



PO Box 1180 • Port Townsend, WA 98368

Administration: (360) 385-0656

Operations: (360) 385-2355

Fax: (360) 385-3988

**Port of Port Townsend
2nd Monthly Meeting Agenda
Wednesday, March 27, 2019, 5:30 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
- IV. Consent Agenda
 - A. Approval of Regular Meeting Minutes – March 13, 2019.....1-3
 - B. Approval of Warrants
- V. Second Reading
- VI. First Reading
- VII. Regular Business
 - A. Marine Science Center Briefing.....4-5
 - B. Department of Fish and Wildlife Lease.....6-17
 - C. Kimmel's Krab Shack Ground Lease.....18-51
 - D. February 2019 Financials.....52-55
 - E. Resolution No. 698-19 Authorizing a Multi-year Levy Period.....56-59
- VIII. Staff Comments
- IX. Commissioner Comments
- X. Next Public Workshop and Regular Business Meeting:
Wednesday, April 10, 2019: Workshop at 9:30 am, Meeting at 1:00 pm
Port Commission Building, 333 Benedict Street, Port Townsend, WA
- XI. Executive Session
- XII. Adjournment

PORT COMMISSION SPECIAL BUSINESS MEETING – March 13, 2019

The Port of Port Townsend Commission met in special session at the Quilcene Community Center, 294952 US Hwy 101, Quilcene, WA

Present: Commissioners –Putney, Hanke & Tucker
Interim Executive Director Pivarnik
Auditor Berg
Deputy Director Toews
Minutes – Nelson

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

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

II. APPROVAL OF AGENDA:

Commissioner Hanke moved to approve the Agenda as presented.

Commissioner Tucker seconded the motion.

Motion carried by unanimous vote.

Quilcene resident Ray Canterbury thanked the Commission and staff for bringing the Port meeting to Quilcene. He also thanked Commissioner Putney for attending the Linger Longer Committee meeting earlier this week.

(Items III and IV were read out of order, as the audience situated itself.)

IV. CONSENT AGENDA:

A. Approval of Regular Business Meeting Minutes – February 27, 2019

B. Approval of Warrants

Warrant #060269 through #060282 in the amount of \$61,133.71 for Payroll & Benefits

Electronic Payment in the amount of \$84,754.05 for Payroll & Benefits

Warrant #060283 through #060334 in the amount of \$123,742.47 for Accounts Payable

Electronic Debit in the amount of \$3,917.04 for WA State Dept. of Revenue Excise Tax

Return for February 2019

Commissioner Tucker moved to approve the Consent Agenda as presented.

Commissioner Hanke seconded the motion.

Motion carried by unanimous vote.

III. PUBLIC COMMENTS (not related to agenda):

Connie Gallant commented on the Coast Seafoods lease.

V. SECOND READING (Action Items):

A. Parking Resolution No. 697-19 (00:09:00):

Mr. Pivarnik explained this item was a First Reading item at the last commission meeting, where the Commission asked for a change to the language. This is a resolution to authorize escalating fees to Port patrons who have failed to make initial payment for their parking spot at the Boat Haven boat ramp and Point Hudson facilities. First occurrence fee is \$30 and the fee for two or more occurrences is \$100.

Commissioner Hanke moved to adopt Resolution No. 697-19 as presented.
Commissioner Tucker seconded the motion.
Motion carried by unanimous vote.

VI. FIRST READING (Discussion Only):

VII. REGULAR BUSINESS:

A. Quilcene Presentation and Opportunity for Public Input (00:09:31):

Mr. Pivarnik explained to the crowd that the Port was in Quilcene to provide facts, as rumors have been making the rounds. He reported to the crowd that the Commission has not made any decisions. He explained the Port's Mission Statement; to serve all Jefferson County residents -maintain facilities, encourage economic vitality, provide access to Port properties and protect environmental heritage. He stated we are starting with a clean slate and this is the first step in the process.

Mr. Pivarnik listed things the Port is not considering, including selling all the Port's Quilcene properties and reinvesting Quilcene sales proceeds into Port Townsend facilities. He stated staff is recommending selling most of the property Coast Seafoods presently occupies to Coast. He explained sales proceeds would be reinvested into the Quilcene facility and a Quilcene Reserve Account would be established. Also, not being considered is eliminating shoreline access, selling the marina, most uplands, the swim beach.

He stated the Port is not proposing expansion of the Coast Seafoods footprint. He added the Coast lease is good through 2039.

He reminded the Port is here to state our points and to listen to community input.

He then outlined choices: No action – not a good choice. He reported the Port is losing money in Quilcene and cannot afford to maintain the marina, floats, etc. He reminded this was predicted during the 2012 Port meeting in Quilcene. Second option - sell land to Coast and reinvest in the Quilcene facility. Staff would recommend establishment of a Quilcene Reserve Account, where funds would be applied towards the marina, restrooms, park facilities and operations.

Mr. Pivarnik reported currently the Port brings in \$132,000 in annual revenue and spends \$154,000 annually, leaving a \$22,000 annual loss.

INPUT FROM THE PUBLIC:

The following people provided input:

Herb Beck, Connie Gallant, Pam Petranek, Kit Kittredge, Keith Meyer, Joel Kawahara, Kevin Reede, Ron Hayes, Chris Llewellyn, Linda Herzog, Bob Lunsford, Clark Hallan, Kim McCullough, Mike Ryan, Ray Canterbury, Roger Sorenson and Anne Ricker.

VIII. STAFF COMMENTS (01:16:00):

Mr. Toews stated he forwarded the Commission's motion to the FAA on the timing of the Phase III Runway Rehabilitation project. The motion communicates to the FAA the desire to obligate grant funds to the Port in 2019, which would allow the Port to move forward with preconstruction submittals, and then delay construction work until spring

of 2020. Mr. Toews reported it looks like there is a good chance of achieving this objective.

Ms. Berg briefed on the January Financials and a reminder of the transition to a cash reporting basis.

Mr. Pivarnik reported he and Commissioner Tucker would meet with Jamestown Tribal Chairman Ron Allen later this week to discuss how the tribes and the Port can work together.

IX. COMMISSIONER COMMENTS (01:19:45):

Commissioner Hanke spoke about the many comments tonight. He talked about the Port facilities in Quilcene – the beaches, the yard, parking areas, restrooms, the marina and the boat ramp. He believes there is a way to get through the issues and stated to the crowd the importance of being involved.

Commissioner Tucker commented on boat ramps, and the expense of maintaining facilities, which he said is frustrating and takes time, but he is excited by the comments made tonight.

Commissioner Putney thanked all for coming out and spoke about the importance of coming to Quilcene to discuss matters. He informed that he would be attending an NODC Broadband meeting, the Maritime Heritage roundtable, and a tribal collaboration meeting.

X. NEXT REGULAR BUSINESS MEETING:

Wednesday, March 27, 2019 at 5:30 PM in the Port Commission Building, 333 Benedict St, Port Townsend.

XI. EXECUTIVE SESSION:

XII. ADJOURNMENT:

The meeting adjourned at 6:56 pm there being no further business to come before the Commission.

ATTEST:

Stephen R. Tucker, Secretary

William W. Putney III, President

Peter W. Hanke, Vice President

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	March 27, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. A) Marine Science Center Briefing
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input type="checkbox"/> Action <input checked="" type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 3/27/2019
TO: Commission
FROM: Jim Pivarnik
SUBJECT: Marine Science Center Briefing

ISSUE

Janine Boire, Executive Director of the Marine Science Center, will provide an update on activities at the Port-owned beach at Fort Worden.

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	March 27, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. B) Department of Fish and Wildlife Lease
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo B. WDFW Lease

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 3/27/2019
TO: Commission
FROM: Jim Pivarnik, Executive Director
SUBJECT: Department of Fish and Wildlife Lease

BACKGROUND

Staff has been working with the Department of Enterprise Services in Olympia, the real estate arm for the State on renegotiating the lease for the Fish and Wildlife offices at Point Hudson. This has been a long process because of many factors but mainly the creosote mitigation component that they were demanding that we complete in order to extend the current lease.

DISCUSSION

The State was requiring that the Port invest a significant capital expenditure in ventilation and HVAC systems in the building for them to stay in their current facility. They were also requesting that if we completed the mitigation and they were not happy with the outcome that they could leave with 90 days' notice. This was certainly a nonstarter. I am happy to report that we have come to terms that your staff can endorse.

These terms are:

The term of the lease will be for a period of five years. The Port's total mitigation commitment will not exceed \$120,000 (as you might remember they were asking for up to \$200,000) The lease can be broken with 90 days' notice if the cure is not successful but only after three years of occupancy. The rate for the next 60 months would be \$8,430.97 per month or \$101,171 per year. The State policy does not allow for CPI inflation escalators in their agreements, however we were able to negotiate an 8.9% increase in rent from this year's rate for the next 60 months. This will generate over \$ 28,000 more than a 3% annual increase for the next five years.

RECOMMENDATION

Authorize Executive Director to execute a lease with Washington State Department of Enterprise Services on behalf of Washington State Department of Fish and Wildlife.

ATTACHMENTS

Lease agreement.

AFTER RECORDING RETURN TO:

Department of Enterprise Services
Real Estate Services
P. O. Box 41468
Olympia, Washington 98504-1468

Lease No. SRL 17-0116
SR 1001574

(Port Townsend) AVD/cns
Page 1 of 10
Date: February 25, 2019

LEASE

THIS LEASE is made and entered into between Port of Port Townsend, a municipal corporation whose address is Port Office Box 1180, Port Townsend, Washington 98368, for its heirs, executors, administrators, successors, and assigns, hereinafter called the Lessor, and the STATE OF WASHINGTON, Department of Fish and Wildlife, acting through the Department of Enterprise Services, hereinafter called the Lessee.

