Bendis to assign and delegate the rights and duties of Bendis hereunder to an independent trustee of an auction trust established for the purpose of segregating the proceeds of the auction and assuring payment to the Seller in accordance with paragraph 7 (e).

(e) Within ten (10) banking days after the auction date and after receipt of the signed Confirmation of Consignment, Bendis shall present a full accounting of the sales proceeds and expenses. With such accounting, Bendis shall present Seller with a check for all monies due from such auction unless delayed by legal proceedings or inability of Bendis, through no fault of its own, to transfer title or to comply with the Commercial Code or other laws. Bendis reserves the right to eliminate any Property for which payment has not been made and Seller agrees to accept responsibility for reclaiming same wherever located.

(f) In the event any disputes arises out of this agreement, the prevailing party shall be entitled to reasonable attorney's fee from the other party. In the event, any action, suit, arbitration or other proceeding shall be instituted by either party to this Agreement to enforce any provision of this Agreement or any matter arising therefrom, or to interpret any provision of this Agreement, 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 recovery 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.

(g) This agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and there are no representations, warranties, conditions, inducements, promises or agreements, oral or otherwise, which have been made by any party to any other party, in order to induce the execution hereof.



- (h) The auction shall be Simulcast using third party software.
- (i) Bendis Companies, Inc., and the Seller have agreed to the following conditions:
  - Port employees shall bring the sale items to the auction site
  - All lots will be sold without reserve

(j) Seller may not cancel, postpone, or reschedule the Auction without the prior, written approval of Auctioneer. If Seller does so, Seller agrees that this act alone will be a breach of Seller's duties to Auctioneer under this Agreement that will harm Auctioneer and Auctioneer's business and cause Auctioneer to suffer damages that would be impracticable or impossible to ascertain. After due consideration of all relevant factors, the Parties agree that fair and reasonable compensation for Auctioneer in such an event would be for Seller to immediately pay Auctioneer liquidated damages of (\$2,000). These liquidated damages are an integral part of the Parties' dealings and this Agreement and constitute reasonable damages for Auctioneer in lieu of Auctioneer being paid by Seller the selling commission provided for herein, and these liquidated damages are not a penalty against Seller.

(k) (1). Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance or interpretation of this Agreement, 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.

(2). Any party asserting a claim arising out of or relating to this Agreement 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.

(3). The parties will pay their own costs of arbitration, and each will be obligated for one-half of the arbitrator's fee. The provision of Section 7 (f) shall also apply to arbitration, and in the event of arbitration under the provisions of this Agreement, the prevailing party shall be awarded reasonable attorney fees and related costs.

(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.

(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.

(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.

(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 7 (k).

(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 5.19 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 Owner 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 7 above, and regardless of Contractor's indemnity obligations.

DRAFT

## AUCTION AGREEMENT SIGNATURE PAGE

Corporation \_\_\_ Partnership \_\_\_ Proprietorship \_\_\_ President \_\_\_ Owner \_\_\_ Other \_\_\_

Signed \_\_\_\_\_

Printed Name: Roy Davis, Chairman

Mailing Address 16340 Lower Harbor Road, Suite 103 \_\_\_\_\_

City: Brookings \_\_\_ State: OR \_\_\_ ZIP: 97415 \_\_\_\_\_

Email Address: Gary@Portofbrookingsharbor.com \_\_\_\_\_

Telephone Number \_\_\_ (541) 469-2218 \_\_\_\_\_

BY:



16340 Lower Harbor #10, Brookings, Oregon 97415

(541) 247-9862 Cell (951) 780-3418

E:mail [diane@bendiscompany.com](mailto:diane@bendiscompany.com)  
[www.bendiscompany.com](http://www.bendiscompany.com)

## NEW BUSINESS AGENDA ITEM

---

**DATE:** *April 12, 2017*  
**RE:** *Chetco Indian Memorial*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

---

### OVERVIEW

- Chetco Indian Memorial is located at the south end of the new boardwalk area of Basin 1.
- Chetco Historical Memorial Committee has requested from the Port to install a directional sign for visitors near the south end of the retail/boat parking lot.
- Chetco Historical Memorial Committee will install the sign.

### DOCUMENTS

- Chetco Indian Memorial pamphlet.
- Proposed sample sign 16"x24" size.
- Map of proposed location of the sign.

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE PROPOSED SIGN AND PROPOSED LOCATION FOR THE CHETCO INDIAN MEMORIAL.



Lucy Dick  
Sculpture by A. Vincen Talbot

Lucy was the last known full-blooded Chetco Indian to live in the Chetco River Valley. She was born into a relatively isolated Chetco culture at the mouth of the Chetco River in the early 1840s. She saw the first white settlers, experienced relocation to the Siletz Reservation, and was later permitted to return to the land of her birth, where she served her community and was laid to rest in Harbor, OR in 1940.

## Our Goal

Our goal is to preserve this traditional cultural place by bringing public awareness to it. A historical marker will share and enhance the rich cultural heritage of the region and will also ensure that the site will be protected from any proposed future development.

All cultural and historical messages on the interpretive panels will be reviewed by the Siletz Tribe's Cultural Resource Department before printing to ensure accuracy.

If you would like to donate to this important project, you may contact:

## Chetco Historical Memorial Committee

P.O. Box 132  
Brookings, OR 97415  
541-661-4178

### Email:

Lynda Timeus [lyndatimeus@yahoo.com](mailto:lyndatimeus@yahoo.com)  
Adrienne Crookes [chickadeecrookes@yahoo.com](mailto:chickadeecrookes@yahoo.com)  
Megan England [englandmegan1@gmail.com](mailto:englandmegan1@gmail.com)

[www.chetcoindianmemorial.com](http://www.chetcoindianmemorial.com)

# Chetco Indian Memorial



This memorial will be the only interpretive site that focuses on an Oregon Coastal tribe and its history on the very site of their ancestral village, making this project unique on the Oregon Coast.

This project is currently under construction.

## The Chetco Tribe

The earliest known inhabitants of what is today the Brookings-Harbor area were members of the Chetco tribe of Indians, an Athapascan linguistic group of people who lived along the Chetco River, regions of the lower Winchuck river, and northward to Cape Ferrelo. The Chetco people were forcibly removed to the Siletz reservation in 1856, and most people who live in the area today are unaware that a tribe once lived here.

In March 2011, repair work following tsunami damage led to the discovery of Indian artifacts during drilling at the port of Brookings-Harbor. A *Curry*

*Coastal Pilot* newspaper article quoted state archaeologist Rick Minor: "The historical find is

significant...it's not very often you can see such an extensive village site intact." This prehistoric site is an important place to tell the story of the Chetco people and of early Oregon history.

## Designers

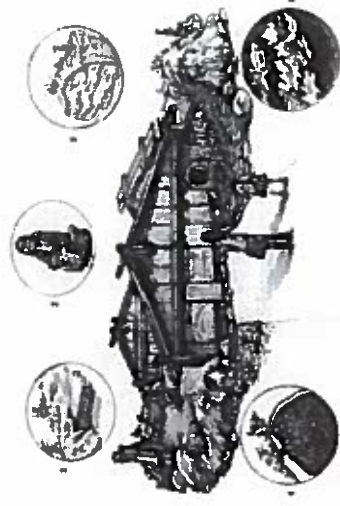
Wow Arts & Exhibits of North Bend, Oregon will design and construct this beautiful memorial. Wow Arts & Exhibits is dedicated to creating educational resources that are sensitive to the needs of tribal communities to ensure their stories are told correctly. Wow has previously helped create other successful Oregon history exhibits such as "The Past is Present," housed in the University of Oregon's Museum of Natural and Cultural History, and "Tideways and Time" at the Umpqua Discovery Center in Reedsport, OR.

Peggy O'Neal, Artist  
Larry Watson, Managing Director  
Wow Arts & Exhibits  
2036 Sherman Avenue  
North Bend, OR 97459  
541-756-2393



### Visiting the Site

Four life-size redwood kiosks will form a scale replica of traditional plank house walls. This accessible design will invite visitors to walk inside of and explore the site in order to see what it was like to live in an actual plank house. Vibrant interpretive panels will share the site's history through time.

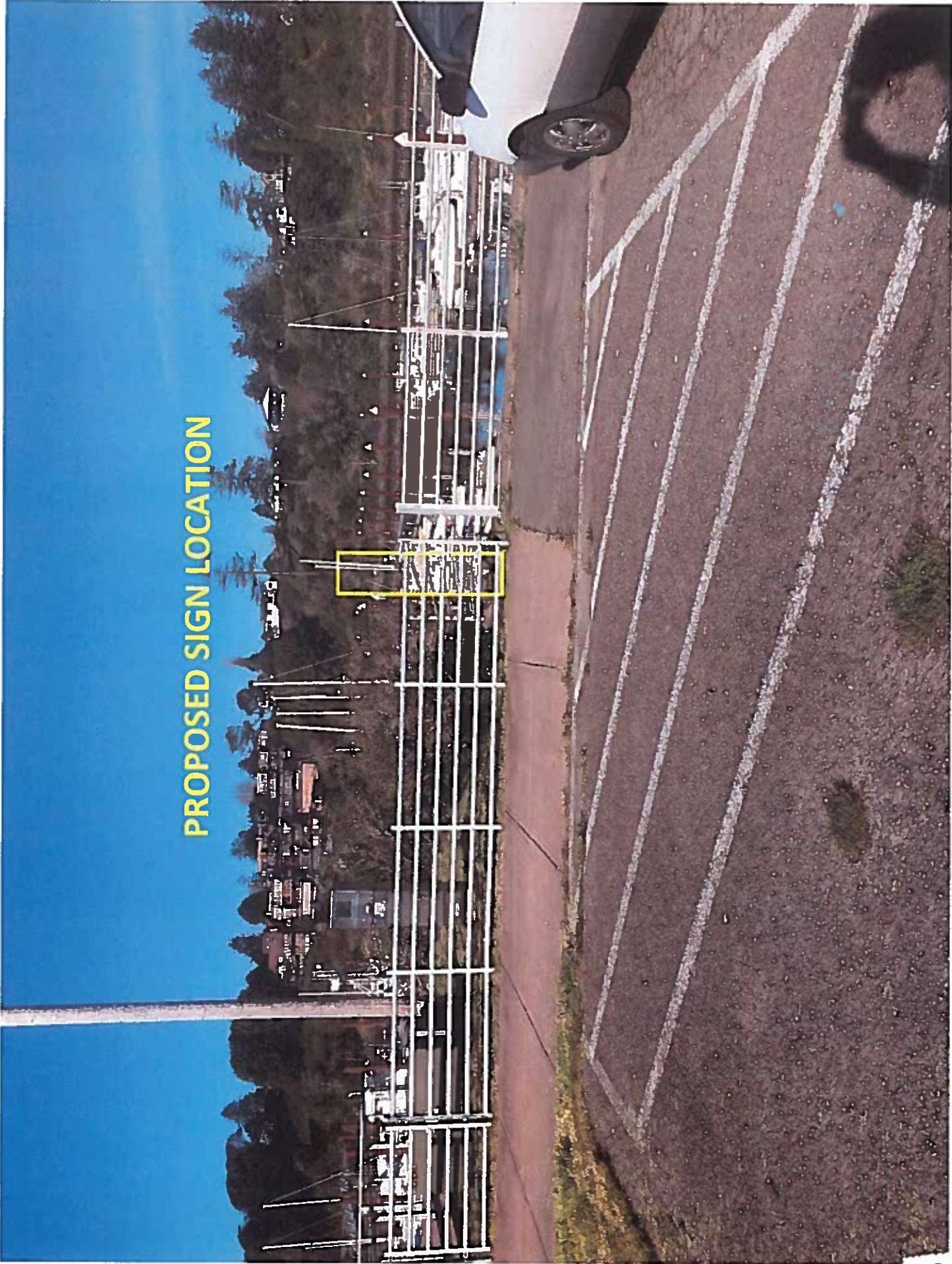


Redwood timber courtesy of Walt Lara and the Yurok Tribe.

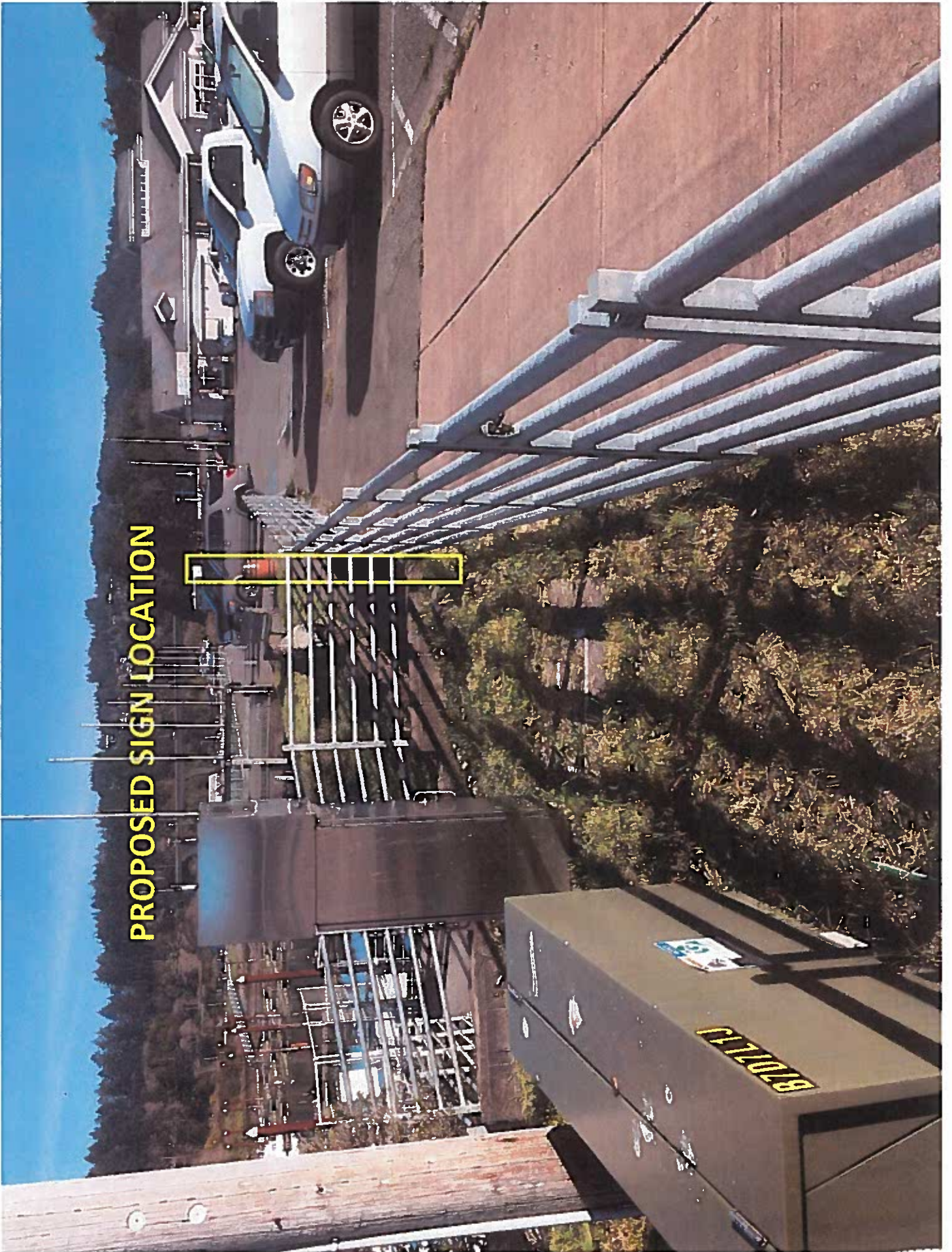












16# x 24 W

# Chetco Indian Memorial Site







## NEW BUSINESS AGENDA ITEM

---

**DATE:** April 12, 2017  
**RE:** Legal Action on Robert Nolan  
**TO:** Port of Brookings Harbor Board of Commissioners  
**ISSUED BY:** Gary Dehlinger, Port Manager

---

### BACKGROUND

- Robert Nolan purchased a boat in the harbor, signed a moorage license agreement and made a payment plan agreement with the Port to pay for his yearly moorage.
- Robert Nolan made two payments on his payment plan.
- Robert Nolan claimed his boat was vandalized only after couple of weeks and removed his boat from the harbor (estimated date May 13, 2016).
- Port staff notified Robert Nolan of his delinquent account on November 14, 2016 then learned of the vandalism claim and that his boat was removed.
- Demand claims and collection actions were initiated and Robert Nolan still refuses to pay.
- Per the Moorage License Agreement, "The Port does not accept vessels or personal property for storage and accepts no responsibility or liability for the safe keeping thereof, including, loss of any kind, theft or damage of any kind or cause."
- Per the Moorage License Agreement, "Fees for moorage and yard storage are due and payable in advance for the entire term of this Agreement and is NON-REFUNDABLE."

### DOCUMENTS

- Robert Nolan Moorage License Agreement (2 pages)
- Robert Nolan Payment Plan (2 pages)
- Robert Nolan Statement 1/9/17 (1 page)
- Southern Oregon Credit Service Inc request to start legal (4 pages)

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT SOUTHERN OREGON CREDIT SERVICE REQUEST TO START LEGAL ACTION AGAINST ROBERT NOLAN.

Port of Brookings-Harbor

P.O. Box 848 - Brookings, OR 97415

Phone: 541-469-2218 Fax: 541-469-0672

Moorage License Agreement



**PAID**  
\$ 4129.16 420<sup>00</sup>

Slip No. SF-01

Bill To: Robert Nolan

Moorage License Term & Type:

From 5/1/16 To 5/1/17

Type: Annual ☒ Semi Annual ☐

Monthly ☐ Weekly ☐ Daily ☐ Transient ☐

Other ☐

Trailer Storage: Yes ☐ No ☐

License #:  Tag:

Gear Storage: Yes ☐ No ☐

Fee: 820<sup>00</sup>

Insurance Information:

Insurance

Policy #:

Exp. Date:

In Case of Emergency & you cannot reach me

Please Notify:

Name Wife

Telephone:

Boat Information:

Boat Name

Reg / Doc #:

OAL: 22 Beam:  Draft:

Year: 1994 Make: Bayliner

Model:

USCG Auxiliary #:

Port of Brookings-Harbor Representative:

Danielle Shepard

Date

THIS MOORAGE LICENSE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON THE BACK SIDE OF THIS APPLICATION AND TO ANY ORDINANCES, PRESENTLY IN EFFECT OR THAT BECOME IN EFFECT IN THE FUTURE

ALL FEES ARE PAYABLE IN ADVANCE OR UPON PRESENTATION LATE CHARGES OF 1 1/2% PER MONTH WILL BE ASSESSED

THE PORT OF BROOKINGS-HARBOR ASSUMES NO RESPONSIBILITY FOR THE VESSEL, ITS EQUIPMENT OR FOR INJURY TO THE OWNER, EMPLOYEES, GUESTS OR AGENTS.

AGREED:

Owner/Operator:

Robert Nolan

Please initial:

RN I agree to comply with Port Rules and Regulations

RN Received Port Ordinances & a copy of my Moorage Agreement

☐ I declined a copy of the Port Ordinance or a copy of my Moorage agreement



# Moorage License Agreement General Terms and Conditions

**Moorage or Storage Space:** The Port of Brookings-Harbor ("Port") grants to the designated Owner/Operator ("Licensee") a license for moorage of the designated vessel in the moorage space identified on the front of this Agreement and/or for the use of certain lots identified herein for the purpose of boat, trailer or gear storage. The Port reserves the right in its sole discretion and without notice to reassign any vessel or the stored material to an alternate site of the Port's choosing, permanently or temporarily, to accommodate emergency situations, repairs or administrative needs.

**Fees & Charges:** FEES ARE BASED ON SIZE OF SLIP OR LENGTH OF BOAT, WHICH IS THE GREATER. Fees for moorage and yard storage are due and payable in advance for the entire term of this Agreement and is NON-REFUNDABLE. Payment plans may be arranged in advance and in writing under certain circumstances. In addition to items covered specifically in this Agreement, Licensee agrees to pay whatever other fees or charges for additional services provided by the Port. The Port shall have right to recover any and all costs associated with the collection of any sums hereunder, whether or not suit is filed, or incurred in the salvage, termination, removal or sale of the vessel or personal property pursuant to this Agreement or any applicable Port ordinance. All rentals which are thirty (30) days past due shall accrue a late payment charge of \$1.00 or 1.5% (18.0% APR), whichever is greater.

