



PO Box 1180 • Port Townsend, WA 98368

Administration: (360) 385-0656

Operations: (360) 385-2355

Fax: (360) 385-3988

**Port of Port Townsend
1st Monthly Business Meeting
Wednesday, August 14, 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. Public Comments (related to/not related to the agenda)
- IV. Consent Agenda
 - A. Approval of Regular Business Meeting Minutes – July 25, 2019 1-4
 - B. Approval of Warrants
- V. Second Reading
 - A. Seasonal Yard Rates 5-8
- VI. First Reading
- VII. Regular Business
 - A. Brion Toss Yacht Rigging, Inc. Proposed Lease Agreement..... 9-35
- VIII. Staff Comments
- IX. Commissioner Comments
- X. Next Regular Business Meeting:
Wednesday, August 28, 2019, at 5:30 PM
Port Commission Building, 333 Benedict Street, Port Townsend, WA
- XI. Executive Session
- XII. Adjournment

PORT COMMISSION SPECIAL BUSINESS MEETING – July 25, 2019

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

Present: Commissioners – Putney, Hanke & Tucker
Executive Director Pivarnik
Finance Director & Port Auditor Berg
Minutes – Exec. Asst. Erickson
Attorney Chmelik (via phone)

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

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

II. II. APPROVAL OF AGENDA (00:00:49):

Commissioner Tucker moved to approve the Agenda as presented.

Commissioner Hanke seconded the motion.

Motion carried by unanimous vote.

III. III. PUBLIC COMMENTS (00:00:53):

Bertram Levy commented on the yard rates, and proposed using data to predict usage, and using metered electricity instead of a flat rate.

Pam Petranek commented on occupancy of the boat yard, yard rates, and financials.

Commissioner Putney asked if the Port Commission could get an economic impact study done by the trades to help quantify the discount statistics. Ms. Petranek agreed to provide that.

Gwendolyn Tracy commented on the yard rate study done last year and on future rate increases.

IV. IV. CONSENT AGENDA (00:10:48):

A. Approval of Public Workshop Minutes – July 10, 2019

B. Approval of Regular Meeting Minutes – July 10, 2019

1. Commissioner Tucker had a correction to page 2, section VII, asking that the minutes reflect who voted how; Commissioners Putney and Tucker voted yay, Commissioner Hanke voted nay.

C. Approval of Warrants

Warrant #060796 through #060806 in the amount of \$16,325.22 for Payroll & Benefits

Electronic Payment in the amount of \$69,301.77 for Payroll & Benefits

Warrant #060807 through #060853 in the amount of \$215,111.33 for Accounts Payable

Electronic Debit in the amount of \$2,550.14 for WA State Employment Security Dept. for WA State Paid Family Medical Leave for Qtr 1 & Qtr 2.

Electronic Debit in the amount of \$13,054.57 to the WA State Dept. of Revenue for Combined Excise Tax Return for June 2019.

Commissioner Hanke moved to approve the Consent Agenda with corrections to the minutes.

Commissioner Tucker seconded the motion.

Motion carried by unanimous vote.

V. SECOND READING (Action Items) (00:12:58):

A. 2020 Operating & Capital Budget Development Schedule

Ms. Berg referred to the Draft 2020 Operating & Capital Budget Development Schedule on page 7 of the packets, reminding the Commission that no suggested changes were made in the first reading. She asked if there were any changes or could this schedule be approved.

Commissioner Hanke moved to approve the Schedule; Commissioner Tucker seconded the motion. Motion carried by unanimous vote.

VI. FIRST READING (Discussion Only):

A. Seasonal Yard Rates (00:13:48)

Executive Director Pivarnik introduced this item, went over financials, the goal to build the operational revenue, and noted that there needs to be a balance between low price and fairness.

Commissioner Hanke commented that he plans to discuss this with the trades, and mentioned that the marine trades rate study was done well. He stated that the biggest increase in cost for the Port was power, and wondered how we might charge fairly for power.

Commissioner Tucker commented that he'd like to see a discount, but advised that we stay steady and fair, not necessarily be the cheapest marina or yard.

Commissioner Putney commented that metering seems like the right thing to do, but unfortunately the commercial schemes for metering are very expensive.

Everyone agreed that a full yard is good for all, that the cost of power is what is driving the rate increase, and that more discussion is needed.

