

The Port
OF PORT TOWNSEND
SERVING ALL OF JEFFERSON COUNTY

**Port of Port Townsend
1st Monthly Business Meeting
Wednesday, December 12, 2018, 1:00 p.m.
Port Commission Building
333 Benedict Street
Port Townsend, WA**

- I. Call to Order / Pledge of Allegiance
- II. Approval of Agenda
- III. Public Comments (related to/not related to the agenda)
- IV. Consent Agenda
 - A. Approval of Regular Business Meeting Minutes – November 28, 2018.....1-5
 - B. Approval of Warrants
- V. Second Reading
- VI. First Reading
 - A. Establishment of Reserve Funds.....6-8
- VII. Regular Business
 - A. Lease – Dave’s Mobile Welding.....9-31
 - B. Lease Assignment – Cunningham / Fishery Point.....32-36
 - C. Point Hudson Jetty Historical Designation.....37-38
 - D. Resolution No. 691-18- Surplus of 75-ton Travelift & Sentry Safe.....39-42
- VIII. Staff Comments
- IX. Commissioner Comments
- X. Next Special Meeting / Public Workshop /Regular Business Meeting:
Special Meeting: Wednesday, January 2, 2019, 9:00 am
Public Workshop: Wednesday, January 9, 2019, 9:30 am
Regular Business Meeting, Wednesday, January 9, 2019, 1:00 pm
Port Commission Building, 333 Benedict Street, Port Townsend, WA
- XI. Executive Session
None
- XII. Adjournment

PORT COMMISSION REGULAR BUSINESS MEETING – November 28, 2018

The Port of Port Townsend Commission met in regular session at the Commission Building, 333 Benedict Street, Port Townsend, WA

Present: Commissioners – Tucker, Hanke and Putney
Interim Executive Director Pivarnik
Auditor Berg
Deputy Director Toews
Minutes – Nelson
Attorney Chmelik (via Skype audio/video)

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Tucker called the meeting to order at 5:30 p.m.

II. APPROVAL OF AGENDA:

Commissioner Tucker announced there would be no Executive Session.

Commissioner Putney moved to approve the Agenda as amended.

Commissioner Hanke seconded the motion.

Motion carried by unanimous vote.

III. PUBLIC COMMENTS (00:01:17):

Jeff Kelety commented on the proposed (moorage) nightly rate increase.

Kitt Kittredge, Quilcene, expressed concerns on what she believes a possible sale of Quilcene property, and other areas of concern in Quilcene.

Bertram Levy discussed ramp usage, revenue, increasing ramp rates, more ramp signage and purchasing a POS device for ramp use/washdown.

Troy McKelvey believes the drop in ramp sales might be due to shortened fishing seasons and decreased availability of crab.

Pam Petranek thanked Mr. Toews for accepting Deputy Director position. She also encouraged folks to attend an upcoming City meeting for input on hiring a City Manager.

IV. CONSENT AGENDA (00:14:52):

A. Approval of Public Workshop Minutes – November 14, 2018

Approval of Regular Meeting Minutes – November 14, 2018

B. Approval of Warrants

Warrant #059835 through #059850 in the amount of \$13,650.89 for Payroll & Benefits

Electronic Payment in the amount of \$71,689.78 for Payroll & Benefits

Warrant #059851 through #059892 in the amount of \$146,847.27 for Accounts Payable

Electronic Debit in the amount of \$10,542.61 for WA State Dept. of Revenue for

Combined Excise Tax Return for October 2018

C. Resolution No. 690-18 – Signatory Authority

Commissioner Hanke moved to approve the Consent Agenda as presented.

Commissioner Putney seconded the motion.

Motion carried by unanimous vote.

V. SECOND READING (Action Items):

A. 2019 Rates (00:15:08):

Mr. Pivarnik discussed the options presented for the nightly transient moorage rates, which include seasonal rates. He handed out and discussed an analysis of a seasonal rate increase, done by Business Manager Quandt. Staff's recommendation is to stick with the year-round rate of \$1.30/foot (Option 1) for both Boat Haven and Point Hudson. Mr. Pivarnik brought attention to the "Event Parking" rates at Point Hudson. Staff proposes a seasonal charge for "Landfall Site Parking", April 1 – September 30 at \$10/day.

Gwendolyn Tracy requested a Mon-Thurs discounted rate for Marine Trades, a special rate offered in the past. Ms. Berg stated staff would need to look at performance before considering.

Commissioner Hanke stated he would prefer to adopt rates tonight and consider changes at another time.

Commissioner Tucker moved to adopt 2019 rates as presented, choosing "Option 1" nightly moorage rates (year-round rate of \$1.30/ft) at both Boat Haven and Point Hudson marinas.

Commissioner Putney seconded the motion.

Motion carried by unanimous vote.

VI. FIRST READING - Discussion Only:

A. Leasing Policy – Update on Advisory Committee Progress (00:33:57):

Mr. Toews provided an update to the commission on progress, pointing out two of their main concerns: "Highest and Best Use", and who may perform market rate analysis and at what frequency. He discussed the committee's suggestions. Mr. Toews stated the committee is making good progress and a policy proposal would come before the commission in January.

Commissioner Putney would like leases to follow a "Performance Based Leasing" policy. He stated it is an incentive towards economic development.

Attorney Chmelik stated many ports do use a performance based lease policy, but he added it could be difficult to enforce. He explained to the commission that a clause allowing consideration of performance based leases in certain cases could be added into the policy.

Discussion ensued. Mr. Toews reminded the purpose of the policy is to give guidance to staff on how to establish the lease, and he added, this is only an update on progress.

VII. REGULAR BUSINESS:

A. Rubicon Yacht Lease (00:49:47):

Mr. Pivarnik reported staff has secured an agreement with Rubicon Yachts, a premier worldwide yacht broker, to lease the former Boat Haven Moorage Office. Mr. Pivarnik informed Rubicon has invested money into the building and is remodeling and upgrading the space. Mr. Pivarnik stated the lease presented is a one-year with two one-year options. He added minimum required deposit amounts equal to one years'

lease payment can be deviated from the RCW (confirmed with the State Auditor-as long as it is officially approved by the commission), hence the three-month deposit in the Rubicon lease. An attachment with commission-approved deviation must be included with the lease. Discussion ensued on deposits and other issues.

Mr. Toews informed the Rubicon lease also includes two parking spaces.

Commissioner Hanke moved to approve the Rubicon Yachts Lease as presented, with the following changes: listing assigned parking spaces in section 1-Leased Premises, rather than in a footnote, and to add a cover sheet noting the deviation in deposit amount.

Commissioner Tucker seconded the motion.

Motion carried by unanimous vote.

