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**Port of Port Townsend
1st Monthly Business Meeting
Wednesday, May 8, 2019, 1:00 p.m.
Port Commission Building
333 Benedict Street
Port Townsend, WA**

- I. Call to Order / Pledge of Allegiance
- II. Approval of Agenda
- III. Recognition
 - Maintenance Lead/Mechanic II - Shawn Wiles – 20 years
 - Facilities/Grounds Maintenance – Laura Snodgrass – 10 years
- IV. Public Comments (related to/not related to the agenda)
- V. Consent Agenda
 - A. Approval of Regular Business Meeting Minutes – April 24, 2019.....1-4
 - B. Resolution No. 701-19 – Warrant Cancellations.....5
 - C. Approval of Warrants
- VI. Second Reading
- VII. First Reading
 - A. Resolution No. 700-19 – Climate Mitigation & Adaptation.....6-9
 - B. Stormwater Rate Increase.....10-11
- VIII. Regular Business
 - A. BUMS Lease.....12-37
 - B. PUD Transformer Easements in the Boatyard.....38-45
 - C. Key FOB Pricing.....46-47
 - D. Support Letter for Puget Sound Day in Washington D.C.....48-50
- IX. Staff Comments
- X. Commissioner Comments
- XI. Next Regular Business Meeting:
Wednesday, May 22, 2019 at 5:30 pm
Port Commission Building, 333 Benedict Street, Port Townsend, WA
- XII. Executive Session
 - A. Personnel Review, pursuant to RCW 42.30.110 (1) (g)
- XIII. Adjournment

PORT COMMISSION REGULAR BUSINESS MEETING – April 24, 2019

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

Present: Commissioners –Putney & Hanke, Tucker via telephone
Interim Executive Director Pivarnik
Auditor Berg
Deputy Director Toews
Minutes – Nelson
Attorney Deets (via Skype audio/visual)

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

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

II. APPROVAL OF AGENDA:

Commissioner Tucker moved to approve the Agenda as presented.

Commissioner Hanke seconded the motion.

Motion carried by unanimous vote.

III. PUBLIC COMMENTS:

None

IV. CONSENT AGENDA (00:01:29):

A. Approval of Regular Business Meeting Minutes – April 10, 2019

B. Approval of Warrants

Warrant #060436 through #060444 in the amount of \$15,203.63 for Payroll & Benefits

Electronic Payment in the amount of \$61,396.67 for Payroll & Benefits

Warrant #060445 through #060484 in the amount of \$189,838.34 for Accounts Payable

Electronic Debit in the amount of \$8,056.83 for WA State Dept. of Revenue Combined

Excise Tax Return for March 2019

Warrant #060413 as a *VOID*

Commissioner Hanke moved to approve the Consent Agenda as presented.

Commissioner Tucker seconded the motion.

Motion carried by unanimous vote.

V. SECOND READING (Action Items):

VI. FIRST READING (Discussion Only):

A. Moorage & Yard Background Check Form and Fee (00:01:44):

Ms. Berg presented the revised Liveboard application where a new fee is proposed to cover background checks. She explained this is to help to try and eliminate abandoned and derelict vessels and crime.

Commissioner Putney explained that staff has requested this be voted for approval today, waiving the second reading.

Commissioner Hanke moved to vote on this today, waiving the Second Reading.

Commissioner Tucker seconded the motion.

Motion carried by unanimous vote.

Commissioner Hanke moved to approve the Liveaboard Application as written.

Commissioner Tucker seconded the motion.

Motion carried by unanimous vote.

VII. REGULAR BUSINESS:

A. LPAC Presentation (00:03:46):

Mr. Toews referred to the Leasing Policy Advisory Committee's (LPAC) Memo along with "bill format" recommended changes to the draft Leasing Policy. He expressed his gratitude to the committee members and stated they have been a great group to work with. He then introduced committee member Pete Langley.

Pete Langley reviewed the committee's main recommended changes to the following subjects: "Highest and Best Use", "Market Analyses", Rental Rate Adjustments" and the "Common Area Maintenance Fees (CAM)".

LPAC member, Ernie Baird gave credit to Port staff for creating a civil, intellectual and productive environment. He discussed viewpoints of the marine trades and the committee on the Common Area Maintenance Fees.

Commissioner Hanke stated the committee has done a great job. He asked if they considered how capital expenses would be covered if paying market rate only.

Commissioner Putney would like to see the lease policy discussed at a workshop.

Mr. Pivarnik explained that this information is for the Commission to digest and then would be brought back for First and Second Readings, with input from commissioners, tenants and staff. He explained the goal is to adopt a policy sometime end of May or early June.

Commissioner Putney asked if staff and the commissioners feel the policy is where we want to be.

Mr. Toews stated staff is in broad agreement with the committee on some points, but not all. He believes a workshop would provide a good opportunity for discussion. After a workshop, staff would present an updated draft for a First Reading.

B. 2019 (1st) Quarterly Project Report (00:22:38):

Ms. Berg provided the status of the Water Meters/Backflow Preventers project, the 2018 Workyard Resurfacing project and the 2017-2020 JCIA Runway Rehab project.

Commissioner Hanke asked if staff has heard from the FAA on the parallel runway proposal. Mr. Toews replied, not yet. He added a response may follow the 90% submittal next week.

C. 2019 Quarterly Financials (00:30:33):

Ms. Berg reported 2019 is looking good. Revenues are "impressively" up over the last five years and expenditures are down. She explained changes to this report are because of the switch to cash reporting. Commissioner Hanke asked further questions.

Mr. Pivarnik stated the shipyard and boatyard business is "through the roof" and commended the yard staff for working extra hard.

D. Integrated Planning Grant (IPG) – Decision to Proceed or Withdraw (00:35:12):

Mr. Toews explained that in 2017 the Port was successful in obtaining a proviso in the State's biennial budget for a \$200K Integrated Planning Grant. He explained the object was to address environmental contamination of soils, stormwater quality issues, and planning for future redevelopment of Boat Haven uplands. He stated the question before the Commission is whether to proceed with or withdraw from the grant award. Mr. Toews explained the costs that would be involved with this project, including staff time and obtaining a consultant. He asked if this is a useful and appropriate investment of the Port's resources. Discussion ensued on the pros and cons of accepting the grant. Commissioner Tucker stated he believes use of the Integrated Planning Grant is a good idea, but staff does not have the bandwidth to take this on at this time.

Commissioner Hanke moved to pass on the Integrated Planning Grant.

Commissioner Tucker seconded the motion.

Motion carried by unanimous vote.

E. 2018 Workyard Resurfacing Project Acceptance (00:52:26):

Ms. Berg explained the project was completed last year but the Port must undergo the process to request releases from three State agencies. The Port just received the last release from the Dept. of Revenue. Ms. Berg asked the Commission for approval of project completion release of retainage to Seton Construction.

Discussion ensued on whether the job completion met specs.

Commissioner Hanke moved to authorize completion of the job.

Commissioner Tucker seconded the motion.

Motion carried by unanimous vote.

VIII. STAFF COMMENTS (0056:36):

Ms. Berg stated she is working on the Annual Report. She announced the Port hired a new security guard who starts Saturday; the Port continues searching for seasonal Customer Service Reps. One new hire starts tomorrow and have two positions left to fill; and the Port has advertised for a Leasing & Contracts Administrator.

Mr. Toews reported last Tuesday, staff from Dept. of Natural Resources provided a presentation to staff on handling procedures of derelict and abandoned vessels.

