

PORT OF BROOKINGS HARBOR
Special Commission Meeting
Thursday, November 30, 2023 at 10:00am
Hybrid / Meeting Room
16350 Lower Harbor Road Suite 202, Harbor OR, 97415

Meeting ID: 771 205 4017 Teleconference Call-In Number: 1 (253) 215-8782 Passcode: 76242023 to mute/unmute: * 6)

Webinar Access:

<https://us02web.zoom.us/j/7712054017?pwd=aGF4ZXlZOHA2eWZuL0o5WkxiZFhoZz09#success>

A request for an interpreter for the hearing impaired, for those who want to participate but do not have access to a telephone, or for other accommodations for persons with disabilities should be made at least 48 hours in advance of the meeting to Port of Brookings Harbor Office at 541-469-2218.

TENTATIVE AGENDA

- | | |
|---|-------------|
| 1. CALL MEETING TO ORDER | PAGE |
| <ul style="list-style-type: none">• Roll Call• Modifications, Additions, and Changes to the Agenda• Declaration of Potential Conflicts of Interest | |
| 2. APPROVAL OF AGENDA | |
| 3. PUBLIC COMMENTS – Limited to a maximum of three minutes per person. Please email your comments to danielle@portofbrookingsharbor.com prior to the meeting if you are calling in. | |
| 4. EXECUTIVE SESSION per ORS 192.660 (2)(f) and ORS 192.660 (2)(i)
This executive session of the Port of Brookings Harbor Board of Directors is called pursuant to ORS 192.660 (2)(f) To consider information or records that are exempt by law from public inspection. ORS 192.660 (2)(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing. | |
| Any member of the media that is here may remain. However, the Board will require that any information derived from this meeting may not be disclosed pursuant to ORS 192.660(4). | |
| ORS 192.660 (6) No executive session may be held for the purpose of taking any final action or making any final decision. | |
| 5. ACTION ITEMS
A. Bornstein Lease Amendment No. 2 | |
| 6. INFORMATION ITEMS
A. None | |
| 7. COMMISSIONER COMMENTS | |
| 8. REGULAR MEETING DATE – Wednesday, December 20, 2023 at 2:00pm | |
| 9. ADJOURNMENT | |

Executive Session

This executive session of the Port of Brookings Harbor Board of Directors is called pursuant to ORS 192.660 (2)(f) To consider information or records that are exempt by law from public inspection. ORS 192.660 (2)(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

Any member of the media that is here may remain. However, the Board will require that any information derived from this meeting may not be disclosed pursuant to ORS 192.660(4).

ACTION ITEM – A

DATE: November 30, 2023
RE: Bornstein Seafood Consent to Sublease
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Travis Webster, Port Manager

OVERVIEW

- The Board approved a lease amendment, October 18, 2023, with Bornstein Seafood to extend their lease from January 1, 2024, to December 2028 for the receiving dock and work area.
- Andrew Bornstein from Bornstein Seafood emailed a letter on November 22, 2023, requesting to sublease the lease premises with Fishermen's Catch.

DOCUMENTS

- Bornstein Seafood letter dated November 22, 2023, 1 page
- Consent to Sublease, 5 pages

COMMISSIONERS ACTION

- Recommended Motion:
Motion to approve Bornstein Seafood consent to sublease with Fishermen's Catch.



November 22, 2023

Regarding Bornstein Seafoods Port Lease;

To Whom it May Concern,

Bornstein Seafoods and Fishermen's catch are engaging in a Joint Venture from December 2023 through March of 2024 to support both parties' commitment to purchasing Dungeness Crab. It is the intent of both companies to share resources to maximize the amount of Crab purchasing opportunities from the commercial fishing fleet. Fishermen's Catch will supply labor and offloading services to the fleet and Bornstein Seafoods will supply access to the dock and the equipment needed to perform offloading services to the fleet. Both parties will provide fish tickets and payments to vessels on a case by case basis.

Sincerely,

Andrew Bornstein

**COMMERCIAL LEASE AGREEMENT
CONSENT TO SUBLEASE**

This consent to sublease (“Consent”) is entered into by and between the Port of Brookings Harbor (“Landlord”), Bornstein Seafoods, Inc. (“Tenant”), and Fishermen’s Catch (“Subtenant”).

BACKGROUND

- A. The Tenant entered into a lease (the “Lease”) with the Landlord on January 1, 2019, and subsequently amended effective October 18, 2023, with respect to the following premises (the “Premises”): a receiving dock and hoist, more particularly described in Exhibit “A”, attached hereto and incorporated herein by this reference (the “Dock Premises”). A map of the Dock Premises is identified as Exhibit “B”, also attached hereto and incorporated herein by this reference; and a work area located adjacent to the Dock Premises, consisting of 3,478 square feet of property, which is more particularly described in Exhibit “A”, attached hereto and incorporated herein by this reference (the “Work Area”). A map of the Work Area is identified as Exhibit “B”, also attached hereto and incorporated herein by this reference.
- B. The Tenant wishes to sublease (the “Sublease”) to the Subtenant all of the Premises (the “Subleased Premises”) from November 30, 2023 until December 31, 2028 (“Subleased Term”).
- C. The Subtenant is willing to undertake the obligations for the Subleased Premises for the Subleased Term.