B. FAA Memo Requesting Taxiway Use as Temporary Runway (01:02:54):

Mr. Toews reported that on November 26 the 60% engineered design phase of the runway was submitted to the FAA for review. Also submitted was a request to use the taxiway as a temporary runway during the project, along with supporting documents. He explained this could help to alleviate the impact of the projects on tenants, including UPS air deliveries, and to allow emergency response to use the taxiway. Mr. Toews announced a meeting would be held on December 18, 2018 at 5:30 pm to brief on the runway project and discuss the attempt to alleviate the impact to airport users.

C. Agricultural Development Grant Search) 1:09:16):

Mr. Pivarnik reported Port discussions regarding agricultural development have gone on for years, as far back as 1924. Acreage in the airport industrial area could be used for agriculture or processing, which would benefit District 2. Mr. Pivarnik asked if the commission has the desire to direct staff to pursue grants, such as EDA/USDA grants. Commissioner Putney added that a planning grant could fund a survey of the need, perform a business analysis and planning of a project layout. He reported that he has been approached about cold storage, dry storage and a mobile meat-processing unit, which there is a critical need for on the Olympic Peninsula.

Mr. Pivarnik added this is good timing due to the resurgence of the Finn River-Chimacum properties.

Commissioner Tucker moved to direct staff to search for agriculture development grants.

Commissioner Hanke seconded the motion.

Motion carried by unanimous vote.

D. Correction to Staff Organizational Chart (01:14:41):

Ms. Berg explained that when the Organizational Chart was adopted by the commission, there was an error, which listed a past maintenance position and left off the replacement position of Maintenance Tech II/Maintenance I. The attached Chart is the corrected version.

Commissioner Tucker moved to adopt the revised Staff Organizational Chart as presented.

Commissioner Putney seconded the motion.

Motion carried by unanimous vote.

E. October 2018 Financials (01:15:24):

Ms. Berg stated the presented financial statement shows the Port as one unit and has the cash flow attached. She reported revenues are better than the prior year and are ahead of budget. Expenses are above the prior year but are below budget. Net operations are below budget and net income is over 2017 by about \$300K.

VIII. STAFF COMMENTS (01:17:00):

Ms. Nelson presented the raffle tickets from the Pacific Marine Expo for the 75-ton and the 300-ton to Commissioner Tucker for drawing. He drew the following winners: 300-ton: Seth Steben from Cordova, Alaska and for the 75-ton: Nathan Jarrett of Bremerton.

Mr. Chmelik discussed the upcoming WPPA Annual Meeting in Bellevue.

Mr. Pivarnik reported staff is planning arrangements for the commission retreat for the third week in January at Port Ludlow.

IX. COMMISSIONER COMMENTS (01:22:45):

Commissioner Hanke asked how attendance was at the Pacific Marine Expo and how the booth partnership with the Marine Trades went.

Commissioner Putney stated he arranged for a Port booth at the NW Aviation show last year in Puyallup and the Jefferson County Pilots Association helped staff it. He would like to have the Port present at the 2019 show as well. He reported he reviewed the WSU 2011 study for a food hub, with a possible future location to the Jefferson County International Airport Eco Park.

Commissioner Tucker reported he attended the 2-day NW Straits Conference.

He stated he and Mr. Pivarnik met with the County who asked for consideration of Port property for the Rhody Carnival and reported the Port is "off the hook". Commissioner Tucker announced the State Auditor reported a clean audit for the Port in the recent Exit Meeting.

Commissioner Tucker announced he attended today's PIF meeting and discussed the approved funding to the EDC in the amount of \$50K over the next three years. His belief is that the funding, used towards staffing the EDC, should come from other sources since the PIF money is targeted for infrastructure. Commissioner Tucker stated \$800K in PIF money is available in 2019 and the Port is eligible to apply. Applications due by February 1.

X. NEXT PUBLIC WORKSHOP/BUSINESS MEETING:

December 12, 2018: Public Workshop at 9:30 am and Business Meeting at 1:00 pm
Port Commission Building, 333 Benedict St, Port Townsend.

XI. EXECUTIVE SESSION:

None

XII. ADJOURNMENT:

The meeting adjourned at 7:09 pm there being no further business to come before the Commission.

ATTEST:

William W. Putney III, Secretary

Stephen R. Tucker, President

Peter W. Hanke, Vice President

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 12, 2018
AGENDA ITEM	<input checked="" type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input type="checkbox"/> Regular Business
AGENDA TITLE	VI. A) Establishment of Reserve Funds
STAFF LEAD	Abigail Berg, Director of Finance & Administration, Port Auditor
REQUESTED	<input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo B. "Reserves Policies" sheet

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/12/2018
TO: Commission
FROM: Abigail Berg, Director of Finance & Administration
SUBJECT: Reserves Policy

ISSUE

The Port does not have a formal reserves policy for operating and capital.

BACKGROUND

Through Commission action in August 2016, it was determined that a reserve for the Boat Haven Renovation would no longer be funded and instead the Port would fund a port-wide capital reserve. The use of the port-wide capital reserve would not be limited by the location of a Port capital project. This reserve has been steadily funded since that time. To further enhance the financial stability of the Port, it is recommended that another reserve commence for operating expenses. More detail of such a policy is in the attached.

DISCUSSION

By implementing a formal Reserves policy, Port staff would have another tool to guide them in making financial recommendations and decisions since they know there are other long-range targets aside from the current year operations activity. Whereas the Commission has already implemented a port-wide capital reserve, it was not implemented by formal policy resolution. In addition, the Port is lacking a reserve for operations that would protect the Port from future economic downturns and other reasons as discussed in the attached.

FISCAL IMPACT

Long-term financial stability to the Port.

RECOMMENDATIONS

We recommend the Commission adopt a formal reserves policy.

RESERVES POLICIES

The Port will strive to maintain adequate cash reserves sufficient to meet the following needs:

- Provide adequate liquidity
- Provide for unanticipated economic downturns
- Maintain good credit ratings
- Provide for services and costs during a declared emergency
- Provide for capital needs
- Meet any mandated reserve requirements (debt)

1. Operating Reserve: The Port will build and maintain sufficient cash reserves to pay an average of three (3) months of operating and general administrative expenses, equating to the Port maintaining approximately 25% of total budgeted operating expenses in its cash reserves. 2019 marks the commencement of this reserve and it is anticipated that the 25% target may take until 2023 to fulfill. Funding this reserve will occur monthly based on the actual operating expenses. This reserve funding is subject to change depending on Commission direction, and/or business activity and performance. Once the reserve target of 25% of operating expenses has been met, should cash reserves fall below 25% of the operating expenses, the Executive Director will immediately bring this to Commission to take action.
2. Port-Wide Capital Reserve: The Port will maintain cash reserves to fund capital projects and capital maintenance work as well as for grant match, when applicable. In the August 10, 2016 Commission meeting, the Commission authorized staff to cease funding the Boat Haven Reserve Fund immediately and redirect those monthly reserve payments to a port-wide Capital Reserve in the amount of \$120,000 per annum. This is funded monthly. With Commission direction, the amount funded to this reserve may be changed and will be reviewed annually during budget development. Use of this reserve for targeted capital work shall be determined during the budget process, or with Commission direction during the year.