Mr. Pivarnik reminded that at the last meeting he informed of the PUD easement for transformer installation on Port property. He announced in exchange, PUD will install five transformers (some will be 3-phase) in the yard at their cost. The Port will pay for the final wiring and pedestals.

IX. COMMISSIONER COMMENTS (1:01:47):

Commissioner Tucker thanked the LPAC committee for the work.

Commissioner Putney announced he has been attending meetings on Broadband. He also recently attended a reception for Admiral Richardson at the Bangor Sub Base.

X. NEXT PUBLIC WORKSHOP/REGULAR BUSINESS MEETING:

Wednesday, May 8, 2019. Workshop at 9:30 a.m., meeting at 1:00 p.m. in the Port Commission Building, 333 Benedict St, Port Townsend.

XI. EXECUTIVE SESSION:

XII. ADJOURNMENT:

The meeting adjourned at 6:35 p.m. 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

RESOLUTION NO. 701-19

A Resolution of the Commission of the Port of Port Townsend

CANCELLING WARRANT NUMBERS 058032 & 058142

WHEREAS: under RCW 36.22.100 registered or interest bearing warrants not presented within one year of the date of their call must be cancelled by the legislative authority to leave the funds as if such warrants had never been drawn;

NOW, THEREFORE BE IT HEREBY RESOLVED by the Port of Port Townsend Commission that the warrants identified below are hereby cancelled:

Warrant Number	Issue Date	Amount	Claimant
058032	8/9/2017	\$413.20	Corey Sampson
058142	9/13/2017	\$53.75	Lee Graybill

ADOPTED this 8th day of May, 2019, by the Commission of the Port of Port Townsend and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.

ATTEST:

Stephen R. Tucker, Secretary

William W. Putney III, President

Peter W. Hanke, Vice-President

APPROVED AS TO FORM:

Port Attorney

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	May 8, 2019
AGENDA ITEM	<input checked="" type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input type="checkbox"/> Regular Business
AGENDA TITLE	VII. A) Resolution No. 700-19 – Climate Mitigation & Adaptation
STAFF LEAD	Eric Toews, Deputy Director
REQUESTED	<input type="checkbox"/> Motion <input type="checkbox"/> Action <input checked="" type="checkbox"/> Discussion
ATTACHMENTS	A. Resolution No. 700-19

RESOLUTION NO. 700-19

A Resolution of the Commission of the Port of Port Townsend

A RESOLUTION COMMITTING TO CLIMATE MITIGATION & ADAPTATION MEASURES

The Port Commission for the Port of Port Townsend, Washington resolves as follows:

WHEREAS: numerous scientific organizations, including the Intergovernmental Panel on Climate Change, have determined that human induced changes to the earth's climate system are unequivocal as evidenced by increases in global average air and ocean temperatures, receding glaciers, decreasing snow pack, ocean acidification and coral bleaching, and by rising global mean sea levels, and further, are damaging to the biosphere, including human systems; and

WHEREAS: energy consumption, specifically the burning of fossil fuels (e.g., coal, oil and natural gas) accounts for more than 80% of U.S. greenhouse gas emissions, and the U.S. produces nearly one quarter of global greenhouse gas emissions; and

WHEREAS: in response to this issue, Jefferson County and the City of Port Townsend have established a Climate Action Committee (CAC) by way of a joint resolution adopted in 2009 (County Resolution No. 06-09 and City Resolution No. 09-0002) to develop a Climate Action Plan and provide recommendations to implement the Plan; and

WHEREAS: the Port of Port Townsend is a participant in the proceedings of the fifteen (15) member CAC, together with representatives from the County, City, PUD, Public Health, Jefferson Healthcare, Jefferson Transit, the Port Townsend Paper Company, as well as citizen representatives; and

WHEREAS: the CAC has unanimously recommended that participating members demonstrate environmental leadership and stewardship by adopting organizational goals to reduce (mitigate) greenhouse gas emissions and to take steps to prepare for the biophysical changes occasioned by climate change (adaptation); and

WHEREAS: the Port of Port Townsend can influence land use, building construction, waste management, and reduce energy use within its facilities; and

WHEREAS: the Port can also provide leadership by motivating and supporting its tenants in efficiently using energy within Port facilities, and encouraging and supporting citizens throughout the County in improving energy use within businesses, industries, schools, churches and homes; and

WHEREAS: the Port of Port Townsend recognizes that the adverse effects of human induced climate change on the biosphere pose serious and increasing risks to our community's future economy and livability; and

WHEREAS: actions taken to reduce greenhouse gas emissions and efficiently use energy are required, and provide multiple local benefits by decreasing air pollution, supporting employment, reducing energy expenditures, saving money, and reducing tax burdens for governments, businesses and citizens; and

NOW, THEREFORE BE IT HEREBY RESOLVED: by the Commission of the Port of Port Townsend, that it shall be the policy of the Port of Port Townsend to reduce greenhouse gas emissions and prepare for human induced climate impacts by implementing the following mitigation and adaptation measures:

I. Mitigation Measures:

1. To the extent allowed by available funding, prioritize energy efficiency repairs and upgrades to Port owned buildings in the five-year Capital Facilities Plan and annual capital budget. Such improvements should include but are not necessarily limited to: window and door replacement, attic/under-floor and wall insulation, and heating/ventilation system upgrades to structures at Point Hudson and Boat Haven.
2. Prioritize fuel efficiency, durability and long-term reliability as decision criteria in the purchase of all new Port fleet vehicles and equipment.
3. Consistent with Port Resolution No. 683-18, consider the use of biofuels and electrification in all future procurement decisions for Port vehicles, vessels and construction equipment. Such consideration shall consider lifecycle costing, comparing not only procurement costs, but lifecycle operational costs.
4. Establish and document adherence to a Port fleet vehicle and equipment maintenance and servicing schedule to optimize efficient, economical operation and service life.
5. Require that all new office equipment purchases by the Port be ENERGY STAR certified.
6. Develop and implement a strategy to replace all Port lighting with energy efficient fixtures.

II. Adaptation Measures:

1. To the extent practicable, seek to diversify Port operations and lines of business in preparation for the physical/environmental and economic dislocations (e.g., sea level rise) likely to be caused by climate change.
2. Continue to explore opportunities to support expansion of the agricultural sector of the local economy (e.g., siting, feasibility, funding of an agricultural processing, storage and distribution center).
3. Focus capital resources on maintaining the Boat Haven Boatyard, recognizing that the practical skills hosted at this facility are vital to the community, both now, and in a future that may be simpler and more local.

ADOPTED this 22nd day of May 2019, by the Commission of the Port of Port Townsend and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.

ATTEST:

Stephen R. Tucker, Secretary

William W. Putney III, President

Peter W. Hanke, Vice President

APPROVED AS TO FORM:

Port Attorney

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	May 8, 2019
AGENDA ITEM	<input checked="" type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input type="checkbox"/> Regular Business
AGENDA TITLE	VII. B) Stormwater Rate Increase
STAFF LEAD	Abigail Berg, Director of Finance & Administration
REQUESTED	<input type="checkbox"/> Motion <input type="checkbox"/> Action <input checked="" type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 5/8/2019
TO: Port Commission
FROM: Abigail Berg, Director of Finance & Administration
SUBJECT: Stormwater Rate Increase

BACKGROUND

In 2014, the Port started billing Boat Haven tenants for Stormwater at the same rates used by the City of Port Townsend. This rate was implemented to help pay for a small portion of the costs to the Port for Stormwater requirements of the Boat Haven Yard and Properties. The Port is responsible for its Stormwater compliance, so these fees go directly to paying for the ongoing compliance costs. The Port has spent over \$1.153 million since 2014 to work on Stormwater compliance. In that time, based on the current tenants, it is estimated that \$38,465 has been paid by Port tenants; whereas these fees do not come close to covering the cost of compliance, they do assist.