WHEREAS, the Department of Enterprise Services is granted authority to lease property under RCW 43.82.010;

WHEREAS, the Lessor and Lessee deem it to be in the best public interest to enter into this Lease;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

LEASED PREMISES

1. The Lessor hereby leases to the Lessee the following described premises:

Tax Parcel Number: 001013001

Common Street Address: 375 Hudson Street, Port Townsend, Washington 98368

Approximately 4,818 BOMA usable square feet of office space located at 375 Hudson Street, Port Townsend, Washington 98368 together with fifteen (15) parking stalls and five (5) storage stalls; legally described as follows:

SECTION 01, TOWNSHIP 30 N., RANGE 01 W' BEGINNING AT THE NW CORNER OF BLK 99, ORIGINAL TOWNSITE OF PT TOWNSEND; THENCE EASTERLY ALONG THE SOUTHERNLY LINE OF CLAY ST 1195', MORE OR LESS, TO THE INNER HARBOR LINE; THENCE ALONG SAID INNER HARBOR LINE S33°05'E193.5', MORE OR LESS, TO AN ANGLE POINT THERIN; THENCE CONTINUEING ALONG SAID INNER HARBOR LINE S3°15'E1200'; THENCE S42°32'W551.2', MORE OR LESS, TO AN INTERSECTION WITH THE S LINE OF BLK 3, ORIGINAL TOWNSITE OF PT TOWNSEND; THENCE WESTERLY ALONG SAID S LINE 89.3', MORE OR LESS, TO THE E LINE OF JACKSON ST; THENCE NORTHERNLY ALONG SAID E LINE OF JACKSON ST, 1392' TO THE POINT OF BEGINNING. EXCEPTING A TRACT CONTINUEING 0.03' OF AN ACRE, LYING IN FORMER HUDSON ST, BETWEEN BLKS 1 & 2 KNOWN AS "LIGHTHOUSE TRACT" TAX 8 VOL 103, PG 39; situate in Port Townsend, Jefferson County, Washington.



USE

2. The premises shall be used by the Department of Fish and Wildlife and/or other state agencies for the following purpose(s): office space. Office use includes associated office activities, such as trainings, conferences, retreats, open public meetings, health and wellness activities, and office related parties and social events.

TERM

3. TO HAVE AND TO HOLD the premises with their appurtenances for the term beginning April 1, 2019 and ending March 31, 2024.

RENTAL RATE

4. The Lessee shall pay rent to the Lessor for the premises at the following rate:

Eight Thousand Four Hundred Thirty Dollars and Ninety-seven Cents

\$8,430.97 per month

Payment shall be made at the end of each month upon submission of properly executed vouchers.

4.1. The Lessee shall not be required to pay any of the rent increases referenced in Paragraph 4 above, until all of the work requested by Lessee in Additional Lease Provisions paragraph 19 has been completed by Lessor. Until all such work is completed and approved by Lessee, the rate of \$7,708.80 per month, as required under SRL 13-0009 shall continue in effect.

EXPENSES

5. During the term of this Lease, Lessor shall pay all real estate taxes, all property assessments, insurance, storm water, water, sewer, garbage collection, and maintenance and repair as described below, together with natural gas, electricity, exterior window washing, landscape and irrigation water.

5.1. Lessee shall pay for only janitorial service and restroom supplies to leased premises.

MAINTENANCE AND REPAIR

6. The Lessor shall maintain the premises in good repair and tenantable condition during the continuance of this Lease, except in case of damage arising from the negligence of the Lessee's agents or employees. For the purposes of maintaining and repairing the premises, the Lessor reserves the right at reasonable times upon reasonable notice to enter and inspect the premises and to make any necessary repairs to the building. Lessor's maintenance and repair obligations shall include, but not be limited to, the mechanical, electrical, interior lighting (including replacement of ballasts, starters and fluorescent tubes as required), plumbing, heating, ventilating and air-conditioning systems (including replacement of filters as recommended in equipment service manual); floor coverings; window coverings; inside and outside walls (including windows and entrance and exit doors); all structural portions of the building (including the roof and the watertight integrity of same); porches, stairways; sidewalks; exterior lighting; parking lot (including snow removal, cleaning and restriping as required); wheel bumpers; drainage; landscaping and continuous satisfaction of all governmental requirements generally applicable to similar office buildings in the area (example: fire, building, energy codes, indoor air quality and requirements to provide architecturally barrier-free premises for persons with disabilities, etc.).

6.1 Lessor shall as part of maintenance provide de-icing and snow and debris removal service. At a minimum. Lessor shall treat or remove, before normal business hours and at other times as soon as practical thereafter, debris, snow and/or ice from the parking lot and all sidewalks and entrances. Without prior notice, Lessor shall apply de-icer and/or sand as necessary to any sidewalks and entrances to avoid unsafe conditions; snow removal in parking lots to take place when an excess of 2 inches of snow occurs; provided, any icy or dangerous conditions must be addressed. This provision does not create any third parties beneficiary rights, including but not limited to rights in any member of the public or state employees, to enforce this provision, rely upon it, or to reference it in any legal action.



ASSIGNMENT/SUBLEASE

7. Except for sublet for use by other State agencies per Paragraph 2 (USE), the Lessee may not assign this Lease or sublet the premises without the prior written consent of the Lessor, which consent shall not be unreasonably withheld or delayed. Lessor shall respond to approve or disapprove a request for consent within sixty (60) days of written receipt of the request. If such response is not received within thirty days, it will be considered approved and Lessee will proceed with sublease. Lessee shall not permit the use of the premises by anyone other than the Lessee, such assignee or sublessee, and the employees, agents and servants of the Lessee, assignee, or sublessee.

RENEWAL/CANCELLATION

8. The Lease may, at the option of the Lessee, be renegotiated for an additional five (5) years.

8.1 It is provided, however, that there is expressly reserved to the Lessee the right and option to terminate this Lease and to relinquish and give up said premises on or after April 1, 2022 by giving written notice to the Lessor at lease ninety (90) days prior to the effective date of such termination, in which event rent shall be prorated to the date of termination.

PAYMENT

9. Any and all payments provided for herein when made to the Lessor by the Lessee shall release the Lessee from any obligation therefor to any other party or assignee.

COMPLIANCE WITH STATE/FEDERAL LAWS

10. Lessor is responsible for complying with all applicable provisions of the Americans With Disabilities Act of 1990, and all amendments and regulations thereto and the Washington State Law Against Discrimination, Chapter 49.60 RCW, as well as the regulations adopted thereunder, with respect to the Leased Premises.

FIXTURES

11. The Lessee, upon the written authorization of the Department of Enterprise Services, shall have the right during the existence of this Lease with the written permission of the Lessor (such permission shall not be unreasonably withheld), to make alterations, attach fixtures, and erect additions, structures or signs, in or upon the premises hereby leased. Such alterations, fixtures, additions, structures and signs shall be authorized only by the Department of Enterprise Services. Performance of any of the rights authorized above shall be conducted in compliance with all applicable governmental regulations, building codes, including obtaining any necessary permits. Any fixtures, additions, or structures so placed in or upon or attached to the premises shall be and remain the property of the Lessee and may be removed therefrom by the Lessee upon the termination of this Lease. Any damage caused by Lessee's removal of any of the above items shall be repaired by the Lessee. Any improvements that the Lessee does not remove within 30 days after the termination of the Lease shall become the property of the Lessor, and the Lessee shall have no responsibility to remove them or repair any damage caused by their removal by another. This provision shall survive termination of the Lease.

ALTERATIONS/IMPROVEMENTS

12. In the event the Lessee requires alterations/improvements during the term of this Lease, any renewals and/or modifications thereof, the Lessor shall have the right to provide such services. If required by state law, the Lessor shall pay prevailing rate of wage to all workers, laborers or mechanics employed to perform such work as well as comply with the rules and regulations of the Department of Labor & Industries. If the Lessee considers Lessor's proposed costs for



alterations/ improvements excessive, Lessee shall have the right, but not the obligation, to request and receive at least two independent bids; and the Lessee shall have the right at its option to select one alternative contractor whom the Lessor shall allow to provide such services for the Lessee in compliance with the Lessor's building standards and operation procedures.

PREVAILING WAGE

13. Lessor agrees to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this Lease when required by state law to do so, and to comply with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Lease will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this Lease as though fully set forth herein.

DISASTER

14. In the event the leased premises are destroyed or injured by fire, earthquake or other casualty so as to render the premises unfit for occupancy, and the Lessor(s) neglects and/or refuses to restore said premises to their former condition, then the Lessee may terminate this Lease and shall be reimbursed for any unearned rent that has been paid. In the event said premises are partially destroyed by any of the aforesaid means, the rent herein agreed to be paid shall be abated from the time of occurrence of such destruction or injury until the premises are again restored to their former condition, and any rent paid by the Lessee during the period of abatement shall be credited upon the next installment(s) of rent to be paid. It is understood that the terms "abated" and "abatement" mean a pro rata reduction of area unsuitable for occupancy due to casualty loss in relation to the total rented area.

NO GUARANTEES

15. It is understood that no guarantees, express or implied, representations, promises or statements have been made by the Lessee unless endorsed herein in writing. And it is further understood that this Lease shall not be valid and binding upon the State of Washington, unless same has been approved by the Director of the Department of Enterprise Services of the State of Washington or his or her designee and approved as to form by the Office of the Attorney General. Any amendment or modification of this Lease must be in writing and signed by both parties.

ENERGY CONSERVATION

16. Lessor has conducted an energy walk-through survey of the leased premises using the DES walk-through survey form. The survey is for the purpose of identifying improvements to maintenance and operating conditions and procedures that would conserve energy. The Lessor shall provide DES with a copy of the completed walk-through form and as soon as practicable thereafter, implement identified improvements to energy conservation maintenance and operating procedures.

REIMBURSEMENT FOR DAMAGE TO PREMISES

17. The Lessee hereby agrees to reimburse the Lessor for damages caused by the negligence of its employees and agents, but in no event shall this paragraph be construed as diminishing the Lessor's duty to make repairs as set forth in preceding paragraphs of this Lease, or as making Lessee responsible for the repair of normal wear and tear.