VII. REGULAR BUSINESS:

A. Resolution No. 704-19 – Rescinding Resolution No. 698-19, Multi-year Levy (00:22:23):

Commissioner Tucker read John Collin's email out loud, which recommended to rescind, build a community understanding of the issue, and explain that the ballot is a legal technicality. Commissioner Tucker stated that these were his thoughts as well.

Commissioner Hanke had no comment.

Commissioner Putney commented that the information about the Port's expenditures and projects is available to the public; there are no secrets or hidden agendas. He added that many projects have been put off because we are low on funds, and yet the Port brings jobs to the area and a three-fold return on taxes.

Commissioner Tucker agreed but said he thought that time was needed in order to educate the community about the issue, so everyone really understands the problem.

Commissioner Putney agreed that bonds and levy lid lifts have an unsuccessful track record, but thought it better to keep it on the ballot.

Commissioner Tucker made a motion for approval of Resolution No. 704-19. No one seconded the motion, and the motion was dead.

B. Quarter 2 Financials, 2019 (00:39:15):

Ms. Berg introduced the second quarter financials and stated that the Port is heading in the right direction, and we need to continue to save money.

Commissioner Hanke asked how the Workyard Promotional Revenue/Expense Breakdown spreadsheet in the packet correlates to yard rates, and asked if a more comparable spreadsheet could be made, where costs correlated month to month for the boat yard lays that had the deep discount. Ms. Berg explained what the yard financials include and how they compare to other years.

Commissioner Putney commented that he learned about financial security (operating reserves) for ports at the commissioners' conference and thanked everyone for working so hard on this.

C. AIP Authorizing Resolution No. 705-19, Taxiway connector for JCIA Runway (00:45:47):

Executive Director Pivarnik explained that this portion of the airport improvement is the connector portion that connects the runway with the taxiway, and that the Port needs the commissioners' approval to apply for the grant funding.

Commissioner Hanke moved to approve the Resolution; Commissioner Tucker seconded the motion. Motion carried by unanimous vote.

D. Project Updates (00:47:05):

Executive Director Pivarnik updated the commission on the two major projects we have: the airport runway project, and Point Hudson breakwater project, both of which are currently in permitting.

Commissioner Tucker asked how the costs of the new breakwater design compared to the old one, and Executive Director Pivarnik replied that the costs would be about the same, but costs are rising in marine construction; we've designed a breakwater system that will last for another 30 years.

Commissioner Tucker relayed that he listened to the December 22, 2014, workshop audio discussion about various options for construction, and referred to a report from MC² on the breakwater, that suggests driving piles in between the existing ones.

Commissioner Putney was concerned that we would be back where we were last summer with this project in that we are not yet at the point where we have the funding to take this on. He noted the critical nature of the facility and asked if we could get bonded for that amount.

Commissioner Hanke asked for an analysis of the Port's current bonding capacity. Ms. Berg estimated that we might have just enough to cover the jetty project, and said she'd provide a true analysis for the commissioners.

VIII. STAFF COMMENTS (0:56:48):

Mr. Chmelik stated that we will work with the county attorney to refine the ballot title for the upcoming election.

IX. COMMISSIONER COMMENTS (00:58:05):

No comments.

- X. NEXT PUBLIC WORKSHOP/SPECIAL BUSINESS MEETING:
Wednesday, August 14, 2019, public workshop at 9:00 AM and regular meeting at 1:00 PM in the Port Commission Building, 333 Benedict St, Port Townsend.
- XI. Meeting Adjourned (00:58:29)

ATTEST:

Steven R. Tucker, Secretary

William W. Putney III, President

Peter W. Hanke, Vice President

PORT OF PORT TOWNSEND AGENDA COVER SHEET

MEETING DATE	August 14, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input checked="" type="checkbox"/> Second Reading <input type="checkbox"/> Regular Business
AGENDA TITLE	Seasonal Yard Rates
STAFF LEAD	Jim Pivarnik, Executive Director
REQUESTED	<input type="checkbox"/> Motion <input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Informational Memo B. Work Yard Lay Days – 5-year Trend C. Electrical Offset chart

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 8/14/2019
TO: Commission
FROM: Jim Pivarnik, Executive Director
SUBJECT: Seasonal Yard Rates

BACKGROUND

Both staff and Commission have had numerous discussions in workshop and general meeting environments as to the continuation of seasonal yard rates. As the fall season approaches, staff believe that if we are going to properly market these discounts, a rate decision is needed.

DISCUSSION

Port staff agrees that a promotional rate during the off season is very important to generate additional income for both the Port and the marine trades. Although the number of boats hauled last year wasn't really increased, the duration of their stays was. This in turn allows for more marine trades involvement and the overall better utilization of the yard facilities.