DISCUSSION

The City recently increased their Stormwater utility rates. The Port needs to do the same to continue to support the Boat Haven Stormwater utility to tenants.

FISCAL IMPACT

The increase in cost to tenants will be between \$3.32 and \$16.47, depending on square footage. The average tenant increase will be approximately \$7.17 per month.

RECOMMENDATION

This is a first reading for this proposal, for discussion.

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	May 8, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VIII. A) Bottoms Up Marine Services Lease
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Memo B. Summary of Key Terms C. Draft Lease

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 5/3/2019
TO: Port Commission
FROM: Jim Pivarnik, Interim Executive Director
SUBJECT: Bottoms Up Marine Services (BUMS), LLC – Proposed Boat Haven Ground Lease Agreement

BACKGROUND: Bottoms Up Marine Services (BUMS), LLC, owned by James Yobaggy since late 2018, has been renting yard space at Boat Haven. BUMS specializes in vessel maintenance and repair, including: sanding; repainting; gel coat and fiberglass repairs; bright work/varnishing and similar activities.

Mr. Yobaggy has approached the Port requesting a ground lease of the premises currently being rented on a month to month basis. After meeting with Mr. Yobaggy and his Business Manager, Pamela Kozora concerning their space requirements and proposed use, Port staff has proposed a two (2) year lease of the currently occupied premises, along with three (3) one (1) year options.

DISCUSSION: The 1,200 square foot premises include Boat Haven Work Yard Spaces #320 and #333. Given the location of this site in proximity to the 75-ton wash down pad, and its history of past income generation, it is proposed that the base rate be established at \$0.45 per square foot. Port staff believe this represents fair value for the use of the prime Work Yard location and is commensurate with the rent currently being paid by BUMS under a month to month tenancy.

Accordingly, the rent at lease inception would be \$540.00 plus Leasehold Tax (LHT) at 12.84% (\$69.34). In the event BUMS were to become a “holdover” tenant at the end of the lease term, the rent would increase to 125% of that paid in the month preceding lease termination.

The proposed security deposit is equal to three (3) months’ rent plus Leasehold Tax at the inception of the lease term. Staff believes that BUMS is an asset to the Boat Haven which serves an important niche of the Port’s customer base.

RECOMMENDATION: Authorize the Executive Director to execute the attached lease with Bottoms Up Marine Services, LLC.

ATTACHMENTS

- Summary of Key Terms – Boat Haven Ground Lease
- Draft Port-BUMS Boat Haven Ground Lease Agreement (including Exhibits “A” and “B”)

PORT OF PORT TOWNSEND:
Summary of Key Terms – Bottoms Up Marine Services (BUMS)
Boat Haven Land Lease
(May 8, 2019)

1. **TENANT:** Bottoms Up Marine Services, LLC (James Yobaggy, President/Owner)
2. **PREMISES:** Approximately 1,200 square feet of marine-related industrial space in the Boat Haven Work Yard (Boatyard Spaces #320 & #333, located at the NE intersection of vacated San Juan and Jefferson Streets).
3. **TERM:** Two (2) years, beginning on June 1, 2019 and ending on May 31, 2021, along with three (3) one (1) year options.
4. **RENT:** \$540.00 per month (calculated at 0.45¢ per square foot) plus LHT (i.e., $\$540.00 + 12.84\% (\$69.34) = \$609.34$). Rent adjusted per CPI-U beginning year 2; base rent may be adjusted beginning in year three (i.e., based on market rate study).
5. **HOLDING OVER:** In the event Lessee allows the lease to expire without negotiating a new agreement with the Port, the tenancy will roll over into a month-to month basis, with all other provisions of the lease agreement remaining in effect, except that the rent will increase to 125% of the rent due in the month preceding the holdover.
6. **USE OF PREMISES:** Vessel maintenance and repair (e.g., sanding, repainting, gel coat and fiberglass repairs, bright work and varnishing and similar activities).
7. **SECURITY:** Security is calculated as follows: $\$0.45 \times 1,200 \text{ s.f.} = \$540.00 \times 3 = \$1,620.00$; $\$1,620.00 + 12.84\% \text{ LHT } (\$208.01) = \$1,828.01$.
8. **UTILITIES:** \$100.00 per month for electricity plus LHT (i.e., $\$100.00 + 12.84\% \text{ LHT } (\$12.84) = \$112.84$), periodically adjusted based on PUD rate changes; \$7.91 per month for stormwater, subject to periodic adjustments; no other utilities provided.
9. **MAINTENANCE & REPAIR:** All maintenance and repairs are the Lessee's responsibility.
10. **INSURANCE:** Per Port policy. Commercial General Liability of \$1,000,000 combined single limit; Comprehensive Business Automobile Liability of \$1,000,000; Workers Compensation Insurance of not less than \$1,000,000 per

occurrence; insurance certificates naming the Port as an additional insured; proof of insurance required prior to occupancy.

11. **ASSIGNMENT/SUBLEASE:** Permitted only by prior written consent of the Port.
12. **DEFAULTS/TERMINATION:** Time is of the essence. Failure to pay rent, or to abide by the covenants/agreements contained in the lease, may serve as a basis for termination. Lessee will be provided with fifteen (15) days' written notice to cure defaults. Port may also terminate upon sixty (60) days' written notice, at its sole discretion, for public or private use in connection with the operation of the business of the Port.
13. **ENVIRONMENTAL:** Hazardous Substances Warranty & Agreement required.

PORT OF PORT TOWNSEND BOAT HAVEN LAND LEASE

THIS LEASE AGREEMENT made this 10th day of May 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 BOTTOMS UP MARINE SERVICES, a Washington Limited Liability Company, hereinafter referred to as "Lessee,"

WITNESSETH:

That the parties hereto do mutually agree as follows:

1. **LEASED PREMISES:** The Port hereby leases to Lessee, and Lessee hereby hires and leases from the Port, the following described premises situated in Jefferson County, State of Washington:

A 1,200 (30' x 40') square foot area known as Boatyard Spaces #320 and #333, located on the northeast corner of the intersection of vacated San Juan and Jefferson Streets at the Port's Boat Haven facility in Port Townsend as shown on Exhibit "A" to this Lease Agreement

hereinafter referred to as "the premises."

2. **TERM:** This Lease shall be for a term of two (2) years, beginning on June 1, 2019 and ending on May 31, 2021 unless extended or sooner terminated as provided in this Lease. The Lessee shall also have an option to extend the lease term by three (3) additional one (1) year terms. Notification to extend the Lease will be done in writing 90 days prior to end of the initial or any extended lease term.
3. **RENT:** Lessee agrees to pay as rental for the leased premises the sum of **Five Hundred Forty Dollars and Zero Cents (\$540.00) plus all applicable taxes.**¹ The rent for each month shall be paid to the Port in advance on or before the first day of each and every month of the lease term, and shall be payable at such place as the Port may hereinafter designate. Beginning in year three (3) and every three (3) years thereafter, the rental rate may be adjusted to the fair market rental rate then prevailing for comparable commercial and/or industrial property in the Western Washington area, bearing in mind all allowable uses of the property and all services and amenities

¹ Calculated as follows: 45.0¢ per s.f. x 1,200 s.f. = \$540.00 rent; LHT @ 12.84% x \$540.00 = \$69.34; total = \$609.34.

available to the property 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. The rental rate beginning in year two (2) and annually throughout the term of the lease will be adjusted by an amount equal to the accumulative amount found on the Consumer Price Index for all urban consumers (CPI-U) for Seattle-Tacoma-Bremerton, which is compiled by the Department of Labor, Bureau of Statistics. In no event shall any rent adjustment result in a reduction in rent from the rate paid in the prior year.