HAZARDOUS SUBSTANCES

18. Lessor warrants to his/her knowledge that no hazardous substance, toxic waste, or other toxic substance has been produced, disposed of, or is or has been kept on the premises hereby leased which if found on the property would subject the owner or user to any damages, penalty, or liability under any applicable local, state or federal law or regulation.



Lessor shall indemnify and hold harmless the Lessee with respect to any and all damages, costs, attorneys' fees, and penalties arising from the presence of any hazardous or toxic substances on the premises, except for such substances as may be placed on the premises by the Lessee.

ADDITIONAL LEASE PROVISIONS

19. It is agreed that the Lessor shall, at Lessor's sole cost and expense, on or before April 1, 2019, complete in a good and workmanlike manner, in accordance with state Leased Space Requirements, July 2005 edition, attached hereto and incorporated herein by reference as Exhibit "A" and addenda, if any, the following items:

HEALTH/SAFETY ISSUES:

- a. Fire extinguishers: Ensure all fire extinguishers and inspections are current.

SITE:

- b. Parking: Work with Lessee to develop a comprehensive parking plan whereby the fifteen (15) parking spaces provided for within the Lease are clearly identified.
- c. Entries: Remove all grime and moss from stairs, sidewalks, and approaches serving this facility. Remove peeling paint from painted surfaces and repaint utilizing slip-resistant finishes on areas of travel.
- d. Lighting: Verify that at least the minimum illumination is maintained for all parking areas and pedestrian pathways throughout the site. (Section 16520 – Lighting Levels)

EXTERIOR:

- e. Doors: Repair or replace all weather stripping. Trim/plane rear entry door to eliminate swelling issue which causes difficulty in opening/closing/latching. Should repair not correct swelling problem, replace door and frame with new unit. (Part A-General Information; Division 8 – Doors & Windows; Accessibility Addendum)
- f. Finishes: Clean/power wash all siding and trim surfaces and light fixtures. Where power washing damages or removes paint, touch up paint to natural line breaks to create a neat and consistent finish (Note: Lessor's ongoing maintenance plan will also address exterior finishes as a long-term maintenance issue).
- g. Roof, Gutters: Remove moss from all roof and gutters/downspouts. (Section A5 Basic Building Requirements)
- h. Windows: Clean windows and frames. Window in "Bio 4" office leaks during wind-driven rain events (see diagram following this section). Effect repairs to correct condition. (Division 8 – Doors & Windows)

INTERIOR:

- i. Relites and Windows: Clean all relites, windows, frames and blinds.
- j. Paint: Repair wall and trim damage – to include door and window surfaces – and touch-up paint. Where touch-up painting is distinguishable from surrounding surfaces, touch-up shall be to natural line breaks. (Section 09900 – Painting) Lessor shall remove and re-install all furniture and partitions and shall provide a licensed electrician to disconnect and reconnect all hard wired connections. Lessee shall remove all personal items, computers and associated Lessee equipment.
- k. Corner Guards: Where outside corners of walls exhibit damage, install corner guards. (A5.8 Chair Rails and Corner Guards)
- l. Flooring: Utilize a professional, commercial cleaning service to pre-treat stains and clean all stairway and second-story carpeted surfaces in Leased Space. With the exception of that installed in the hallway outlined in blue on the diagram following this section, remove existing and provide and install new Exhibit "A"-compliant carpet on entire first floor. Colors shall be selected or approved from Lessor-submitted samples by the Lessee. (Section 09680 - Carpet) Lessor to remove and re-install all furniture and partitions and shall provide a licensed electrician to disconnect and reconnect all hard wired connections. Lessee shall remove all personal items, computers and associated Lessee equipment. Remove carpet in all other first floor hallways and replace with vinyl flooring materials matching or similar to that which is installed in the entry hall. Provide and install walk-off mats (Section 09000, Finishes, 1.1 Floors and Base) in areas indicated in



red outlines on Exhibit "B", attached hereto and incorporated herein by reference. Repair seams, coving, and transition edges then strip and reseal all existing vinyl floor surfaces throughout Leased Space. Lessor to remove and re-install all furniture and partitions and shall provide a licensed electrician to disconnect and reconnect all hard wired connections. Lessee shall remove all personal items, computers and associated Lessee equipment.

- m. **Doors:** Repair/replace silencers. (Section 08000 – Doors and Windows)

PLUMBING: (Division 15 – Mechanical)

- n. **Fixtures:** Repair or replace the lower unit of the two drinking fountains located in the hallway adjacent to the entry area. Install an instant hot water device in break area. (Section A5, Basic Building Requirements, A5.7) Remove existing and apply new white caulk where restroom and break room fixtures meet wall, floor, or counter surfaces in order to provide a neat, sanitary finish.

MECHANICAL: (Division 15 - Mechanical)

- o. **General Air Quality: - Creosote Mitigation:** In order to mitigate creosote odors throughout the lease premises, Lessor shall undertake the improvements specified below:
 a. **Air Exchange System:** By May 31, 2019, Lessor shall complete installation of an air-to-air exchange system to increase fresh air circulation within the leased space. Lessor shall not be obligated to incur expenses exceeding \$120,000.00 to effect this improvement.
- p. **Restroom:** Lessee notes presence of 'sewer' smell in north hall men's restroom when exhaust fan is not in operation. Investigate source of smell and effect means to eliminate this issue.

CANCELLATION/SUPERSESION

20. This Lease cancels, supersedes, or replaces SRL 13-0009 dated February 19, 2013, and all modifications thereto effective April 1, 2019.

DUTY TO CURE

21. Upon receiving notice of a condition requiring a cure, the party obligated to effect the cure shall initiate and complete cure or repair of such condition within a reasonable time. A condition requiring cure includes, without limitation: (1) a condition for which the Lease requires either party to undertake repair/ replacement and/or other maintenance of the Premises, (2) a condition where either has failed to maintain a service or utility account in good standing as required by the Lease, and (3) any other condition resulting from a party's failure to carry out any obligation under the Lease, including without limitation obligations for rent, charges, improvements, alterations, and/or deferred maintenance, and remediation of damages for which a party is responsible under the Lease. Premises include all fixtures and equipment provided within the Premises by the Lessor.

The term "reasonable time" as used within this paragraph of the Lease shall mean as soon as reasonably possible but no longer than thirty (30) days, unless either (1) an emergency condition exists requiring an immediate cure to promptly begin without delay, usually within hours and to be complete within 24 hours to the extent reasonably possible in light of the nature of the condition and circumstances, or (2) a non-emergency condition exists that is not reasonably possible to cure within 30 days with due diligence and the breaching party provides the level of cure or preparation for cure that is reasonably possible to do with due diligence within 30 days.

If an emergency or non-emergency condition exists that is not reasonably possible to completely cure within 24 hours or 30 days, respectively, the party obligated to cure shall so notify the other party within 24 hours or 30 days, respectively. Such notice shall explain why the cure is not reasonably possible with due diligence to complete within 24 hours (if an emergency) or 30 days (if a non-emergency) and provide the earliest date that the work can be completed as soon as reasonably possible. It is not a justifiable ground for delay that the party obligated to effect the cure does not have available funding to accomplish to cure or that a preferred contractor has limited availability if other contractors can satisfactorily perform the work sooner at reasonable cost.



The term "emergency condition" shall mean a condition requiring a cure that (i) prevents or substantially disrupts the Lessee from using all or a substantial part of the premises, or (ii) causes or substantially threatens to cause injury to persons or damage to property or raises a substantial danger to the health or safety of any persons on or using the premises. Notice under this paragraph may be by the means allowed in the Notice paragraph, but in addition includes actual notice/awareness that Lessor or Lessee has of a condition independent of any such notice.

SELF HELP

22. If the party obligated to effect the cure does not cure within the time required by this Lease, the other party may cure all or part of the default after providing notice to the party obligated to effect the cure of its intent to perform such cure, and, if applicable, recover the costs incurred in curing the default. If the nonbreaching party is the Lessee, the Lessee may deduct all reasonable costs incurred from rent or other charges owed to Lessor. If the nonbreaching party is the Lessor, Lessor will submit properly executed vouchers and proof of payment to Lessee and Lessee shall remit payment to Lessor within thirty (30) days or as soon as is practicable. A party's costs incurred to cure include, but are not limited to, all reasonable out-of-pocket expenses, payment of unpaid utility or services charges for which the other party is responsible, and all administrative costs the non-breaching party reasonably incurs and documents in performing or arranging for performance of the cure.

The nonbreaching party is under no obligation to cure some or all of the default of the breaching party. To the extent that the nonbreaching party does not cure the default, the nonbreaching party may pursue its legal and contractual remedies against the breaching party. The nonbreaching party's failure to cure the breaching party's default does not waive the nonbreaching party's rights to relief. Nothing herein removes or lessens either party's obligation to mitigate damages.

If the Lessee elects to cure using self-help in part or whole, the Lessor shall defend, save, and hold harmless the Lessee, its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever arising out of or in connection with such cure, except where RCW 4.24.115 is applicable and injuries and/or damages are caused by the sole negligence of the Lessee, its agents, or employees. If RCW 4.24.115 is applicable and liability for damages arises out of bodily injury to persons or damages to property and is caused by or results from the concurrent negligence of the Lessee, its agents, or employees, Lessor's liability, including the duty and cost to defend, hereunder shall apply only to the extent of the negligence of Lessor, its agents, or employees.

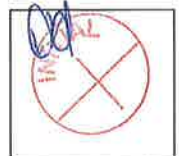
DEFAULT LEADING TO TERMINATION

23. If either party fails to initiate and complete cure of a condition requiring cure within a reasonable time after receiving notice of such condition, the nonbreaching party may initiate a default leading to termination of the Lease by providing written notice to the breaching party of the continuing breach. If the breaching party does not complete the cure of the breach within 60 days after receiving such written notice initiating default leading to termination, the nonbreaching party may at such time, or at a later date if the cure has still not been completed, declare a termination by default by so notifying the breaching party. Cure of a condition after a valid notice of termination by default is provided, but before termination, shall void a valid notice of termination of the Lease.