**Utilities:** The Port does not guarantee the functionality, continuity or characteristics of the electricity or water provided by the Port. All risk associated with electricity supply, including risk to any of the vessel's electrical components or circuitry is entirely at Licensee's risk. Licensee is responsible for all utility charges incurred during the term of moorage, whether the vessel is physically in the assigned slip or not.

**Rules and Regulations:** Licensee agrees to comply at all times with any and all rules and regulations promulgated by any federal, state, local or this Port. Further, Licensee agrees to abide by special requests made in the interests of public or vessel safety by the Harbor Master or his designee. It is Licensee's responsibility to stay abreast of all rules and regulations concerning vessel use and the use of Port facilities. A copy of the Port's rules and regulations are available from the Port office.

**Insurance:** Licensee agrees to provide a marine/watercraft insurance policy with general liability limits of at least \$500,000. The Port of Brookings Harbor shall be named as additional insured. A copy of said insurance shall be provided to the Port. Failure to provide or keep in force such insurance shall be construed as a default of this Agreement and the Port will exercise its right to terminate.

**Vessel Access:** Licensee grants the Port free access at all times to the vessel for purpose of inspection for compliance with this Agreement or with Port ordinances, movement of the vessel, fighting fire or other casualty, or at the discretion of the Port, the prevention of any casualty or potential hazard. The Port assumes no responsibility for any damage that may occur arising from the assertion of this right.

**Waiver of Responsibility:** The obligation of the Port under this Agreement is limited to furnishing that portion of dock or land space reasonably necessary for vessel moorage or placement of Licensee's personal property. The Port does not accept vessels or personal property for storage and accepts no responsibility or liability for the safe keeping thereof, including, loss of any kind, theft or damage of any kind or cause. Licensee is fully responsible for himself, his family, his employees or invitees to the Port's premises and agrees to hold the Port harmless and free from claim for any damages, injury or loss resulting from the acts or failure to act of Licensee, his family, his employees or invitees.

**Acceptance of Premises:** Licensee acknowledges he has inspected the premises for use under this Agreement and accepts them in their present "AS-IS" condition. Licensee agrees to keep the assigned premises neat, clean, free of hazardous or flammable materials and to preserve the assigned space in as good condition and repair as is now or may be put hereafter by the Port.

**Condition of Vessel:** Licensee shall keep the vessel in seaworthy condition and fully operable at all times while in the water and shall secure and otherwise attend to the needs of the vessel. Failure to do so may result in the vessel being deemed a hazardous vessel in accordance with Port ordinance and removed at Licensee's risk and expense. Licensee understands that this action is taken to protect the Port and does not imply any responsibility for storage on the part of the Port.

**Assignment, Transfer and Sub-Lease:** This license is not assignable, transferable to any other party. Licensee may replace vessel with another of like size but must notify the Port immediately of the vessel's particulars.

Licensee may change operators but must notify the Port within 5 days with the particulars of the operator, including name, address and telephone. Licensee must notify the Port within 10 days of the sale of the vessel and the vessel must be removed or the new owner must make application for a new license which may or may not be granted by the Port, at the Port's sole discretion.

**Moorage Renewal and Termination:** Vessels or personal property remaining on the Port's premises after the expiration of this license shall be deemed abandoned and subject to removal or sale by the Port. Port may, upon 30 days written notice cancel long term moorage licenses for repeated violations of Port ordinances, rules or regulations.

**Port's Rights Upon Non-payment or Abandonment:** Any vessel or personal property deemed to be abandoned for any of the reasons stated herein is subject to seizure by the Port. A vessel or personal property shall be deemed abandoned thirty (30) days from the due date of payment or the failure to renew and prepay the license. Port may chain, lock or remove the vessel or the personal property from its assigned location on the Port premises at its sole discretion and refuse access by Licensee to such property until all accounts are paid in full including the Port's costs of seizure, including attorney fees and other costs of collection. The Port shall not be responsible for any loss or damage to the vessel or personal property so seized during the entire time said vessel or personal property remains in the Port's possession. At any time following the date of seizure the Port's, in its sole discretion, may offer for sale to the highest bidder, upon public notice in accordance with the Port's ordinance, the vessel or property so seized.

**Change of Address:** Licensee is responsible to notify the Port of any change of mail or email address or change of telephone number. All billings will be deemed delivered when mailed to the address of record supplied by Licensee.

**Non-waiver and Jurisdiction:** The failure of the Port to enforce all or any part of this Agreement shall not constitute a waiver of any rights, including that which may have failed to enforce, the Port may have under this Agreement and it. This Agreement shall be construed under the laws of the State of Oregon.

## "Lessee" further agrees::

- No moorage will be allowed unless designated by the Port Manager or his representative. The right is reserved to refuse moorage if in the best interest of the "PORT".
- Departure from or cancellation of moorage or repair or storage yard space will not be recognized unless the "PORT" office is notified by the owner or operator and a record is made of same.
- Yearly moorage rates are described as paid in advance for one full year.
- All moorage rates will be paid according to overall length of "VESSEL" or length of finger dock, whichever is greater.
- Yearly moorage rates not renewed by full payment within thirty (30) days of due date become delinquent and automatically revert to the monthly rate charge.
- All rentals which are thirty (30) days past due shall accrue a late payment charge of \$1.00 or 1.5% (18.0% APR), which ever is greater.
- All rates and charges of any "PORT" facilities or services are considered on a NO REFUND basis.
- Personal subleasing of any "PORT" facilities is prohibited.
- Failure to pay for charges or misuse of "PORT" facilities may result in relinquishing all privileges or access to facilities and service of the Port of Brookings Harbor.
- The storage is a matter of license to use space rather than a bailment. "LESSEE" agrees to hold "PORT" harmless from any responsibility for preservation, security, or protection of items stored within the storage facility.
- No fabrication or repair of hull, wheelhouse cabin or deck gear.
- No sandblasting, welding or fiber glassing.
- No exterior painting of hull, cabin, deck gear or trailers.
- No storage of hazardous materials or chemicals.
- All items to be stored must be kept on board "VESSEL".
- No storage of miscellaneous gear will be allowed on the ground around "VESSEL". (Exception) Sailboat masts not attached to "VESSEL" may be stored adjacent to "VESSEL".
- No electrical service is available in storage yard without prior arrangements made with Harbormaster or Port Manager. Additional fees will be charged for this service.
- Moorage holder further agrees that before over the water "VESSEL" maintenance and repairs take place at the Port of Brookings Harbor, the "PORT" will be immediately contacted to ensure conformity with the State of Oregon Best Management Practices.

## Payment Plan

Name: Robert Nolan

Social Security Number: \_\_\_\_\_

DOB: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have you ever applied for/had a payment plan with Port of Brookings Harbor before? Yes ☐ No ☒

You must be 21 years of age or older to apply for a payment plan. Payment plans are made in either 3 or 4 consecutive installments. If payments are missed, the payment plan will be rendered void, and the remaining balance will be due immediately.

You will be sent an email with a link to set up an Experian Connect account, and share your credit information with the Port of Brookings Harbor. Since this is a soft inquiry (self inquiry) on your credit, there is no effect on your credit report or score. The cost of the credit check is \$14.95, and there are no subscription or hidden fees. There will be a finance charge and administrative fee totaling \$100.00 added to the total balance of every payment plan.

I authorize the Port of Brookings Harbor to obtain such credit reports and tenant screening reports as they, in their sole discretion, determine to be necessary.

Robert Nolan

Signed

Robert Nolan

Printed

4-29-16

Date

Approved / Not Approved Port of Brookings Harbor: \_\_\_\_\_



## PAYMENT PLAN

Date: 4/29/16 Account Number: \_\_\_\_\_

Account Name: Robert Nolan

Phone Number: \_\_\_\_\_

Space: SF-01 ID #: \_\_\_\_\_

Beginning Balance 820

Number of Payments 4

Payment Amount 208.08

Finance Charge 12.30 DS  
Posted

Total Due 832.30

[Signature]

Employee Signature

4/29/16  
Date

**PAID**

\$ 4/29/16 \$420.00

*I understand that I am responsible for the following payment plan schedule:*

<i>Date</i>	<i>Amount</i>
<u>5/1/16</u>	<u>208.08</u>
<u>6/1/16</u>	<u>208.08</u>
<u>7/1/16</u>	<u>208.08</u>
<u>8/1/16</u>	<u>208.08</u>

*I understand that if I fail to make two payments in a row, I will be taken off the payment plan and late fees will be reapplied to my account.*

[Signature]  
Customer Signature

4-29-16  
Date



Date  
1/9/2017

[www.portofbrookingsharbor.com](http://www.portofbrookingsharbor.com)

**For billing questions Call (541) 469-2218 ext 1004**

**TERMS:** Due upon receipt. A late charge of \$1.00 or 1.5% (18%Apr) whichever is greater will apply to past due amounts of \$1.00 or more.

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SOUTHERN OREGON CREDIT SERVICE INC.  
785 NE 7<sup>TH</sup> STREET  
GRANTS PASS, OR 97526  
541-479-9390  
541-472-4871 Fax

**AGENCY REQUEST TO START LEGAL**

Date of request: 3/13/17

Customer name: Robert Nolan

Date Assigned: 1/16/17

Date of last contact: Not returned any calls

Attempted Calls: 3                      Notices Mailed: 1

Last payment date: none    Amount:                      Current Balance: \$580.45

Reason for legal action: Owns property

Legal action being taken:

- ☐ Garnishment of Wages
- ☐ Bank Writ
- ☒ Judgment against Personal Property



Legal Action Approved



Legal Action Disapproved

4/29/16-Bought boat from John Coakley, also moved boat from slip CJ-11 to SF-01. DS

I called Mr. Nolan today regarding his delinquent account. He was very nice, but frustrated. He told me that after moving his boat to the Sport basin, after only a couple weeks, his boat was incredibly vandalized, to the extent that he pulled his boat out in a furious rage, never to return. He wanted to speak with a manager about his account.

11/14/2016 4:20:01 PM: sw

11/18/2016 10:07:14 AM: Skylar called Mr Nolan and transferred to me. I gave him the option of a payment plan or the account possibly going to collection agency. He thinks because his boat was vandalized he should not have to pay. I put together a payment plan and email to him. See attached.kb

11/18/2016 11:30:13 AM: Sent Robert Nolan Payment Plan Agreement 11-19-16.kb

12/13/2016 11:17:49 AM: Called and left message. Gave all information to Gary for okay to send demand letter.kb

12/15/16-Demand Letter sent by Skylar. Due date 12/31/16.kb

Sent to collections - Total amount \$450.97 Credit Memo#20170108. SW

1/9/2017 2:01:42 PM:

3/14/2017 1:48:45 PM: Received notification from agency "Southern Oregon Credit Service" to start legal proceedings against Robert Nolan for current balance of \$580.45. To management to get to the board for permission per contract.kb

SOUTHERN OREGON CREDIT SERVICE, INC.  
785 NE 7TH ST  
GRANTS PASS, OR 97526

DATE: 01-16-17

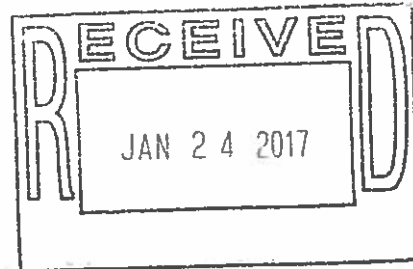
(541) 479-9390 FAX (541) 472-4871

We are pleased to acknowledge the accounts listed below for collection. Efforts have commenced on the date of this report. Please direct all contacts to our office, to limit the possibility of confusion. Our firm thanks you for the opportunity to service your accounts.

PORT OF BROOKINGS  
16408 LOWER HARBOR RD  
PO BOX 848  
BROOKINGS OR 97415

8130

DEBTOR NAME	ACCOUNT #	AMOUNT	DESK	DEBTOR #
NOLAN ROBERT		574.66	5	1536210



TOTAL NUMBER OF ACCOUNTS ASSIGNED:	1	AVERAGE AGE (DAYS):	77
TOTAL DOLLAR AMOUNT ASSIGNED:	574.66	AVERAGE AMOUNT:	574.66

Sincerely,

*Holly Natho*  
HOLLY NATHO  
CLIENT CONSULTANT

# DEMAND FOR PAYMENT OF DEBT

DATE: 12-15-16AMOUNT DUE IF PAID  
BY 12-31-16**AMOUNT DUE**  
\$ 450<sup>97</sup>

RESPONSIBLE PARTY:

Robert NolanAMOUNT DUE IF SENT  
TO COLLECTIONS**AMOUNT DUE**  
\$ 586<sup>26</sup>

PROVIDER OF SERVICE:

Port of Brookings HarborP.O. Box 848Brookings OR 97415CONTACT: Kim BoomPHONE: 541-469-2218 x 405

FAILURE TO PAY WITHIN 10 DAYS FROM THE ABOVE DATE WILL RESULT IN THIS ACCOUNT  
BEING ASSIGNED TO SOUTHERN OREGON CREDIT SERVICE FOR COLLECTION.

THIS NOTICE ORIGINATES FROM AND IS THE VEHICLE OF THE ABOVE NAMED PROVIDER  
AND NO OTHER AUTHORITY

**SENT TO****THERE WILL BE NO FURTHER NOTICE**

ENCLOSE THIS NOTICE WITH YOUR PAYMENT

**JAN 9 2017****COLLECTIONS**DATE OF  
LAST CHARGE 10/31/16DATE OF  
LAST PAYMENT 4/29/16DEBTOR'S  
PHONE # 541-660-2819DEBTOR'S  
EMPLOYERDATE OF  
BIRTH

SOC. SEC. #

SPOUSE'S  
NAME 541-761-0553SPOUSE'S  
DATE OF BIRTHSPOUSE'S  
SOC. SEC. #SPOUSE'S  
EMPLOYERADDITIONAL  
INFORMATION

## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Port Signage / Resolution No. 275*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Board of Commissioners approved Resolution No. 275, Exterior Sign Code, March 19, 1996 to establish a degree of uniformity in signage while allowing for individual creativity, thus promoting a visual environment which will be aesthetically pleasing and inviting to the consumer, enhance the natural attractiveness of the area and generate more activity for all the Port businesses.
- The Port has numerous signs, banners and sandwich boards that do not comply with the current Resolution No. 275, Exterior Sign Code.

### DOCUMENTS

- Photos of existing signs, banners, sandwich boards at the Port (12 photos).
- Resolution No. 275, Exterior Sign Code (9 pages).

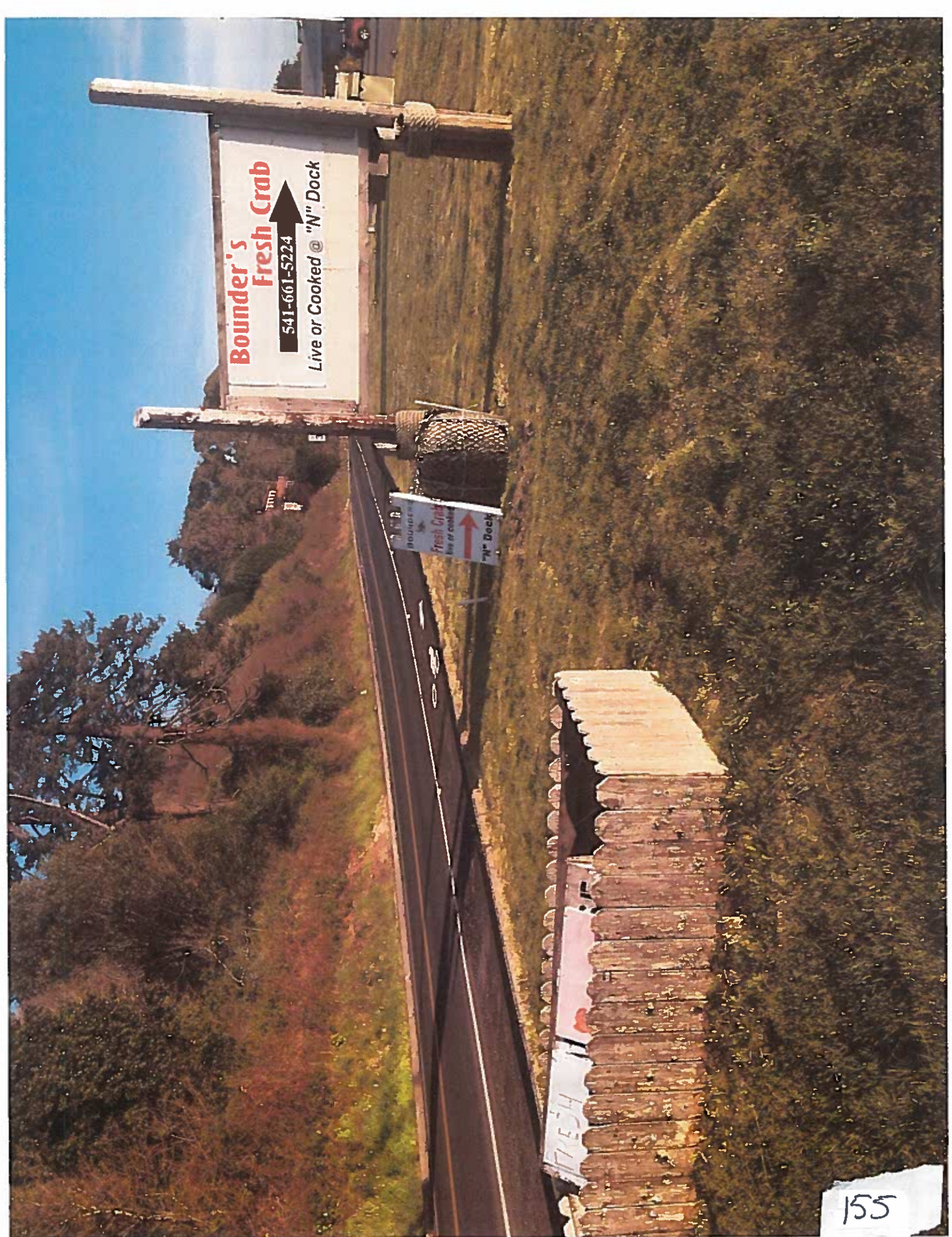
### COMMISSION ACTION

- Requesting Board approval to bring existing signs to code per Resolution No. 275.
- Requesting Board permission to update Ports billboard signs as funds allow or if tenants wish to pool together and fund for new approved billboard signs. Any new signage will be approved by the Board.

















GREAT  
FOOD

CANDY  
COFFEE

ICE CREAM  
ESPRESSO

TIDEWIND SPORTFISHING

541-469-0337

MAIL SERVICE • SPORTS RENTALS  
HAIR SALON • CHARTER SERVICE  
RV SERVICE

◀ **BOARDWALK** Shops

NO  
STOPPING  
FOR  
LOADING  
OR  
UNLOADING  
OF  
PASSENGERS  
OR  
FREIGHT

NO  
STOPPING  
FOR  
LOADING  
OR  
UNLOADING  
OF  
PASSENGERS  
OR  
FREIGHT





158









1600





1661





GREAT FOOD  
CANDY COFFEE  
ICE CREAM ESPRESSO

**TIDEWIND SPORTFISHING**  
541-469-0337

MAIL SERVICE SPORTS RENTALS  
HAIR SALON CHARTER SERVICE  
RV SERVICE

**BOARDWALK Shops** →

No  
Unleashed  
Trainers  
Overnight  
Parking by  
Permit Only

1602









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# MOUNTAIN VIEW CUSTOM CYCLES



AMERICAN V-TWIN

Sales • Service • Parts • Customization  
24 Hour Roadside Pickup • Fabrication

RESOLUTION NO. 275

A Resolution of the Port of Brookings Harbor  
the Exterior Sign Code

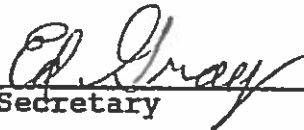
WHEREAS, the Port of Brookings Harbor Board of Commissioners has determined that a uniform exterior sign code is necessary to promote the safety, welfare, and aesthetic well-being of property owned by and rented by the Port of Brookings Harbor to various tenants,

NOW, THEREFORE, IT IS HEREBY RESOLVED:

That the Exterior Sign Code attached hereto and incorporated by reference herein, shall constitute the applicable law for the erection, maintenance, and removal of signs existing in connection with Port of Brookings Harbor real property.