4. **LATE CHARGE:** In the event that any installment of rent remains unpaid more than twenty (20) days after it is due, then Lessee shall also be obliged to pay a "late charge" as per the Port of Port Townsend Rate Schedule then in effect.
5. **DEPOSIT:** Upon the execution of this Lease, Lessee shall deposit with the Port three (3) month's rent plus applicable taxes in the amount of **One-Thousand Eight Hundred Twenty-Eight Dollars and One Cent (\$1,828.01)**. This Lease shall not be effective until full deposit of the required amount is made with the Port. The deposit shall be held by the Port as security for Lessee's faithful performance of all of its obligations under this Lease. Any interest earned on amounts deposited shall be retained by the Port. The deposit shall be returned to Lessee upon termination of this Lease, less any charges owing to the Port or expenses incurred by the Port in repairing damage caused by Lessee or restoring the leased premises to the condition required upon termination of this Lease.
6. **USE OF PREMISES:** Lessee shall use the premises for vessel maintenance and repair (e.g., sanding, repainting, gel coat and fiberglass repairs, bright work and varnishing and similar activities) and shall not use them for any other purpose without the prior written consent of the Port. Lessee shall use the entire premises for the conduct of said business in a first-class manner continuously during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or redecorating or for reasons beyond Lessee's reasonable control. Lessee agrees that it will not disturb the Port or any other tenant of the Port's by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the premises inconsistent with normal boat repair work.
7. **PARKING:** No vehicle parking is permitted on this Leased property. This prohibition does not include forklifts, but does include all personal cars, vans, and trucks.

8. **UTILITIES:** Lessee shall pay the Port One Hundred Dollars (\$100.00) per month plus all applicable taxes for electricity², which amount will be adjusted from time to time to reflect current usage. Lessee shall also pay the Port Seven Dollars and Ninety-One Cents (\$7.91) for Stormwater, which amount may be adjusted periodically by the Port. No other utility services are furnished to the premises (e.g., light, heat, gas, water, sewerage, or garbage disposal).
9. **ACCEPTANCE OF PREMISES:** Lessee has examined the leased premises and accepts them in their present condition.
10. **MAINTENANCE AND REPAIR:** At the expiration or sooner termination of this Lease, Lessee shall return the premises to the Port in the same condition in which received (or, if altered by Lessee with the Port's consent, then the premises shall be returned in such altered condition), reasonable wear and tear and damage by fire or unavoidable casualty excepted. Lessee shall, at its' own expense, and at all times:
- a. Keep the premises and the adjoining roadways neat, clean and in a safe and sanitary condition;
 - b. Maintain and keep the leased premises in a good state of repair; and
 - c. Not commit waste of any kind.
11. **ALTERATIONS AND IMPROVEMENTS:** Lessee shall make no alterations or improvements to or upon the premises without first obtaining written approval from the Executive Director of the Port. Such written approval shall also include agreement for disposition of the improvements upon termination of this Lease.
12. **INSPECTION - "FOR RENT" SIGNS:** The Port reserves the right to inspect the leased premises at any and all reasonable times throughout the term of this Lease, PROVIDED, that it shall not interfere unduly with Lessee's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for thirty (30) days prior to the expiration or sooner termination of this Lease.
13. **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

² Calculated as follows: \$100.00 x 12.84% LHT = \$12.84.

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.

14. DAMAGE OR DESTRUCTION:

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

- 15. INDEMNIFICATION AND HOLD HARMLESS:** The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained, or alleged to have been sustained by the Lessee or by others as a result of any condition (including existing or future defects in the premises) or occurrence whatsoever related in any way to the premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the premises and of the areas adjacent thereto. Lessee agrees to defend and to hold and save the Port harmless from all liability or expense of litigation) in connection with any such items of actual or alleged injury or damage.
- 16. INSURANCE:** Lessee agrees to maintain during the lease term liability insurance as set forth below, at Lessee's sole expense. All such insurance shall name the Port of Port Townsend as an additional insured, and shall be with insurance companies acceptable to the Port.
- a. Comprehensive General Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000 combined single limit for each occurrence. Such insurance shall include but not be limited to bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, and products/completed operations liability.
 - b. Comprehensive Business Automobile Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000 combined single limit for each occurrence. Such insurance shall include but not be limited to bodily injury liability, property damage liability, hired car liability, and non-owned auto liability.
 - c. Workers Compensation Insurance as will protect tenant's employees from claims under Washington Workers Compensation Act as well as all Federal Acts applicable to the tenant's operations at the site such as but not limited to U.S. Longshoremen and Harborworkers Act, Jones Act, and Federal Employers Liability section of the Washington Workers Compensation Policy and all Federal Acts Insurance shall not be less than \$1,000,000 for each occurrence.

The Lessee agrees to supply the Port with appropriate evidence to establish that its insurance obligations have been met, and that the insurance policy or policies are not subject to cancellation without at least thirty (30) days advance written notice to the Port. The conditions set forth in subparagraphs a, b and c of this Paragraph 16 shall be met prior to occupancy.

- 17. WAIVER OF SUBROGATION:** The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts, including any extended

coverage endorsements thereto, PROVIDED, that this paragraph 17 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.

18. **INCREASE IN COST OF INSURANCE:** Lessee shall not use the demised premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the leased premises are a part, and to the extent allocable to the term of this Lease, may be added to the amount of rental hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.
19. **HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT:** Lessee has examined the Hazardous Substances Warranty and Agreement, consisting of seven (7) pages, which is attached hereto and which by this reference is incorporated herein as Exhibit "B" as fully set forth herein, and acknowledges full understanding of its obligations under said Hazardous Substances Warranty and Agreement.
20. **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.
21. **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:** Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the realty of which the premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Lessee also agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations. Lessee further agrees that all buildings, structures or other improvements, approved by the Port, will be properly permitted by 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.
22. **ASSIGNMENT OR SUBLEASE:** Lessee shall not assign or transfer this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, otherwise, without the written consent of the Port first had and obtained. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this Lease more than one-half (1/2) of the outstanding shares of any class of

stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, such change in the ownership of the stock of the Lessee shall be deemed an assignment of this Lease within the meaning of this paragraph. If the Port shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent. The Port's consent will not unreasonably be withheld.

- 23. DEFAULTS:** Time is of the essence of this Lease Agreement, and in the event of the failure of Lessee to pay the rentals or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein set forth to be kept and performed, the Port may elect to terminate this Lease and reenter and take possession of the premises with or without process of law, PROVIDED, however, that Lessee shall be given fifteen (15) days' notice in writing stating the nature of the default in order to permit such default to be remedied by Lessee within said fifteen (15) day period. If upon such reentry there remains any personal property of Lessee or of any other person upon the leased premises, the Port may, but without the obligation so to do, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Lessee shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Lessee to the Port, and the balance, if any, shall be paid to Lessee. Notwithstanding any such reentry, the liability of Lessee for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee shall make good to the Port any deficiency arising from a re-letting of the leased premises at a lesser rental than that hereinbefore agreed upon. Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Port. Any failure by the owners, officers, or principals of Lessee to pay rentals, storage fees, moorage or any other charges owed to the Port under separate contract shall constitute default under provisions of this Lease Agreement.