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 12, 2018
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. A) Lease - Dave's Mobile Welding
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Memo B. Lease, Exhibit 'A', Exhibit 'B'

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/12/2018
TO: Commission
FROM: Jim Pivarnik, Interim Executive Director
SUBJECT: Lease for Dave's Mobile Welding

BACKGROUND

David Fletcher from Dave's mobile welding has been renting the former Craftsmen United site on a month to month basis. He has approached the Port to see if a longer-term lease would be possible. After meeting with David, the Port proposed a two-year lease with several one-year options.

DISCUSSION

Mr. Fletcher, a long-term former employee of Craftsman United is very familiar with the facility. Since going out on his own last year David has secured work all around the county. Having the ability to be a mobile service and also having a building for equipment and larger projects will be an asset to our marine trades community.

RECOMMENDATION

Authorize Executive Director to execute lease with Dave's Mobile Welding.

ATTACHMENTS

Draft Lease

PORT OF PORT TOWNSEND BUILDING & LAND LEASE

THIS LEASE AGREEMENT made this 13th day of December, 2018, by and between the PORT OF PORT TOWNSEND, a municipal corporation organized and existing under the laws of the State of Washington, Lessor, hereinafter referred to as "the Port," and DAVE'S MOBILE WELDING, LLC, a Washington Limited Liability Company, hereinafter referred to as "Lessee,"

WITNESSETH:

That the parties hereto do mutually agree as follows:

1. **LEASED PREMISES:** The Port hereby leases to Lessee, and Lessee hereby hires and leases from the Port, the following described premises situated in Jefferson County, State of Washington:
 - a. Approximately 4,800 square feet of manufacturing building space in the Port's building located at #304 10th Street, Port Townsend, WA 98368; and
 - b. Land situated directly north of the building described in subparagraph a, above, and the current fence line along Sims Way, and limited east-west by the envelope of the building located at #304 10th Street, Port Townsend, WA 98368,hereinafter referred to as "the premises." The premises are depicted on Exhibit "A" which is attached hereto and which by this reference is incorporated herein as if fully set forth herein.
2. **TERM:** The term of this Lease is two (2) years, beginning January 1, 2019, and ending at midnight, December 31, 2020 unless extended or sooner terminated as provided in this Lease. The Lessee shall also have an option to extend the lease term by three (3) additional one (1) year terms. Notification to extend the Lease will be done in writing 90 days prior to end of the initial or any extended lease term.
3. **RENT:** Lessee agrees to pay as rental for the leased premises the sum of **Two Thousand Eight Hundred and Eighty Dollars (\$2,880.00)** plus all applicable taxes. The rent for each month shall be paid to the Port in advance on or before the first day of each and every month of the lease term, and shall be payable at such place as the Port may hereinafter designate. The rental rate beginning in year two and annually throughout the term of the lease will be adjusted by an amount equal to the accumulative amount found on the Consumer Price Index for all urban consumers (CPI-U) for Seattle-Tacoma-Bremerton, which is compiled by the Department of Labor, Bureau of Statistics. In no event shall any rent adjustment result in a reduction in rent from the rate paid in the prior year.

4. **LATE CHARGE:** In the event that any installment of rent remains unpaid more than twenty (20) days after it is due, then Lessee shall also be obliged to pay a "late charge" as per the Port of Port Townsend Rate Schedule then in effect.
5. **DEPOSIT:** Upon the execution of this Lease, Lessee shall deposit with the Port security in the amount of **Two Thousand Eight Hundred and Eighty Dollars and Zero Cents (\$2,880.00)** plus all applicable taxes; each month thereafter Lessee shall deposit an additional **Four Hundred and Eighty Dollars and Zero Cents (\$480.00)** plus all applicable taxes until the security reaches **Eight Thousand Six Hundred Forty Dollars and Zero Cents (\$8,640.00)** plus all applicable taxes, in order to guarantee performance under this Lease. This Lease shall not be effective until the initially required deposit of **Two Thousand Eight Hundred Eighty Dollars and Zero Cents (\$2,880.00)** plus all applicable taxes is made with the Port. The deposit shall be held by the Port as security for Lessee's faithful performance of all of its obligations under this Lease. Any interest earned on amounts deposited shall be retained by the Port. The deposit shall be returned to Lessee upon termination of this Lease, less any charges owing to the Port or expenses incurred by the Port in repairing damage caused by Lessee or restoring the leased premises to the condition required upon termination of this Lease.
6. **USE OF PREMISES:** Lessee shall use the premises for the purpose of boat repair, construction and manufacturing and associated office space and shall not use them for any other purpose without the prior written consent of the Port. Lessee shall use the entire premises for the conduct of said business in a first class manner continuously during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or redecorating or for reasons beyond Lessee's reasonable control. Lessee agrees that it will not disturb the Port or any other tenant of the Port's by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the premises.
7. **UTILITIES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all utility services furnished to the premises, including, but not limited to, light, heat, electricity, gas, water, sewerage, garbage disposal, and communications. WiFi and/or fiber services are not included in the rent.
8. **ACCEPTANCE OF PREMISES:** Lessee has examined the leased premises and accepts them in their present condition with the exception of the following improvements, which the Port agrees to install at its expense prior to January 31, 2019:
 - a. Remedy mold growth in the shop bathroom (i.e., by use of an epoxy paint product);
 - b. Repaint both bathrooms (i.e., shop and office);
 - c. Re-plumb the sinks in both bathrooms;
 - d. Replace toilets in both bathrooms;

- e. Replace drip pans beneath both water heaters (i.e., associated with the shop and office bathrooms);
 - f. Repair roof leak around water heater in roof;
 - g. Repair/patch insulation vapor barrier in the middle section of the shop ceiling; and
 - h. Delete/remove the loose wiring in the ceiling that provided power to exhaust fans removed by a previous tenant.
9. **MAINTENANCE AND REPAIR:** At the expiration or sooner termination of this Lease, Lessee shall return the premises to the Port in the same condition in which received (or, if altered by Lessee with the Port's consent, then the premises shall be returned in such altered condition), reasonable wear and tear and damage by fire or unavoidable casualty excepted. Lessee shall, at its' own expense, and at all times:
- a. Keep the premises, and the adjoining roadways and sidewalks, neat, clean and in a safe and sanitary condition;
 - b. Maintain and keep the leased premises in a good state of repair; and
 - c. Not commit waste of any kind.
10. **ALTERATIONS AND IMPROVEMENTS:** Lessee shall make no alterations or improvements to or upon the premises or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval from the Executive Director of the Port. Such written approval shall also include agreement for disposition of the improvements upon termination of this Lease.
11. **INSPECTION - "FOR RENT" SIGNS:** The Port reserves the right to inspect the leased premises at any and all reasonable times throughout the term of this Lease, PROVIDED, that it shall not interfere unduly with Lessee's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises, and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for thirty (30) days prior to the expiration or sooner termination of this Lease.
12. **POSSESSION:** If the Port shall be unable for any reason to deliver possession of the premises, or any portion thereof, at the time of the commencement of the term of this Lease, the Port shall not be liable for any damage caused thereby to Lessee, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any rent until such time as the Port can deliver possession, PROVIDED, that if Lessee shall, in the interim, take possession of any portion of the premises, it shall pay as rental the full rental specified herein reduced pro rata for the portion of the premises not available for possession by Lessee, AND PROVIDED FURTHER, that if the Port shall be unable to deliver possession of

the premises at the commencement of the term of this Lease, Lessee shall have the option to terminate this Lease by at least thirty (30) days written notice, unless the Port shall deliver possession of the premises prior to the effective date of termination specified in such notice. If Lessee shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable.