As we stated at the last commission meeting, it is not the rate itself that is problematic, it is the included utilities at that discounted rate. These utility charges are quantifiable and something that should not be absorbed by the Port but something that should be passed on to the user. Obviously placing meters throughout the yard would be the best way to recoup expenses; however, that would be a capital cost that needs to be evaluated next year. We have gotten ball park estimates for placing meters throughout the yard, and the cost is approximately \$300 per meter, or \$30,000 to meter the yard. As I stated at our last meeting, most of our competition is charging a flat rate utility surcharge, some as high as \$5 per day and some \$15 to \$30 per month. For this season, we propose a flat rate of \$1.50 per day or \$30 per month; this is something that would nearly recoup our costs for the power (see attached spreadsheet).

RECOMMENDATION

After talking to all staff and many marine trades, the feeling is that we started this test program in 2018 with the idea to generate more data as to the effectiveness of seasonal rates. In the 2018/19 season the results were mixed. Staff does believe that we really need more data to make a more informed decision about seasonal rates in general. For this reason, staff is in support of giving the seasonal discount of 36 cents per foot from October through March in the boatyard. In addition, to address the utility issue, staff propose a simple-to-administer \$1.50-per-day or \$30-per-month charge, if the customer wants to have electricity. This would be an optional cost for the boat owner.

ATTACHMENTS

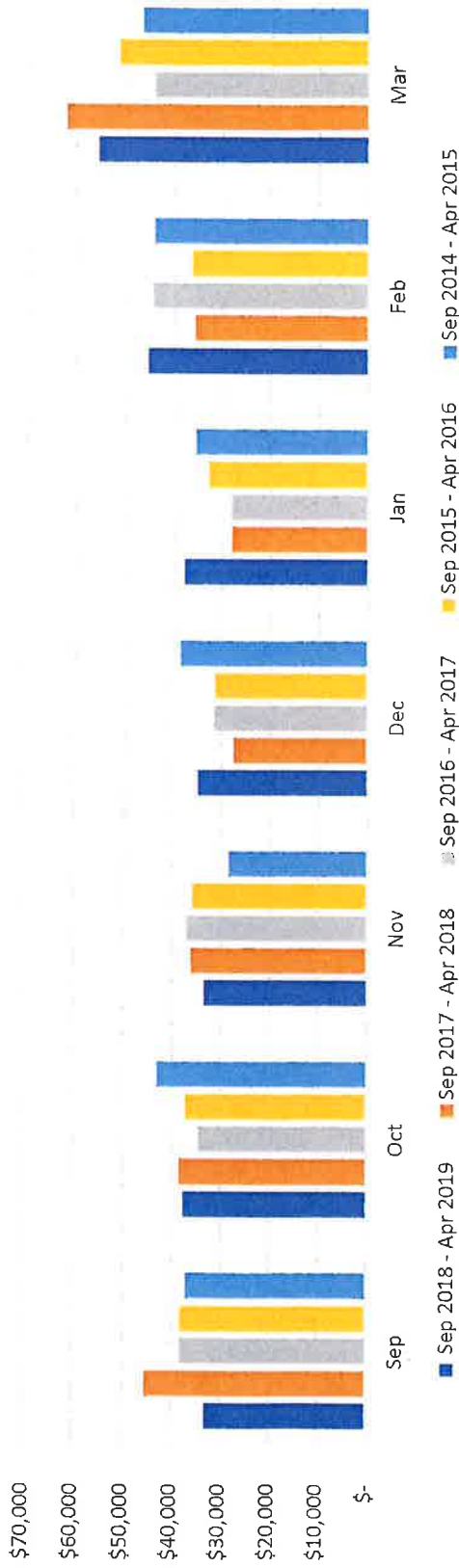
Electrical Offset chart
Work Yard Lay Days – 5-year Trend