24. TERMINATION OF LEASE OR CHANGE IN LOCATION OF PREMISES BY PORT:

- a. In the event that the Port, at its sole discretion, shall require the use of the premises for any purpose for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to the Lessee **sixty (60)** or more days before the termination date specified in the notice. Compensation to

Lessee for loss of use, cost of relocation, and/or cost of improvement, will be agreed by Lessee and the Port Executive Director.

- b. In lieu of exercising the termination authority set forth in subparagraph a, immediately above, the Port, in its sole discretion, should it require relocation of the premises to another site within the facility for any purpose in connection with the business of the Port, may relocate the premises described in Paragraph #1, infra, by written notice delivered or mailed by the Port to the Lessee **sixty (60)** or more days before the premises described in Paragraph #1, infra, are required for Port use. In the event this subparagraph b is exercised by the Port, Lessee agrees that the Port shall not be required to compensate Lessee for loss of use or cost of relocation. Any modification to the location of the premises described herein shall be memorialized in writing and signed by both parties.

- 25. **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.
- 26. **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.
- 27. **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.

28. **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.
29. **WAIVER:** The acceptance of rental by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. No waiver by the Port of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been cured by Lessee, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 23 hereof.
30. **PROMOTION OF PORT COMMERCE:** Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Lessee further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Lessee.
31. **SURRENDER OF PREMISES - ATTORNEYS' FEES:** At the expiration or sooner termination of this Lease, Lessee shall promptly remove building from leased property or re-negotiate a lease at the same or different site at the Port. In the event that the Port shall be required to bring any action to enforce any of the provisions of this Lease, or shall be required to defend any action brought by Lessee with respect to this Lease, and if the Port shall be successful in such action, Lessee shall, in addition to all other payments required herein, pay all of the Port's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.
32. **HOLDING OVER:** Any holding over by the Lessee after the expiration of this Lease shall be construed as a tenancy at sufferance (unless such occupancy is with the written consent of the Port) in which event the Lessee will be a tenant from month to month, upon the same terms and conditions of this Lease, except at a rent for such holdover period of 125% of the rental rate in effect for the month preceding such holdover. Acceptance by the Port of rent after such termination shall not constitute a renewal.

33. **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.
34. **LIENS AND ENCUMBRANCES:** Lessee shall keep the leased premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such a lien on the leased premises if not paid.
35. **NOTICES:** All notices hereunder may be delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

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

To Lessee:
BOTTOMS UP MARINE SERVICES, LLC
c/o MR. JAMES YOBAGGY
1240 West Sims Way
Port Townsend, WA 98368

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

36. **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.
37. **"LESSEE" INCLUDES LESSEE, ETC.:** It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessee under this Lease Agreement.
38. **CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

39. **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.

40. **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.

41. **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.

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

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

Lease Agreement dated this 10th day of May 2019 is hereby approved by the Port of Port Townsend, on this 8th day of May 2019 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

LESSEE – BOTTOMS UP MARINE SERVICES, LLC

James Yobaggy, Owner

ATTEST:

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 James Yobaggy 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 she 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: _____

EXHIBIT "A"
DEPICTION OF THE LEASED PREMISES

ATTACHED IMAGE IS A PLACEHOLDER – FINAL EXHIBIT TO BE INCORPORATED PRIOR TO
EXECUTION/ACKNOWLEDGMENT OF LEASE



it to window

EXHIBIT "B"
HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT

RIDER TO LEASE AGREEMENT DATED: MAY 10th, 2019, BETWEEN THE PORT OF PORT TOWNSEND and BOTTUMS UP MARINE SERVICES, LLC.

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

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

2. **STORAGE AND USE OF HAZARDOUS SUBSTANCES.** Lessee agrees at all times to restrict its storage and use of substances identified in Paragraph 1 to the inside of the permanent building(s) at the premises, and specifically to those locations within such buildings(s) having concrete flooring or such other impermeable flooring as 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 1 only on areas which have impermeable surfaces and/or other means for preventing accidental contact by such substances with the soils upon the leasehold or its surrounding area.
4. **RELEASES OF HAZARDOUS SUBSTANCES PROHIBITED.** Lessee shall not release, dispose of, or permit a release of, any of the substances described or identified in Paragraph 1 onto the premises or into the environment surrounding the premises.
5. **REGULATORY COMPLIANCE.** Lessee warrants and agrees that, during the term of this Lease and any extensions thereof, it will take all steps necessary to comply with all applicable federal, state and local requirements for the containment, storage, use and disposal of any and all hazardous or toxic substances at the premises, including but not limited to obtaining and maintaining all necessary federal, state and local permits or licenses, and obtaining any required federal or state hazardous waste generator or transporter identification numbers. Lessee shall provide to 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 or toxic substances or wastes, and unless otherwise agreed in writing, Lessee shall retain an independent hazardous waste disposal firm to dispose of any and all such substances at an off-site facility which has been properly approved, licensed and authorized to accept such substances. Lessee shall ensure that the disposal firm is properly licensed and in good standing with the applicable regulatory authorities for such work, and that it has all required transporter identification numbers.
7. **LESSEE'S WARRANTY OF NO CONTAMINATION.** Except as may be disclosed in Attachment No. 1 hereto, Lessee warrants and represents 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 or toxic waste. If any such releases, formal accusations, citations, claims or litigation against Lessee arise during the term of this lease or any extension thereof, then Lessee shall notify 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 a toxic or hazardous substance onto the premises or into the surrounding environment. 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's liability for any contamination of the leased premises by the discharge of hazardous substances and Lessee's duty of indemnification under this paragraph shall only apply to intentional or negligent violations of this Rider by Lessee or its employees and agents. Notwithstanding anything in this Rider to the contrary, neither Lessee nor

its officers, directors or employees shall have any liability for, or any obligation to indemnify the Port or other parties from, any claims arising from the discharge or presence of hazardous materials on the leased premises which occurred before the commencement of the Lease, nor shall the Lessee be responsible for any contamination caused by the Port or prior tenants of the leased premises or any contamination which migrates on to the leased premises from other properties.

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 of hazardous substance into the environment, including but not limited to material changes in Lessee's methods of hazardous waste disposal, material increases in the volume of Lessee's hazardous waste disposal, or material changes in the nature of any hazardous wastes which Lessee anticipates it will generate.
10. **COPIES OF ENVIRONMENTAL CORRESPONDENCE.** Lessee agrees to provide 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 that has had or may have contact with Lessee regarding environmental concerns pertaining to the premises.
11. **NOTIFICATION OF SPILLS OR RELEASES.** Lessee shall comply with all notification requirements under the applicable federal, state and local environmental statutes and regulations, including but not limited to the timely notification of the appropriate government authorities of any spills or releases of toxic or hazardous substances into the environment or onto the premises. Lessee shall notify 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 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.** PAMELA KOZORA, Business Manager for Bottoms Up Marine Services, LLC, whose work telephone number is 360-301-5921 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 13 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
Port of Port Townsend

James Yobaggy, President/Owner
Bottoms Up Marine Services, LLC

Date: May 10, 2019

Date: May 10, 2019

(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: _____)

By: _____
James Yobaggy, Owner/President
Bottoms Up Marine Services (BUMS)

Date: May 10, 2019

(Attachment No. 2 to Hazardous Substances Rider)

DECLARATION OF COMPLIANCE

PAMELA KOZORA, as the designated representative of Lessee primarily responsible for environmental compliance pursuant to Paragraph 15 of the Hazardous Substances Warranty and Agreement dated: May 10, 2019, 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 6 of the Hazardous Substances Warranty and Agreement are inaccurate as of the date indicated below.
4. Lessee has not stored, used or had present on or adjacent to the premises any hazardous or toxic substances except those that have been disclosed in writing to lessor.
5. Lessee has not released, disposed of, or permitted the release of any hazardous or toxic substances onto the premises or into the environment surrounding the premises, except as has been disclosed in writing to Lessor.