ADOPTED by the Port of Brookings Harbor Board of Commissioners on the 19th day of March, 1996.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

# PORT OF BROOKINGS/HARBOR EXTERIOR SIGN CODE

## SECTIONS:

- 10 DEFINITIONS
- 20 PURPOSE
- 30 APPLICATION
- 40 THEME
- 50 CRITERIA
- 60 EXEMPT SIGNS
- 70 SIGNS EXPRESSLY PROHIBITED
- 80 NON CONFORMING SIGNS
- 90 TERMINATION OF SIGNS BY ABANDONMENT
- 100 VARIANCES
- 110 APPEALS

**10 DEFINITIONS.** The following definitions apply to material and subjects addressed specifically within.

**ALTER** - Any changes excluding content, and including but not limited to size, shape, method of illumination, position, location, materials, construction, or supporting of a sign.

**ARC** - Architectural Review Committee

**BENCH SIGN** - A sign placed on a bench and not attached to any building.

**BUSINESS** - A commercial or industrial enterprise.

**CONTINUOUS STRING DEVICES** - A series of flags, banners, pennants other devices designed to move in the wind, that are attached along a string, wire or cable.

**EXTERIOR SIGNS** - Signs that are attached to the exteriors of a building or to transparent surfaces such as glass doors or windows so as to be visible from outside the building, or any other sign visible from outside the building.

**FACADE** - The front of a building as determined by the customer entrance, from the ground or street level to the roof line or top of the marquee, whichever is higher.

**FIXED BALLOON** - Any lighter-than-air device attached by a rope or tether to a fixed place.

**FREE STANDING SIGN** - A sign erected on a frame or poles and not attached to any building.

**GRAPHICS** - Art work and/or lettering.

**LETTER BOARD** - See READER BOARD

**MARQUEE** - A non-movable roof-like structure which is self draining.

**NON CONFORMING SIGN** - All signs existing on the effective date of this code that do not conform with the provisions of this code.



**PILING** - A structure of pieces of timber or material having the appearance of timber, placed in the ground to carry a vertical load.

**PORT** - The Port of Brookings/Harbor and/or the Port commissioners, manager and designated representatives.

**PREMISES** - Leased property on which the business operates.

**PUBLIC AREA** - Any area designated for use by the port as a right-of-way, walkway, boardwalk, rest area, driveway, roadway, or other use that is intended to be clear of obstructions.

**READER BOARD** - A sign with changeable letters by either electronic or manual means.

**SANDWICH BOARD** - A one or two sided A frame type sign that is not fastened to the ground or any structure.

**SIGN** - Any notice or advertisement, pictorial or otherwise, including the supporting structure, used as an outdoor display for the purpose of advertising a business along with its goods and services.

**SIGNAGE** - Any sign or combination of signs used by a business.

**SIGN, PUBLIC** - A sign erected by a public officer or employee in the performance of a public duty which shall include, but not be limited to, motorist, informational signs and warning lights. Signs on public buildings and/or giving direction to public facilities.

**WALL GRAPHICS** - Included but not limited to any mosaic, mural or painting or graphic art technique or combination or grouping of mosaics, murals, or paintings or graphic art techniques, applied, implanted or placed directly onto a wall or fence.

**WIND SIGN OR DEVICE** - Any sign or device in the nature of banners, flags, balloons, or other object fastened in such a manner as to move upon being subject to pressure by wind or breeze.

**20 PURPOSE** The purpose of the sign code is to integrate the advertising needs of the businesses located at the Port of Brookings Harbor with the overall safety and aesthetic needs of the Port. The intent of the code is to establish a degree of uniformity in signage while allowing for individual creativity, thus promoting a visual environment which will be aesthetically pleasing and inviting to the consumer, enhance the natural attractiveness of the area and generate more activity for all of the Port businesses. The object of a sign is to identify the business name and type of product or service offered for sale. This code is further intended to encourage signs that:

- A. Protect the Port from sign clutter;
- B. Protect the public's ability to identify users and premises without confusion.
- C. Eliminate unnecessary distractions which may jeopardize pedestrian or vehicular traffic safety;
- D. Are as small in size and few in number as is consistent with their purpose of communicating identification and essential information;
- E. Protect the right of the public to be directed, warned, advised and informed;
- F. Possess a satisfactory aesthetic effect and pleasing elements of design that relate to the form, proportion, material, surface treatment and location; and
- G. Assure the maintenance of signs.

**30 APPLICATION.** For signs on any real property in which the Port owns an interest, a sign application must be approved before any sign (except those specifically exempted), is erected, placed, painted, constructed, carved or otherwise given public exposure. Sign applications shall be filed with the Port on an appropriate form in a manner prescribed by the Port. A sign approval shall be issued only after a determination by the Port that the proposed sign is in compliance with all provisions of this section. Each business requesting a sign pursuant to this document shall submit an application to the Port which shall include:

- A. A scale drawing of the proposed sign including dimensions of both the sign and the building or structure to which it will be affixed.
- B. A description of the materials and colors to be used in the construction of the sign.
- C. A drawing of the placement of the proposed sign at the business location.

**40 THEME.** The overall environment at the Port naturally promotes a nautical theme. All exterior signage therefore should carry out this theme by relating to the area of the Port of Brookings Harbor and its activities including but not limited to themes about the ocean, fishing, boating, or other seaport village activities.

**50 CRITERIA.** All signs shall be of a professional quality and be maintained to a professional appearance. Exterior signs must comply with the following regulations:

- A. **Materials:** The materials permitted for signs are wood, metal, polymer material, stained glass and ceramics. Paper and/or neon signs are not allowed as permanent exterior signs.
- B. **Graphics:** These shall be clear, legible, follow the Port theme and be of a professional quality.
- C. **Colors:** Colors of exterior signage must receive approval from the Port. Colors not recommended are fluorescent, day-glo type colors.
- D. **Size:** The area of a sign is determined by the area of the circle or rectangle required to contain it.

#### 1. Exterior Building Signs

- a. **Roof Mounted Signs.** No sign shall be placed on the top of the roof ridge of a building or on top of a facade or marquee. No part of any sign shall extend above the roof ridge or highest part of the roof. Roof signs must conform to criteria outlined in this code and shall be considered in the total signage allotment for a business.
- b. The size and total area of allowed front exterior signs shall be determined by the facade area of the building. Each building shall be allowed a total exterior signage area for the front equal to 10% of the facade area of the building. Exterior facade signage may not exceed a total of seventy (70) square feet regardless of the size of the facade.
- c. Each building may be allowed additional exterior signage area for the sides or rear of a building with Port approval. These additional signs shall not exceed 10% of the area of the side or rear of the building on which the sign is located. Exterior signage for the sides or rear of a building may not exceed a total of seventy (70) square feet regardless of the size of the sides or rear of the building.

d. The total exterior signage of any building, including the facade, roof, and any freestanding sign as may be approved, shall not exceed 140 square feet.

e. The total exterior signage area for a building shall not be affected by the number of businesses located in the building. The business owner or primary leaseholder, if the building is owned by the Port, is ultimately responsible for allocating this allowed area to the businesses located therein and for insuring compliance of signage limitations in the case of multiple businesses being located in a building.

f. All exterior building signs shall be flush-mounted parallel to or painted on the exterior wall of the building.

## **2. Free Standing Signs.**

a. Businesses abutting Lower Harbor Drive and Boat Basin Road may be allowed one (1) free standing sign identifying the business. This sign, if approved, must be located on the premises. Such sign shall not exceed 12 feet in height and shall be limited to a total area of 40 square feet per business and shall be considered part of the businesses total facade signage area. If both sides of a double sign are of the exact same design then only one side will be included in the area of that sign. The sign shall be mounted on at least one (1) pilings with two (2) to three (3) more non-supporting poles per side to make the sign resemble a dock piling. The sign shall be placed in a planter or landscaped area designated by the Port. The sign shall not project over any property line or project into a public area.

b. Light from a free standing sign shall be directed away from a residential area and any abutting street.

**3 Sandwich Board and A-frame Signs.** A temporary sandwich board or A-frame sign may be allowed for a period up to 90 days per year pursuant to review and approval of the Port Manager provided the following conditions are met:

a. Only one (1) such sign per applicant business may be allowed and shall not exceed two (2) feet in width and four (4) feet in height.

b. Each sign must be professionally made and must be kept clean and in good repair. Each sign must be sufficiently weighted at the bottom to prevent being toppled by the wind.

c. Signs shall be displayed only at such times as the business they are intended to identify is open for business. Signs are limited to displaying the business name/logo, "open" and description of the business type. Such signs shall not be placed in a public right of way.

**4. Decorative Banners.** Decorative banners and flags, excluding local, state or national flags, may be displayed only if they are not torn, faded, or frayed.

**5. Bench Signs** Bench signs in the Port shall be leased from the Port on benches and sign blanks provided by the Port at sites designated by the Port. Signs will not be permitted on boardwalk benches.

**6. Monument Signs.** For businesses not abutting Lower Harbor Drive, one (1) free standing monument sign may allowed for each cluster of up to four (4) businesses having a common parking area. Such sign shall not exceed 12 feet in height and shall be limited to a total area of 48 square feet, with no business having more than 12 square feet of sign area. The sign shall be mounted

between two (2) pilings with two (2) to three (3) more non-supporting poles per side to make the ends of the sign resemble a dock piling. The sign shall be placed in a planter or landscaped area designated by the Port. The sign shall not project over any property line or project into any public area. The site of such monument signs shall be chosen by the Port and such signs constructed by the Port to accommodate sign blanks of eight feet in length by 18 inches in height (8' x 18"). The Port will erect the structure for the signs and each business requesting to place a sign on the structure will be responsible to provide and maintain its sign. These signs shall not be included in calculating the total signage allotted each business.

7. Fixed Balloons. Upon application and approval by the Port, a business may display a fixed balloon for a period not to exceed 30 days per application.

**60 EXEMPT SIGNS.** The following signs and devices shall not be subject to the provisions of this code.

A. Memorial tablets, cornerstones, or similar plaques not exceeding six (6) square feet.

B. Temporary signs for events of a general port-wide civic benefit.

C. Temporary, non-illuminated real estate or construction signs provided that said signs are removed within 72 hours from sale, lease or rental of the property, or the completion of the construction project. The following standards shall apply to signs:

1. One (1) non-illuminated temporary sign 18 inches by 24 inches shall be permitted for the lease, rental, or sale of a property.

2. One (1) non-illuminated temporary sign 18 inches by 24 inches shall be permitted for the identification of the contractors working on the construction or remodeling of a building.

D. Temporary signs for new businesses, for a period not to exceed 30 days.

E. Paper signs that serve as a notice of a public meeting or event that shall be removed after such meeting is held.

F. Small informational signs related to the operation of a business, such as "open/closed" signs, credit card signs, rating or professional association signs, and signs of a similar nature, provided said signs do not exceed three (3) square feet in area per sign, and no more than four (4) in number for any individual business on any parcel of property, with no more than 9 square feet in total signage area for such signs per business.

G. Signs placed by state or federal governments for the purpose of identifying public works projects or publicly funded and/or sponsored projects, designed to fulfill the requirements of state or federal funding agencies.

H. Nameplates indicating the name, and/or address of the occupant of a moorage provided it does not exceed 72 square inches.

I. Interior signs not placed in the window or placed to be visible from outside of the building.

J. Wall Graphics or Murals that do not contain any reference to the business or its products, either expressly or by common association and is displayed purely for the enjoyment of the public can be granted an exemption from the requirements of this code if the art is approved by the Port after an

application has been submitted by the artist responsible before making the project. The Port encourages the use of tasteful art that promotes the theme of the Port of Brookings Harbor. In considering these applications, the ARC can rule on and set requirements on matters including but not limited to appropriateness of subject matter, location, scale, colors, quality and aesthetics.

K. Incidental signs displayed strictly for a direction, safety, or the convenience of the public, including but not limited to signs that identify restrooms, public telephones, parking area entrances and exits, rules pertaining to Port expectations are allowed, except that they will only be as large as necessary, uniform in design and graphic, and of a color in harmony with the surroundings and theme of the port; Individual signs in this category shall not exceed 3 square feet in area.

**70 SIGNS EXPRESSLY PROHIBITED.** The following signs and devices are expressly prohibited.

A. Sandwich board or "A" frame except as provided in Section 50 D.3. , banners, flags and pennants except as provided in Section 50 D.4., other portable signs of any nature, continuous string devices, and paper signs except as may be provided in section 60.

B. Billboards or off-premise advertising signs not erected by the Port, wind signs.

C. Signs which contain any flashing, blinking or moving letters, characters or other elements, rotating or otherwise movable signs.

D. Vehicle signs, except for standard advertising identification markings which are permanently or magnetically attached to or printed on a business or commercial vehicle.

E. Reader boards.

F. Political signs.

G. No signs, as provided in section 60 shall project into the public right-of-way to a distance of less than two (2) feet from the face of curb or in the case where no curb exists, no less than two (2) feet from the edge of the pavement, and no such projecting signs shall be installed to a height of less than seven (7) feet six (6) inches clearance from grade thereunder or top of the grade to the lowest point of said sign.

H. In no case shall any sign:

1. Be animated, audible, rotate or have intermittent or flashing illumination.

2. Be erected in a public easement or right-of-way.

3. Be erected so as to prevent free ingress to or egress from any door or window, or any other exit way required by the current edition of the Oregon State Structural Specialty Code and Fire and Life Safety Regulations, 1985 edition.

4. Be attached to any public utility pole, or structure, light pole, lamp, lamp post, tree, fire hydrant, bridge, curb, or sidewalk located on Port property.

5. Be attached to a stand pipe, gutter, drain, or fire escape, nor shall any sign be erected so as to impair access to the roof .



6. Be erected in any location where, by reason of its location will obstruct the view of any authorized traffic sign, signal, or other traffic control device. Nor may any sign, by reason of its shape, position or color, interfere with or be confused with any authorized traffic signal, sign or device. Further, no sign shall be erected in a location where it will obstruct vision of the public right-of-way to the vehicle operator during ingress to, egress from, or while traveling on, said public right-of-way.

7. Be painted on or attached to any fence, except as provided in section 60 I and L.

8. Operate or employ any stereopticon or motion picture projection or media in conjunction with any advertisements, or have visible moving parts or any portion of which moves or gives the illusion of motion except as otherwise provided in this code.

**80 NON CONFORMING SIGNS.** All signs existing on the effective date of this code and not conforming with the provisions of this section are deemed non conforming signs except as provided in Section 60.

A. No non conforming sign, except as provided in Section 80 B, shall be changed, expanded or altered in any manner which would increase the degree of its nonconformity, or be structurally altered to prolong its useful life, or be moved in whole or in part to any other location where it would remain non conforming.

B. All non conforming signs existing on the effective date of this code may remain in use for five (5) years under the following conditions:

1. Until the business for which it advertises has been abandoned in accordance with Section 100 below.

2. The sign remains in good operating condition.

3. The sign is not currently , or likely to become, a hazard to traffic, pedestrians or property.

C. Termination of Non conforming Signs.

1. Immediate termination. Non conforming signs which advertise a business no longer conducted or a product no longer sold on the premises where such sign is located shall be removed within 60 days after the effective date of this code, except as otherwise expressly permitted by this section. Termination of the nonconformity shall consist of removal of the sign or its alteration to eliminate fully all non conforming features.

2. Termination by damage or destruction. Any non conforming sign damaged or destroyed by any means, to the extent of one-third (1/3) of its replacement cost new shall be terminated and shall not be restored.

3. Any non conforming sign not terminated pursuant to any other provision of this code shall be removed within 5 years following adoption of this code.

#### **90 TERMINATION OF SIGNS BY ABANDONMENT.**

A. Any sign advertising or relating to a business on the premises on which it is located, which business is discontinued for a period of 90 consecutive days, regardless of any intent to resume or not to abandon

such use, shall be presumed to be abandoned and all such signage, whether conforming or non conforming to the provisions of this code shall be removed within said 90 days. If a conforming free standing sign the graphics only may be removed. Any period of such non continuance caused by government actions, strikes, materials shortages, or acts of God, and without any contributing fault by the business or user, shall not be considered in calculating the length of discontinuance for purposes of this subsection.

B. An extension of time for removal of signage of an abandoned business, not to exceed an additional 90 days, may be granted by the Port upon an appeal filed by the legal owner of the premises or the person in control of the business.

#### **100 VARIANCES.**

A. **GENERALLY.** When practical difficulties, unnecessary hardships or results inconsistent with the general intent and stated purpose of this ordinance occur by reason of the strict application of the standards set forth in these regulations, a sign variance may be requested by the legal owner of the premises or the person in control of the business.

B. **APPLICATION.** A request for a sign variance shall be made by submitting such request in writing to the Port, along with all supporting documentation pertinent to the situation, such as maps, photographs or sketches. The request for variance shall be set for review on the earliest available meeting date of the ARC. The hearing may be continued from time to time.

C. **REQUIRED FINDINGS.** The ARC must make the following findings in order to approve a sign variance:

1. The strict application of the standards contained in this sign ordinance deprive's the applicant's property of privileges enjoyed by other property owners in the same vicinity and under identical use classification due to special circumstances applicable to the property including size, shape, topography, location or surroundings; and
2. The variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity with the same use classifications as the subject property; and
3. The authorization of the variance shall not be materially detrimental to the purpose of this code, be injurious to property in the same zone or vicinity in which the property is located or be otherwise detrimental to the objectives of any Port development plan or policy; and
4. The variance request is the minimum variance from the provisions and standards of this code which will alleviate the hardship.

#### **110 APPEALS.**

A. Any person aggrieved by an action of the ARC, may make an appeal of that decision. Appeals of decisions made by the ARC shall be submitted in writing to the Port for review by the Port Commissioners. Decisions of the Port Commissioners are final.

# NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Re-Establishing Lease Rates and Lease Application Form*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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## BACKGROUND

- Hungry Clam, Zola's Pizzeria and J Sloane Hair Studio leases range from \$1.22 to \$1.25 per square foot.
- New and existing commercial retail tenants are in the range of \$1.05 per square foot.
- Hungry Clam, Zola's Pizzeria and J Sloane Hair Studio leases have expired.

## RECOMMENDATION

- Lower Hungry Clam, Zola's Pizzeria and J Sloane Hair Studio square footage rates to the entering rate of \$1.05 per square foot and apply 2.1% CPI increase to the \$1.05 rate for the new lease agreement. This will keep the disparity between long term and new tenants in line.
- Add wording to lease document, Section 8 Utilities and Services, "Water and sewer usage will be billed separately".
- Lease rates will be reviewed annually with all other rates within the port properties.
- Create application for new tenants.

## DOCUMENTS

- Draft application for potential new commercial retail tenants (3 pages).

## RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT LOWERING HUNGRY CLAM, ZOLA'S PIZZERIA AND J SLOANE HAIR STUDIO LEASES TO \$1.05 PLUS 2.1% CPI INCREASE FOR THE NEW LEASE AGREEMENTS.

**PORT OF BROOKINGS HARBOR  
APPLICATION FOR COMMERCIAL RETAIL SPACE**

**DRAFT**

**BUSINESS INFORMATION**

Legal Name of Business: \_\_\_\_\_

D/B/A: (if different from Legal Name) \_\_\_\_\_

Type of Organization:

☐ Proprietorship ☐ C-Corp. ☐ S-Corp. ☐ General Partnership ☐ Limited Partnership ☐ Non-Profit ☐ L.L.C. ☐ L.L.P.

Address (Main Office): \_\_\_\_\_  
Number Street City State Zip

Federal Tax ID#/Employer ID #: \_\_\_\_\_ Number of Employees: \_\_\_\_\_ Yrs in Business: \_\_\_\_\_

Description of Business: \_\_\_\_\_  
Briefly describe the product sold or service rendered by your business (e.g. restaurant, flower shop, etc.)