For Discussion and Direction

Electrical offset

Electric	\$1 per day				1.5 per day			
	Occ. Average	\$ 30.00	varinace	% captured	Occ. Average	\$45	varinace	% captured
Sept. 17	\$ (943.84)	56.00	\$ 1,680.00	\$ 736.16	56.00	\$ 2,520.00	\$ 1,576.16	
Sept. 18	\$ (1,102.38)	55.00	\$ 1,650.00	\$ 547.62	55.00	\$ 2,475.00	\$ 1,372.62	
Oct. 17	\$ (1,689.27)	40.00	\$ 1,200.00	\$ (489.27)	40.00	\$ 1,800.00	\$ 110.73	
Oct. 18	\$ (2,827.67)	66.00	\$ 1,980.00	\$ (847.67)	66.00	\$ 2,970.00	\$ 142.33	
Nov. 17	\$ (2,330.22)	50.00	\$ 1,500.00	\$ (830.22)	50.00	\$ 2,250.00	\$ (80.22)	
Nov. 18	\$ (4,310.11)	77.00	\$ 2,310.00	\$ (2,000.11)	77.00	\$ 3,465.00	\$ (845.11)	
Dec. 17	\$ (3,170.24)	42.00	\$ 1,260.00	\$ (1,910.24)	42.00	\$ 1,890.00	\$ (1,280.24)	
Dec. 18	\$ (4,404.43)	76.00	\$ 2,280.00	\$ (2,124.43)	76.00	\$ 3,420.00	\$ (984.43)	
Jan. 18	\$ (3,048.55)	44.00	\$ 1,320.00	\$ (1,728.55)	44.00	\$ 1,980.00	\$ (1,068.55)	
Jan. 19	\$ (4,870.48)	82.00	\$ 2,460.00	\$ (2,410.48)	82.00	\$ 3,690.00	\$ (1,180.48)	
Feb. 18	\$ (3,584.98)	36.00	\$ 1,080.00	\$ (2,504.98)	36.00	\$ 1,620.00	\$ (1,964.98)	
Feb. 19	\$ (7,038.83)	86.00	\$ 2,580.00	\$ (4,458.83)	86.00	\$ 3,870.00	\$ (3,168.83)	
Mar. 18	\$ (4,378.28)	61.00	\$ 1,830.00	\$ (2,548.28)	61.00	\$ 2,745.00	\$ (1,633.28)	
Mar. 19	\$ (4,800.24)	104.00	\$ 3,120.00	\$ (1,680.24)	104.00	\$ 4,680.00	\$ (120.24)	
Apr. 18	\$ (3,479.62)	74.00	\$ 2,220.00	\$ (1,259.62)	74.00	\$ 3,330.00	\$ (149.62)	
Apr. 19	\$ (3,304.14)	112.00	\$ 3,360.00	\$ 55.86	112.00	\$ 5,040.00	\$ 1,735.86	
Season Totals								
17-18	\$ (22,625.00)	44.78	\$ 12,090.00	\$ (10,535.00)	44.78	\$ 18,135.00	\$ (4,490.00)	-80%
Season Totals								
18-19	\$ (32,658.28)	82.25	\$ 19,740.00	\$ (12,918.28)	82.25	\$ 29,610.00	\$ (3,048.28)	-91%

Work Yard Lay Days - 5 year Trend



Month	Sep 2018 - Apr 2019	Sep 2017 - Apr 2018	Sep 2016 - Apr 2017	Sep 2015 - Apr 2016	Sep 2014 - Apr 2015
Sep	\$ 26,831	\$ 45,620	\$ 46,071	\$ 43,400	\$ 42,751
Oct	\$ 32,962	\$ 45,284	\$ 38,186	\$ 38,107	\$ 37,111
Nov	\$ 37,556	\$ 38,306	\$ 34,364	\$ 37,084	\$ 43,111
Dec	\$ 33,413	\$ 36,043	\$ 37,066	\$ 35,780	\$ 28,409
Jan	\$ 34,833	\$ 27,461	\$ 31,533	\$ 31,225	\$ 38,484
Feb	\$ 37,741	\$ 27,839	\$ 28,102	\$ 32,636	\$ 35,465
Mar	\$ 45,300	\$ 35,488	\$ 44,443	\$ 36,150	\$ 44,191
Apr	\$ 55,586	\$ 61,808	\$ 44,155	\$ 51,353	\$ 46,690
Total	\$ 304,223	\$ 317,850	\$ 303,920	\$ 305,735	\$ 316,211

PORT OF PORT TOWNSEND AGENDA COVER SHEET

MEETING DATE	August 14, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. A) Brion Toss Yacht Riggers, Inc. Proposed Lease Agreement
STAFF LEAD	Eric Toews, Deputy Director
REQUESTED	<input type="checkbox"/> Motion <input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Memo B. Summary of Key Terms C. Brion Toss Lease, including Exhibit "B"