13. DAMAGE OR DESTRUCTION:

- a. Should the premises or the buildings or structures of which the premises are a part be damaged by fire or other casualty, and if the damage is repairable within four (4) weeks from the date of the occurrence (with the repair work and the preparations therefore to be done during regular working hours on regular work days), the premises shall be repaired with due diligence by the Port, and in the meantime the monthly minimum rental shall be abated in the same proportion that the untenable portion of the premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs.
- b. Should the premises or any buildings or structures of which the premises are a part be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within four (4) weeks of the occurrence, the Port shall have the option to terminate this Lease on thirty (30) days' notice, effective as of any date not more than sixty (60) days' after the occurrence. In the event that this paragraph shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the lease in effect or to terminate it. If the Port shall elect to continue this Lease in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Lease, and the lease shall automatically terminate sixty (60) days after the occurrence of the damage. For the period from the occurrence of any damage to the premises to the date of completion of the repairs to the premises (or to the date of termination of the lease if the Port shall elect not to restore the premises), the monthly minimum rental shall be abated in the same proportion as the untenable portion of the premises bears to the whole thereof.

- 14. INDEMNIFICATION AND HOLD HARMLESS:** The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained, or alleged to have been sustained by the Lessee or by others as a result of any condition (including existing or future defects in the premises) or occurrence whatsoever related in any way to the premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the premises and of the areas adjacent thereto. Lessee agrees to defend

and to hold and save the Port harmless from all liability or expense of litigation) in connection with any such items of actual or alleged injury or damage.

15. **INSURANCE:** Lessee agrees to maintain during the lease term liability insurance as set forth below, at Lessee's sole expense. All such insurance shall name the Port of Port Townsend as an additional insured, and shall be with insurance companies acceptable to the Port.
- a. Comprehensive General Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000.00 combined single limit for each occurrence. Such insurance shall include but not be limited to bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, and products/completed operations liability.
 - b. Comprehensive Business Automobile Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000.00 combined single limit for each occurrence. Such insurance shall include but not be limited to bodily injury liability, property damage liability, hired car liability, and non-owned auto liability.
 - c. Workers Compensation Insurance as will protect tenant's employees from claims under Washington Workers Compensation Act as well as all Federal Acts applicable to the tenant's operations at the site such as but not limited to U.S. Longshoremen and Harborworkers Act, Jones Act, and Federal Employers Liability section of the Washington Workers Compensation Policy and all Federal Acts Insurance shall not be less than \$1,000,000.00 for each occurrence.

The Lessee agrees to supply the Port with appropriate evidence to establish that its insurance obligations have been met, and that the insurance policy or policies are not subject to cancellation without at least thirty (30) days advance written notice to the Port. The conditions set forth in subparagraphs a, b and c of this Paragraph 15 shall be met prior to inception of this Lease Agreement.

16. **WAIVER OF SUBROGATION:** The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts, including any extended coverage endorsements thereto, PROVIDED, that this paragraph 16 shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of the Port or Lessee.
17. **INCREASE IN COST OF INSURANCE:** Lessee shall not use the demised premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with

respect to the buildings or structures of which the leased premises are a part, and to the extent allocable to the term of this Lease, may be added to the amount of rental hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.

18. **HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT:** Lessee has examined the Hazardous Substance Warranty and Agreement, consisting of six (6) pages, which is attached as Exhibit "B" hereto and which by this reference is incorporated herein as fully set forth herein, and acknowledges full understanding of its obligations under said Hazardous Substances Warranty and Agreement.
19. **TAXES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all license and excise fees and occupation taxes covering the business conducted on the premises, and all taxes on property of Lessee on the leased premises and any taxes on the leased premises or leasehold interest created by this Lease Agreement.
20. **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:** Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Lessee also agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations. Lessee further agrees that all buildings, structures or other improvements, approved by the Port, will be properly permitted by Jefferson County. Any fees for any inspection of the premises during or for the lease term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.
21. **ASSIGNMENT OR SUBLEASE:** Lessee shall not assign or transfer this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, otherwise, without the written consent of the Port first had and obtained. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this Lease more than one-half (1/2) of the outstanding shares of any class of stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, such change in the ownership of the stock of the Lessee shall be deemed an assignment of this Lease within the meaning of this paragraph. If the Port shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent. The Port's consent will not unreasonably be withheld.

- 22. DEFAULTS:** Time is of the essence of this Lease Agreement, and in the event of the failure of Lessee to pay the rentals or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein set forth to be kept and performed, the Port may elect to terminate this Lease and reenter and take possession of the premises with or without process of law, PROVIDED, however, that Lessee shall be given fifteen (15) days' notice in writing stating the nature of the default in order to permit such default to be remedied by Lessee within said fifteen (15) day period. If upon such reentry there remains any personal property of Lessee or of any other person upon the leased premises, the Port may, but without the obligation so to do, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Lessee shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Lessee to the Port, and the balance, if any, shall be paid to Lessee. Notwithstanding any such reentry, the liability of Lessee for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee shall make good to the Port any deficiency arising from a re-letting of the leased premises at a lesser rental than that hereinbefore agreed upon. Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Port. Any failure by the owners, officers, or principals of Lessee to pay rentals, storage fees, moorage or any other charges owed to the Port under separate contract shall constitute default under provisions of this Lease Agreement.
- 23. TERMINATION BY PORT:** In the event that the Port, at its sole discretion, shall require the use of the premises for any purpose for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to the Lessee **sixty (60)** or more days before the termination date specified in the notice. The Lessee and the Port's Executive Director will agree to appropriate compensation to be provided Lessee for loss of use, cost of relocation, and/or cost of improvements.
- 24. TERMINATION FOR GOVERNMENT USE:** In the event that the United States Government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the premises or any part thereof, the Port may, at its option, terminate this Lease as of the date of such taking, and, if Lessee is not in default under any of the provisions of this Lease on said date, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

- 25. TERMINATION BECAUSE OF COURT DECREE:** In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.
- 26. SIGNS:** No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted or within the leased premises, including the windows and doors thereof, without the approval of the Executive Director of the Port first had and obtained. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the premises, and correct any unsightly condition, caused by the maintenance and removal of said signs, etc.
- 27. INSOLVENCY:** If Lessee shall file a petition in bankruptcy, or if Lessee shall be adjudged bankrupt or insolvent by any court, or if a receiver of the property of Lessee shall be appointed in any proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on Lessee's interest in the premises or on any personal property kept or maintained on the premises by Lessee, the Port may at its option, terminate this Lease.
- 28. WAIVER:** The acceptance of rental by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. No waiver by the Port of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been cured by Lessee, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 22 hereof.
- 29. PROMOTION OF PORT COMMERCE:** Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Lessee further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Lessee.