Gross Annual Revenue: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Emergency Contact Person: \_\_\_\_\_ Phone # (\_\_\_\_\_) \_\_\_\_\_

Business Phone # (\_\_\_\_\_) \_\_\_\_\_ Business Fax # (\_\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_ Website: \_\_\_\_\_

**COMMERCIAL RENTAL HISTORY**

Present Address: \_\_\_\_\_  
Number Street City State Zip

☐ Rent ☐ Own Rental/Mortgage Amount Paid Monthly \$ \_\_\_\_\_ From/To: \_\_\_\_\_

Reason for leaving: \_\_\_\_\_

Landlord Name/Mortgage Co. \_\_\_\_\_ Phone # (\_\_\_\_\_) \_\_\_\_\_

Previous Address: \_\_\_\_\_  
Number Street City State Zip

☐ Rent ☐ Own Rental/Mortgage Amount Paid Monthly \$ \_\_\_\_\_ From/To: \_\_\_\_\_

Reason for leaving: \_\_\_\_\_

Landlord Name/Mortgage Co. \_\_\_\_\_ Phone # (\_\_\_\_\_) \_\_\_\_\_

**BUSINESS FINANCIAL INFORMATION**

Primary Bank: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Bank Phone # (\_\_\_\_\_) \_\_\_\_\_ Bank Fax # (\_\_\_\_\_) \_\_\_\_\_

Type of Account: ☐ Checking ☐ Savings Checking Balance \$ \_\_\_\_\_ Savings Balance \$ \_\_\_\_\_

DRAFT

## CREDIT REFERENCES

Please list all business debt and corresponding payment information:

Creditor \_\_\_\_\_ Type of Business \_\_\_\_\_ Contact Person \_\_\_\_\_ Phone # \_\_\_\_\_  
( )

Address: \_\_\_\_\_  
Number Street City State Zip

Opening Balance: \$ \_\_\_\_\_ Outstanding Balance: \$ \_\_\_\_\_ PMT Amt: \$ \_\_\_\_\_

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Creditor \_\_\_\_\_ Type of Business \_\_\_\_\_ Contact Person \_\_\_\_\_ Phone # \_\_\_\_\_  
( )

Address: \_\_\_\_\_  
Number Street City State Zip

Opening Balance: \$ \_\_\_\_\_ Outstanding Balance: \$ \_\_\_\_\_ PMT Amt: \$ \_\_\_\_\_

-----  
Creditor \_\_\_\_\_ Type of Business \_\_\_\_\_ Contact Person \_\_\_\_\_ Phone # \_\_\_\_\_  
( )

Address: \_\_\_\_\_  
Number Street City State Zip

Opening Balance: \$ \_\_\_\_\_ Outstanding Balance: \$ \_\_\_\_\_ PMT Amt: \$ \_\_\_\_\_

## PRINCIPAL / OWNER / GUARANTOR INFORMATION

Name: \_\_\_\_\_ SS # \_\_\_\_\_ DOB: \_\_\_\_\_

Drivers License # \_\_\_\_\_ Title: \_\_\_\_\_ % of Ownership: \_\_\_\_\_

Employer: \_\_\_\_\_ Gross Income: \$ \_\_\_\_\_

Employer Phone # ( ) \_\_\_\_\_ Position: \_\_\_\_\_ Length of Employment: \_\_\_\_\_

Home Address: \_\_\_\_\_  
Number Street City State Zip

☐ Rent ☐ Own Rental/Mortgage Amount Paid Monthly \$ \_\_\_\_\_ How Long at this address: \_\_\_\_\_

-----  
Name: \_\_\_\_\_ SS # \_\_\_\_\_ DOB: \_\_\_\_\_

Drivers License # \_\_\_\_\_ Title: \_\_\_\_\_ % of Ownership: \_\_\_\_\_

Employer: \_\_\_\_\_ Gross Income: \$ \_\_\_\_\_

Employer Phone # ( ) \_\_\_\_\_ Position: \_\_\_\_\_ Length of Employment: \_\_\_\_\_

Home Address: \_\_\_\_\_  
Number Street City State Zip

☐ Rent ☐ Own Rental/Mortgage Amount Paid Monthly \$ \_\_\_\_\_ How Long at this address: \_\_\_\_\_

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**DRAFT**

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**CERTIFICATION AND AUTHORIZATION**

Port of Brookings Harbor or any firm acting on its behalf is hereby granted permission to perform a credit check on our company or and/or the individuals identified in this application. Further we understand that Port of Brookings Harbor may contact any of the references provided as part of this application.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Submit to:** Port of Brookings Harbor  
PO Box 848  
Brookings, OR 97415

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**OFFICE USE ONLY:**

Space Applying for: \_\_\_\_\_ Square Footage: \_\_\_\_\_

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## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *J Sloane Hair Studio, LLC Lease*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- J Sloane Hair Studio lease expired March 31, 2015 per Port records.
- Updating lease agreement to current standard lease format.
- Retail space is 835 square feet at \$1.072 per square foot.
- Lease is for three years with option for three additional years.
- Section 13 Insurance, is currently under review with Port Lawyer and CAL/OR Insurance to make sure the tenant and Port are covered per State law. This section could be updated before the meeting April 12, 2017.
- Section 8 Utilities and Service, added "Water and Sewer usage will be billed separately."

### DOCUMENTS

- Draft lease attached for review (19 pages).

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE LEASE AGREEMENT WITH J SLOANE HAIR STUDIO, LLC AS PRESENTED.

## COMMERCIAL LEASE AGREEMENT

DRAFT

This lease is made and entered into at Brookings, Oregon this 1st day of May 2017, by and between the **Port of Brookings Harbor** (the Landlord) and Tabitha Wilson (the Tenant) dba **J Sloane Hair Studio LLC**.

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 commercial retail space, as shown in Exhibit "A" and "B", attached hereto and incorporated herein by this reference (the "Leased Premises").

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

- a. Landlord hereby leases to Tenant approximately 835 square-feet of commercial retail space, (the Leased Premises, as shown in Exhibit A & B), located at 16340 Suite 105, Lower Harbor Road, Brookings, Oregon. The Leased Premises contains Eight Hundred Thirty-Five (835) square feet of retail commercial space. The Base Rental for the Leased Premises shall be as follows:

1. The rental rate for the retail commercial space shall be \$1.07 per month for a total of Eight Hundred Ninety-Five and 12/100 Dollars per month (\$895.12);

The initial term of this lease shall be for a term of three (3) years commencing April 1, 2017 and continuing through March 31, 2020.

The total Base Rental for the Leased Premises shall be Eight Hundred Ninety-Five and 12/100 Dollars (\$895.12) per month, as calculated above, payable on the first day of each month commencing April 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 three (3) 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.

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 \$895.12. 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 for hair and nail salon 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. **Equipment.** Tenant shall install in the Leased Premises only such equipment as is customary for the intended *use* and shall not overload the floors 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. Any air conditioning required because of heat generating equipment or special lighting installed by Tenant shall be installed and operated at Tenant's expense.
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. Water and Sewer usage will be billed separately. 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 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.
- c. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.
- d. 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.

- e. 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.

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.

- 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. **Parking**. Landlord reserves the right to reassign parking spaces provided to Tenant at any time during the period of this lease with thirty (30) days written notice to Tenant and Tenant's consent, which shall not be unreasonably withheld.
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

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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 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**

**J Sloane Hair Studio LLC,  
Tenant**

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

Name: Roy Davis

Title: Chairman

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_



EXHIBIT "A"

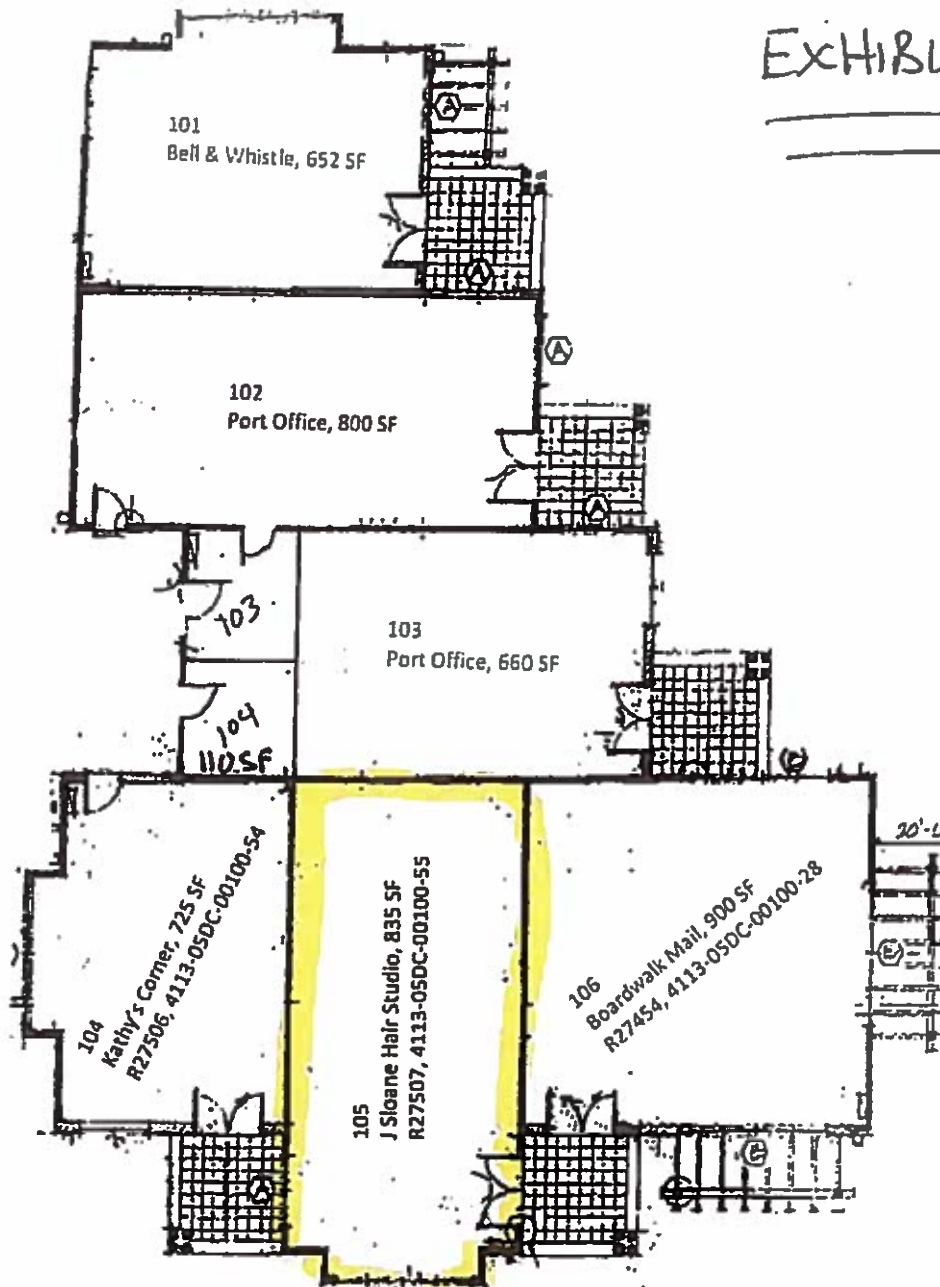


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EXHIBIT "B"

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Building 1  
16340 Lower Harbor Road

## NEW BUSINESS AGENDA ITEM

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**DATE:** April 12, 2017  
**RE:** Zola's Pizzeria Lease  
**TO:** Port of Brookings Harbor Board of Commissioners  
**ISSUED BY:** Gary Dehlinger, Port Manager

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### OVERVIEW

- Zola's Pizzeria lease expired January 31, 2016 per Port records.
- Updating lease agreement to current standard lease format.
- Retail space is 891 square feet at \$1.072 per square foot.
- Storage space is 324 square feet at \$0.30 per square foot.
- Outdoor Seating and Stage is 861 square feet at \$0.30 per square foot.
- Lease is for three years with option for three additional years.
- Section 13 Insurance, is currently under review with Port Lawyer and CAL/OR Insurance to make sure the tenant and Port are covered per State law. This section could be updated before the meeting April 12, 2017.
- Section 8 Utilities and Service, added "Water and Sewer usage will be billed separately."

### DOCUMENTS

- Draft lease attached for review (19 pages).

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE LEASE AGREEMENT WITH ZOLA'S PIZZERIA AS PRESENTED.

## COMMERCIAL LEASE AGREEMENT

**DRAFT**

This lease is made and entered into at Brookings, Oregon this 1st day of May 2017, by and between the **Port of Brookings Harbor** (the Landlord) and **Eian Savas** (the Tenant) dba Zola's Pizzeria.

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 retail building, outside storage for detached building area and outdoor seating and stage, as shown in Exhibit "A" and "B", attached hereto and incorporated herein by this reference (the "Leased Premises").

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

- a. Landlord hereby leases to Tenant approximately 2,076 square-feet of ground and building, (the Leased Premises, as shown in Exhibit A & B), located at 16362 Lower Harbor Road, Brookings, Oregon. The Leased Premises contains Eight Hundred Ninety-One (891) square feet of retail building, outdoor storage for detached buildings consisting of Three Hundred Twenty-Four (324) square feet and outdoor seating & stage consisting of Eight Hundred Sixty-One (861) square feet. The Base Rental for the Leased Premises shall be as follows:

1. The rental rate for the retail building shall be \$1.07 per month for a total of Nine Hundred Fifty-Five and 15/100 Dollars per month (\$955.15);
2. The rental rate for the outdoor storage for detached buildings shall be \$0.30 per month for a total of Ninety-Seven and 20/100 Dollars per month (\$97.20).
3. The rental rate for the outdoor seating and stage shall be \$0.30 per month for a total of Two Hundred Fifty-Eight and 30/100 Dollars per month (\$258.30).

The initial term of this lease shall be for a term of three (3) years commencing April 1, 2017 and continuing through March 31, 2020.

The total Base Rental for the Leased Premises shall be One Thousand Three Hundred Ten and 65/100 Dollars (\$1,310.65) per

month, as calculated above, payable on the first day of each month commencing April 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 three (3) 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.

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 \$1,310.65. 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 for restaurant purposes 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. **Equipment.** Tenant shall install in the Leased Premises only such equipment as is customary for the intended *use* and shall not overload the floors 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. Any air conditioning required because of heat generating equipment or special lighting installed by Tenant shall be installed and operated at Tenant's expense.
  
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. Water and Sewer usage will be billed separately. 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 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.
- c. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.

- d. 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.
- e. 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.

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.
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. **Parking.** Landlord reserves the right to reassign parking spaces provided to Tenant at any time during the period of this lease with thirty (30) days written notice to Tenant and Tenant's consent, which shall not be unreasonably withheld.
- 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 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.

CRAFT

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**

**ZOLA'S PIZZERIA,**  
**Tenant**

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

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

Name: Roy Davis

Name: \_\_\_\_\_

Title: Chairman

Title: \_\_\_\_\_

Mailing Address:

\_\_\_\_\_

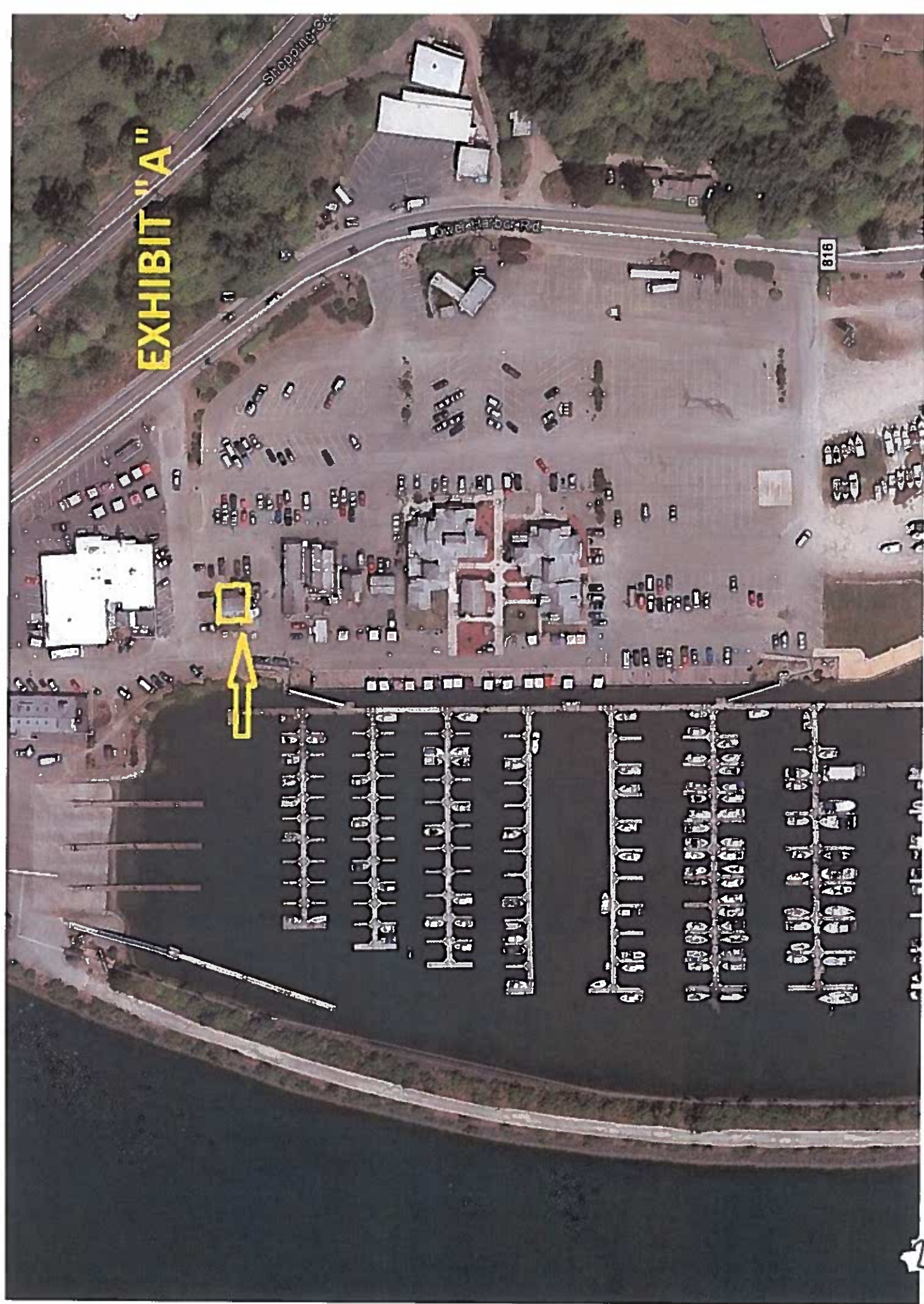
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Phone \_\_\_\_\_



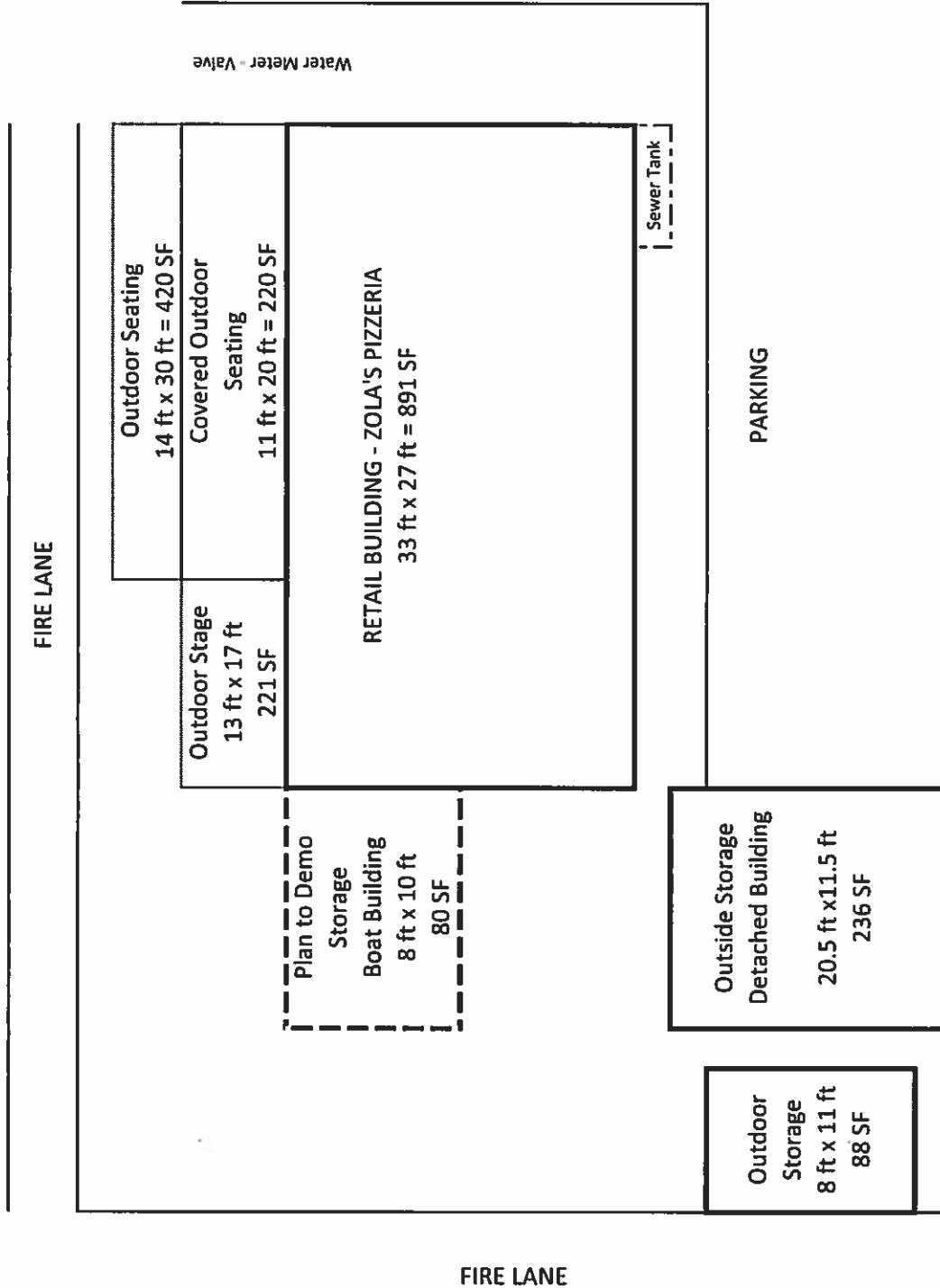
EXHIBIT "A"

DRAFT





16362 Lower Harbor Road



Retail Building = 891 SF  
Outdoor Seating and Stage = 861 SF  
Outdoor Storage = 324 SF

218

DRAFT

## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Whales Tail Candy & Gifts Lease*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Whales Tail Candy & Gifts lease expired February 28, 2016.
- Updating lease agreement to current standard lease format.
- Retail space is 872 square feet at \$1.07 per square foot.
- Lease is for one year with option for one additional year.
- Section 13 Insurance, is currently under review with Port Lawyer and CAL/OR Insurance to make sure the tenant and Port are covered per State law. This section could be updated before the meeting April 12, 2017.
- Section 8 Utilities and Service, added "Water and Sewer usage will be billed separately."