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 8/14/2019
TO: Port Commission
FROM: Eric Toews, Deputy Director
SUBJECT: Brion Toss Yacht Rigging, Inc. – Proposed Armory Building Lease Agreement

BACKGROUND: Brion Toss Yacht Rigging, Inc. (“Toss Rigging”), owned by Brion Toss, Christian Gruye and Ian Weedman, is a yacht rigging company of world renown, a key contributor to Port Townsend’s maritime heritage and character, and a Port tenant in good standing for nearly thirty (30) years. Toss Rigging specializes in the manufacture of custom yacht rigging components and supplies, and also hosts educational programs and seminars. Ian Weedman recently rejoined Toss Rigging as Vice President of the company, after running his own yacht rigging company in the Portland, Oregon area for some years.

Brion Toss and Christian Gruye approached Port staff in June requesting a new lease agreement for the premises they have long occupied in the Armory Building. Toss Rigging has been in holdover status under an expired lease since January of 2015. Toss Rigging has proposed a five (5) year lease of the premises (approximately 1,332 s.f.), with no options to renew.

DISCUSSION: The premises would remain unchanged from their present configuration and include both retail and shop space on the ground floor of the Armory Building. The proposed base rate is \$0.585 per square foot, identical to the rate most recently applied to the Best Coast Canvas Lease in the same building. This represents an increase of approximately 4.7 cents per square foot. Port staff believe this represents fair value for the space, commensurate with the rent currently being paid by other tenants.

Accordingly, the rent at lease inception would be \$779.22 plus Leasehold Tax (LHT) at 12.84% (\$100.05). In the event Toss Rigging 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 at the inception of the lease term. Obviously, Toss Rigging is an anchor tenant of Point Hudson’s “Maritime Heritage Corridor”, and Port staff is both pleased and happy to secure these iconic craftspeople to another lease term.

RECOMMENDATION: Authorize the Executive Director to execute the attached lease with Brion Toss Yacht Rigging, Inc.

ATTACHMENTS

- Summary of Key Terms – Point Hudson Armory (portion of) Lease
- Draft Port-Brion Toss Yacht Riggers, Inc. Lease (including Exhibit “A”, graphic depiction of the premises and Exhibit “B”, Hazardous Substances Warranty & Agreement)

PORT OF PORT TOWNSEND:
Summary of Key Terms - Point Hudson Armory Building (Portion of) Lease
(July 8, 2019)

1. **TENANT:** Brion Toss Yacht Rigging, Inc. (Brion Toss, President/Owner, Christian Gruye, CEO/Owner, Ian Weedman, Vice President)
2. **PREMISES:** Approximately 1,332 square feet of marine-related light industrial building space on the ground floor of the Armory Building at Point Hudson, 313 Jackson Street.
3. **TERM:** Five (5) years, beginning on September 1, 2019 and ending on August 31, 2024.
4. **RENT:** \$779.22 per month (calculated at 0.585¢ per square foot) plus LHT (i.e., \$779.22 + 12.84% (\$100.05) = \$879.27). 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 (e.g., if the rent were \$779.22 + LHT, the rent in holdover status would be + 25%, or \$974.03 + LHT).
6. **USE OF PREMISES:** Marine-related light industrial space for manufacturing and sales of yacht rigging components and supplies and classroom educational programs and seminars.
7. **SECURITY:** Three (3) month security + LHT (\$2,637.82) at lease inception; lessee already has a deposit of \$1,913.60 on file with the Port from an agreement to be superseded by this lease; thus, \$724.22 will be deposited prior to execution of this lease.
8. **UTILITIES:** All utilities are the responsibility of the Lessee.
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; Workers Compensation Insurance of not less than

\$1,000,000 per occurrence; insurance certificates naming the Port as an additional insured; proof of insurance must be provided 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 one-hundred and twenty (120) days' written notice, at its sole discretion, for public or private use in connection with the operation of the business of the Port.

**PORT OF PORT TOWNSEND
POINT HUDSON BUILDING LEASE**

THIS LEASE AGREEMENT made this _____ day of August 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 BRION TOSS YACHT RIGGING, INC., a Washington 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, the following described premises situated in the City of Port Townsend, Jefferson County, State of Washington:

Approximately 1,332 square feet of retail and shop space on the ground floor of the Armory Building at Point Hudson, located at 313 Jackson Street, Port Townsend WA 98368

hereinafter referred to as "the premises." All grounds and parking areas surrounding the Armory Building are excluded from the leased premises. The premises are depicted on Exhibit "A" which is attached hereto and which by this reference is incorporated herein as if fully set forth herein.