If a termination by default is declared or a court so orders, the date of termination shall be determined based on the earliest reasonable date that the Lessee may move and relocate from premises or as agreed by the parties. The determination shall be made in light of available funding for the move, the date at which suitable replacement premises can be fully available, and the time reasonably needed to plan and complete the move.

WITHHOLDING OF RENT PAYMENTS

24. If the Lessor fails to maintain, repair and/or improve the premises as set forth herein, the Lessee may, if authorized by the Department of Enterprise Services, withhold ten percent (10%) of rent payments until such time as Lessor completes deficient maintenance, repair and/or improvements. Upon receipt of documentation of Lessor's noncompliance with maintenance, repair and/or improvement provisions and a written request to withhold rent payments from the Lessee, the



Department of Enterprise Services shall provide Lessor with a list of deficient maintenance, repair and/or improvement items and notify Lessor that Lessee has been authorized to withhold rent payment until deficient maintenance, repair and/or improvements have been completed. Lessee shall place all withheld rent payments in an interest bearing account. Withheld rent payments plus accrued interest will be remitted to Lessor after the Department of Enterprise Services verifies that Lessor has satisfactorily completed all maintenance, repair and/or improvements and authorizes Lessee to remit the withheld rent. Nothing in this provision shall limit other remedies which may be available to Lessee under this Lease.

CONDEMNATION

25. If any of the premises or the Building, as may be required for the reasonable use of the premises, are taken by eminent domain, this Lease shall automatically terminate as of the date Lessee is required to vacate the premises and all rentals shall be paid to that date. In case of a taking of a part of the premises, or a portion of the Building not required for the reasonable use of the premises, at Lessee's determination, then the Lease shall continue in full force and effect and the rental shall be equitably reduced based on the proportion by which the floor area of the premises is reduced, such rent reduction to be effective as of the date possession of such portion is delivered to the condemning authority. Lessor reserves all rights to damages and awards in connection therewith, except Lessee shall have the right to claim from the condemning authority the value of its leasehold interest and any relocation benefits.

MONTH TO MONTH TENANCY

26. If Lessee remains in possession of the premises after the expiration or termination of the Lease term, or any extension thereof, such possession by Lessee shall be deemed to be a month-to-month tenancy, terminable as provided by law. During such month-to-month tenancy, Lessee shall pay all rent provided in this Lease or such other rent as the parties mutually agree in writing and all provisions of this Lease shall apply to the month-to-month tenancy, except those pertaining to term and option to extend.

SUBORDINATION

27. So long as Lessor has fully performed under the terms of this Lease, Lessee agrees to execute, within ten (10) days of written request by Lessor, the state's standard Tenant Estoppel and Subordination Agreements which have been approved as to form by the Office of the Attorney General. A \$400.00 processing fee will be assessed for processing these documents.

CAPTIONS

28. The captions and paragraph headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any paragraph.

INTEGRATED DOCUMENT

29. This Lease and the exhibits hereto constitute the entire agreement between the parties with respect to the lease of Premises and supersedes all prior and contemporaneous agreements and understandings between the parties hereto relating to the subject matter hereof.



NOTICES

30. Wherever in this Lease written notices are to be given or made, they will be sent by certified mail to the address listed below unless a different address shall be designated in writing and delivered to the other party.

LESSOR: Port of Port Townsend
Post Office Box 1180
Port Townsend, Washington 98368

LESSEE: Department of Enterprise Services **SRL 17-0116**
Real Estate Services
1500 Jefferson Street S.E., 2nd Floor
Post Office Box 41468
Olympia, Washington 98504-1468

IN WITNESS WHEREOF, the parties subscribe their names.

Port of Port Townsend

STATE OF WASHINGTON

Department of Fish and Wildlife

By: _____

Acting through the Department
of Enterprise Services

Printed Name: _____

Title: _____

Seth Wallace, Assistant Director
Real Estate Services

Date: _____

Date: _____

RECOMMENDED FOR APPROVAL:



Amber Dixon, Property and Acquisition Specialist
Real Estate Services

Date: _____

APPROVED AS TO FORM:

By: _____

Assistant Attorney General

Date: _____



STATE OF _____)
) ss.
 County of _____)

On this _____ day of _____, A.D., 20_____, before me personally appeared _____ to me known to be the _____ of the corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

 Notary Public in and for the State of Washington,
 Residing at _____
 My commission expires _____

STATE OF WASHINGTON)
) ss.
 County of Thurston)

I, the undersigned, a Notary Public, do hereby certify that on this _____ day of _____, 20_____, personally appeared before me SETH WALLACE, Assistant Director, Real Estate Services, Department of Enterprise Services, State of Washington, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as the free and voluntary act and deed of the Department, for the purposes and uses therein mentioned, and on oath stated that he was duly authorized to execute said document.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

 Notary Public in and for the State of Washington,
 Residing at _____
 My commission expires _____



PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	March 27, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. C) Kimmel's Krab Shack Ground Lease
STAFF LEAD	Eric Toews, Deputy Director
REQUESTED	<input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo B. Kimmel's Krab Shack Lease, with Attachments A, B, C

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 3/21/2019
TO: Port Commission
FROM: Jim Pivarnik, Executive Director
SUBJECT: Kimmel's Crab Shack LLC – Sale of Buildings and Ground Lease

BACKGROUND: During the Commission retreat in January of this year, review of the Port's portfolio of leases was identified as a priority for 2019. As the Commission knows, many buildings owned and leased by the Port are at, or beyond, their anticipated useful life, and demand extensive repairs that cannot reasonably be recovered through lease revenues. The buildings leased by New Day Fisheries are one such example.

DISCUSSION: In October of 2015, the Port's part-time engineer, Harold Anderson, conducted a facility condition assessment for the "New Day Fisheries" building located on the New Day spit at 2427 Washington Street. The building has been used by New Day Fisheries for seafood processing and sales since 1987. Mr. Anderson's assessment documented numerous building deficiencies requiring an estimated \$264,000¹ to maintain a state of "good repair".

During the preparation of the Port's draft Capital Repair and Replacement Plan in late 2015, it was concluded by staff that the subject structure had exceeded its anticipated useful lifespan. Moreover, staff determined that the extensive repairs identified by Mr. Anderson were unwise given that the cost of such repairs could never be recovered through a market rate lease. However, the Lessee (New Day Fisheries, Scott Kimmel) expressed interest in purchasing the structure and assuming responsibility for its long-term repair and maintenance. Mr. Kimmel has reaffirmed this interest on numerous occasions over the intervening years.

On January 19, 2016, then Executive Director, Larry Crockett, made written certification to the Commission that the New Day Fisheries Building was no longer needed for port district purposes. On the same date, and after proper public notice and hearing, the Port Commission approved Port Resolution Number 637-16, which amended its Comprehensive Scheme of Improvements to surplus the New Day Fisheries Building. In doing so, the Commission concluded that the building was unnecessary for current or future Port operations, and expressly authorized the Executive Director to sell or dispose of the property *"in the best manner which he, in his discretion, shall determine, including by negotiated transfer for consideration."*

At the time of adoption of Resolution No. 637-16, it was believed that the three adjoining buildings on the spit south of the dock at 2427 Washington Street had not been constructed by,

¹ In 2015 dollars. Adjusted for inflation, this figure is nearly 282,000 in 2019 dollars.

and were not owned by, the Port. These contiguous structures (referred to as the “Westerly New Day Fisheries Buildings”), which include concrete block structure, a freezer unit, and a wood framed/partially enclosed weight room) were of uncertain ownership and origin, and not identified explicitly within the Port’s adopted Scheme of Improvements. To resolve any potential ambiguity, the Port’s Executive Director made written certification to the Commission that these buildings too, like the principal building previously determined to be surplus, were no longer needed for port district purposes. After timely and effective notice and public hearing, the Commission approved Port Resolution No. 642-16 concluding that these buildings were not needed for current or future Port operations and authorized the Executive Director to sell or dispose of these contiguous structures along with the principal building previously addressed via Resolution No. 637-16.

Consistent with the authority previously granted under Resolutions No. 637-16 and 642-16, current Port staff has negotiated transfer of all the aforementioned structures with Mr. Scott Kimmel, President of Kimmel’s Crab Shack, LLC. An appraisal prepared by Peter Shorett of Kidder Matthews in June of 2015 has been reviewed and updated, and a purchase price has been agreed upon with Mr. Kimmel. The agreed upon consideration for all four structures and a share of the appraisal costs is \$101,250.

A Quitclaim Deed conveying the structures to Kimmel’s Crab Shack LLC and legally severing the buildings from the underlying real property will be completed and conveyed concurrent with execution of the lease described below. The consideration of \$101,250 is determined by the Executive Director to be adequate, given the extensive deferred maintenance costs associated with these buildings, and the market appraisal prepared by Kidder-Matthews.

Mr. Kimmel is presently renting the New Day Spit and associated buildings on a month-to-month basis. In return for the purchase of the structures described above, Mr. Kimmel desires to enter into a long-term (i.e., 30-year) land lease for his business located at 2427 Washington Street. In staff’s judgment, the proposed lease terms and conditions satisfy the needs of Mr. Kimmel, while safeguarding the long-term interests of the taxpayers of Jefferson County.

The proposed 30-year Land Lease encompasses approximately 25,000 square feet located on the “spit” at 2427 Washington Street. The proposed 30-year lease term is consistent with the Port’s authority under RCW 53.08.080, and is necessary in order for Mr. Kimmel to justify purchase and rehabilitation of the structures. When read together, paragraphs 8, 9, 10, 11 and 12 of the lease agreement require that the lessee return either tenantable structures or bare ground to the Port at the end of the lease term. Moreover, paragraph 15 of the proposed lease provides the discretion necessary to deal with potential damage or destruction of the premises occasioned by climate-change induced sea level rise/storm surge damage.