- 30. SURRENDER OF PREMISES - ATTORNEYS' FEES:** At the expiration or sooner termination of this Lease, Lessee shall promptly remove building from leased property or re-negotiate a lease at the same or different site at the Port. In the event that the Port shall be required to bring any action to enforce any of the provisions of this Lease, or shall be required to defend any action brought by Lessee with respect to this Lease, and if the Port shall be successful in such action, Lessee shall, in addition to all other payments required herein, pay all of the Port's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.
- 31. HOLDING OVER:** Any holding over by the Lessee after the expiration of this Lease shall be construed as a tenancy at sufferance (unless such occupancy is with the written consent of the Port) in which event the Lessee will be a tenant from month to month, upon the same terms and conditions of this Lease, except at a rent for such holdover period of 125% of the rental rate in effect for the month preceding such holdover. Acceptance by the Port of rent after such termination shall not constitute a renewal.
- 32. ADVANCES BY PORT FOR LESSEE:** If Lessee shall fail to do anything required to be done by it under the terms of this Lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Lessee, and upon notification to Lessee of the cost thereof to the Port, Lessee shall promptly pay the Port the amount of that cost.
- 33. LIENS AND ENCUMBRANCES:** Lessee shall keep the leased premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such a lien on the leased premises if not paid.
- 34. NOTICES:** All notices hereunder may be delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

To Lessor:
THE PORT OF PORT TOWNSEND
P.O. Box 1180
Port Townsend, Washington 98368

To Lessee:
DAVE'S MOBILE WELDING, LLC
PO Box 1911
Port Townsend, WA 98368
Phone: (360) 302-0069

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

35. **JOINT AND SEVERAL LIABILITY:** Each and every party who signs this Lease, other than in a representative capacity, as Lessee, shall be jointly and severally liable hereunder.
36. **"LESSEE" INCLUDES LESSEE, ETC.:** It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessee under this Lease Agreement.
37. **CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
38. **SEVERABILITY:** If any term or provision of this Lease Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.
39. **NON-DISCRIMINATION SERVICES:** The Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, sex, sexual orientation, or national origin in furnishing, or by refusing to furnish, to such person, or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

It is agreed that the Lessee's noncompliance with the provisions of this clause shall constitute a material breach of this Lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

40. **NON-DISCRIMINATION EMPLOYMENT:** The Lessee covenants and agrees that in all matters pertaining to the performance of this Lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and non-discriminatory treatment of all persons without respect to race, creed or national origin and, in particular:
- a. Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities, and

- b. Lessee will comply strictly with all requirements of applicable federal, state or local laws or regulations issued pursuant thereto relating to the establishment of non-discriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, creed, color, sex, sexual orientation, or national origin.

41. EASEMENTS: The Parties recognize that the Port facilities are continuously being modified to improve the utilities and services used and provided by the Port. The Port or its agents shall have the right to enter the demised premises of the Lessee, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, and all other services required by the Port for its use. The Port is hereby granted a continuous easement or easements that the Port believes is necessary within the lease premises of the Lessee, without any additional cost to the Port for the purposes expressed hereinabove; PROVIDED however, that the Port by virtue of such use does not permanently deprive the Lessee from its beneficial use or occupancy of its leased area.

In the event that the Port does permanently deprive the Lessee from such beneficial use or occupancy, then an equitable adjustment in rent or in the cost required to modify its premises to allow the Lessee to operate its business, will be negotiated and paid by the Port to the Lessee. In the event that such entry by the Port is temporary in nature, then the Port shall reimburse the Lessee for the cost required to modify its premises for the temporary period that the Lessee is inconvenienced by such Port entry. The Port will not be responsible to the Lessee for any reduced efficiency, or loss of business occasioned by such entry.

Lease Agreement dated this 13th day of December 2018 is hereby approved by the Port of Port Townsend Port Commission, on this 12th day of December 2018 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

LESSEE

David Fletcher

ATTEST:

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Jim Pivarnik, Interim Executive Director

Port Attorney

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

I certify that I know or have satisfactory evidence that David Fletcher signed this instrument and that he is authorized to execute the instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

Signature of
Notary Public: _____

My Appointment Expires: _____

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

I certify that I know or have satisfactory evidence that Jim Pivarnik signed this instrument and that he is authorized to execute the instrument as Interim Executive Director of the Port of Port Townsend and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature of
Notary Public: _____

My Appointment Expires: _____

DAVE'S MOBILE WELDING - EXHIBIT A

304 - 10th Street

Bldg 4800 SF

Parking on north side of building up to the fence line and bordered by east and west sides of building

Legend












-  304 - 10th Street South Side
-  Admiral Ship Supply Inc
-  Columbia Bank
-  DAVE'S MOBILE WELDING - EXHIBIT A
-  DAVE'S WELDING PREMISES - EXHIBIT A
-  Key City Fish Company
-  Marine
-  McDonald's
-  Port Townsend
-  Port Townsend Brewing Co
-  Sunrise Coffee Company



EXHIBIT "B"

HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT

RIDER TO LEASE AGREEMENT DATED: December 13, 2018, BETWEEN THE PORT OF PORT TOWNSEND and DAVE'S MOBILE WELDING, LLC.