- 2. TERM:** The term of this Lease is five (5) years, beginning September 1, 2019, and ending at midnight, August 31, 2024 unless extended or sooner terminated as provided in this Lease.
- 3. RENT:** Lessee agrees to pay as rental for the leased premises the sum of **Seven Hundred and Seventy-Nine Dollars and Twenty-Two Cents (\$779.22)** 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 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

¹ Calculated as follows: 58.5¢ per s.f. x 1,332 s.f. = \$779.22 rent; LHT @ 12.84% x \$779.22 = \$100.05; total = \$879.27.

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. **SECURITY DEPOSIT:** Upon the execution of this Lease, Lessee shall deposit with the Port security in the amount of **Two Thousand Six Hundred and Thirty-Seven Dollars and Eighty-Two Cents (\$2,637.82)**² in order to guarantee performance under this Lease. However, Lessee has an existing deposit of **One Thousand Nine Hundred and Thirteen Dollars and Sixty Cents (\$1,913.60)** currently on file with the Port under an agreement now superseded by this Lease. Accordingly, Lessee shall deposit an additional **Seven Hundred Twenty-Four Dollars and Twenty-Two Cents (\$724.22)** in order to satisfy the requirements of this paragraph 5. This Lease shall not be effective until the full deposit of **Two Thousand Six Hundred Thirty-Seven Dollars and Eighty-Two Cents (\$2,637.82)** is on file with the Port. The deposit shall be held by the Port as security for Lessee's faithful performance of all of its obligations under this Lease. Any interest earned on amounts deposited shall be retained by the Port. The deposit shall be returned to Lessee upon termination of this Lease, less any charges owing to the Port or expenses incurred by the Port in repairing damage caused by Lessee or restoring the leased premises to the condition required upon termination of this Lease.
6. **USE OF PREMISES:** Lessee shall use the premises for the purposes of manufacturing and sales of yacht rigging components and supplies and classroom educational programs and seminars and shall not use them for any other purposes 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. Except for ordinary and routine noises and vibrations associated with the manufacture of yacht rigging components, Lessee agrees that it will not disturb the Port or any other tenant of the Port's by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the premises.
7. **UTILITIES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all utility services furnished to the premises, including, but not limited to, light, heat, electricity, gas, water, sewerage, garbage disposal.
8. **ACCEPTANCE OF PREMISES:** Lessee has examined the leased premises and accepts them in their present condition "as is" and without further maintenance liability on the part of the Port, with

² Required security for all Port leases is three (3) months (minimum) + LHT, calculated as follows: \$779.22 per month x 3 = \$2,337.66; \$2,337.66 x 12.84% = \$300.16; \$2,337.66 + \$300.16 = \$2,637.82.

the exception of deleting/removing the loose and unused electrical wiring in the ceiling prior to August 1, 2019. The Port makes no representations or warranties with respect to the condition, suitability, zoning restrictions, or usability, except the Port's right to grant a lease of the premises. Lessee acknowledges that Lessee has fully inspected the premises and is not relying on any statement or representation made by the Port or the Port's agents with respect to the condition of the premises, and Lessee assumes the responsibility and risks of the same, including any defects or conditions that cannot be observed by casual inspection.

9. **MAINTENANCE AND REPAIR:** Maintenance and repair of the premises and all improvements thereon is the sole responsibility of Lessee. Accordingly, 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's obligation to make repairs shall not extend to any repairs to the roof (structure of covering), to the foundations of the building or structure and exterior walls, of which the leased premises are a part, unless such repairs are necessitated by Lessee's negligence or failure to maintain the interior. Lessee shall, at its' own expense, and at all times:
 - a. Keep the premises, and the adjoining roadways and sidewalks, neat, clean and in a safe and sanitary condition;
 - b. Maintain and keep the leased premises in a good state of repair; and
 - c. Not commit waste of any kind.

10. **ALTERATIONS AND IMPROVEMENTS:** Lessee shall make no alterations or improvements to or upon the premises or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval from the Executive Director of the Port. When seeking the Port's approval, Lessee shall submit full plans and specifications for any proposed alterations and shall furnish proof of compliance with all applicable building codes and other regulations and shall apply for and obtain all necessary permits for such work. If the proposed improvements are estimated to cost more than \$25,000, the Port may require the posting of a completion bond as security for the completion of the improvements. Upon conclusion of the alterations, Lessee shall furnish "as-built" drawings of all improvements and alterations. The Port's approval of alterations shall also include agreement for disposition of the improvements upon termination of this Lease.