In most other respects, the terms and conditions of the Port's standard lease template apply, including the Port's standard Hazardous Substances Warranty and Agreement, which has been incorporated as Exhibit "C".

RECOMMENDATION:

Authorize the Executive Director to execute the attached lease agreement with Kimmel's Crab Shack, LLC. Consistent with Resolutions 637-16 and 642-16, consideration will be received, and a Quitclaim Deed will be conveyed, concurrent with execution of the lease.

ATTACHMENTS:

Proposed Land Lease Agreement, including the following exhibits:

1. Exhibit "A" – Graphic depiction of leased premises;
2. Exhibit "B" – Description of Lessee-owned buildings on the premises;
3. Exhibit "C" – Hazardous Substances Warranty & Agreement

PORT OF PORT TOWNSEND LAND LEASE

THIS LEASE AGREEMENT made this 27th day of March 2019, 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 KIMMEL'S CRAB SHACK, LLC, a Washington Limited Liability Corporation, 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, certain real property (hereinafter "the premises") located in Jefferson County, Washington, more particularly depicted upon Exhibit "A" which is attached hereto and incorporated herein by this reference, and which is briefly described as follows:

AN APPROXIMATELY 29,600 SQUARE FOOT AREA LOCATED UPON A
PORTION OF HASTINGS 2ND ADDITION, BLOCKS 24 & 25, LOTS 1-8 (TAX
LOT 110) CITY OF PORT TOWNSEND

The Port hereby warrants that it has good and marketable fee title to the premises and has full right and authority to execute this Ground Lease and to demise the premises. The four (4) buildings located on the premises and described in Exhibit "B" attached hereto and incorporated herein by this reference, have been purchased by Lessee from the Port of Port Townsend and are the property of Lessee.

2. **TERM:** This Lease shall be for a term of thirty (30) years, beginning on May 1, 2019 and ending on April 30, 2049.
3. **RENT:**
 - a. Lessee agrees to pay as rental for the leased premises the sum of **Two Thousand Seventy-Two Dollars and Zero Cents (\$2,072.00)** plus all applicable taxes.
 - b. Beginning on May 1, 2022 the rental rate may be adjusted to the fair market rental rate for the premises based on the fair market rental rate then prevailing for comparable commercial and/or industrial premises in the Western Washington area, bearing in mind all allowable uses of the

property and all services and amenities available to the premises by virtue of its location. In the event that the parties are unable to reach agreement on the fair market rate adjustment, the rate shall be determined by arbitration before a single arbitrator who shall be jointly selected by the parties or by the Jefferson County Court if the parties cannot agree.

- c. Except in years when a fair market rate adjustment is made as set forth in Subparagraph (b) of this Paragraph 3, above, the rental rate beginning in year two (2) and annually throughout the term of this Lease will be adjusted by an amount equal to the percentage change over the prior year 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.
 - d. In no event shall any rent adjustment under Subparagraphs (b) or (c) of this Paragraph 3 result in a reduction in rent from the rate paid in the prior year.
 - e. 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 the main office of the Port or at such place as the Port may hereafter designate.
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. This provision for a "late charge" and the Port's acceptance of payment of such charges shall not be construed as a waiver of Lessor's right to declare this Lease in default if a rent payment is not paid when due.
5. **DEPOSIT:** Upon the execution of this Lease, Lessee shall deposit with the Port three month's rent in the amount of **Seven Thousand Fourteen Dollars and Thirteen Cents (\$7,014.13)**. This Lease shall not be effective until full deposit of the required amount is made with the Port. If Lessee defaults in any particular the Port may use, apply or retain all or any part of the security (1) to the extent of any sum due to the Port, or (2) to make any required payment on Lessee's behalf, or (3) to compensate the Port for any expense or damage caused by Lessee's default. On the Port's demand, Lessee shall promptly pay to the Port a sum equivalent to the amount by which the security was so depleted. On the fifth (5th) anniversary of this Lease and every five (5) years thereafter, the amount of such security deposit shall be increased in the same proportion as the annual rental is increased above the basic rent charged during the first (1st) year of the lease term.
6. **USE OF PREMISES:** Lessee shall use the premises for the processing and retail and wholesale sales of fish 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 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 inconsistent with the processing and retail and wholesale sales of fish.

7. **UTILITIES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all charges for all utility services furnished to the premises, including, but not limited to light, heat, electricity, gas, water, sewerage, garbage disposal and janitorial services. In the event that the premises are part of a building or are part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to the Port its (Lessee's) pro rata share of the cost of any such utility services, and Lessee's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of costs shall not be required.
8. **ACCEPTANCE OF PREMISES:** Lessee has examined the leased premises and accepts them in their present condition. No representations have been made by or on behalf of the Port as to the condition of the improvements that are located on the leased land. Lessee fully understands that those improvements were constructed by prior leaseholders and not by the Port. The Port has made no representations regarding the soils under the buildings and improvements, nor has the Port made any representations regarding the suitability of the land for any additional improvements contemplated by Lessee. Except for the warranties of title and quiet enjoyment implied in any lease, the Port makes no warranties whatsoever regarding the premises and hereby specifically disclaims any and all such warranties.
9. **EXISTING IMPROVEMENTS ON THE PREMISES:** The Port has agreed to lease the premises for a long term in exchange for the Lessee's commitment to maintain all improvements (Port-owned and Lessee-owned) in a manner consistent with normal practice in a comparable situation, reasonable wear and tear excepted. Consistent with Paragraph 10, below, Lessee agrees that all improvements upon the premises will be maintained in good condition throughout the term of this Lease and that they will be surrendered to the Port in substantially the same condition as at the commencement of this Lease, normal wear and tear excepted, subject to Paragraphs 11 and 12 below.

10. MAINTENANCE AND REPAIR:

- a. Throughout the term of this Lease, the Lessee shall, at Lessee's sole cost and expense, maintain the premises and all improvements (Port-owned and Lessee-owned) in good condition and repair, and in accordance with all applicable laws, rules, ordinances, orders and regulations. Lessee shall, at its' own expense, and at all times:
 - i. Keep the premises, and the adjoining roadways and walkways, neat, clean and in a safe and sanitary condition;
 - ii. Keep the glass of all windows and doors thereof clean and presentable;
 - iii. Maintain and keep the leased premises in a good state of repair;
 - iv. Not commit waste of any kind;
 - v. Replace all cracked or broken glass in the premises;
 - vi. Keep the electrical system and the sprinkler system and all pipes and drains clean and in a good state of repair;
 - vii. Protect the sprinkler system and all pipes and drains so that they will not freeze or become clogged;
 - viii. Remove all snow and ice from the walkways adjacent to the premises/buildings and all snow and ice from the roofs thereof; and
 - ix. Make all necessary repairs to the roofs (structures or coverings), to the foundations of the buildings or structures and exterior walls of which the premises are a part.
- b. Except as expressly provided in Paragraph 15, Subparagraph (c), below, Lessee shall promptly and diligently repair, restore and replace as required to maintain and comply as above, or to remedy all damage to or destruction of all or any part of the improvements upon the leased premises from any causes whatsoever. The completed work of maintenance, compliance, repair, restoration or replacement shall be equal in value, quality and use to the condition of the improvements before the casualty giving rise to the work, except as expressly provided to the contrary in this Lease. The Port shall not be required to furnish any services or facilities or to make any repairs of any kind on or in the premises. Notwithstanding the foregoing, at the end of this Lease, the Port acknowledges that the improvements will likely show substantial wear and tear, and despite reasonable maintenance, that the improvements will effectively be given by the Lessee to the Port at the end of the Lease, and that only in the case of substantial waste or neglect which renders the improvements unusable for the processing and retail and wholesale sales of fish, shall Lessee be held responsible for any further repair, restoration or removal of the improvements.

- 11. ALTERATIONS AND IMPROVEMENTS:** In the event that Lessee elects to construct additional or replacement improvements on the premises or make alterations to any improvements on the premises, and obtains the Port's written consent for such additions or reconstruction or alterations, all decisions to construct improvements or alterations on the premises shall reflect a reasonable review of the highest and best use of the premises at the time construction is commenced and for the foreseeable future. The Port's written approval will be obtained before any major construction is commenced on the premises, and before any building materials have been ordered or delivered to the premises by Lessee or under Lessee's authority, Lessee shall comply with all of the following conditions or procure the Port's written waiver of the condition or conditions specified in the waiver. The Port shall have the right to post and maintain on the premises any notices of non-responsibility provided for under applicable law, and to inspect the premises in relation to the construction at all reasonable times.
- a. **Plans and Specifications.** Lessee shall deliver to the Port for the Port's review and approval two (2) sets of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of Washington, including, but not limited to, preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas and landscaping, all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable the Port to make an informed judgment about the design and quality of construction and about any effect on the reversion. All improvements shall be constructed within the exterior property lines of the demised premises, PROVIDED that required work beyond the premises on utilities, access and conditional use requirements do not violate this provision. With the plans, Lessee shall deliver to the Port the certificate of the person or persons who prepared the plans and specifications, certifying that Lessee has paid for them or waiving payment and waiving any right to a lien on the premises.
 - b. **Port Approval.** The Port reserves the right, in its sole discretion, to approve or disapprove the preliminary plans and specifications. The Port shall not unreasonably withhold approval of preliminary plans and specifications, but shall have the right to withhold approval if it finds that the improvements are not consistent with the highest and best use of the premises or that the improvements are not aesthetically pleasing or harmonious with the improvements constructed in the immediate vicinity. Approval or disapproval shall be communicated in the manner provided for notices, and disapproval shall be accompanied by specification of the grounds for

disapproval, PROVIDED that the Port's failure to disapprove within fifteen (15) days after receipt of the plans and specifications shall be conclusively considered to be Port approval.