IT IS HEREBY AGREED THAT THE LEASE AGREEMENT IDENTIFIED ABOVE SHALL BE SUPPLEMENTED AND MODIFIED AS FOLLOWS:

1. **HAZARDOUS SUBSTANCES ON PREMISES.** Without the express written permission of Lessor, Lessee shall not store, use or have present on or adjacent to the premises any hazardous or toxic substances, including those substances defined as "hazardous" or "extremely hazardous" under federal or Washington State environmental statutes or regulation (including but not limited to 42 USC 9601 et seq, 40 CFR Part 302, RCW Chapter 70.105D.020 and WAC 173-340-200, and any successor statutes and regulation), except as follows: _____

2. **STORAGE AND USE OF HAZARDOUS SUBSTANCES.** Lessee agrees at all times to restrict its storage and use of substances identified in Paragraph 1 to the inside of the permanent building(s) at the premises, and specifically to those locations within such buildings(s) having concrete flooring or such other impermeable flooring as Lessor may in its sole discretion approve in writing upon request by Lessee.
3. **HANDLING AND DISPOSAL.** The Lessee agrees to use said substances identified in paragraph 2 only on areas which have impermeable surfaces and or other means for preventing accidental contact by such substances with the soils upon the leasehold or its surrounding area.
4. **RELEASES OF HAZARDOUS SUBSTANCES PROHIBITED.** Lessee shall not release, dispose of, or permit a release of, any of the substances described or identified in paragraph 1 onto the premises or into the environment surrounding the premises.
5. **REGULATORY COMPLIANCE.** Lessee warrants and agrees that, during the term of this lease and any extensions thereof, it will take all steps necessary to comply with all applicable federal, state and local requirements for the containment, storage, use and disposal of any and all hazardous or toxic substances at the premises, including but not limited to obtaining and maintaining all necessary federal, state and local permits or licenses, and obtaining any required federal or state hazardous waste generator or

transporter identification numbers. Lessee shall provide to Lessor a copy of each such existing permit, license, and identification number before occupancy, and shall provide a copy of any such permit, license, and identification number which Lessee may obtain in the future within seven days of receipt by Lessee.

6. **DISPOSAL OF HAZARDOUS WASTES.** In the event Lessee has occasion or need to dispose of hazardous or toxic substances or wastes, and unless otherwise agreed in writing, Lessee shall retain an independent hazardous waste disposal firm to dispose of any and all such substances at an off-site facility which has been properly approved, licensed and authorized to accept such substances. Lessee shall ensure that the disposal firm is properly licensed and in good standing with the applicable regulatory authorities for such work, and that it has all required transporter identification numbers.
7. **LESSEE'S WARRANTY OF NO CONTAMINATION.** Except as may be disclosed in Attachment No. 1 hereto, Lessee warrants and represents (1) that it has not released any toxic or hazardous substances onto the premises or into the environment in connection with its activities at the premises, (2) that it has inspected the premises and is not aware of any indication that a release of any hazardous substances has ever occurred at the premises, including prior to Lessee's occupancy, (3) that it has never been formally accused or cited, at the premises or elsewhere, for any violation of environmental laws, regulations or any hazardous waste-related governmental permit, and (4) that no claims or litigation have ever been pending against it by any person or governmental agency involving any use, storage, release or disposal of hazardous or toxic waste. If any such releases, formal accusations, citations, claims or litigation against Lessee arise during the term of this lease or any extension thereof, then Lessee shall notify Lessor in writing within seven (7) days of such event, and shall provide Lessor with a copy of each document reflecting such event.
8. **INDEMNIFICATION AND HOLD HARMLESS.** Lessee shall indemnify and hold Lessor harmless with respect to any and all direct or indirect expenses, losses of damages, including all consequential damages, Attorney's fees, and litigation-related expenses and costs, incurred by Lessor which result from (1) Lessee's breach of provision of this Rider, (2) claims, actions, suites, proceedings, judgments, fines or remedial orders (including orders to clean up contamination at the premises) which arise because of Lessee's breach of this Rider, (3) Lessee's violation of environment laws or regulations, or (4) Lessee's release of a toxic or hazardous substance onto the premises or into the surrounding environment. This provision shall apply regardless of whether Lessee has been negligent or at fault for such breach, violation, or release. This obligation by the Lessee shall survive the expiration or termination of the lease agreement and the sale of the property. If Lessor so requests, Lessee shall accept the tender of defense of, and shall retain counsel of Lessor's selection and at Lessee's expense to defend, any third party claim asserted against Lessor in

connection with alleged conduct by Lessee which, if true, would be in breach of the provision of this Rider.

9. **NOTIFICATION TO LESSOR OF CHANGES IN OPERATION.** Lessee agrees to notify Lessor in writing at least seven (7) days in advance of any previously undisclosed action which the Lessee plans to take which poses a material risk of a release of hazardous substance into the environment, including but not limited to material changes in Lessee's methods of hazardous waste disposal, material increases in the volume of Lessee's hazardous waste disposal, or material changes in the nature of any hazardous wastes which Lessee anticipates it will generate.
10. **COPIES OF ENVIRONMENTAL CORRESPONDENCE.** Lessee agrees to provide Lessor with copies of all past and future correspondence to or from the Washington Department of Ecology, the U.S. Environmental Protection Agency, and any other government agency which has had or may have contact with Lessee regarding environmental concerns pertaining to the premises.
11. **NOTIFICATION OF SPILLS OR RELEASES.** Lessee shall comply with all notification requirements under the applicable federal, state and local environmental statutes and regulations, including but not limited to the timely notification of the appropriate government authorities of any spills or releases of toxic or hazardous substances into the environment or onto the premises. Lessee shall notify Lessor within 24 hours of discovery of any such spills or releases, and shall provide copies of all correspondence and documents related to such spills or releases to Lessor with seven days after receipt or creation, as the case may be.
12. **LESSOR'S REMEDY FOR BREACH OR VIOLATION.** In the event Lessee permits a release of a hazardous substance to occur at or near the premises, or breaches any provision of this Rider, Lessor shall be entitled (1) to terminate the lease agreement immediately, (2) to require Lessee to cease all operation which pose a risk of releasing a hazardous substance into the environment, and (3) to require Lessee to begin an immediate cleanup of any and all contamination at the premises to the extent necessary to achieve full compliance with the applicable environmental laws and regulations. Lessor shall be entitled to obtain immediate injunctive relief from a court of competent jurisdiction to enforce this provision. These remedies shall be in addition to, and not in substitution for, any other remedies available to Lessor under applicable law.
13. **ANNUAL DECLARATION OF COMPLIANCE.** Within ten (10) days of receipt of a written request by Lessor, Lessee shall provide to lessor a declaration of Lessee's compliance or non-compliance with the applicable environmental laws and regulations and with the provisions of this Rider, in the form set forth in Attachment No. 2. Lessor anticipates that it

will request such a declaration annually, approximately on the anniversary date of this Rider.