11. **INSPECTION - "FOR RENT" SIGNS:** The Port reserves the right to inspect the leased premises at any and all reasonable times throughout the term of this Lease, PROVIDED, that it shall not interfere unduly with Lessee's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for thirty (30) days prior to the expiration or sooner termination of this Lease.

12. **POSSESSION:** If the Port shall be unable for any reason to deliver possession of the premises, or any portion thereof, at the time of the commencement of the term of this Lease, the Port shall

not be liable for any damage caused thereby to Lessee, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any rent until such time as the Port can deliver possession, PROVIDED, that if Lessee shall, in the interim, take possession of any portion of the premises, it shall pay as rental the full rental specified herein reduced pro rata for the portion of the premises not available for possession by Lessee, AND PROVIDED FURTHER, that if the Port shall be unable to deliver possession of the premises at the commencement of the term of this Lease, Lessee shall have the option to terminate this Lease by at least thirty (30) days written notice, unless the Port shall deliver possession of the premises prior to the effective date of termination specified in such notice. If Lessee shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable.

13. DAMAGE OR DESTRUCTION:

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

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

related in any way to Lessee's use or occupancy of the premises and of the areas adjacent thereto except to the extent attributable to the negligence or other wrongdoing of the Port or its employees, contractors or agents. Lessee agrees to defend and to hold and save the Port harmless from all liability or expense of litigation in connection with any such items of actual or alleged injury or damage.

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

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

- 16. LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES:** For purposes of the indemnification provision set forth in paragraph 14, above, and only to the extent of claims against Lessee by the Port under such indemnification provision, Lessee specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, The United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto.

- 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 Substance Warranty and Agreement, consisting of six (6) pages, which is attached as Exhibit "B" hereto and which by this reference is incorporated herein as fully set forth herein, and acknowledges full understanding of its obligations under said Hazardous Substances Warranty and Agreement.
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 building or other realty of which the premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Lessee also agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations. Lessee further agrees that all buildings, structures or other improvements, approved by the Port, will be properly permitted by Jefferson County. Any fees for any inspection of the premises during or for the lease term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.
22. **ASSIGNMENT OR SUBLEASE:**
- a. 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.
 - b. 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.
 - c. Lessee shall reimburse the Port, within thirty (30) days of presentment of a bill for attorney fees incurred by the Port regarding a consent to assignment for the purpose of obtaining a loan or other consideration from a third party.

- d. 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.
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 BY PORT:** In the event that the Port, at its sole discretion, shall require the use of the premises for any purpose for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to the Lessee **one hundred and twenty (120)** or more days before the termination date specified in the notice. Lessee and the Port Executive Director will agree compensation to Lessee for loss of use, cost of relocation, and/or cost of improvement. In the event that the parties are unable to reach agreement on the compensation to Lessee, the amount 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.
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 – ATTORNEY'S FEES:**
- a. At the expiration or earlier termination of the term, Lessee shall surrender to the Port the possession of the premises and all improvements. Surrender or removal of fixtures, trade fixtures and improvements shall be as directed in paragraph 10 of this Lease on ownership of improvements at termination. Lessee shall leave the

surrendered premises and any other property in broom-clean condition except as provided to the contrary in provisions of this Lease on maintenance and repair of improvements. All property that Lessee is required to surrender shall become the Port's property at termination of this Lease. All property that Lessee is not required to surrender but that Lessee does abandon shall, at the Port's election, become the Port's property at termination. If Lessee fails to surrender the premises at the expiration or sooner termination of this Lease, Lessee shall defend and indemnify the Port from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender.

- b. In the event that either party shall commence legal action to interpret or to enforce any of the provisions of this Lease, the substantially prevailing party shall be entitled to an award for all reasonable costs and attorney fees incurred in any such action. Any action brought under the terms of this Lease shall be maintained in Jefferson County, Washington.

- 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 that 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:

BRION TOSS YACHT RIGGING, INC.
c/o Christian Gruye, CEO
313 Jackson Street
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.