By: _____
Pamela Kozora, Business Manager
Bottoms Up Marine Services, LLC

Date: May 10, 2019

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	May 8, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VIII. B) PUD Transformer Easements in the Boatyard
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo B. Easement Attachments #948301003 and 991403001

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 5/8/2019
TO: Port Commission
FROM: Jim Pivarnik, Executive Director
SUBJECT: PUD Transformer Easements in Boatyard

BACKGROUND:

As reported in our last meeting the PUD has started to upgrade power transformers in the yard. They have already replaced two old rusting transformers in the shipyard and would now like to start working on power distribution in the rest of the yard. Staff has been working with the PUD to identify areas of the yard where easements can be given without impacting future business development. Attached are two maps and photos that depict approximant locations and the powerline easements needed to comply.

RECOMMENDATION:

Staff recommends authorizing the Executive Director to sign easement documents attached.

ATTACHMENTS

Easement documents for parcel 948301003
Easement documents for parcel 991403001

RETURN ADDRESS:
PUD#1 of Jefferson County
310 Four Corners Road
Port Townsend, WA 98368

EASEMENT

GRANTOR: Port of Port Townsend
GRANTEE: **PUBLIC UTILITY DISTRICT NUMBER 1 OF JEFFERSON COUNTY**
SHORT LEGAL: Section: 10 Qtr. Section SE ¼ Township: 30N Range 1W
ASSESSOR'S PROPERTY TAX PARCEL: **948301003**

For and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, Port of Port Townsend ("Grantor" herein), its successors and assigns hereby conveys and warrants to **PUBLIC UTILITY DISTRICT #1 OF JEFFERSON COUNTY**, a Washington Municipal ("Grantee" herein), its successors and assigns for the purposes hereinafter set forth, a nonexclusive perpetual easement over, under, along, across and through the following described real property ("Property" herein) Jefferson County, Washington:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

EASEMENT LOCATION: Except as may be otherwise set forth herein, Grantee's rights shall be exercised upon that portion of the Property (the Easement Area" herein) that is fifteen (15) feet in width having ten (10) feet of such width on each side of the centerline of Grantee's systems located as constructed or to be constructed, extended or relocated on the Property, except those portions of the Property occupied by existing building footings, foundations, and/or subsurface structures.

1. Purpose. Grantee shall have the right to use the Easement Area to construct, operate, maintain, repair, replace, improve, remove, and enlarge one or more utility systems for purposes of transmission, distribution and sale of electricity. Together with the right of access over and across said Property to enable Grantee to exercise its rights hereunder. As used herein, the term "systems" shall include all appurtenances and facilities as are necessary, in the judgment of Grantee, for the operation and maintenance of said systems.

2. Grantor's Use of Easement Area. Grantor agrees not to erect any structures on said "Easement Area", and further agrees not to place trees, rockeries, fences or other obstructions on the Property that would interfere with the exercise of Grantee's rights herein.

3. Grantor's Agreement to Relocate Utility System (S). Upon permitted approval and issuance of a building permit by City of Port Townsend to allow Grantee to construct additional structures on Grantee's property that would cause existing PUD Utility System(s) to obstruct, impinge upon or conflict with a valid construction design; PUD will cooperate with Grantee to remodel or relocate existing systems at PUD expense.

DATED this ____ day _____ of 2019:

GRANTOR: BY: _____
BY: _____

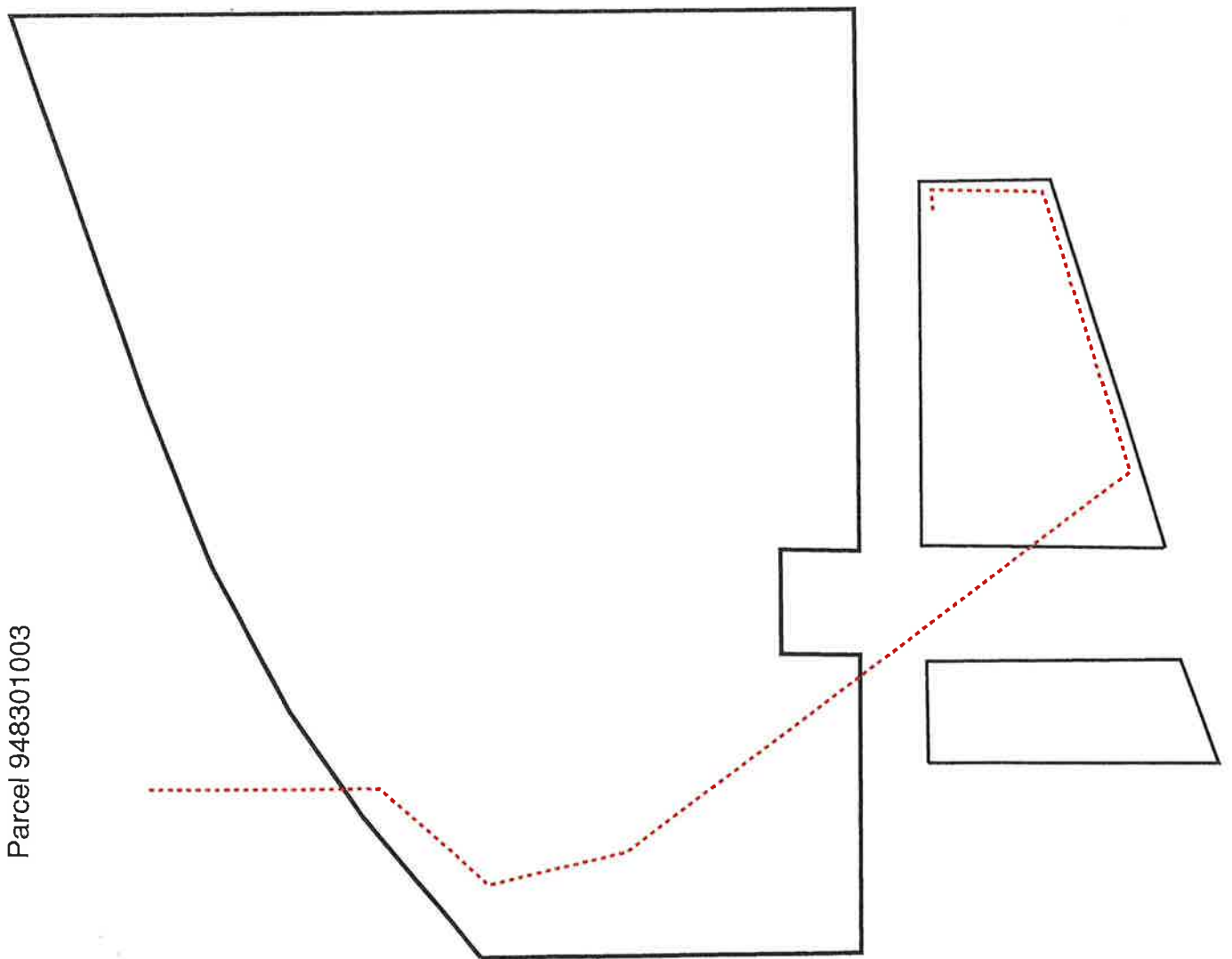
STATE OF WASHINGTON)
) SS
COUNTY OF)

On this ____ day of _____, 2019, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the individual(s) who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this hereto affixed the day and year in this certificate first above written.