- c. Use of Licensed and Bonded Contractor. Lessee shall use a licensed and bonded contractor for all improvements or alterations to the demised premises. Lessee shall furnish the Port with a true copy of Lessee's contract with the contractor. The contract shall give the Port the right, but not the obligation, to assume Lessee's obligations and rights under that contract if Lessee should default.
- d. Required Governmental Permits. Lessee shall procure and deliver to the Port, prior to the commencement of construction, evidence of compliance with all then applicable codes, ordinances, regulations and requirements for permits and approvals, including, but not limited to: a grading permit; building permits; zoning and land use approvals, including critical areas permits; environmental (i.e., State Environmental Policy Act, RCW 43.21C) determinations, and approvals from various governmental agencies and bodies having jurisdiction over the premises.
- e. Evidence of Regulatory Compliance. Upon completion of construction, Lessee shall provide the Port with copies of all certificates of completion, certificates of occupancy, and as-built plans evidencing regulatory compliance.

- 12. OWNERSHIP OF IMPROVEMENTS:** All improvements constructed on the premises by Lessee as permitted by this Lease shall be owned by Lessee until expiration of the term or sooner termination of this Lease. Lessee shall not, however, remove such improvements from the premises without the Port's prior written permission. The four (4) buildings described in Exhibit B and purchased by Lessee from the Port shall be owned by Lessee and may be removed by Lessee at any time during this Lease. The parties covenant for themselves and all persons claiming under them that the improvements are real property. At the expiration of the term or sooner termination of this Lease, with respect to improvements constructed or installed on the premises during the term of this Lease, the buildings themselves, the ceiling cranes and all electrical, plumbing, heating, air conditioning and other building systems and any drapes, carpeting, and installed appliances, but not Lessee's freely moveable personal property, or any compressors (other than for the heating and air conditioning systems), shall, without compensation to Lessee, then become the Port's property, free and clear of all claims by Lessee or any third person, and Lessee shall defend and indemnify the Port against all liability and loss arising from such claims or from the Port's exercise of the rights conferred by this Paragraph 12. Notwithstanding the terms of this Paragraph 12, the Port may, at the expiration or earlier termination of this Lease, demand the removal from the premises any part

or all of the improvements or fixtures that have been subject to casualty, or substantial waste or neglect, and which therefore are no longer usable for the processing and retail and wholesale sales of fish. At the expiration of the term or sooner termination of this Lease, with respect to the four (4) buildings purchased by Lessee from the Port, the buildings themselves, the ceiling cranes and all electrical, plumbing, heating, air conditioning and other building systems and any drapes, carpeting, and installed appliances, but not Lessee's freely moveable personal property, or any compressors (other than for the heating and air conditioning systems), shall be removed from the premises by Lessee, unless the Port in its sole and absolute discretion agrees in writing that they may remain on the premises, in which case they shall, without compensation to Lessee, then become the Port's property, free and clear of all claims by Lessee or any third person, and Lessee shall execute such deed or other documents reasonably requested by the Port to evidence such transfer of ownership to the Port, and Lessee shall defend and indemnify the Port against all liability and loss arising from such claims or from the Port's exercise of the rights conferred by this Paragraph 12. The cost of all removal required or permitted by this paragraph shall be borne solely by the Lessee.

13. **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 one hundred and eighty (180) days prior to the expiration or sooner termination of this Lease.
14. **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.

15. DAMAGE OR DESTRUCTION:

- a. Except as expressly provided in Subparagraph (c) of this Paragraph 15, below, Lessee shall promptly and diligently repair, restore and replace as required to remedy all damage to or destruction of all or any part of the improvements upon the leased premises from any causes whatsoever. The completed work of repair, restoration or replacement shall be equal in value, quality and use to the condition of the improvements before the casualty giving rise to the work. Lessee shall also promptly take all steps necessary to assure that the leased premises shall be and remain safe and the damaged improvements not constitute a hazard or danger to persons or property from the time of the fire or other casualty.
- b. The Port may in its discretion abate or suspend the rent in consideration of the particular hardship or incapacity of Lessee.
- c. If not later than sixty (60) days after the occurrence of a fire or other casualty which causes substantial damage to the improvements, Lessee, using reasonable judgment and in reliance upon professional estimates and advice, determines that such full repair and/or restoration is either (i) physically impossible, or (ii) PROVIDED that Lessee has fulfilled all of the hazard insurance requirements set forth in Paragraph 17 of this Lease, the available insurance proceeds are less than eighty percent (80%) of the cost of such repair and/or restoration, then Lessee may terminate this Lease by written notice to the Port given within such sixty (60) day time period. Such termination notice shall not, however, be effective until sixty (60) days after the date upon which it is received by the Port, during which time the Port shall have the opportunity to seek an adjustment from the insurer so as to increase the amount of available insurance proceeds, arrange for such repair and/or restoration at a cost sufficiently low so as to avoid condition (ii) of the preceding sentence, or design a partial restoration of the improvements which would be sufficient to provide Lessee with improvements of reasonably equivalent quality and floor area to not less than eighty percent (80%) of the improvements as they existed immediately prior to such fire or other casualty; and in any of the foregoing cases by written notice of such action to Lessee within such additional sixty (60) day period the Port may render Lessee's termination notice null and void. If the Port shall fail to

so nullify the termination notice, then this Lease shall terminate at the expiration of such sixty (60) day period after the Port's receipt of Lessee's termination notice, and any proceeds of insurance payable to Lessee on account of such fire or other hazard shall be paid as provided in Subparagraph (d) of this Paragraph 15, below.

- d. If this Lease is early terminated under Subparagraph (c) of this Paragraph 15, above, the Port shall be entitled to the proceeds of all insurance collected, after deduction of the following: the Lessee's costs of demolition and removal of the damaged and unusable improvements, and the filling and grading of the premises; and, the Lessee's then current book value for the improvements.

16. 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 except to the extent attributable to the negligence or other wrongdoing of the Port or its employees, contractors or agents. Lessee agrees to defend, indemnify, and to hold and save the Port harmless from all liability and expense (including, but not limited to attorney's fees and other costs of litigation) in connection with any such items of actual or alleged injury or damage.

17. INSURANCE: Lessee agrees to maintain during the lease term 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. Throughout the term of this Lease, at Lessee's sole cost and expense, Lessee shall keep or cause to be kept insured, for the mutual benefit of the Port and Lessee, all improvements located on or appurtenant to the premises against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for industrial structures, including vandalism and malicious mischief. The amount of insurance shall be sufficient to prevent either the Port or Lessee from becoming a co-insurer under the provisions of the policy, but in no event shall the amount be less than \$250,000 (herein called the "insurable value"). The Port shall not be required to carry any insurance coverage on the premises. Lessee may include the holder of any mortgage on the leased premises as a loss payee. The Port shall, at Lessee's cost and

expense, cooperate fully with Lessee to obtain the largest possible recovery in the event of any insurance claim. Except as expressly provided in Paragraph 15, Subparagraphs (c) and (d), above, all policies of fire and extended coverage insurance required by this Lease shall provide that the proceeds shall be payable to Lessee as follows:

- i. Insurance proceeds shall be paid first to make all necessary repairs to restore the improvements to their condition prior to the insured casualty. Payments of insurance proceeds for repair, restoration or reconstruction of the improvements shall be held in a trust account approved by the Port and be disbursed monthly on architect's certificates until the work is completed and accepted.
 - ii. Any insurance proceeds remaining after complying with the provisions of this Lease relating to maintenance, repair and reconstruction of improvements shall be the Lessee's sole property.
- b. 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 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, and contractual liability.
- c. 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 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.
- d. Workers Compensation Insurance as required by Washington law 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, with minimum limits of liability as required by such laws and in no event less than \$1,000,000 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 Lessee shall provide a complete copy of all insurance policies to the Port at the Port's request. The conditions set forth in Subparagraphs (a), (b), (c), and (d) of this Paragraph 17 shall be met prior to occupancy.

- 18. 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 insurance contracts, including any extended coverage endorsements thereto, PROVIDED that this Paragraph 18 is effective only to the extent that the insurance company(ies) actually pay(s) for such injury, loss or damage, and, PROVIDED FURTHER, that this Paragraph 18 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.

19. **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 improvements 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 leased premises, 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.
20. **HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT:** Lessee has examined the Hazardous Substance Warranty and Agreement, consisting of six (6) pages, which is attached hereto as Exhibit "C" 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.
21. **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 and any taxes and assessments based on the premises or any improvements located thereon.
22. **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:** Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the improvements 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 local laws, rules, regulations, ordinances, permits and permit requirements, orders, and decrees of all governmental bodies having authority over the premises or any improvements located thereon, or any activity conducted thereon, as currently in effect or as may be hereafter amended or issued. Lessee shall defend, indemnify, and hold the Port harmless against all claims, costs (including but not limited to attorney fees), fees, fines, penalties, liabilities, losses, and damages that the Port may

incur by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation of any of the foregoing. Lessee further agrees that all improvements, approved by the Port will be properly permitted by the City and/or 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.

- 23. 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 23. If the Port shall give its consent to any assignment or sublease, this Paragraph 23 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.

24. EASEMENTS:

- a. The parties recognize that the Port's 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 premises leased by 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 significantly impact or deprive the Lessee from its beneficial use or occupancy of the leased premises.
- b. In the event that the Port does significantly impact the Lessee from such beneficial use or occupancy, then there will be an equitable adjustment in rent. In the event that the Port does permanently deprive the Lessee from such beneficial use or occupancy, then 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.

- 25. 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. After such stored property has been stored for a period of thirty (30) days or more, the Port shall have the right to sell such property PROVIDED, however that Lessee shall be given fifteen (15) days' notice in writing of the Port's intent to sell such property. The proceeds of such sale of stored property shall 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 that 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.
- 26. 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.

- 27. 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.
- 28. 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.
- 29. 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.
- 30. WAIVER:** No word, act or omission of the Port shall be deemed to be a waiver of any default or noncompliance by Lessee under the terms of this Lease or of any right of the Port hereunder or of any notice given by the Port hereunder unless the Port so advises Lessee in writing. 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 25 hereof.