14. **INSPECTION OF PREMISES.** Lessee agrees to permit and cooperate with any on-site inspections and testing requested by Lessor, including inspections and testing conducted by consultants or engineers hired by Lessor to evaluate Lessee's compliance with the applicable environmental requirements and the provisions of this Rider. Lessor shall provide Lessee within 24 hours advance notice of Lessor's intent to conduct such inspection or testing.
15. **DESIGNATED REPRESENTATIVE RESPONSIBLE FOR COMPLIANCE.** DAVID FLETCHER whose work telephone number is 360-302-0069 and whose home telephone number is 360-302-0069 shall be the Lessee's designated representative who shall be primarily responsible (1) for Lessee's compliance with the provision of this Rider, (2) for handling contact with Lessor pertaining to environmental compliance, and (3) for signing on behalf of Lessee the annual declaration of compliance pursuant to Paragraph 12 above. Lessee shall promptly notify Lessor of any changes in the identity or telephone numbers of the designated representative.
16. **ADDITIONAL PROVISIONS.**

LESSOR:

LESSEE:

Jim Pivarnik

Dave Fletcher

Title: Interim Executive Director

Title: _____

Date: _____

Date: _____

(Attachment No. 1 to Hazardous Substances Rider)

DISCLOSURE BY LESSEE

The Lessee makes the following disclosure pursuant to Paragraph 6 of the Hazardous Substances Warranty and Agreement (Attach Additional page(s) if necessary):

1. Release(s) of Hazardous Substances by Lessee:
(If none, initial here: _____)
2. Indication(s) of Contamination at Premises:
(If none, initial here: _____)
3. Lessee Violation(s) of Environmental Regulations:
(If none, initial here: _____)
4. Environmental Claims or Litigation Against Lessee:
(If none, initial here: _____)

Lessee: DAVE'S MOBILE WELDING, LLC

By: _____ / _____
(Printed Name) (Signature)

Title: _____/Date: _____

(Attachment No. 2 to Hazardous Substances Rider)

DECLARATION OF COMPLIANCE

_____, as the designated representative of Lessee primarily responsible for environmental compliance pursuant to Paragraph 12 of the Hazardous Substances Warranty and Agreement dated: December 13, 2018, hereby declare and represent as follows on behalf of Lessee:

1. I have read, and am familiar with, Lessee's obligations and representations as set forth in the Hazardous Substances Warranty and Agreement applicable to Lessee.
2. I am not aware of, and do not believe there have been any violations by Lessee of any of the provisions in the Hazardous Substances Warranty and Agreement, or of any requirements imposed on Lessee by federal, state or local environment laws and regulations.
3. I have no reason to believe, and do not believe, that any of the representations in Paragraph 6 of the Hazardous Substances Warranty and Agreement are inaccurate as of the date indicated below.
4. Lessee has not stored, used or had present on or adjacent to the premises any hazardous or toxic substances except those that have been disclosed in writing to Lessor.
5. Lessee has not released, disposed of, or permitted the release of any hazardous or toxic substances onto the premises or into the environment surrounding the premises, except as has been disclosed in writing to Lessor.

Lessee: DAVE'S MOBILE WELDING, LLC

By: _____
Signature

Title: _____/Date: _____

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 12, 2018
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. B) Lease Assignment Cunningham / Fishery Point
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Memo B. Lease

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/12/2018
TO: Commission
FROM: Jim Pivarnik, Interim Executive Director
SUBJECT: Lease Assignment Cunningham / Fishery Point LLC

BACKGROUND

Cunningham Ships Carpentry LLC has been operating in the Port for the last 4 years. Last year the owner Bob Cunningham passed away. His wife was to continue running the business but has decided that she didn't want to continue. Mark Burn from Fishery Point LLC had sublet some space from the Cunninghams for the last few years. He has approached the Port to see if he could just get a lease assumption for the remaining year of the lease.

DISCUSSION

Staff believe that since Mr. Burn has already been in the building that it would be a good use of the space for the remainder of the term. At the end of the term Mr. Burn would need to re-negotiate the lease.

RECOMMENDATION

Approve lease assignment to Fishery Point LLC.

ATTACHMENTS

Cunningham/Fishery Point Lease Assignment.

ASSIGNMENT & ASSUMPTION OF BUILDING LEASE

THIS ASSIGNMENT AND ASSUMPTION OF BUILDING LEASE is dated and effective as of **December 12, 2019** by and between Cunningham Ships Carpentry, LLC, a Washington Limited Liability Company ("Assignor"), and FISHERY POINT, LLC, a Washington Limited Liability Company ("Assignee") with a business address of 1575 Tyler Street, Port Townsend, Washington, 98368.

WHEREAS, Assignor is Tenant under that certain BUILDING & LAND LEASE dated September 1, 2014, by and between the PORT OF PORT TOWNSEND, a Washington Municipal Corporation ("Lessor") and Assignor, (as modified from time to time, the "Lease"), respecting certain premises (the "Premises") located at the Port Townsend Boat Haven, Port Townsend, Washington, as more particularly described therein;

WHEREAS, Assignor desires to assign its interest in the Lease to Assignee and Assignee desires to assume Assignor's obligations under the Lease; and

WHEREAS, Paragraph #21 of the Lease provides that the Assignor's interest in the Lease may not be assigned unless the Lessor grants its written consent to any such assignment,

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree, and Lessor consents, as follows:

- 1. Assignment of Lease:** Assignor does hereby transfer, assign, convey and deliver to Assignee its entire right, title and interest in the Lease and the Premises.
- 2. Assumption of Obligations:** Assignee does hereby accept this assignment and, for the benefit of Assignor and Lessor, expressly assumes and agrees to hereafter perform all of the terms, covenants, conditions and obligations of Assignor under the Lease, which accrue from and after the date hereof. Assignee has been furnished with a copy of the Lease, which is attached hereto as Exhibit "A" (including all amendments thereto), has reviewed the Lease, and understands all of the terms of the Lease.
- 3. Indemnity:** Assignor agrees to save, indemnify, defend and hold Assignee harmless from and on account of any claims, demands, actions, losses, expenses and liabilities of Assignee under the Lease on account of or arising out of any obligations and liabilities of the Lessee thereunder, arising prior to the date hereof.

Assignee agrees to save, indemnify, defend and hold Assignor harmless from and on account of any claims, demands, actions, losses, expenses and liabilities of Assignor under the Lease on account of or arising out of the obligations and liabilities so assumed and arising after the date hereof.

4. Rents and Stormwater Fees in Arrears: Assignor and Assignee understand and agree that the lease is not current, and that Lessee/Assignor presently owes three (3) months in back rents together with three months in stormwater fees to Lessor. Accordingly, and as a condition precedent to Lessor's approval of this Assignment, Assignee expressly agrees to pay Lessor back rents in the amount of Two Thousand Five Hundred Twenty-Eight Dollars and Eighty-Five Cents (\$2,528.85) plus Leasehold Tax calculated at 12.84% (\$324.70), together with stormwater fees for three months totaling Fifty-Four Dollars and Forty-Eight Cents (\$54.48).

5. Deposit Adjustment: Assignor and Assignee understand and agree that the deposit on file with Lessor is insufficient (i.e., it has not yet been adjusted for CPI increases) and must be increased from the present \$1,400.00 plus leasehold tax calculated at 12.84% (\$179.76) (i.e., a total currently on file of \$1,579.76) to \$1,902.36.¹ Accordingly, and as a condition precedent to Lessor's approval of this Assignment, Assignee expressly agrees to deposit security in the amount of One Thousand Nine Hundred and Two Dollars and Thirty-Six Cents (\$1,902.36) with Lessor. Upon fulfillment of this condition, Lessor will expeditiously credit Assignor the \$1,579.76 presently on file with the Port.