NOW, THEREFORE, IN CONSIDERATION of Landlord consenting to the Sublease, Tenant is joint venturing with Subtenant agreeing to fulfill all of the obligations of Tenant under the Lease, the parties agree to keep, perform and fulfill the promises, conditions and agreements below:

- 1. **Consent to Sublease.** Landlord consents to the Sublease by Tenant to Subtenant for the Subleased Premises for the Sublease Term on the terms and conditions contained set forth in this Consent.
- 2. **Use of Premises.** Except as otherwise provided in this Consent, Subtenant and the agents and employees of Subtenant will only use the Subleased Premises for a purpose consistent with the permitted use allowed in the Lease. Further, Subtenant agrees to comply with all other applicable provisions of the Lease, and will not do anything that would constitute a violation of any part or condition of the Lease.
- 3. **Sublease Term.** The term of the sublease begins November 30, 2023 and ending December 31, 2028.
- 4. **Continuing Liability.** The Tenant acknowledges that: (a) the Tenant will remain primarily liable for, and will not be released from the full and faithful performance of all of the terms and conditions of the Lease, notwithstanding the existence of, and Landlord’s consent to, the Sublease, or any breach committed by the Subtenant under the Sublease; and (b) the Landlord will be entitled to pursue all remedies available in the event of the Tenant’s

breach of the Lease without regard to the performance or non-performance of the terms of the Sublease by the Subtenant.

5. **Assumption by Subtenant.** The Subtenant agrees to assume all of the applicable obligations and responsibilities of the Tenant under the Lease with respect to the Subleased Premises during the Sublease Term.
6. **Limitation of Consent.** This Consent is not a consent to (a) the terms of the Sublease, (b) any further subleasing of the subleased premises, (c) any subleasing of any other portion of the subleased premises; or (d) the subleasing of any portion of the Premises to any other subtenant or on any different terms than contained in this Consent. The Tenant will provide Landlord with a fully executed copy of the sublease promptly after execution.
7. **Binding Effect.** This Consent will be binding on the Landlord, and will inure to the benefit of the Tenant, the Subtenant and their respective heirs, executors, administrators and successor in interest and assigns.
8. **Assignment and Subletting.** The Subtenant will not assign, transfer or further sublet the Subleased Premises or any part of the Subleased Premises without the prior written consent of the both the Tenant and the Landlord.
9. **Notices.** The Landlord agrees that a copy of all notices of default under the Lease sent to the Tenant will also be sent to the Subtenant at the address of the Subleased Premises. To the extent that such default was not caused by the Subtenant, the Subtenant will have the right to cure such defaults as may be granted to the Tenant under the Lease.
10. **Termination of Lease.** If, at any time prior to the expiration of the Sublease, the Lease is terminated for any reason, the Sublease will also simultaneously terminate. However, if the Subtenant agrees, at the election and upon written demand of the Landlord, to attorn to the Landlord upon the terms and conditions set out in the Sublease for the remainder of the term of the Sublease, termination of the Lease will not similarly terminate the Sublease.
11. **Attorney's Fees.** In the event of any legal action concerning this Consent, the prevailing party will be entitled to an award of reasonable attorney's fees and courts costs as fixed by the court.
12. **OTHER TERMS AND CONDITIONS.** This Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. All other terms and conditions of the original Lease remain in full force and effect and remain unaffected hereby. In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement. To facilitate exchange of this Amendment, the parties may execute and exchange facsimile or e-mailed counterparts of the signature pages and such facsimile or e-mailed counterparts shall serve as originals

IN WITNESS WHEREOF, the parties have executed this instrument as of the date last below written at Curry County, Oregon.

Port of Brookings Harbor, Landlord

Dated: _____ By: _____
Richard Heap, Board President

Attest: _____
Commissioner

Bornstein Seafood, Inc., Tenant

Dated: _____ By: _____
Andrew Bornstein

Fishermen's Catch, Subtenant

Dated: _____ By: _____
Name: _____
Title: _____

Lease Area

EXHIBIT A

A parcel of land lying in the Southwest Quarter of the Southeast Quarter of Section 5, Township 41 South, Range 13 West, Willamette Meridian, Curry County, Oregon, more particularly described as follows:

Dock Area

BEGINNING at Point "A", said point being North 20°51'41" West, a distance of 2,180.62 feet from a 2 ½" brass cap in asphalt set at the Northwest corner of D.L.C. 40, and also being the inside rail at the Southwest corner of a concrete boat dock;
thence along the inside rail of said concrete boat dock, North 06°26'17" West a distance of 60.06 feet;
thence leaving said inside rail, North 84°01'44" East a distance of 19.61 feet to Point "B";
thence South 06°28'49" East a distance of 31.99 feet;
thence South 37°03'24" East a distance of 11.34 feet to the inside rail of said concrete boat dock;
thence along said inside rail, South 06°58'44" East a distance of 18.26 feet;
thence South 83°47'12" West a distance of 25.58 feet, to the POINT OF BEGINNING.