31. **PRIOR AGREEMENTS:** This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement, letter of intent or understanding pertaining to any such matter will be effective for any purpose. No provisions of this Lease may be amended or added to, except by an agreement in writing signed by the parties or their respective successors in interest.
32. **ATTORNEY FEES AND COSTS:** In the event either party requires the services of an attorney in connection with enforcing or interpreting the terms of this Lease, or in the event suit is brought for the recovery of any sums due under this Lease or for the breach of any covenant or condition of this Lease, or for the restitution of the premises to the Port or eviction of the Lessee during the lease term or after the expiration thereof, the substantially prevailing party is entitled to reasonable attorney fees and all costs incurred in connection therewith, including, without limitation, the fees of accountants, appraisers and other professionals, whether at trial, on appeal or without resort to suit.
33. **VACATION OF PREMISES – HOLDING OVER:** In the event that no new lease has been negotiated and executed by the parties (or their successors) prior to the termination of this Lease, and upon written notice from the Port given at any time prior to the expiration of the term, Lessee shall promptly vacate the premises on or before the last day of the term, leaving the premises in the condition described in Paragraph 34, below. If Lessee holds over after the expiration or earlier termination of this Lease without the express written consent of the Port, Lessee will be a tenant at sufferance only and otherwise subject to the terms, covenants and conditions herein specified, insofar as applicable, except that the monthly rent will be one hundred fifty percent (150%) of the rent applicable during the last rental period under this Lease. Tenant shall also pay its share of then current additional rent, prorated on a daily basis. Acceptance by the Port of rent after the expiration or earlier termination of this Lease will not result in a renewal of this Lease. The forgoing provisions of this section are in addition to and do not affect the Port's right of re-entry or any other rights of the Port hereunder or otherwise provided by law. Lessee hereby indemnifies and agrees to hold the Port harmless from all loss, injury or liability arising from Lessee's failure to surrender the premises upon the expiration or earlier termination of this Lease.
34. **SURRENDER OF PREMISES:** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, will not work a merger, and will, at the option of the Port, operate as an assignment to it of any or all subleases or subtenancies. Upon the expiration or earlier termination of this Lease, Lessee shall peaceably surrender the premises and all of the alterations and additions thereto,

leave the premises clean, in as good order, repair and condition as was provided to Lessee on the commencement date, reasonable wear and tear excepted, and Lessee shall comply with the provisions of Paragraphs 11 and 12, above. The delivery of keys to any employee of the Port or to the Port's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the premises.

- 35. 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.
- 36. 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 that would or might constitute the basis for such a lien on the leased premises if not paid.
- 37. NOTICES:** All notices hereunder may be personally 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:
KIMMEL'S CRAB SHACK LLC
c/o Scott Kimmel
2427 Washington Street
Port Townsend, WA 98368
Phone: (360) 385-4600

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 received or refused by the addressee.

38. **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.
39. **"LESSEE" INCLUDES LESSEES, 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.
40. **CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
41. **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.
42. **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.
43. **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.

44. **LABOR UNREST:** Lessee agrees to join with the Port and use its best efforts in avoiding labor unrest, or in the event of a wildcat strike or other labor difficulty, to use its good offices in negotiating and bringing to a swift and satisfactory conclusion any kind of labor dispute that may affect the interests of the Port.
45. **SUCCESSORS AND ASSIGNS:** Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease are binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns. If the Port sells or otherwise conveys its title to the premises, then after the effective date of such sale or conveyance, the Port will have no further liability under this Lease to Lessee except as to matters of liability which have accrued and are unsatisfied as of the date of sale or conveyance, and Lessee must seek performance solely from the Port's purchaser or successor in title. The Port's successor will have all rights of the Port, as Landlord, hereunder.

Lease Agreement dated this 27th day of March 2019 is hereby approved by the Port of Port Townsend, on this 27th day of March 2019 and effective upon the receipt of a deposit and insurance documentation from the Lessee.

LESSEE, KIMMEL'S CRAB SHACK LLC

Scott Kimmel, President

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Jim Pivarnik, Executive Director

Port Attorney

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

I certify that I know or have satisfactory evidence that SCOTT KIMMEL signed this instrument and that he/she is authorized to execute the instrument and acknowledged it to be his/her 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 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: _____



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

EXHIBIT "A": DEPICTION OF LEASED PREMISES

1:1,128

Date: 3/20/2019

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



EXHIBIT "B"
DESCRIPTION OF LESSEE-OWNED BUILDINGS UPON THE LEASED PREMISES

The four (4) structures described below have been purchased by Lessee from the Port of Port Townsend and are the property of Lessee. The four (4) structures described below are to be maintained in a state of good repair by Lessee, as specified under the relevant terms of the Lease.

General Description: Four (4) structures together comprising approximately 12,061 square feet of floor space, located near or upon the "New Day" spit within Hastings 2nd Addition to the City of Port Townsend, Jefferson County, WA, on a portion of Blocks 24 and 25, Lots 1-8 (Tax Lot 110), and specifically excluding the underlying real property which remains in Port of Port Townsend ownership.

Specific Building Descriptions:

1. The structure commonly known as the "New Day Fisheries Building", a steel and concrete block building of approximately 10,200 square feet in size (60' wide by 170' long), located at 2427 Washington Street;
2. The "Westerly New Day Fisheries Buildings", consisting of three adjoining buildings comprising approximately 1,861 square feet and situated on the spit south of the loading pier at 2427 Washington Street, including:
 - a. An approximately 1,240 square foot concrete block structure with a composition roof and concrete floor;
 - b. An approximately 465 square foot attached freezer unit presently used for storage; and
 - c. An approximately 156 square foot wood framed/partially enclosed weight room.

EXHIBIT "C"
HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT

RIDER TO LEASE AGREEMENT DATED: _____, 2019, BETWEEN THE PORT OF PORT TOWNSEND and KIMMEL'S CRAB SHACK, LLC ("Lessee").

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 the Port, Lessee shall not store, use or have present on or adjacent to the premises any Hazardous Substances. Hazardous Substances means a reportable quantity of any hazardous, toxic, dangerous or extremely dangerous substance, material, vapor, or waste, pollutant, or pollution, which is or becomes regulated by the United States Government, the State of Washington, or any local governmental authority applicable to the leased property. The term includes, without limitation, any substance containing constituents of the foregoing.

Except that Lessee may store, use, or have present on the premises the following:

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 the Port 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, its officers, employees, contractors, agents, licensees, invitees, and assigns, shall not Release, dispose of, or permit a Release of any Hazardous Substances onto the premises or into the environment surrounding the premises, whether said Release is caused by intentional or unintentional acts, omissions, negligence, or otherwise. As used in this Lease, the term "Release" shall be defined as provided in 42 U.S.C. 9601 and RCW 70.105D.020. In the event a conflict exists between the two definitions, the broader definition shall apply. For purposes of this lease, the term Release shall also include a threatened Release.

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, including without limitation laws, rules, regulations, ordinances, permits and permit requirements, orders, decrees, and other governmental requirements regarding the proper and lawful generation, use, sale, transportation, storage, treatment and disposal of Hazardous Substances, (hereinafter "Laws"), on or in any manner which affects the premises. Lessee shall, at its sole cost and expense, comply with all Laws. Lessee shall obtain any required federal or state hazardous waste generator or transporter identification numbers. Lessee shall provide to the Port 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 (7) days of receipt by Lessee.
6. **DISPOSAL OF HAZARDOUS WASTES.** In the event Lessee has occasion or need to dispose of Hazardous 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 that it has (1) 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, (2) 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 (3) 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 Substances. 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 the Port in writing within seven (7) days of such event, and shall provide the Port with a copy of each document reflecting such event.
8. **INDEMNIFICATION AND HOLD HARMLESS.** Lessee shall indemnify and hold the Port 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 the Port 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 Hazardous Substance onto the premises or into the surrounding environment.

This obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs, environmental consultants' fees, attorneys' fees, fines and penalties, laboratory testing fees, claims by third parties and governmental authorities for death, personal injuries, property damage, business disruption, lost profits, natural resource damages and any other costs for environmental assessments, monitoring, government compliance, or otherwise related to a Release or threatened Release of Hazardous Substances. This obligation by the Lessee shall survive the expiration or termination of this Lease Agreement and the sale of the property. If the Port so requests, Lessee shall accept the tender of defense of, and shall retain counsel of the Port's selection and at Lessee's expense to defend any third-party claim asserted against the Port in connection with alleged conduct by Lessee which, if true, would be in breach of the provision of this Rider. Lessee shall have no obligation under this Paragraph 8, if Lessee can establish that the Release or threatened Release of a Hazardous Substance and the damages resulting therefrom were caused solely by:

- a. An act of God;
- b. An act of war;
- c. An act or omission of a third party other than (i) an employee or agent of the Lessee, or (ii) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the Lessee, if the Lessee establishes by a preponderance of the evidence that Lessee (a) exercised due care with respect to the Hazardous Substance concerned, taking into consideration the characteristics of such Hazardous Substance, in light of all relevant facts and circumstances, and (b) took reasonable precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of such acts or omissions; or
- d. Any combination of the foregoing paragraphs.

9. **NOTIFICATION TO THE PORT OF CHANGES IN OPERATION.** Lessee agrees to notify the Port 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 or threatened Release of Hazardous Substances 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 the Port 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 Hazardous Substances into the environment or onto the premises. Lessee shall notify the Port 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 the Port with seven (7) days after receipt or creation, as the case may be.
12. **PORT'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, the Port shall be entitled (1) to terminate this Lease Agreement immediately, (2) to require Lessee to cease all operation which pose a risk or threat 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. The Port 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 the Port under applicable law.
13. **ANNUAL DECLARATION OF COMPLIANCE.** Within ten (10) days of receipt of a written request by the Port, 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. The Port 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 the Port, including inspections and testing conducted by consultants or engineers hired by the Port to evaluate Lessee's compliance with the applicable environmental requirements and the provisions of this Rider. The Port shall provide Lessee within 24 hours advance notice of the Port's intent to conduct such inspection or testing.
15. **DESIGNATED REPRESENTATIVE RESPONSIBLE FOR COMPLIANCE.** _____ whose work telephone number is _____ and whose home telephone number is _____ 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 the Port 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

the Port of any changes in the identity or telephone numbers of the designated representative.