### DOCUMENTS

- Draft lease attached for your review (18 pages).

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE LEASE AGREEMENT WITH WHALES TAIL CANDY & GIFTS AS PRESENTED.

DRAFT

## COMMERCIAL LEASE AGREEMENT

This lease is made and entered into at Brookings, Oregon this 1st day of May 2017, by and between the **Port of Brookings Harbor** (the Landlord) and **Becky Hannen** (the Tenant) dba **Whales Tail Candy & Gifts**.

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 retail building space, as shown in Exhibit "A" and "B", attached hereto and incorporated herein by this reference (the "Leased Premises").

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

- a. Landlord hereby leases to Tenant approximately 872 square-feet of building, (the Leased Premises, as shown in Exhibit A & B), located at 16350 Lower Harbor Road Space #204, Brookings, Oregon. The Leased Premises contains Eight Hundred Seventy-Two (872) square feet of retail building space. The Base Rental for the Leased Premises shall be as follows:
  1. The rental rate for the retail building shall be \$1.07 per month for a total of Nine Hundred Thirty-Three and 04/100 Dollars per month (\$933.04);

The initial term of this lease shall be for a term of one (1) year commencing May 1, 2017 and continuing through April 30, 2018.

The total Base Rental for the Leased Premises shall be Nine Hundred Thirty-Three and 04/100 Dollars (\$933.04) per month, as calculated above, payable on the first day of each month commencing May 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 one (1) 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.

- 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 \$933.04. 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 for retail 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. **Equipment.** Tenant shall install in the Leased Premises only such equipment as is customary for the intended *use* and shall not overload the floors 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. Any air conditioning required because of heat generating equipment or special lighting installed by Tenant shall be installed and operated at Tenant's expense.
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. Water and Sewer usage will be billed separately. 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 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.
- c. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.
- d. 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.
- e. 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 lease 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 sued 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.
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.
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. **Parking.** Landlord reserves the right to reassign parking spaces provided to Tenant at any time during the period of this lease with thirty (30) days written notice to Tenant and Tenant's consent, which shall not be unreasonably withheld.
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 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**

**Whales Tail Candy & Gifts,  
Tenant**

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

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

Name: Roy Davis

Name: \_\_\_\_\_

Title: Chairman

Title: \_\_\_\_\_

Mailing Address:

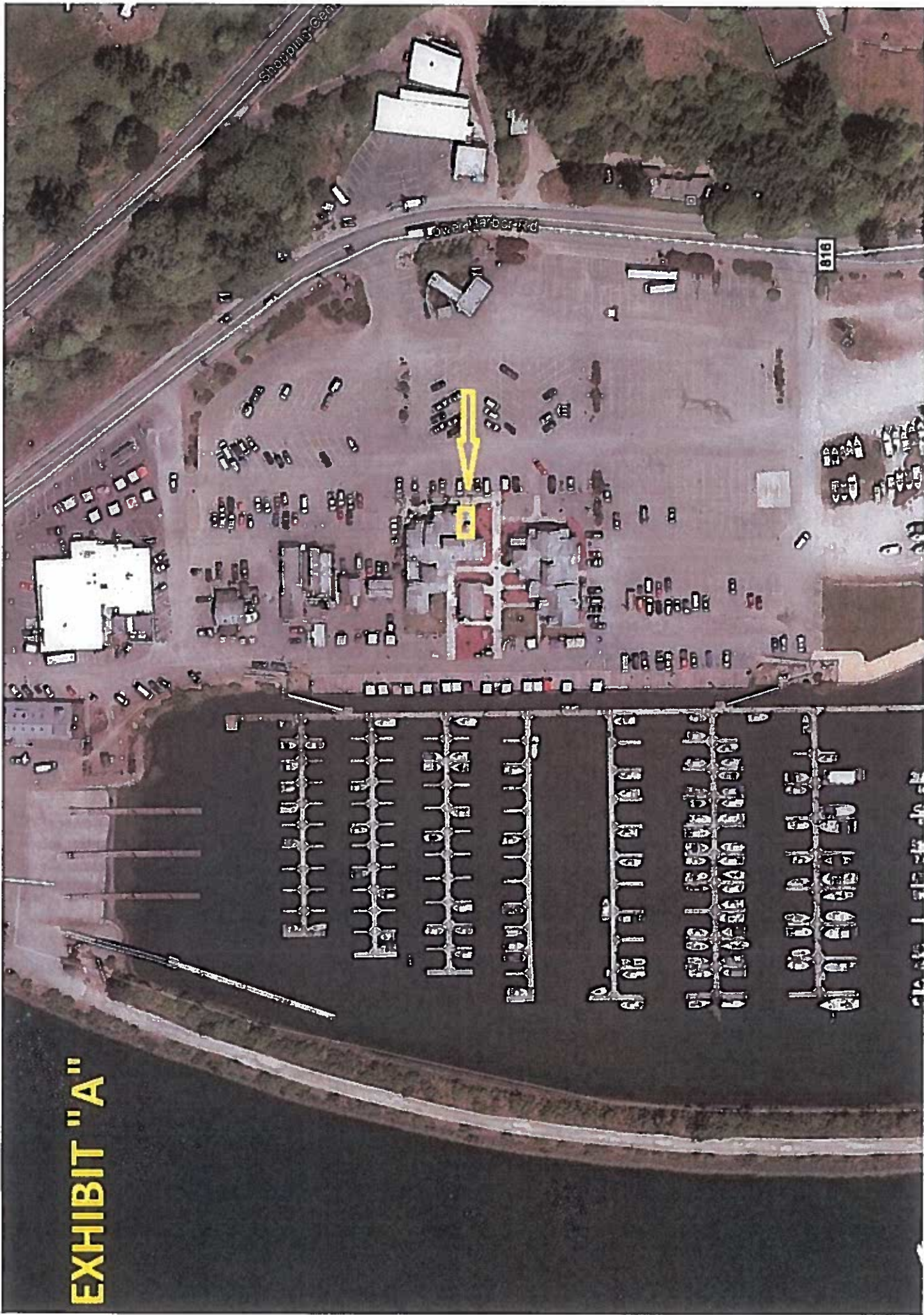
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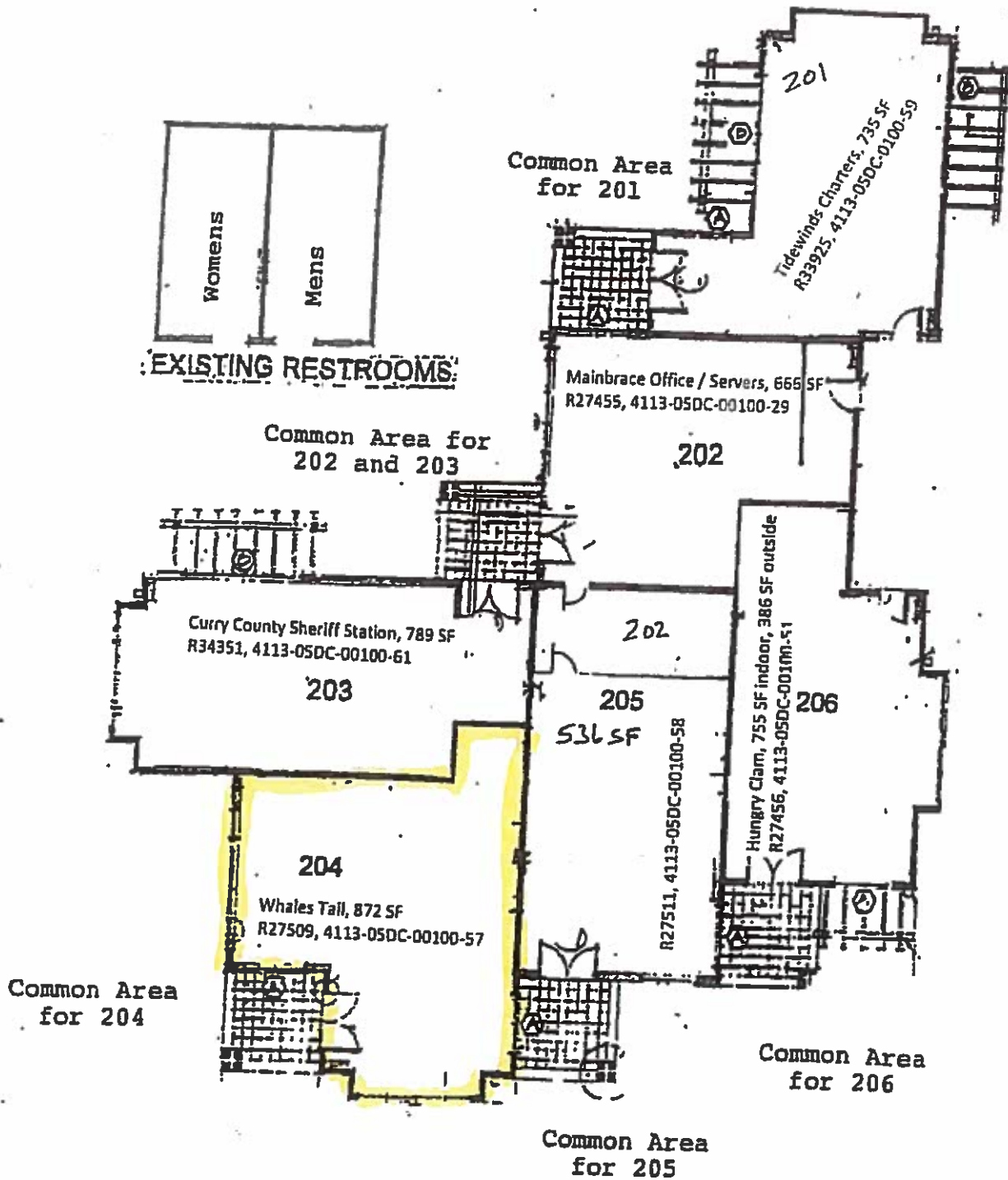
EXHIBIT "A"



DRAFT

EXHIBIT "B"

DRAFT



Building 2  
16350 Lower Harbor Road



## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Kathy's Corner Market Lease*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Kathy's Corner Market lease expired January 31, 2015.
- Updating lease agreement to current standard lease format.
- Retail space is 703 square feet at \$1.072 per square foot.
- Lease is for one year with option for one additional year.
- Section 13 Insurance, is currently under review with Port Lawyer and CAL/OR Insurance to make sure the tenant and Port are covered per State law. This section could be updated before the meeting April 12, 2017.
- Section 8 Utilities and Service, added "Water and Sewer usage will be billed separately."

### DOCUMENTS

- Draft lease attached for your review (18 pages).

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE LEASE AGREEMENT WITH KATHY'S CORNER MARKET AS PRESENTED.

DRAFT

## COMMERCIAL LEASE AGREEMENT

This lease is made and entered into at Brookings, Oregon this 1st day of May 2017, by and between the **Port of Brookings Harbor** (the Landlord) and **Scott Mathey** (the Tenant) dba **Kathy's Corner Market**.

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 retail building space, as shown in Exhibit "A" and "B", attached hereto and incorporated herein by this reference (the "Leased Premises").

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

- a. Landlord hereby leases to Tenant approximately 703 square-feet of building, (the Leased Premises, as shown in Exhibit A & B), located at 16340 Lower Harbor Road Space #104, Brookings, Oregon. The Leased Premises contains Eight Hundred Thirty-Five (835) square feet of retail building space. The Base Rental for the Leased Premises shall be as follows:
  1. The rental rate for the retail building shall be \$1.07 per month for a total of Seven Hundred Fifty-Three and 62/100 Dollars per month (\$753.62);

The initial term of this lease shall be for a term of one (1) year commencing May 1, 2017 and continuing through April 30, 2018.

The total Base Rental for the Leased Premises shall be Seven Hundred Fifty-Three and 62/100 Dollars (\$753.62) per month, as calculated above, payable on the first day of each month commencing May 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 one (1) 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.

- 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 \$753.62. 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 for retail 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. **Equipment.** Tenant shall install in the Leased Premises only such equipment as is customary for the intended *use* and shall not overload the floors 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. Any air conditioning required because of heat generating equipment or special lighting installed by Tenant shall be installed and operated at Tenant's expense.
  
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. Water and Sewer usage will be billed separately. 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 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.
- c. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.
- d. 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.
- e. 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 lease 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 sued 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.
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.
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. **Parking.** Landlord reserves the right to reassign parking spaces provided to Tenant at any time during the period of this lease with thirty (30) days written notice to Tenant and Tenant's consent, which shall not be unreasonably withheld.
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 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**

**Kathy's Corner Market,  
Tenant**

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

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

Name: Roy Davis

Name: \_\_\_\_\_

Title: Chairman

Title: \_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_



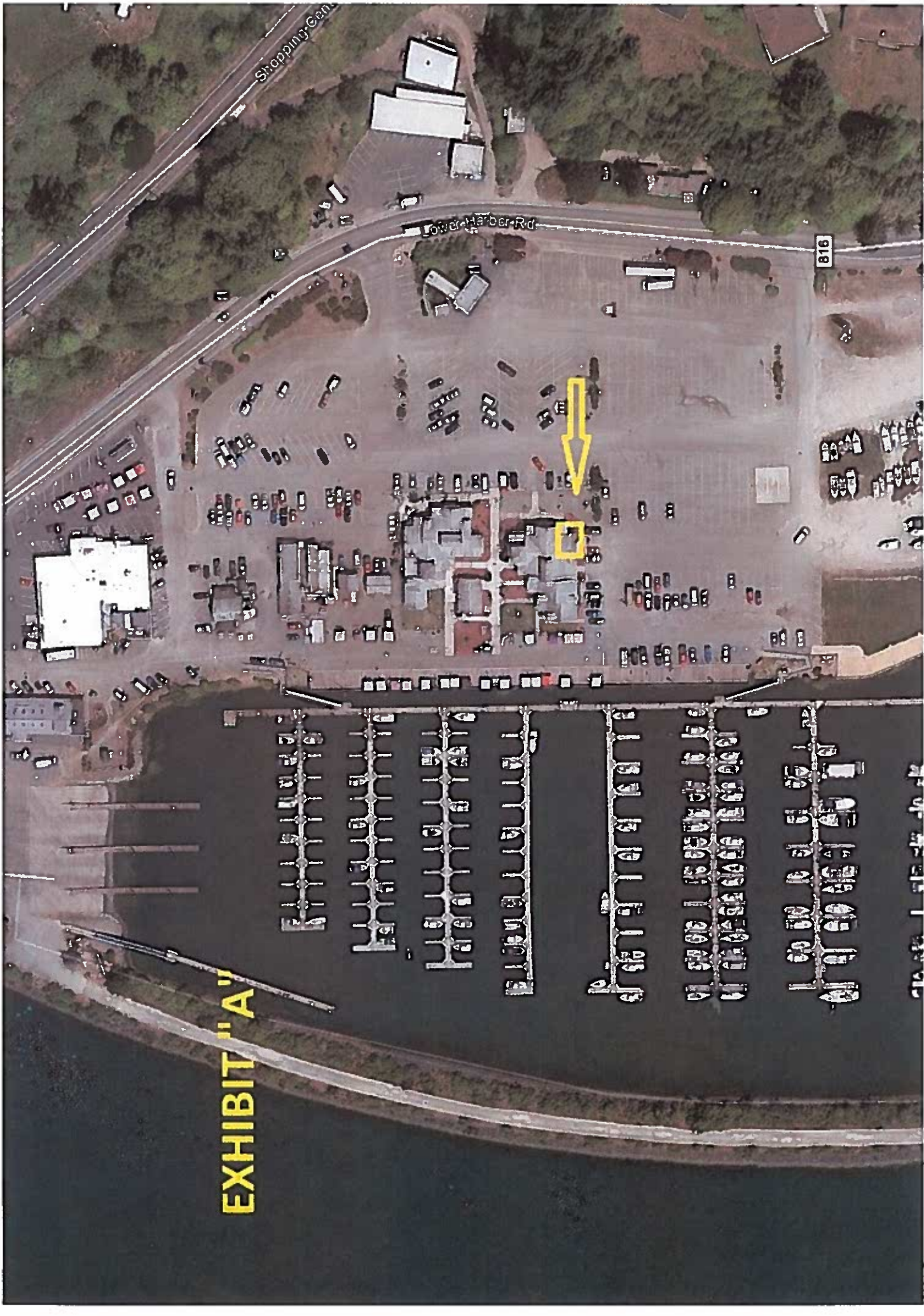
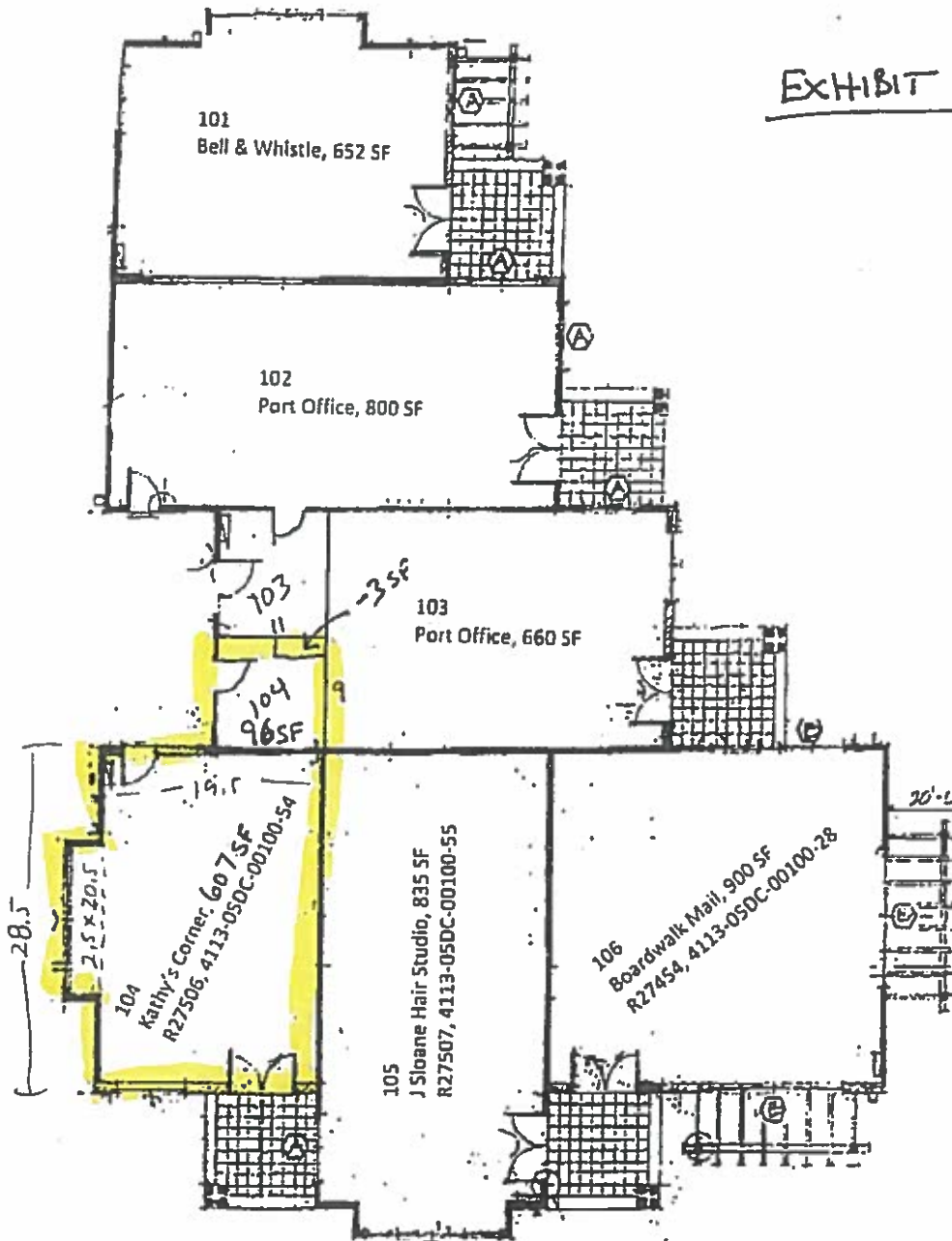


EXHIBIT "A"

DRAFT

EXHIBIT "B"

DRAFT



Building 1  
16340 Lower Harbor Road

## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Robert and Marilyn Busch Lease*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Robert and Marilyn lease expired July 31, 2015.
- Lease parking lot is 3,168 square feet at current rate of \$0.045 per square foot.
- Lease is for ten years with option for one additional ten years.