Work Area

BEGINNING at Point "B" described above:
thence North 62°34'54" East a distance of 80.00 feet;
thence South 27°25'06" East a distance of 40.00 feet;
thence South 62°34'54" West a distance of 89.71 feet;
thence North 37°03'24" West a distance of 10.27 feet;
thence North 06°28'49" West a distance of 31.99 feet, to the POINT OF BEGINNING.

Bearings for the above description are Oregon State Plane – South Zone and are based on a line between control monuments #1 and #2 as indicated on County Survey #41-1623 prepared by OBEC Consulting Engineers, to bear North 27°44'56" West a distance of 639.37 feet.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
JULY 25, 1995
RICHARD P. ROBERTS
2730

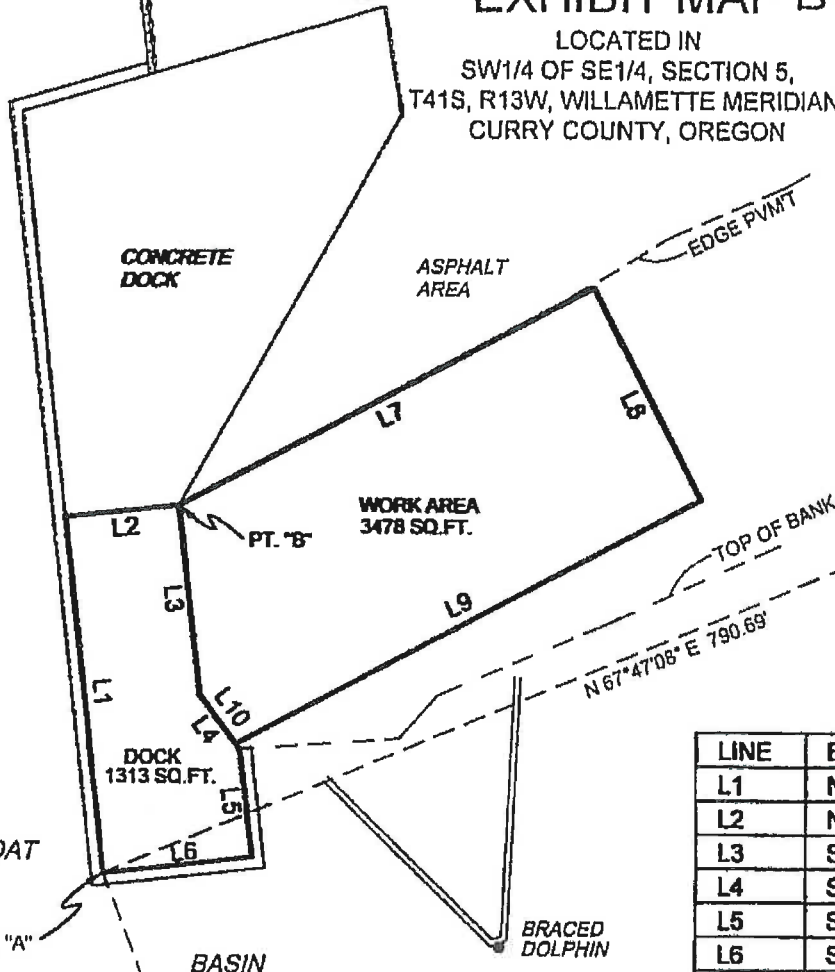
EXPIRATION DATE. 12/31/04

EXHIBIT MAP B

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

FOUND MAGNAIL-WASHER
STAMPED "OBEC CONTROL"
CONTROL PT #2 PER
COUNTY SURVEY #41-1623

(OREGON STATE PLANE S.O. ZONE)
(N 27°44'55" W 639.37' CS#41-1623
N 27°44'56" W 639.37'



FOUND 5/8" IRON REBAR
S/ RPC "OBEC CONTROL"
CONTROL PT #1 PER
COUNTY SURVEY #41-1623

LINE	BEARING	DISTANCE
L1	N 06°26'17" W	60.06'
L2	N 84°01'44" E	19.61'
L3	S 06°28'49" E	31.99'
L4	S 37°03'24" E	11.34'
L5	S 06°58'44" E	18.26'
L6	S 83°47'12" W	25.58'
L7	N 62°34'54" E	80.00'
L8	S 27°25'06" E	40.00'
L9	S 62°34'54" W	89.71'
L10	N 37°03'24" W	10.27'

BOAT

PT. "A"

BASIN

BRACED
DOLPHIN

N 20°51'41" W 2180.62'

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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1995
RICHARD P. ROBERTS
2730

EXPIRES 12/31/14

PREPARED FOR: PORT OF BROOKINGS-HARBOR

SURVEY DATE: JAN. 16, 2013

JOB #: 13-005



Roberts & Associates



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