16. ADDITIONAL PROVISIONS.

PORT OF PORT TOWNSEND:

LESSEE:

Jim Pivarnik, Executive Director

Scott Kimmel, President

Date: _____

Date: _____

(Attachment No. 1 to Hazardous Substances Rider)

DISCLOSURE BY LESSEE

The Lessee makes the following disclosure pursuant to Paragraph 7 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: KIMMEL'S CRAB SHACK, 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 13 of the Hazardous Substances Warranty and Agreement dated: _____, hereby declares and represents 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 7 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 Substances except those which have been disclosed in writing to lessor.
5. Lessee has not Released, disposed of, or permitted the Release of any Hazardous Substances onto the premises or into the environment surrounding the premises, except as has been disclosed in writing to Lessor.

Lessee: KIMMEL'S CRAB SHACK, LLC

By: _____
Signature

Title: _____/Date: _____

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	March 27, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. D) February 2019 Financials
STAFF LEAD	Abigail Berg, Director of Finance & Administration
REQUESTED	<input type="checkbox"/> Action <input checked="" type="checkbox"/> Discussion
ATTACHMENTS	A. February 2019 Financials

Port of Port Townsend
Summary of Operating & Non-Operating Revenues & Expenses
2019 Activity with Comparison to Prior Year and Budget

	YTD Feb. 2018	YTD Feb. 2019	Variance to prior year - 2018 v 2019	notes	YTD Budget 2019	Variance to Budget YTD
REVENUES						
Boat Haven Moorage	273,657	285,248	11,591		281,933	3,315
Yard Operations	210,287	252,886	42,599		231,792	21,094
Boat Haven Properties	106,701	116,597	9,896		105,496	11,101
Pt. Hudson Marina, RV & Prop	169,337	173,725	4,388		174,164	(439)
Quilcene	17,448	21,028	3,580	a	18,442	2,586
Ramps	7,857	9,024	1,167	b	8,300	724
JCIA	21,880	24,047	2,166		22,740	1,307
Total Operating Revenues	807,166	882,555	75,388		842,867	39,688
OPERATING EXPENSES						
Salaries & Wages	331,986	315,051	(16,935)		344,822	(29,771)
Payroll Taxes	32,943	49,031	16,088	c	37,800	11,231
Employee Benefits	124,326	65,556	(58,770)	d	127,542	(61,986)
Uniform Expense	354	2,494	2,139		1,385	1,109
Contract Services	20,094	47,608	27,515		49,346	(1,738)
Consulting Services	15,595	7,248	(8,348)		16,000	(8,753)
Legal & Auditing	17,694	35,267	17,573	e	16,666	18,601
Facilities & Operations	101,624	68,206	(33,418)	f	94,915	(26,708)
Utilities	61,227	110,997	49,770	g	64,247	46,750
Marketing	6,557	7,446	889		7,645	(199)
Economic Development	-	-	-		-	-
Travel & Training	3,914	5,711	1,798		5,950	(239)
Cost of Goods - Fuel	322	317	(4)		322	(5)
Community Relations	-	-	-		-	-
Total Operating Expenses	716,635	714,931	(1,704)		766,639	(51,708)
Income from Operations w/o Depr	90,532	167,624	77,092		76,227	91,396
Non-Operating Revenue						
Capital Contributions/Grants	37,977	66,051	28,074		58,028	8,023
Interest	2,821	4,965	2,144		2,200	2,765
Property & other taxes	186,580	83,257	(103,323)	h	179,915	(96,658)
Misc Non-Operating Revenue	3,992	5,046	1,055		4,750	296
Total Non-Operating Revenues	231,370	159,319	(72,050)		244,893	(85,574)
Non-Operating Expenses						
Bond Interest	52,955	51,375	(1,580)	i	48,972	2,403
Bond Mgmt, Issuance & Misc Exp	100	100	-		80	20
Election Expense	-	-	-		-	-
Total Non-Operating Expenses	53,055	51,475	(1,580)		49,052	2,423
Net Non-Operating Income (Expense)	178,315	107,844	(70,471)		195,841	(87,997)
Net Income (Loss)	268,847	275,468	6,621		272,068	3,400

Notes:

- (a) Late 2018, added 3 water meters and increased rates to match current Jefferson PUD water rates. In addition, fuel sales increased compared to last year when the pump needed repair and took 1-2 months to obtain parts and repair.*
- (b) Sold substantially more Annual Passes in Jan. 2019 than 2018.*
- (c) Part of moving to Cash Basis reporting, this amount includes the Qtr. 4, 2018 LNI payment.*
- (d) Benefits paid in February (Cash Basis), not accrued back to January like in 2018.*
- (e) Substantial invoice for legal services related to current litigation.*
- (f) Part of moving to Cash Basis, Insurance will not be allocated monthly, but recognized when paid.*
- (g) Cash Basis change, didn't accrue "December" incurred utilities. Will true up by year end.*
- (h) Cash Basis change, Prop. Tax not allocated monthly by budget, but recorded as received.*
- (i) Part of moving to Cash Basis, Bond Int. exp. not allocated monthly, but recognized when paid.*

**Port of Port Townsend
YTD Cashflow report**

	YTD February 2019
	notes
Net Income w/out Depreciation	275,468
Net Change in Accruals from Balance Sheet*	(193,166)
Less: Capital Expenses:	
Point Hudson South Jetty project	-
WorkYard Resurfacing 2018	-
JCIA Runway Replacement project	(70,738)
PTBH Water Meters project	-
2019 PTBH Restroom Remodel	(31,063)
Land	-
Buildings	-
Improvements	-
Equipment replacement	a (10,431)
Total Capital Expenses	(112,232)
Less: Principal Payments on Debt:	
Hudson Point Refunding Bond	-
PTBH Marina Bond	-
Total Principal Payments	-
Increase (Decrease) in Cash Y-T-D	(29,930)
Beginning Cash at 1/1/2019	1,885,761
Ending Cash at 2/28/19	1,855,831

**These are current assets and current liabilities.*

Notes:

(a) Purchase of Vactor truck from City of Port Townsend.

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	March 27, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. E) Resolution No. 698-19, Authorizing a Multi-year Levy Period
STAFF LEAD	Eric Toews, Deputy Director
REQUESTED	<input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Resolution No. 698-19 (Staff memo to be presented.)

RESOLUTION NO. 698-19

**A RESOLUTION OF THE PORT COMMISSION OF THE PORT OF
PORT TOWNSEND AUTHORIZING A MULTIYEAR LEVY PERIOD**

WHEREAS, on September 13, 1966 the Commission of the Port of Port Townsend (the "Port") adopted Resolution No. 194 establishing an industrial development district ("IDD"), the boundaries of which were later amended by Resolution No. 196 on December 13, 1966; and

WHEREAS, the Commission expressly found the need for the improvement of the lands within the boundaries of such IDD to make the same suitable for industrial use and purposes, and for improvement of harbor facilities and harbor use within the Port; and

WHEREAS, the Port has adopted and approved a Comprehensive Scheme of Harbor Improvements, which may be amended, modified and restated in the future (the "Comprehensive Scheme"); and

WHEREAS, the Port intends to provide for the redevelopment of lands in the IDD in accordance with the powers granted to the Port under RCW 53.25; and

WHEREAS, the Port has previously levied an industrial development tax levy pursuant to RCW 53.36.100; and

WHEREAS, the Washington State Legislature has enacted RCW 53.36.160 to permit multiyear levy periods of up to twenty years, commencing with the date of the initial levy; and

WHEREAS, the Port intends to approve the use of a second multiyear levy period; and

WHEREAS, the Port duly published a notice of intent to impose levies over a second multiyear levy period pursuant to RCW 53.36.160(2);

**NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT
OF PORT TOWNSEND, WASHINGTON, as follows:**

Section 1. The Port intends to impose levies over a second multiyear period pursuant to the provisions of RCW 53.36.160.

The aggregate dollar amount to be collected over the second multiyear levy period shall be determined and limited as described in RCW 53.36.160. The levies are not required to be collected in each year during the second multiyear period, but any such levy shall only be made with approval by the Port Commission in the year prior to each collection year. Any revenues derived from levies made under RCW 53.36.160 and not expended in the year in which the levies are made may be paid into a fund for future use in carrying out the powers granted under chapter 53.25 RCW, which fund may be accumulated and carried over from year to year, with the right to continue to levy the taxes provided for under RCW 53.36.160 for the authorized purposes. In the event a levy authorized under RCW 53.36.160 produces revenue in excess of the requirements to complete the projects under the Port's Comprehensive Scheme within an industrial development district, the excess must be used solely for the retirement of general obligation bonded indebtedness.

Section 2. This resolution shall take effect immediately upon its adoption.

ADOPTED AND APPROVED at a regular meeting of the Commission of the Port of Port Townsend, Washington held this 27th day of March 2019.

ATTEST:

Stephen R. Tucker, Secretary

William W. Putney III, President

Peter W. Hanke, Vice President

APPROVED AS TO FORM:

Port Attorney

CERTIFICATE

I, the undersigned, Secretary of the Port Commission of the Port of Port Townsend, Washington (the "Port") and keeper of the records of the Port Commission (the "Commission"), DO HEREBY CERTIFY:

1. That the attached resolution is a true and correct copy of Resolution No. 698-19 of the Port Commission (the "Resolution"), duly adopted at a regular meeting thereof held on the 27th day of March 2019.

2. That said meeting was duly convened and held in all respects in accordance with law, due and proper notice of such meeting was given, that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Commission voted in the proper manner for the adoption of the Resolution; that all other requirements and proceedings incident to the proper adoption of the Resolution have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of March 2019.

Stephen R. Tucker, Secretary
Port Commission