### DOCUMENTS

- Letter from Bob and Marilyn Busch dated March 28, 2017 (1 page)
- 2005 lease agreement with Port (15 pages)

### COMMISSION ACTION

- Does the Board accept Bob and Marilyn Busch letter dated March 28, 2017 to extend the lease another 10 years and first right of refusal if Port decides to sell the leased land?
- Continue month-to-month lease and wait for the appraisal to come in and possibly sell the property and no renewal lease.
- If the Board does not accept the letter, new lease will need to be negotiated.
- If the Board accepts the letter, I would recommend that a commission member make a MOTION TO ACCEPT THE LEASE EXTENSION WITH ROBERT AND MARILYN BUSCH AS PRESENTED.



**Bob and Marilyn Busch  
97832 S Bank Chetco River Rd.  
Brookings, OR 97415  
541-469-9354  
541-469-2903 FAX  
marilynbuschrealty@gmail.com**



**March 28, 2017**

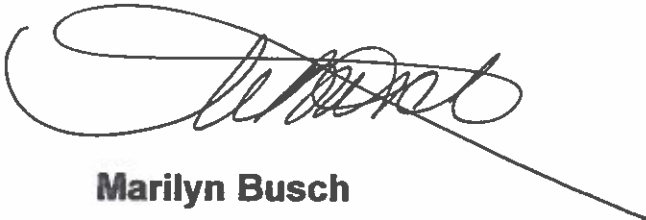
**Gary Dehlinger, Manager  
Port of Brookings Harbor  
Box 848  
Brookings, OR 97415**

**Dear Gary:**

**I am writing regarding the parking lot we lease from the Port.**

**We would like to exercise our option to renew our lease for another 10 years, per the terms of our lease. We were never notified prior to the lease expiring. We also request a First Right of Refusal for purchasing the property. If the property is ever available for sale, we are interested in purchasing it.**

**Thank you and sincerely,**



**Marilyn Busch**

## COMMERCIAL PARKING LEASE

DATED: July 19, 2005

BETWEEN: Port of Brookings Harbor,  
A Municipal Corporation  
of the state of Oregon  
P. O. Box 848  
Brookings, OR 97415

LANDLORD

AND: Robert & Marilyn Busch  
P. O. Box 222  
Arcata, CA 95518-0222

TENANT

Landlord leases to Tenant the following described property on the terms and conditions stated below:

See Exhibit A and B, attached hereto.

### SECTION 1. OCCUPANCY

**1.1 Original Term.** The term of this lease shall commence August 1, 2005 and continue through July 31, 2015.

**1.2 Possession.** Tenant's right to possession and obligations under the lease shall commence on August 1, 2005.

**1.3 Renewal Option.** If the lease is not then in default, Tenant shall have the option to renew this lease for one successive term of ten years.

### SECTION 2. RENT

**2.1 Basic Rent.** Tenant shall pay to Landlord as rent the sum of \$74.59 per month [1,989 sq. ft. @ \$.0375/sq. ft. (\$.45/sq. ft. per year)]. Rent shall be payable on the first day of each month in advance at such place as may be designated by Landlord except that rent for the first and last months has been paid upon the execution of this lease, and Landlord acknowledges receipt of this sum.

**2.2 Additional Rent.** All taxes and insurance costs which Tenant is required to pay by this lease, and any other sum which Tenant is required to pay to Landlord or third parties shall be additional rent.

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## 2.3 Escalation.

The base rent provided for in section 2.1 shall be subject to adjustment at the commencement of the second year of term, August 1, 2006, and yearly thereafter ("the adjustment date") as follows:

The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month or date nearest the date of the commencement of the term. In no case shall the minimum monthly rent be less than the minimum monthly rent set forth in section 2.1.

## SECTION 3.

Landlord is not by virtue of this section a partner or joint venturer with Tenant in connection with the business carried on under this lease, and shall have no obligation with respect to Tenant's debts or other liabilities, and no interest in Tenant's profits.

## SECTION 4. USE OF THE PREMISES

**4.1 Permitted Use.** The premises shall be used for parking by patrons and employees of the Busch adjoining property and for no other purpose. Any unpermitted use shall constitute a material default in this lease. Non-permanent (moveable) structures are permitted if they do not protrude more than 3' into the parking area and do not interfere with parking configuration.

**4.2 Restrictions on Use.** In connection with use of the premises Tenant shall;

(a) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, including but not limited to those of the Port, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

(b) Refrain from any activity which would make it impossible to insure the premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau or its successor allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(c) Refrain from any use which would be reasonably offensive to other tenants or owners or users of neighboring premises or which would tend to create a nuisance or damage the reputation of the premises.

## SECTION 5.

Tenant will install blacktop at the time of building construction. Plans for the parking facility, and all amendments thereto, must be approved by a licensed architect

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QES 7/26/05

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or engineer at Tenant's expense, and by Landlord's board of commissioners or their designees. Construction of the facility shall be in accordance with all applicable laws of whatever nature, and in accordance with all applicable codes. All developmental fees, real property assessments or special assessments imposed against the property shall be paid promptly by Tenant.

Tenant shall pay all architects, engineers, landscapers, material men, contractors, and subcontractors in connection with the work done in connection with the property. Tenant shall permit no liens to be placed against the property. Tenant shall purchase a performance bond in an amount to be approved by Landlord to insure completion of the facility.

## **SECTION 6. REPAIRS AND MAINTENANCE**

**6.1 Tenant's Obligations.** Tenant shall keep the leased premises in good repair and condition at all times.

## **SECTION 7. EXISTING ENCUMBRANCES AND USES**

**7.1. Easements.** Tenant acknowledges there are preexisting easements to which the leased premises are subject. Tenant assumes responsibility for ascertaining the existence of, and the location of such easements. Such easements may include, but are not limited to, easements for culverts, basin water intrusion, and utilities. Tenant agrees that Landlord shall have no responsibility for the maintenance of the easements or installations in connection therewith. Tenant agrees that there shall be no abatement of rent nor any claim against Landlord for inconvenience or disturbance resulting from the activities of Landlord or third parties in maintaining the easements.

**7.2 Landlord's Interference with Tenant.** Any repairs, replacements, alterations, or other work performed on or around the lease premises by Landlord shall be done in such a way as to interfere as little as reasonably possible with use of the premises by Tenant. Tenant shall have no right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision, or with repairs conducted by easement holders on the premises.

**7.3 Reimbursement for Repairs Assumed.** If Tenant fails or refuses to make repairs which are required by section 6, landlord may make the repairs and charge actual costs of repairs to tenant. Such expenditures by Landlord shall be reimbursed by Tenant on demand together with interest at the rate of 12 percent per annum from the date of expenditure by Landlord.

**7.4 Inspection of Premises.** Landlord shall have the right to inspect the premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant notice in writing of the repairs that are required.

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## SECTION 8. ALTERATIONS

**8.1 Alterations Prohibited.** Except as specified herein, Tenant shall make no improvements or alterations on the leased premises of any kind without first obtaining Landlord's written consent.

**8.2 Ownership of Alterations.** All improvements and alterations performed on the leased premises by either Landlord or Tenant shall be the property of this lease upon termination unless the applicable Landlord's consent or work sheet specifically provides otherwise.

## SECTION 9. INSURANCE

**9.1 Insurance Required.** Tenant shall keep the leased premises insured at Tenant's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall bear the expense of any insurance insuring the property of Tenant on the premises against such risks.

**9.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss neither party's insurance company shall have a subrogated claim against the other.

## SECTION 10. TAXES

**10.1 Property Taxes.** Tenant shall pay as due all taxes on its personal property located on the leased premises. Tenant shall pay as due all general real property taxes and special assessments levied against the leased premises.

**10.2 Special Assessment.** If an assessment for a public improvement is made against the leased premises, Landlord may elect to cause such assessment to be paid in installments in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of paragraph 7.1.

**10.3 Contest of Taxes.** Tenant shall be permitted to contest the amount of any tax or assessment so long as such contest is conducted in a manner which does not cause any risk that Landlord's interest in the leased premises will be foreclosed for nonpayment.

**10.4 Proration of Taxes.** Tenant's share of real property taxes and assessments for the years in which this lease commences or terminates shall be prorated based upon the portion of the tax year that this lease is in effect.

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## SECTION 11. DAMAGE AND DESTRUCTION

**11.1 Partial Damage.** If the leased premises are damaged or destroyed, the property shall be repaired by Tenant at Tenant's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Tenant.

## SECTION 12. EMINENT DOMAIN

**12.1 Partial Taking.** If a portion of the leased premises is condemned, the lease shall continue on the following terms:

(a) Landlord and Tenant shall be entitled to the proceeds of condemnation as their interest may appear.

(b) Tenant shall proceed as soon as reasonably possible to make such repairs and alterations to the premises as are necessary to restore the remaining premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

(c) After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Tenant to restore the balance of the property in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the leased premises as an economic unit on account of the partial taking. If the parties are unable to agree upon the amount of the reduction of rent, the amount shall be determined by arbitration in the manner as is provided in Section 18.

(d) If a portion of Landlord's property not included in the leased premises is taken and severance damages are awarded on account of the leased premises, or an award is made for detriment to the leased premises as a result of activity by a public body not involving a physical taking of any portion of the premises, this shall be regarded as a partial condemnation, and the rent shall be reduced to the extent of reduction in rental value of the premises as though a portion had been physically taken.

**12.2 Total Taking.** If a condemning authority takes all of the leased premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use which Tenant was then making of the premises, the lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination under paragraph 12 above. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

**12.3 Sale in Lieu of Condemnation.** Sale of all or part of the leased premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 10 as a condemnation.

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## SECTION 13. LIABILITY AND INDEMNITY

### 13.1 Liens.

(a) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the leased premises and shall keep the premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 15 percent per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy, which Landlord may have on account of Tenant's default.

(b) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**13.2 Indemnification.** Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant on the leased premises or any condition of the leased premises in the possession or under the control of Tenant. Landlord shall have no liability to Tenant for any loss or damage caused by third parties or by any condition of the premises.

**13.3 Liability Insurance.** Before going into possession of the premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry the following insurance at Tenant's cost: public liability and property damage insurance in a responsible company with limits of not less than \$1,000,000 for injury to one person, \$1,000,000 for injury to two or more persons in one occurrence, and \$1,000,000 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the leased premises shall protect Landlord against the claims of Tenant on account of the obligations assumed by Tenant under this contract, and shall protect Landlord and Tenant against claims of third persons. Certificates evidencing such insurance and bearing endorsements requiring 10 days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property. The Certificate of Insurance shall list the Landlord as an **Additional Insured** with regards to any and all activities emanating out of the use of the premises by the Tenant.

## SECTION 14, QUIET ENJOYMENT; MORTGAGE PRIORITY

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**14.1 Landlord's Warranty.** Landlord warrants that it is the owner of the leased premises and has the right to lease them. Tenant is responsible for ascertaining the encumbrances and easements relating to the leased property. Subject to these exceptions, Landlord will defend Tenant's right to quiet enjoyment of the leased premises from the lawful claims of all persons during the lease term.

## **SECTION 15. ASSIGNMENT AND SUBLEASE**

No part of the leased property may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord. This provision shall apply to all transfers by operation of law. If Tenant is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation. No consent in one instance shall prevent the provision from applying to a subsequent instance. Landlord shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances. In determining whether to consent to assignment Landlord may consider the following factors: financial ability of assignee; business experience of assignee; general reputation in the community of assignee; prior relations between the assignee and landlord, and the consideration of the best interest of the public in the sole discretion of landlord.

## **SECTION 16. DEFAULT**

The following shall be events of default:

**16.1 Default in Rent.** Failure of Tenant to pay any rent or other charge within 10 days after it is due.

**16.2 Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**16.3 Insolvency.** Insolvency of Tenant: an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days. If Tenant consists of two or more individuals or business entities the events of default specified in this paragraph 14.3 shall apply to each individual unless within 10 days after an event of default occurs the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has

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been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

## **SECTION 17. REMEDIES ON DEFAULT**

### **17.1 Termination.** In the event of a default the lease may be terminated

at the option of Landlord by notice in writing to Tenant. If the lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default. If the lease is terminated, Tenant's liability to Landlord for damages shall survive such termination, and Landlord may reenter, take possession of the 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.

**17.2 Reletting.** Following reentry or abandonment, Landlord may relet the premises and in that connection may make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the premises, or to any tenant which Landlord may reasonably consider objectionable. Landlord may relet all or part of the premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

**17.3 Damages.** In the event of termination on default Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the least term, the following amount as damages:

(a) The loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured.

(b) The reasonable costs of re-entry and re-letting including without limitation the cost of any clean up, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned by Tenant's failure to quit the premises upon termination and to leave them in the required condition, any remodeling costs, attorney fees, court costs, broker commissions, and advertising costs.

(c) Any excess of the value of the rent and all of Tenant's other obligations under this lease over the reasonable expected return from the premises for the period commencing on the earlier of the date of trial or the date the premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

**17.4 Right to Sue More Than Once.** Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

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**17.5 Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

## **SECTION 18. SURRENDER AT EXPIRATION**

**18.1 Condition of Premises.** Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver possession to Landlord and surrender the leased premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which Tenant is responsible shall be corrected to the latest practical date prior to such surrender, unless the Landlord requests otherwise.

### **18.2 Holdover.**

(a) If Tenant does not vacate the leased premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures which Tenant is required to remove under this lease shall constitute a failure to vacate to which this paragraph shall apply if the property not removed will substantially interfere with occupancy of the premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(b) If a month-to-month tenancy results from a holdover by Tenant, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 10 days prior to the termination date which shall be specified in the notice. Tenant waives any notice, which would otherwise be provided by law with respect to a month-to-month tenancy.

## **SECTION 19. MISCELLANEOUS**

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

**19.2 Attorney Fees.** If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees.

**19.3 Notices.** Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

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**19.4 Succession.** Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

**19.5 Landlord's Right to Cure Defaults.** If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 12 percent annum from the date of expenditure by Landlord.

**19.6 Construction.** Both Landlord and Tenant have had opportunity for this lease to be reviewed by legal counsel. By agreement of the parties, therefore, the rule of construction of ambiguities against the drafter shall not be applicable to this lease.

**19.7 Entry For Inspection.** Landlord shall have the right to enter upon the premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the premises, or to show the premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this lease, to place and maintain upon the premises notices for leasing or selling of the premises.

**19.8 Interest On Rent And Other Charges.** Any rent or other payment required of Tenant by this lease shall, if not paid within 10 days after it is due, bear interest at the maximum legal rate from the due date until paid.

**19.9 Proration Of Rent.** In the event of commencement or termination of this lease at a time other than the beginning or end of one of the specified rental period, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

**19.10 Clause Paramount.** For all claims, demands, suits, actions and proceedings against the Port, of every kind and nature, including without limitation, those sounding in contract or tort or for the breach of warranty, the laws of the State of Oregon shall be, without exception or limitation, binding and controlling law, and damages shall not exceed the amounts set forth in the Oregon Tort Claims Act. Any and all suits, actions and proceedings, of every kind and nature whatsoever, against the Port shall be filed and maintained exclusively in the Circuit Court of the State of Oregon for the County of Curry.

LANDLORD:

Port of Brookings Harbor

By: Norma Fitzgerald  
President

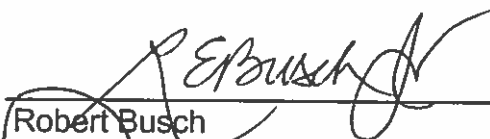
By: Kathy Lindley  
Commissioner

10 COMMERCIAL PARKING LEASE

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PEB 7/26/05

D.S. 8/14/05 268

TENANT:

By:  7/26/05  
Robert Busch

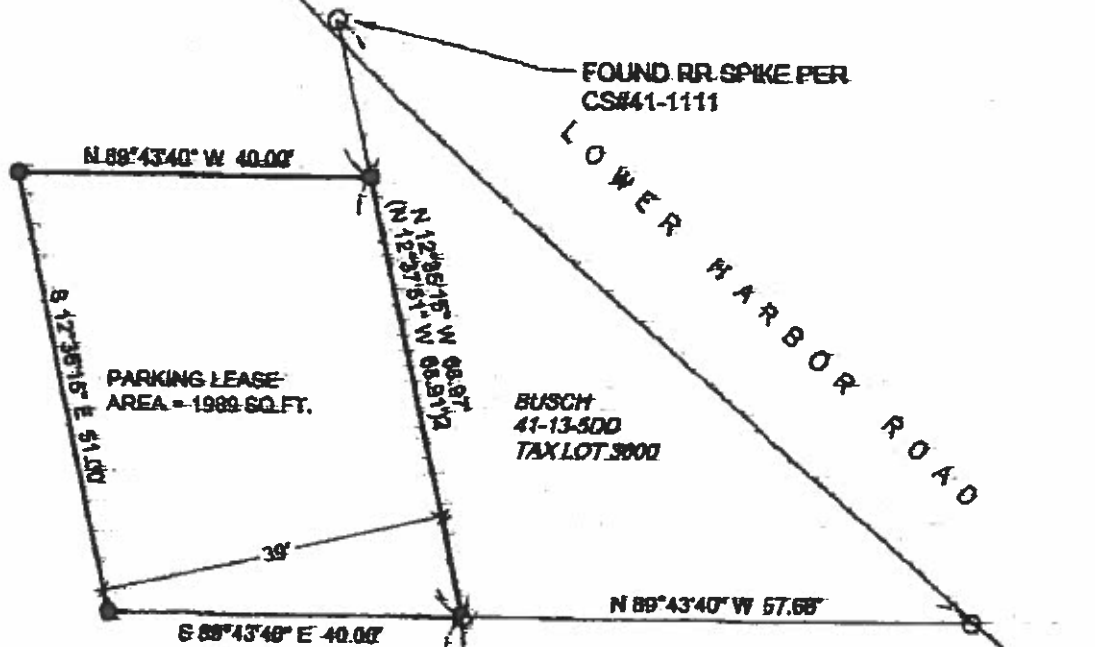
By:  7/26/05  
Marilyn Busch

P. O. Box 222  
Arcata, CA 95518-0222

Telephone: 707.822-7300  
Fax: 707.822-9011  
Cell: 707.407-6358

# EXHIBIT A

LOCATED IN  
SE1/4, SECTION 5, T41S, R13W, W.M.  
CURRY COUNTY, OREGON



## LEGEND:

- △ FOUND MONUMENTS PER CS 41-1268
- FOUND 5/8" IRON REBAR WITH ALUM. CAP PER CS#41-1449
- FOUND 5/8" IRON REBAR WITH PLASTIC CAP PER CS#41-1171
- CALCULATED LEASE CORNER, NO MONUMENT SET OR FOUND
- ( ) RECORD DATA PER CS 41-1268
- ( ) RECORD DATA PER CS 41-1449

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 25, 1998  
RICHARD P. ROBERTS  
2730  
EXPIRES 12/31/08

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"

S 88° 13' 49" E 533.65'  
(S 89° 47' 00" E 533.70')

18.27'

PREPARED FOR: ROBERT E. BUSCH JR.