Print or stamp name of Notary)
NOTARY PUBLIC in and for the State of Washington,
Residing at _____
My appointment expires _____

Parcel 948301003





RETURN ADDRESS:
PUD#1 of Jefferson County
310 Four Corners Road
Port Townsend, WA 98368

EASEMENT

GRANTOR: Port of Port Townsend
GRANTEE: **PUBLIC UTILITY DISTRICT NUMBER 1 OF JEFFERSON COUNTY**
SHORT LEGAL: Section: 11 Qtr. Section: NW ¼ Township: 30N Range: 1W
ASSESSOR'S PROPERTY TAX PARCEL: **991403001**

For and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid,

Port of Port Townsend ("Grantor" herein), its successors and assigns hereby conveys and warrants to **PUBLIC UTILITY DISTRICT #1 OF JEFFERSON COUNTY**, a Washington Municipal ("Grantee" herein), its successors and assigns for the purposes hereinafter set forth, a nonexclusive perpetual easement over, under, along, across and through the following described real property ("Property" herein) Jefferson County, Washington:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

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1. **Purpose.** Grantee shall have the right to use the Easement Area to construct, operate, maintain, repair, replace, improve, remove, and enlarge one or more utility systems for purposes of transmission, distribution and sale of electricity. Together with the right of access over and across said Property to enable Grantee to exercise its rights hereunder. As used herein, the term "systems" shall include all appurtenances and facilities as are necessary, in the judgment of Grantee, for the operation and maintenance of said systems.

2. **Grantor's Use of Easement Area.** Grantor agrees not to erect any structures on said "Easement Area", and further agrees not to place trees, rockeries, fences or other obstructions on the Property that would interfere with the exercise of Grantee's rights herein.

3. **Grantor's Agreement to Relocate Utility System (S).** Upon permitted approval and issuance of a building permit by City of Port Townsend to allow Grantee to construct additional structures on Grantee's property that would cause existing PUD Utility System(s) to obstruct, impinge upon or conflict with a valid construction design; PUD will cooperate with Grantee to remodel or relocate existing systems at PUD expense.

DATED this ____ day _____ of 2019:

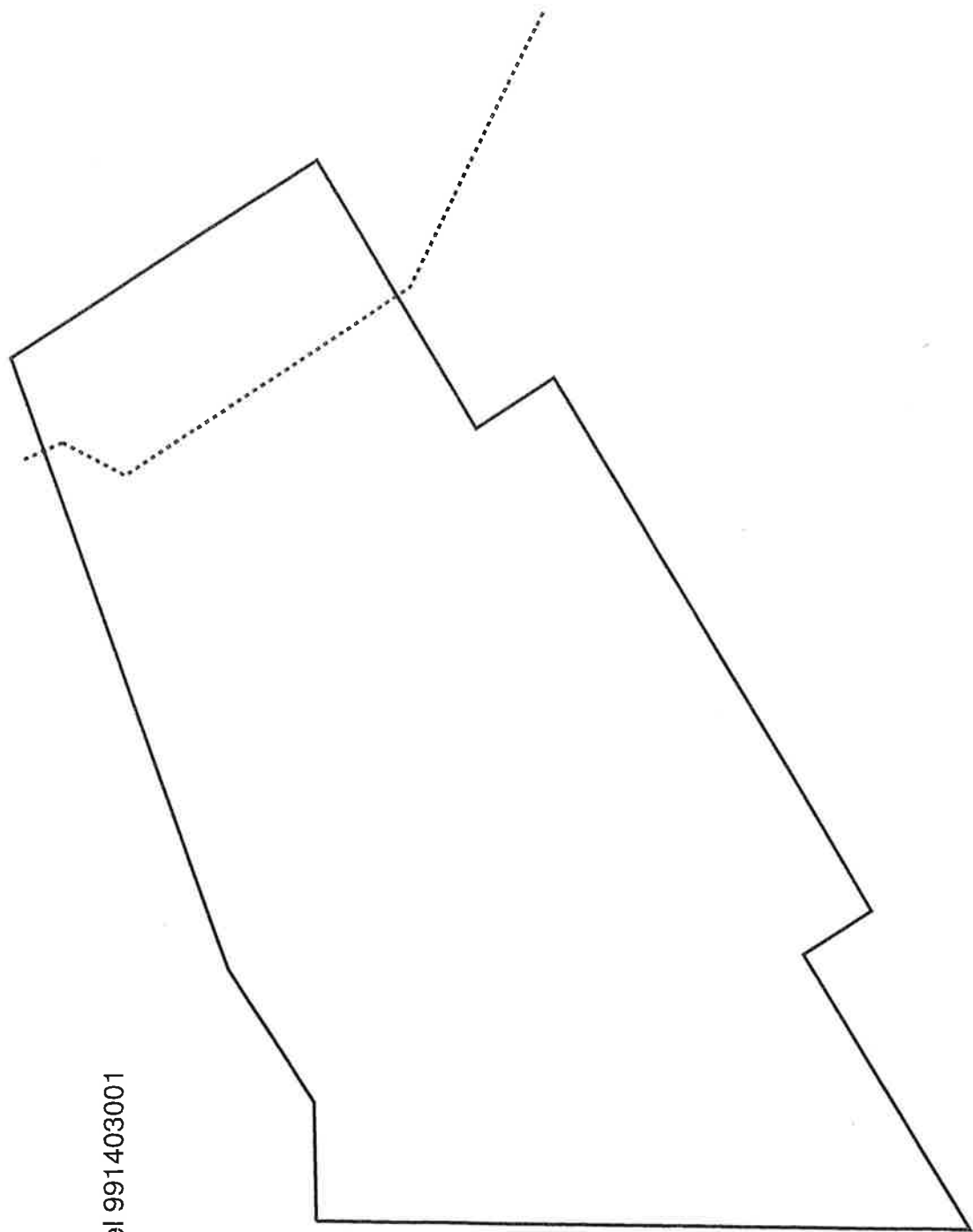
GRANTOR: BY: _____
BY: _____

STATE OF WASHINGTON)
) SS
COUNTY OF)