6. Contingency: Notwithstanding anything to the contrary herein, this Assignment shall be contingent upon the receipt of the consent of the Lessor as evidenced by the execution by the Lessor's consent set forth below. By consenting to this Assignment, Lessor acknowledges:

- a. That with the exception of the back rents and stormwater fees specifically enumerated in Paragraph #4, above, all rents, royalties, penalties, assessments, taxes, and charges of any kind owing to Lessor arising out of the Lease have been timely paid, that no such rents, royalties, penalties, assessments, taxes, or charges that have accrued to date hereof are unpaid, and that to the best of Lessor's knowledge there are no rents, penalties, assessments, taxes, or charges of any kind contemplated by Lessor to be imposed on or after the date hereof that are not specified in the Lease;
- b. That, with the exception of the back rents and stormwater fees specifically enumerated in Paragraph #4, above, Assignor is not in default or violation of any provision of the Lease;
- c. That all repairs or maintenance of the Premises that are the responsibility of Lessor and which have been requested by Assignor have been, or will within a reasonable time be, effected in a good and workmanlike manner at Lessor's expense;
- d. That the Lease is in effect in accordance with its terms; and
- e. That the Lease is enforceable in accordance with its terms.

7. Successors and Assigns: This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

¹ (i.e., a rental rate of \$842.95, plus leasehold tax of \$108.23, equals \$951.18, multiplied by two (2) equals \$1,902.36)

Executed as of the date first above written.

ASSIGNOR:

CUNNINGHAM SHIPS COMPANY, LLC

Mary C. Cunningham

ASSIGNEE:

FISHERY POINT, LLC

Mark Burn

LESSOR'S CONSENT:

The Port of Port Townsend, as owner and holder of all right, title and interest under the Lease hereby consents to the foregoing assignment.

APPROVED AS TO FORM:

THE PORT OF PORT TOWNSEND
A Washington Municipal Corporation

Jim Pivarnik, Interim Executive Director

Port Attorney

CUNNINGHAM/FISHERY POINT
LEASE ASSUMPTION

DECEMBER 12, 2018

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 12, 2018
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. C) Point Hudson Jetty Historical Designation
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input type="checkbox"/> Action <input checked="" type="checkbox"/> Discussion
ATTACHMENTS	A. Memo

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/12/2018
TO: Commission
FROM: Jim Pivarnik, Interim Executive Director
SUBJECT: Point Hudson Jetty Historical Designation

BACKGROUND

For the last few years there has been an increased dialogue on the proposed construction of the Jetty at Point Hudson. There has been a group of dedicated individuals that have asked for consideration of replacing the jetty in kind. Many hours of work have been put into creating a historical timeline of Point Hudson development and presenting it to staff and commission. With that, investigations have been made as to what help (financial and permitting) could be received if the Port were to designate the Jetty as an historic structure and rebuild it with those design standards in mind. Staff and Commissioner Tucker have met with Michael Sullivan of Artifacts Consulting to explore what it would mean to designate the structure Historic and what restrictions would be placed on the Port should that happen.

DISCUSSION

As we are all aware the Point Hudson Jetty project has been going on for some time. Engineering is complete, and permits issued. However, funding continues to plague the completion of this project. To date almost \$700,000 has been expended. If the Port were to proceed with historic designation, much of the prior effort would be written off. The proponents argue that help from the historic trust and other organizations could make up for this shortfall. The question is would the Commission like staff to pursue this option along with other potential alternatives, and report back our findings?

RECOMMENDATION

For discussion and direction.

ATTACHMENTS

None

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 12, 2018
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. D) Resolution No. 691-18 – Surplus of 75-ton Travelift and Sentry Safe
STAFF LEAD	Abigail Berg, Director of Finance & Administration, Port Auditor
REQUESTED	<input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Memo B. Resolution No. 691-18

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/12/2018
TO: Commission
FROM: Jim Pivarnik, Interim Executive Director
SUBJECT: Surplus Old 75-ton Travelift

BACKGROUND

Two years ago, we had a failure of the 75-ton Travellift with a boat in the slings. That failure resulted in our insurance company totaling the entire machine and funding a replacement. Since that time the machine has been taking up space in the yard and staff believes that it has little value to the port district.

DISCUSSION

The travel lift has been sitting in the maintenance yard for over a year now. Our staff has said that there is no additional value to the lift and this item should be surplus. Although there may be some parts that are interchangeable, surplus of the entire machine will allow us to either sell the machine in its entirety or sell it for parts.

RECOMMENDATION

Authorize Executive Director to surplus and dispose of old 75-ton Marine Travellift.

ATTACHMENTS

Resolution No. 691-18.

RESOLUTION NO. 691-18

A Resolution of the Commission of the Port of Port Townsend

RESOLUTION DECLARING CERTAIN ITEMS SURPLUS AND AUTHORIZING THEIR SALE AND/OR DISPOSAL

WHEREAS: The Port of Port Townsend has in its possession the damaged and disassembled 75-ton Travelift and a disassembled, fire-resistant Sentry safe that are no longer needed, as described in Exhibit A and attached to this resolution; and

WHEREAS: due to the failure of this travelift and subsequent replacement of it and the disassembly of the safe lock in order to open it, these are of no value to the Port and is therefore no longer needed for Port purposes; and

WHEREAS: such property having been certified in writing as not needed for Port purposes by the Interim Executive Director, its managing official, a copy of said certification is marked Exhibit A and attached to this Resolution,

NOW, THEREFORE BE IT HEREBY RESOLVED by the Port Commission of the Port of Port Townsend that the said property be declared surplus, and that the Interim Executive Director is authorized to sell, donate or dispose of the property in the best manner which he, in his discretion, shall determine, including by negotiation or informal bidding from members of the public, or direct disposal or donation.

ADOPTED this 12th day of December 2018 by the Commission of the Port of Port Townsend and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.

ATTEST:

William W. Putney III, Secretary

Stephen R. Tucker, President

Peter W. Hanke, Vice President

APPROVED AS TO FORM:

Port Attorney

Port of Port Townsend
12/12/2018 Commission Meeting

Resolution 691-18-Travelift & Safe

EXHIBIT "A"

CERTIFICATE

THAT CERTAIN PORT DISTRICT PROPERTY IS SURPLUS

The undersigned, Jim Pivarnik, Interim Executive Director, the managing official of the Port District of the Port of Port Townsend, hereby certifies that the following property is surplus and is not needed for Port District purposes.

EQUIPMENT TO SURPLUS:

LOCATION:	TYPE:	BRAND:	MODEL:	SERIAL #
Port Maintenance yard	equipment	Travelift	2005	NA
Point Hudson	safe	Sentry	R20727	NA

Jim Pivarnik, Interim Executive Director