SURVEY DATE: 5/12/05

JOB #: 05-091

**Roberts & Associates**

Land Surveying INC

English Village Ctr.  
15957 Hwy. 101 S. #11  
P.O. Box 2791

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

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*Lease description*

**EXHIBIT B**

A parcel of land lying in the Southeast Quarter of the Southeast Quarter of Section 5, Township 41 South, Range 13 West, Willamette Meridian, Curry County, Oregon, more particularly described as follows:

COMMENCING at a 2 ½" brass cap in asphalt set at the Northwest corner of D.L.C. 40;

thence North 01°00'14" West 2153.45 feet to a 5/8" iron rebar with aluminum cap stamped "LS 66910" as set in Curry County Surveyor's file #41-1449;

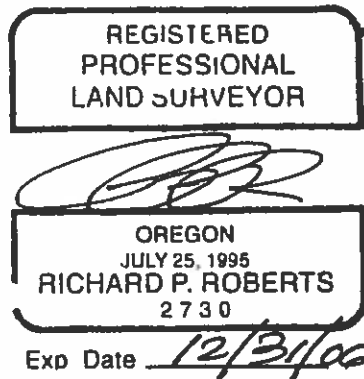
thence North 02°58'55" West 72.79 feet to a 5/8" iron rebar with plastic cap set at the Southwest corner of that parcel of land conveyed to Robert E. Busch Jr. in Instrument 1997-03701, Official Records of Curry County, Oregon, and the TRUE POINT OF BEGINNING;

thence along the West line of said Busch parcel, North 12°35'15" West 51.00 feet;

thence North 89°43'40" West 40.00 feet;

thence South 12°35'15" East 51.00 feet;

thence South 89°43'40" East 40.00 feet to the POINT OF BEGINNING.



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ADDENDUM A TO COMMERCIAL PARKING LEASE  
Between Port of Brookings Harbor and Robert & Marilyn Busch  
Dated July 19, 2005

This Addendum, when signed by all parties, is hereby made a part of the commercial parking lease.

- 1) The Northerly boundary is extended to meet the Port ingress and egress, for the express purpose of providing ingress and egress to this commercial parking lease. The area is approximately 705 sq. ft. +/-.
- 2) The Westerly boundary is extended approximately 7". The area is approximately 357 sq. ft. +/-.
- 3) The Southerly boundary is extended in a pie shape area approximately 117 sq. ft. +/-.

The area of the original parking lot was approximately 1989 sq. ft. The additional area of the parking lot contained herein is approximately 1179.00 sq. ft. The total combined area of the amended parking lot is 3,168 sq. ft. +/- See Exhibit B attached herein.

Anything not hereby modified, altered, or changed to remain the same.

LANDLORD:

Port of Brookings Harbor

By Ane Hall  
President

By [Signature]  
Commissioner

TENANT:

By [Signature]  
Robert Busch

By [Signature]  
Marilyn Busch

97832 SB Chetco Rd., Brookings, OR 97415  
Telephone/Fax: 469-9354; Cell: 661-5675



# EXHIBIT B

LOCATED IN  
3E1/4, SECTION 5, T41S, R13W, W.M.  
CLATSOP COUNTY, OREGON

PORT INGRESS/EGRESS

① 705  $\frac{1}{2}$  ac

N 63° 43' 40" W 0.200'

PARKING LEASE  
AREA = 1000 SQ. FT.

357  $\frac{1}{2}$  ac

②

117  $\frac{1}{2}$  ac

N 89° 40' 00" E 0.100'

N 89° 40' 00" E 0.100'  
CORNER OF BRASSIER CUP

N 89° 40' 00" E 0.100'

FOUND BR SPIKE PER  
CS#41-1111

2004  
11-13-00  
TAX LOT 300

TOTAL PARKING Lot,  
PER ADDENDUM A,  
3,168  $\frac{1}{2}$  ac

## LEGEND

**NORTH**  
SCALE 1" = 20'

- ① FOUND MONUMENTS PER CS 41-1200
- ② FOUND 5/8" IRON REBAR WITH ALUM. CAP PER CS#41-1440
- ③ FOUND 5/8" IRON REBAR WITH PLASTIC CAP PER CS#41-1171
- ④ CALCULATED LEASE CORNER, NO MONUMENT SET OR FOUND
- (1) RECORD DATA PER CS 41-1253
- (2) RECORD DATA PER CS 41-1060

2 1/2" ALUM. CAP  
MARKED "MARQUESS"  
2-ASSOC. BEARS  
NORTH 0.22' FROM D.C. LINE

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

2 1/2" BRASS CAP  
IN ASPHALT MARKED  
"NW COR. SEC. 40 1990"

S 89° 40' 00" E 0.100'  
(200' 67' 00" E 332' 75")

612.27'

1/30/07 MB

## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Roy Davis & Joe Speir Lease*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Roy Davis & Joe Speir lease expired May 31, 2013.
- Updating lease agreement to current standard lease format.
- Shop space is 1,361 square feet at \$0.50 per square foot.
- Lease is for 3 years with option for three additional years.
- Section 13 Insurance, is currently under review with Port Lawyer and CAL/OR Insurance to make sure the tenant and Port are covered per State law. This section could be updated before the meeting April 12, 2017.
- Section 8 Utilities and Service, added "Water and Sewer usage will be billed separately."

### DOCUMENTS

- Draft lease attached for review (20 pages).

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE LEASE AGREEMENT WITH ROY DAVIS & JOE SPEIR AS PRESENTED.

## COMMERCIAL LEASE AGREEMENT

**DRAFT**

This lease is made and entered into at Brookings, Oregon this 1st day of May 2017, by and between the **Port of Brookings Harbor** (the Landlord) and **Roy Davis and Joe Speir** (the Tenant) jointly and severally.

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 commercial shop space, as shown in Exhibit "A", "B" and "C", attached hereto and incorporated herein by this reference (the "Leased Premises").

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

- a. Landlord hereby leases to Tenant approximately 1,361 square-feet of commercial shop space, (the Leased Premises, as shown in Exhibit A, B & C), located at 16060 Lower Harbor Road, Brookings, Oregon. The Leased Premises contains One Thousand Three Hundred Sixty-One (1,361) square feet of shop commercial space. The Base Rental for the Leased Premises shall be as follows:

1. The rental rate for the shop commercial space shall be \$0.50 per month for a total of Six Hundred Eighty and 50/100 Dollars per month (\$680.50);

The initial term of this lease shall be for a term of three (3) years commencing May 1, 2017 and continuing through April 30, 2020.

The total Base Rental for the Leased Premises shall be Six Hundred Eighty and 50/100 Dollars (\$680.50) per month, as calculated above, payable on the first day of each month commencing May 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 three (3) 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.

- 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 \$680.50. 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 for shop space 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. **Equipment.** Tenant shall install in the Leased Premises only such equipment as is customary for the intended *use* and shall not overload the floors 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. Any air conditioning required because of heat generating equipment or special lighting installed by Tenant shall be installed and operated at Tenant's expense.
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. Water and sewer will be billed separately. 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 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.
- c. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.
- d. 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.

- e. 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.

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.
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. **Parking.** Landlord reserves the right to reassign parking spaces provided to Tenant at any time during the period of this lease with thirty (30) days written notice to Tenant and Tenant's consent, which shall not be unreasonably withheld.
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

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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 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**

**Roy Davis & Joe Speir,  
Tenant**

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

Name: Sue Gold

Title: Vice-Chairman

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone \_\_\_\_\_

Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

ROY DAVIS + JOE SPEIR

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Exhibit A

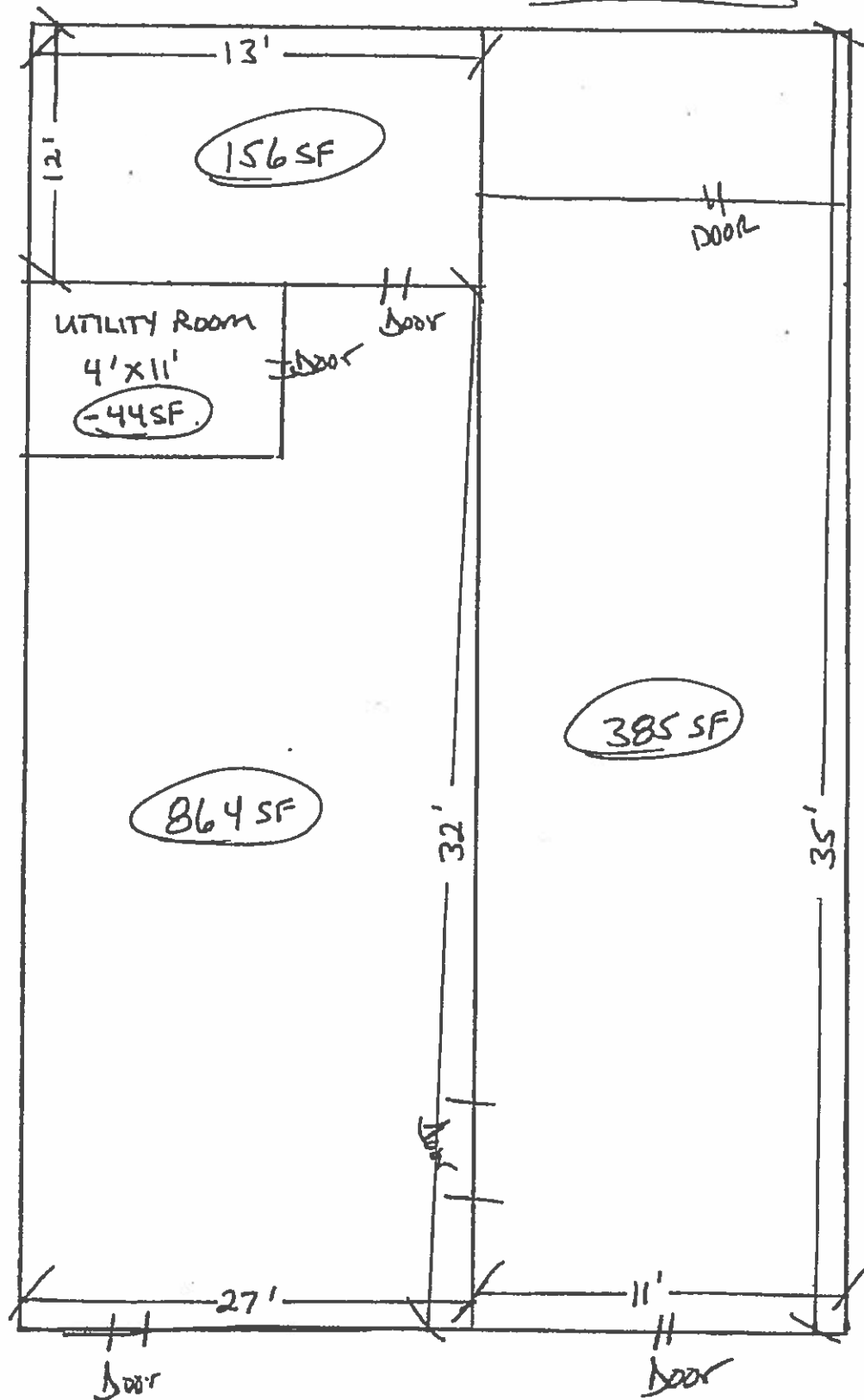
156  
385  
864  

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1405  
-44  

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1,361 SF





**EXHIBIT "B"**  
**ROY DAVIS & JOE SPEIR SHOP**

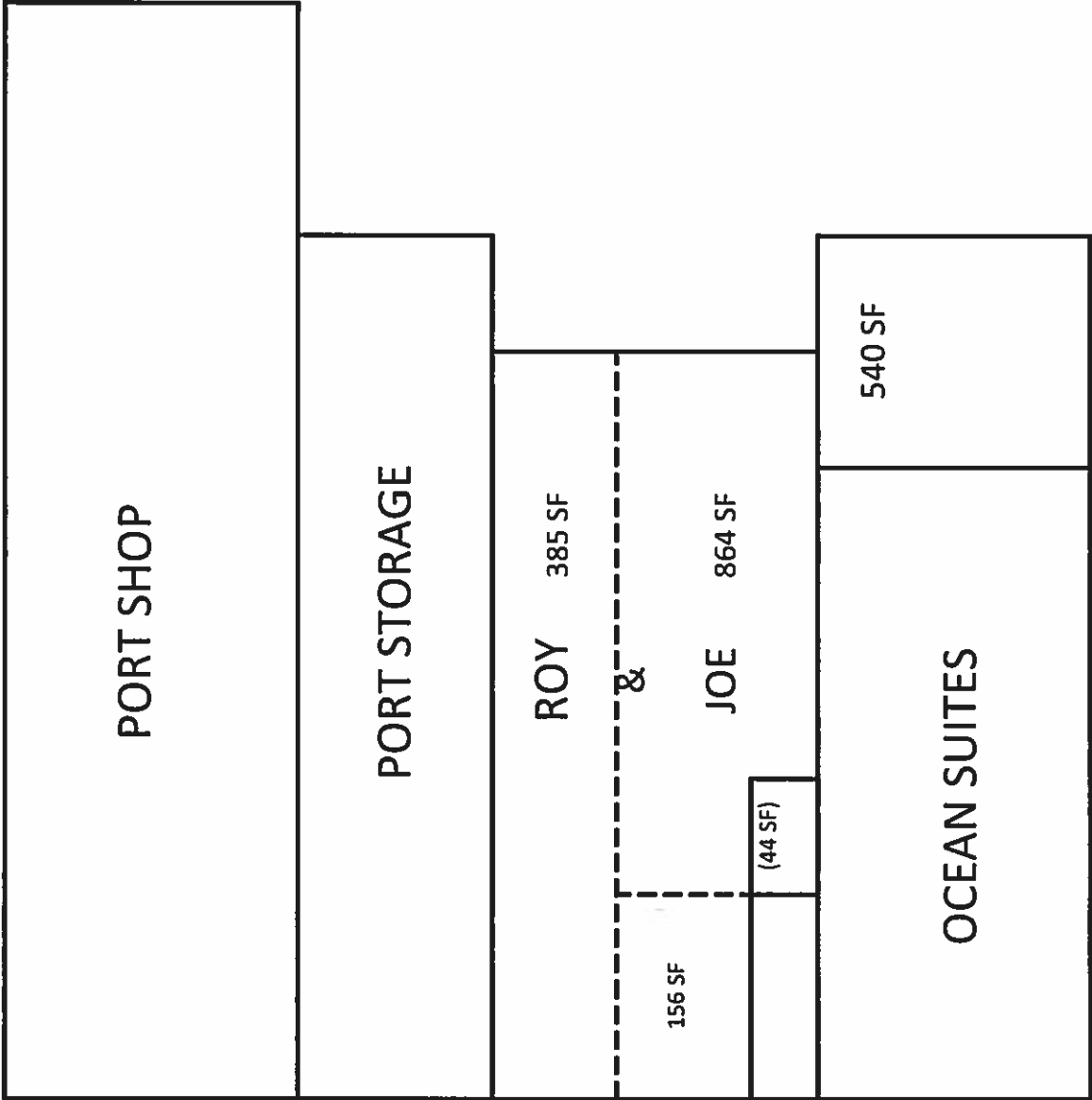


Google earth

Imagery Date: 9/7/2013 42°07'36.26"N 124°15'50.96"W elev. 20 ft eye alt. 676 ft

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16060 Lower Harbor Road



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## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Pacific Hooker / Pacific Fishing Lease*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Buddy with Pacific Hooker has inquired renting shop space for fish gear storage at the Boat Yard shop.
- Shop storage space is 1,900 square feet at \$0.40 per square foot.
- Currently the shop roof leaks when it rains and will need repaired by the Port or the tenant could repair and be credited at a reduced lease rate.
- Port staff will need to remove all Port storage items out prior to tenant move in.

### DOCUMENTS

- Draft lease attached for review if Port repairs the roof (19 pages).

### RECOMMENDED MOTION

- I would recommend that a commission member make a MOTION TO ACCEPT THE LEASE AGREEMENT WITH PACIFIC FISHING AS PRESENTED.



## COMMERCIAL LEASE AGREEMENT

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This lease is made and entered into at Brookings, Oregon this 1st day of May 2017, by and between the **Port of Brookings Harbor** (the Landlord) and **Pacific Fishing, 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 commercial shop space, as shown in Exhibit "A" and "B", attached hereto and incorporated herein by this reference (the "Leased Premises").

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

- a. Landlord hereby leases to Tenant approximately 1,900 square-feet of commercial shop space, (the Leased Premises, as shown in Exhibit A & B), located at 16060 Lower Harbor Road, Brookings, Oregon. The Leased Premises contains One Thousand Nine Hundred (1,900) square feet of storage commercial space. The Base Rental for the Leased Premises shall be as follows:

1. The rental rate for the storage commercial space shall be \$0.40 per month for a total of Seven Hundred Sixty and 00/100 Dollars per month (\$760.00);

The initial term of this lease shall be for a term of three (3) years commencing May 1, 2017 and continuing through April 30, 2020.

The total Base Rental for the Leased Premises shall be Seven Hundred Sixty and 00/100 Dollars (\$760.00) per month, as calculated above, payable on the first day of each month commencing May 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 three (3) 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.

- 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 \$760.00. 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 for storage space 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. **Equipment.** Tenant shall install in the Leased Premises only such equipment as is customary for the intended *use* and shall not overload the floors 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. Any air conditioning required because of heat generating equipment or special lighting installed by Tenant shall be installed and operated at Tenant's expense.
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. Water and sewer will be billed separately. 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 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.
- c. Tenant is responsible for all other repairs to the Leased Premises which Landlord is not required to make under Section 10 or Section 15.
- d. 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.

- e. 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 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.

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.