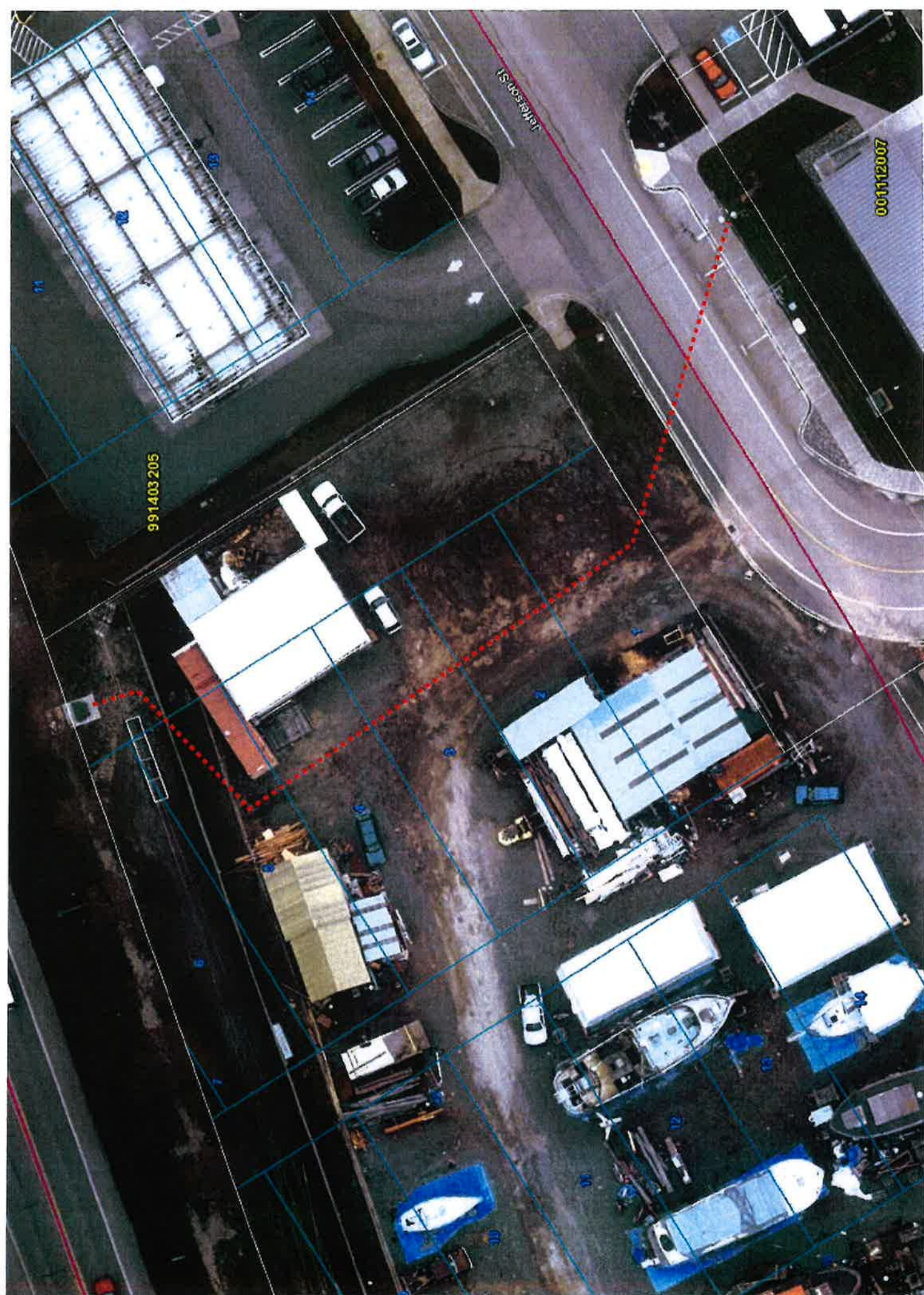
On this ____ day of _____, 2019, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the individual(s) who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this hereto affixed the day and year in this certificate first above written.

Print or stamp name of Notary)
NOTARY PUBLIC in and for the State of Washington,
Residing at _____
My appointment expires _____



Parcel 991403001



PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	May 8, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VIII. C) Key FOB Pricing
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 5/8/2019
TO: Port Commission
FROM: Jim Pivarnik, Interim Executive Director
SUBJECT: Key FOB Pricing

BACKGROUND:

The electronic keypads for the restrooms and laundry at Boat Haven have been installed and tested. It is now time to start the distribution of key FOBs and on-air passes to our tenants. This transition will begin mid-May and be complete by June 1. With this, Staff needs guidance on a pricing structure for additional FOBs and replacement FOBs.

DISCUSSION:

Staff is looking at policies for distribution and what happens if a tenant needs an additional FOB and or loses one. We have been talking about providing one FOB for each tenant and annual ramp pass holder at no cost. An additional FOB could be purchased for \$10 which covers our cost and handling. Staff would not recommend giving more than two FOBs to a tenant. There is also the issue of replacing lost FOBs. Staff would recommend a replacement FOB would be \$25.

This system is extremely user friendly and we can track unauthorized use and shut that key off when we suspect abuse. This system also has the feature of giving unique codes for short periods of time. For instance, we can issue a restroom code that will only last a few days (or any time period) and then turn off. This feature will be great for transient boaters or short-term yard tenants. We are also working on a system that will allow us to use this feature for daily ramp use and could be integrated with the washdown in the future.

All in all, staff is very pleased with the flexibility and ease of use of this new system.

RECOMMENDATION:

Authorize staff to develop a rate schedule and modify our rate card to include the following fees.

Key FOB	1 per tenant	No Charge
Additional FOB	1 additional (max.)	\$10
Lost FOB		\$25

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	May 8, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VIII. D) Support Letter for Puget Sound Day in Washington D.C.
STAFF LEAD	Jim Pivarnik, Interim Executive Director
REQUESTED	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 5/8/2019
TO: Port Commission
FROM: Jim Pivarnik, Executive Director
SUBJECT: Support Letter for Puget Sound Day in Washington DC

BACKGROUND:

County Commissioner, Kate Dean will be attending Puget Sound day in Washington DC in a few weeks. She would like to make sure that all local governments and organizations have the opportunity to be included in a letter of support to continue Federal funding for Puget Sound restoration. This request has been forwarded to your emails and copies of the request are attached. Staff believes that this is a very worthwhile partnership and would recommend supporting.

ATTACHMENTS

Kate Dean email

Hi all,

I will be attending the Puget Sound Day on the Hill in Washington DC in a couple of weeks (see below for

more information) to advocate for continued funding for restoring the Salish Sea. I believe you share my belief that a healthy marine ecosystem is critical for the economy, livability and resilience of our communities. Whether it's preventing our Orca from going extinct, or caring about well managed salmon runs, or maintaining infrastructure to support maritime jobs, or incentivizing farmers to use environmental practices, or preparing for the impacts of climate change- our region must repair the damage done to the waters we all rely on, preserve the critical ecosystems we have intact and innovate for a changing future.

The Puget Sound Partnership is collecting signatures from organizations and businesses who wish to amplify this message to Congress.

Will you please consider signing? And/or bringing to your board to sign?

To be included as an official signatory to the letter, please provide the requested information at the following link: <https://forms.gle/UQE1nvKN62cVBJop6>. Enter your name, title, and organization exactly as you would like it to appear in the letter.

Please let me know if you have any questions or wish to discuss. Feel free to share.

Kate

Once again, leaders from the Pacific Northwest representing businesses, academia, tribal, state and local government, and the nonprofit community will meet with our delegation and other key legislators to educate them on the need for continued investment in Puget Sound recovery at the Puget Sound Day on the Hill. This effort is organized by the Puget Sound Partnership in collaboration with Representatives Kilmer and Heck. To demonstrate even broader support, we're asking leading organizations in the region to join us by signing on to the letter.

Kate Dean

Jefferson County Commissioner, District 1

1820 Jefferson Street

Port Townsend, WA 98368

(360)385-9100

kdean@co.jefferson.wa.us