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. **Parking**. Landlord reserves the right to reassign parking spaces provided to Tenant at any time during the period of this lease with thirty (30) days written notice to Tenant and Tenant's consent, which shall not be unreasonably withheld.
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

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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 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**

**Pacific Fishing, LLC**  
**Tenant**

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

Name: Roy Davis

Title: Chairman

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone \_\_\_\_\_

Mailing Address:

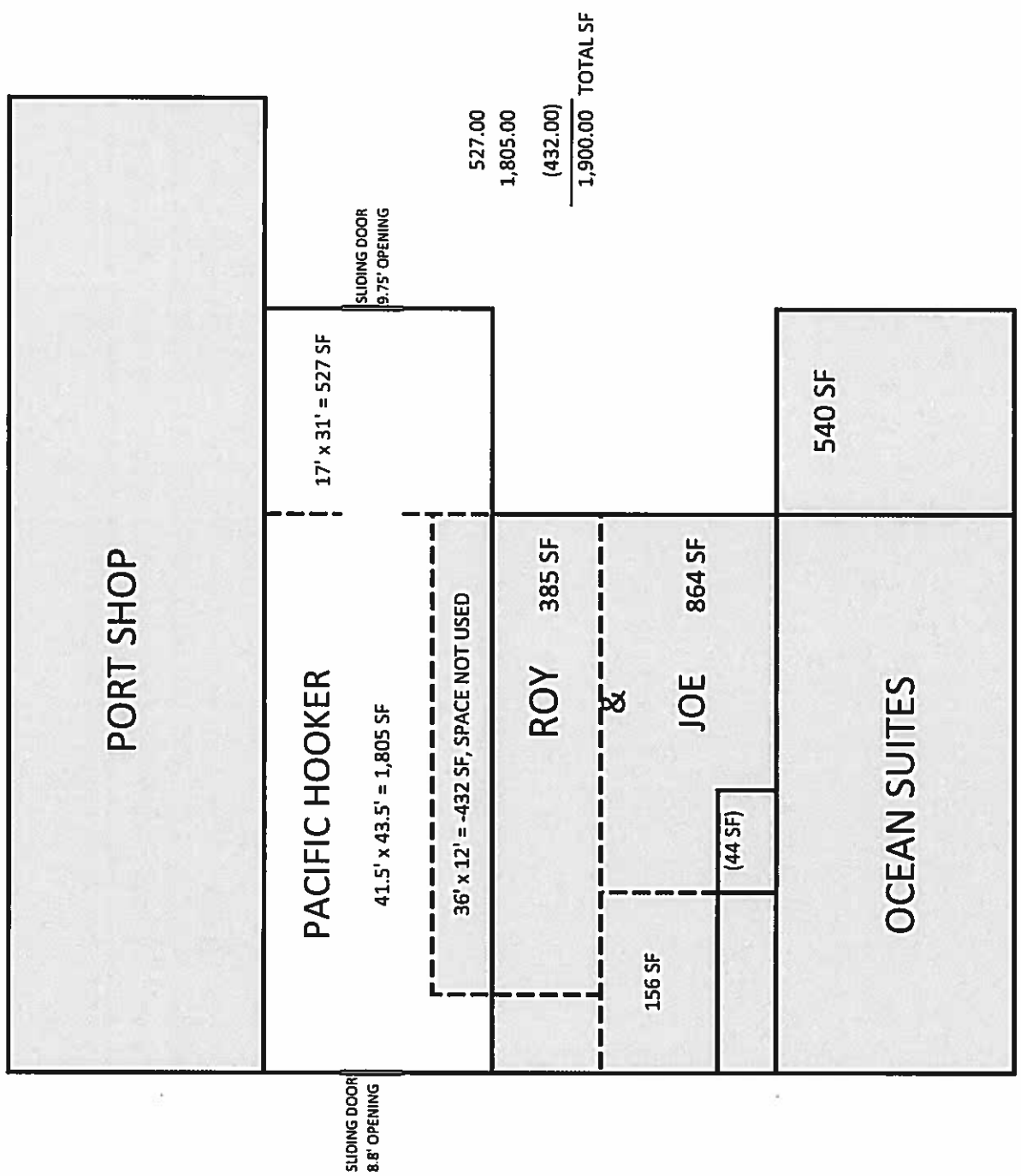
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16060 Lower Harbor Road



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## NEW BUSINESS AGENDA ITEM

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**DATE:** *April 12, 2017*  
**RE:** *Representative DeFazio Legislative Support*  
**TO:** *Port of Brookings Harbor Board of Commissioners*  
**ISSUED BY:** *Gary Dehlinger, Port Manager*

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### OVERVIEW

- Representative DeFazio is looking for letters of support for his proposed H.R., "Investing in America: Unlocking the Harbor Maintenance Trust Fund Act".

### DOCUMENTS

- Emails from Ryan Seiger and Ray Bucheger (2 pages)
- Proposed H.R. and fact sheet (8 pages)

### COMMISSIONER ACTION

- Does the Board want a draft letter of support written for Rep DeFazio proposed H.R.?

**Gary**

---

**From:** Ray Bucheger <Ray@federalrelations.com>  
**Sent:** Monday, April 03, 2017 1:34 PM  
**To:** jburns@portofcoosbay.com; rcuellar@portofalsea.com;  
peter.mitchell@portofarlington.com; jknight@portofastoria.com;  
admin@portofbandon.com; gary@portofbrookingsharbor.com;  
dmann@portofcascadelocks.org; murray@cityofdepoebay.org;  
coquilleriverpt@mycomspan.com; manager@portofgaribaldi.org;  
portmanager@portofgoldbeach.com; mmcelwee@portofhoodriver.com;  
garyn@portofmorrow.com; portofnehalem@nehalemtnet.net;  
kgreenwood@PortofNewport.com; manager@portofsiuslaw.com; trapp@portsh.org;  
Andrea@PortOfTheDalles.com; mbradley@potb.org; bud.shoemake@portoftoledo.org;  
kimpuzey@uci.net; cvitek@portofumpqua.net; harbormaster@ci.warrenton.or.us; Rick Finn  
**Cc:** Peter Friedmann; Abigail Struxness; Dave Harlan; Mark Freeman; Robert Ault; Chris Cummings; Ed Tabor  
**Subject:** DeFazio HMT Bill

Hello Port Directors:

I am writing to give you a heads up that I have shared your contact information with Liz Cooney and/or Ryan Seiger from Rep DeFazio's office. You will be hearing from one or both today to ask you to support the "Investing in America: Unlocking the Harbor Maintenance Trust Fund Act", legislation that Rep DeFazio will introduce on Wednesday to ensure the use of the Harbor Maintenance Trust Fund for its intended purpose—maintaining your ports and harbors, instead of using the funds to hide the size of the budget deficit.

You will also get an email from me later today asking to sign onto a letter supporting this legislation. You may know that we supported Rep DeFazio's efforts to authorize the 10% set-aside for "emerging ports" back in 2014 by assembling a national ad-hoc coalition of small ports that generated support on Capitol Hill for DeFazio's efforts. We will be mobilizing this coalition again to drum up support for DeFazio's legislation.

Let me know if you have any questions.

Ray

**Ray Bucheger**  
**Pioneer Group & FBB Federal Relations**  
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Gary

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**From:** Seiger, Ryan <Ryan.Seiger@mail.house.gov>  
**Sent:** Monday, April 03, 2017 12:56 PM  
**To:** Seiger, Ryan  
**Cc:** Hill (Cooney), Elizabeth; Brain, Michael; Dedrick, Kathy; McCarragher, Ward  
**Subject:** Kelly-DeFazio - H.R. \_\_, the Investing in America: Unlocking the Harbor Maintenance Trust Fund Act  
**Attachments:** KELLPA\_016\_xml.pdf; 2017-04-05 FACT H.R. \_\_\_\_ Unlocking the HMTF FINAL.pdf

All:

On Wednesday (4/5/17), Rep. Mike Kelly (R-PA/Ways and Means) and RM Peter DeFazio (D-OR/T&I) plan to introduce H.R. \_\_\_\_, the “Investing in America: Unlocking the Harbor Maintenance Trust Fund Act” – legislation to provide more than \$18 billion in investment for our Nation’s coastal and inland harbors over the next decade without raising one more dime in taxes.

This bipartisan bill ensures the use of the Harbor Maintenance Trust Fund for its intended purpose—maintaining our commercial harbors—instead of using the funds to hide the size of the budget deficit. By taking the Trust Fund off budget and allowing the expenditure of Harbor Maintenance Tax revenues collected each year, the legislation provides more than \$18 billion over the next decade, which is a 29 percent increase in investment and will enable the U.S. Army Corps of Engineers to dredge all Federal commercial harbors to their constructed widths and depths. The bill also preserves Congress’ authority to appropriate additional funds for harbor maintenance needs from the existing \$9 billion balance in the Trust Fund.

Enclosed is an advance copy of this proposal and fact sheet for your review. Mr. DeFazio would in interested in letters of support for the proposal, if possible.

If you have any questions, please let me know. And please feel free to share this information with other interested ports and stakeholders.

Ryan C. Seiger  
Staff Director/Senior Counsel  
Subcommittee on Water Resources and Environment  
Committee on Transportation and Infrastructure  
505 Ford House Office Building  
Washington, D.C. 20515  
(202) 225-0060



(Original Signature of Member)

115TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To provide for the use of funds in the Harbor Maintenance Trust Fund for the purposes for which the funds were collected and to ensure that funds credited to the Harbor Maintenance Trust Fund are used to support navigation.

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IN THE HOUSE OF REPRESENTATIVES

Mr. KELLY of Pennsylvania (for himself and Mr. DEFazio) introduced the following bill; which was referred to the Committee on

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**A BILL**

To provide for the use of funds in the Harbor Maintenance Trust Fund for the purposes for which the funds were collected and to ensure that funds credited to the Harbor Maintenance Trust Fund are used to support navigation.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Investing In America:  
5 Unlocking the Harbor Maintenance Trust Fund Act”.

1 **SEC. 2. USE OF HARBOR MAINTENANCE TRUST FUND TO**  
2 **SUPPORT NAVIGATION.**

3 (a) **AVAILABILITY OF AMOUNTS.**—Section 210 of the  
4 Water Resources Development Act of 1986 (33 U.S.C.  
5 2238) is amended—

6 (1) in the section heading by striking “**AU-**  
7 **THORIZATION OF APPROPRIATIONS**” and insert-  
8 ing “**FUNDING FOR NAVIGATION**”; and

9 (2) in subsection (a) by striking “There are au-  
10 thorized to be appropriated” and all that follows be-  
11 fore paragraph (1) and inserting “Amounts made  
12 available from the Harbor Maintenance Trust Fund  
13 in accordance with section 9505(d) of the Internal  
14 Revenue Code of 1986 shall be used to pay—”.

15 (b) **AMENDMENT TO TRUST FUND CODE.**—Section  
16 9505(c) of the Internal Revenue Code of 1986 is amend-  
17 ed—

18 (1) in the matter preceding paragraph (1) by  
19 striking “, as provided by appropriation Acts,” and  
20 inserting “, in accordance with subsection (d),”; and

21 (2) by adding at the end the following:

22 “(d) **AVAILABILITY OF AMOUNTS.**—Beginning on Oc-  
23 tober 1, 2017, there shall be available from the Harbor  
24 Maintenance Trust Fund for making expenditures under  
25 subsection (c)—

1 “(1) without further appropriation, an amount  
2 equivalent to the taxes received in the Treasury  
3 under section 4461 for the previous fiscal year, as  
4 determined by the Secretary of the Treasury; and

5 “(2) such additional amounts as provided by  
6 appropriations Acts.”.

7 (c) ESTIMATE OF HARBOR MAINTENANCE NEEDS.—  
8 Section 1537(2) of MAP-21 (33 U.S.C. 2238a(2)) is  
9 amended by striking “amount of appropriations” and in-  
10 serting “expenditures”.

11 **SEC. 3. BUDGETARY TREATMENT OF HARBOR MAINTENANCE TRUST FUND.**

12 Notwithstanding any other provision of law, the re-  
13 cepts and disbursements of the Harbor Maintenance  
14 Trust Fund—

15 (1) shall not be counted as new budget author-  
16 ity, outlays, receipts, or deficit or surplus for pur-  
17 poses of—

18 (A) the budget of the United States Gov-  
19 ernment as submitted by the President;

20 (B) the congressional budget (including al-  
21 locations of budget authority and outlays pro-  
22 vided therein);

23 (C) the Balanced Budget and Emergency  
24 Deficit Control Act of 1985; or  
25

1 (D) the Statutory Pay-As-You-Go Act of  
2 2010;

3 (2) shall be exempt from any general budget  
4 limitation imposed by statute on expenditures and  
5 net lending (budget outlays) of the United States  
6 Government; and

7 (3) shall be available only for the purposes  
8 specified in section 9505 of the Internal Revenue  
9 Code of 1986.

10 **SEC. 4. ANNUAL REPORT TO CONGRESS.**

11 Section 330 of the Water Resources Development Act  
12 of 1992 (26 U.S.C. 9505 note; 106 Stat. 4851) is amend-  
13 ed—

14 (1) in subsection (a)—

15 (A) by striking “and annually thereafter,”  
16 and inserting “and annually thereafter concu-  
17 rent with the submission of the President’s an-  
18 nual budget request to Congress,”; and

19 (B) by striking “Public Works and Trans-  
20 portation” and inserting “Transportation and  
21 Infrastructure”; and

22 (2) in subsection (b)(1) by adding at the end  
23 the following:

24 “(D) A description of the expected expend-  
25 itures from the trust fund to meet the needs of

1 navigation for the fiscal year of the budget re-  
2 quest.”.

3 **SEC. 5. HARBOR MAINTENANCE TRUST FUND DEFINED.**

4 In this Act, the term “Harbor Maintenance Trust  
5 Fund” means the Harbor Maintenance Trust Fund estab-  
6 lished by section 9505 of the Internal Revenue Code of  
7 1986.

8 **SEC. 6. APPLICABILITY.**

9 This Act (including the amendments made by this  
10 Act) shall apply to fiscal years beginning after September  
11 30, 2017.



**H.R. \_\_\_\_**  
**Investing in America:**  
**Unlocking the Harbor Maintenance Trust Fund**  
**Introduced by**  
**Ways and Means Committee Member Mike Kelly and**  
**T&I Committee Ranking Member Peter DeFazio**  
*April 5, 2017*

**EXECUTIVE SUMMARY**

H.R. \_\_\_\_, the “Investing in America: Unlocking the Harbor Maintenance Trust Fund Act”, provides more than **\$18 billion** in investment for our Nation’s coastal and inland harbors over the next decade without raising one more dime in taxes.

This **bipartisan bill** ensures the use of the Harbor Maintenance Trust Fund for its intended purpose—maintaining our commercial harbors—instead of using the funds to hide the size of the budget deficit. By taking the Trust Fund off budget and allowing the expenditure of Harbor Maintenance Tax revenues collected each year, the legislation provides more than \$18 billion over the next decade, which is a **29 percent increase** in investment and will enable the U.S. Army Corps of Engineers to dredge **all** Federal commercial harbors to their constructed widths and depths. The bill also **preserves Congress’ authority to appropriate additional funds** for harbor maintenance needs from the existing \$9 billion balance in the Trust Fund.

**HARBOR MAINTENANCE BACKLOG**

According to the U.S. Army Corps of Engineers (Corps), full navigation channels at our Nation’s busiest 59 ports are available less than 35 percent of the time—and the conditions of our midsize and emerging harbors are far worse. With the opening of the expanded Panama Canal in June 2016, larger container ships will increasingly call on East and Gulf Coast ports, and the dredging needs of our ports will continue to grow.

In January 2017, the Corps estimated the total cost to achieve and maintain constructed widths and depths of all Federal navigation projects is **\$20.3 billion** over the next decade. This estimate includes:

- \$11.0 billion—to achieve full dimensions in the next five years (\$2.2 billion annually); and
- \$9.3 billion—to maintain these dimensions for an additional five years (\$1.9 billion annually).

Moreover, total Corps navigation needs are likely higher. The Corps’ \$20.3 billion estimate includes additional expenses related to navigation work (e.g., construction of dredged material placement facilities and other navigation infrastructure). However, this estimate does not likely include all necessary jetty and breakwater work or other needs identified by ports to maintain and expand harbor use nationwide.

## HARBOR MAINTENANCE TRUST FUND

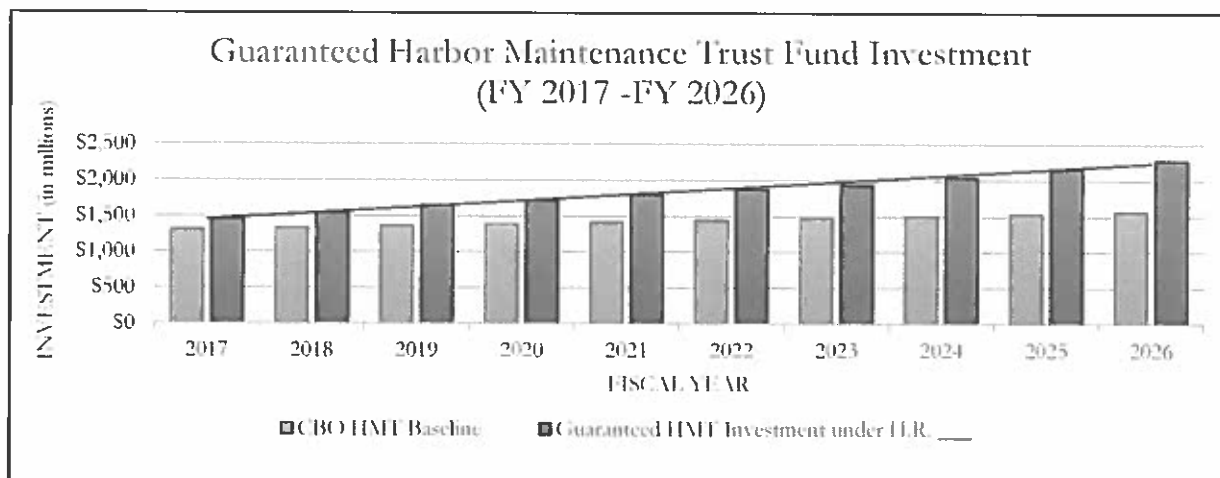
In 1986, Congress enacted the Harbor Maintenance Tax to recover the operation and maintenance dredging costs for commercial ports from maritime shippers. The Harbor Maintenance Tax is directly levied on importers and domestic shippers using coastal or inland ports as a 0.125 percent *ad valorem* tax on the value of imported cargo (e.g., \$1.25 per \$1,000 value), and is typically passed along to U.S. taxpayers on the purchase of imported goods or services. These revenues are deposited into a Harbor Maintenance Trust Fund within the U.S. Treasury from which Congress currently appropriates funds to the Corps for harbor maintenance dredging.

The Harbor Maintenance Trust Fund collects far more revenues from shippers than Congress has appropriated to the Corps to maintain our harbors, with approximately **\$9 billion in already collected revenues sitting idle in the U.S. Treasury**. As a result, shippers continue to honor their commitment to pay for promised maintenance activities that the Federal Government then fails to carry out. To be clear, there are sufficient funds in the Trust Fund to meet the maintenance dredging needs of all Federally-authorized ports. The problem is that these funds, which were collected for this express purpose, are diverted to hide the size of the budget deficit.

According to the Congressional Budget Office (CBO), the Harbor Maintenance Trust Fund will collect \$18.5 billion in new revenues over the next decade—in addition to the estimated \$8.8 billion in previously collected but unspent revenues in the Trust Fund. Yet, according to CBO, Federal appropriations from the Trust Fund over the next decade are only expected to total \$14.3 billion, and would result in the balance of the Trust Fund doubling—reaching \$17.2 billion in fiscal year 2026.<sup>2</sup> Under this scenario, the maintenance needs of commercial ports will continue to go unmet.

## INVESTING IN AMERICA: UNLOCKING THE HARBOR MAINTENANCE TRUST FUND

H.R. \_\_\_\_ provides more than \$18 billion from the Harbor Maintenance Trust Fund over the next decade for the intended purposes of maintaining our commercial harbors.



<sup>1</sup> The Harbor Maintenance Tax initially applied to both imported and exported goods; however, in 1998, the U.S. Supreme Court unanimously held that imposition of the tax on exported goods was a violation of the U.S. Constitution.

<sup>2</sup> Even if Congress appropriates the discretionary targets outlined in the Water Resources Reform and Development Act of 2014 (P.L. 113-121), the balance of the Harbor Maintenance Trust Fund continues to increase from its current level.

As the bar chart above demonstrates, the bill provides significant additional funds to the Corps to address the backlog of maintenance dredging needs of our commercial ports. If Congress simply dedicates the expected receipts to the Trust Fund over the next decade for their intended purposes, we will invest more than \$18 billion in our critical port and harbor needs—and all of this work could be performed without raising one dime more in taxes. At the same time, Congress may continue to appropriate funds from the almost \$9 billion balance in the Trust Fund to ensure the Corps has sufficient funds to address all identified annual maintenance needs.

The *Unlocking the Harbor Maintenance Trust Fund Act* honors our long-term commitment to U.S. shippers and taxpayers, maintains and improves the competitiveness of U.S. businesses and industry, and creates and sustains thousands of additional construction jobs and jobs dependent on a vibrant and efficient marine transportation system.<sup>3</sup>

**H.R. \_\_\_\_\_, THE INVESTING IN AMERICA:  
UNLOCKING THE HARBOR MAINTENANCE TRUST FUND ACT**

To honor the Federal commitment to U.S. shippers and taxpayers, to ensure the competitiveness of U.S. commercial harbors, and to create and sustain thousands of jobs, H.R. \_\_\_\_\_:

- Provides more than \$18 billion in infrastructure investment for our Nation's coastal and inland harbors over the next decade without raising one more dime in taxes;
- Takes the Harbor Maintenance Trust Fund off budget; and
- Preserves Congress' authority to appropriate additional funds for harbor maintenance needs from the existing \$9 billion balance in the Trust Fund.

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<sup>3</sup> According to a 2014 American Society of Civil Engineers (ASCE) report, if the U.S. simply maintains its current levels of investment in its marine transportation system, by 2020, there will be an estimated 738,000 fewer jobs in the U.S.— jobs that will be lost due to America's lack of competitiveness in global trade and because U.S. households will be spending more for the imported goods and commodities moving within the U.S. along its inland waterways. That number increases to potential job losses of 1.4 million jobs by 2040. *See* [http://www.asce.org/airports\\_inland\\_waterways\\_and\\_marine\\_ports\\_report/](http://www.asce.org/airports_inland_waterways_and_marine_ports_report/)