43. **LESSEE'S ACKNOWLEDGEMENT OF PRESENCE OF CERTAIN SUBSTANCES:** Lessee acknowledges that, because the buildings at Point Hudson were constructed many years ago, that they may contain asbestos, creosote, lead paint and other substances that would not be allowed in modern construction. The Port will comply with the directives of any lawful authority that may require the removal or remediation of such substances and will not use any such substances during the renovation or remodeling of the Point Hudson facility, but Lessee agrees not to demand the removal of any such substances which do not impose a hazard to the health of Lessee and its employees, guests and invitees. In the event that any such substances need to be removed from the leased premises, Lessee agrees to cooperate with the Port and allow the removal of such materials, including the temporary cessation of Lessee's business activities, Lessee's rent shall be abated during any such period of disruption, but Lessee shall not be entitled to any damages or compensation for business interruption or loss of revenue, PROVIDED the Port moves expeditiously to complete such activities.

44. **ENTIRE AGREEMENT:** This Lease Agreement contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Lease which have not been reduced to

writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Port Townsend.

Lease Agreement dated this _____ day of August 2019 is hereby approved by the Port of Port Townsend, on this 14^h day of August 2019 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

LESSEE: BRION TOSS YACHT RIGGING, INC.

By: _____
Brion Toss, President/Owner

Christian Gruye, CEO/Owner

ATTEST:

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Jim Pivarnik, Executive Director

Port Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, BRION TOSS, to me known to be the PRESIDENT/OWNER of BRION TOSS YACHT RIGGING, INC., 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 she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this ____ day of August 2019.

Susan M. Nelson

NOTARY PUBLIC in and for the State of Washington,
residing at Port Townsend

My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, CHRISTIAN GRUYE, to me known to be the CHIEF EXECUTIVE OFFICER/OWNER of BRION TOSS YACHT RIGGING, INC., 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 she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this ____ day of August 2019.

Susan M. Nelson

NOTARY PUBLIC in and for the State of Washington,
residing at Port Townsend

My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, JIM PIVARNIK, to me known to be the EXECUTIVE DIRECTOR of the PORT OF PORT TOWNSEND, and acknowledged the said instrument to be the free and voluntary act and deed of said port district, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument on behalf of the port district.

GIVEN under my hand and official seal this ____ day of August 2019.

Susan M. Nelson

NOTARY PUBLIC in and for the State of Washington,
residing at Port Townsend

My commission expires: _____

EXHIBIT "B"

HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT

RIDER TO LEASE AGREEMENT DATED: September 1, 2019, BETWEEN THE PORT OF PORT TOWNSEND and BRION TOSS YACHT RIGGING, INC.

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

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

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

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

6. **DISPOSAL OF HAZARDOUS WASTES.** In the event Lessee has occasion or need to dispose of hazardous or toxic substances or wastes, and unless otherwise agreed in writing, Lessee shall retain an independent hazardous waste disposal firm to dispose of any and all such substances at an off-site facility which has been properly approved, licensed and authorized to accept such substances. Lessee shall ensure that the disposal firm is properly licensed and in good standing with the applicable regulatory authorities for such work, and that it has all required transporter identification numbers.

7. **LESSEE'S WARRANTY OF NO CONTAMINATION.** Except as may be disclosed in Attachment No. 1 hereto, Lessee warrants and represents (1) that it has not released any toxic or hazardous substances onto the premises or into the environment in connection with its activities at the premises, (2) that it has inspected the premises and is not aware of any indication that a release of any hazardous substances has ever occurred at the premises, including prior to Lessee's occupancy, (3) that it has never been formally accused or cited, at the premises or elsewhere, for any violation of environmental laws, regulations or any hazardous waste-related governmental permit, and (4) that no claims or litigation have ever been pending against it by any person or governmental agency involving any use, storage, release or disposal of hazardous or toxic waste. If any such releases, formal accusations, citations, claims or litigation against Lessee arise during the term of this lease or any extension thereof, then Lessee shall notify Lessor in writing within seven (7) days of such event, and shall provide Lessor with a copy of each document reflecting such event.

8. **INDEMNIFICATION AND HOLD HARMLESS.** Lessee shall indemnify and hold Lessor harmless with respect to any and all direct or indirect expenses, losses of damages, including all consequential damages, Attorney's fees, and litigation-related expenses and costs, incurred by Lessor which result from (1) Lessee's breach of provision of this Rider, (2) claims, actions, suites, proceedings, judgments, fines or remedial orders (including orders to clean up contamination at the premises) which arise because of Lessee's breach of this Rider, (3) Lessee's violation of environment laws or regulations, or (4) Lessee's release of a toxic or hazardous substance onto the premises or into the surrounding environment. This provision shall apply regardless of whether Lessee has been negligent or at fault for such breach, violation, or release. This obligation by the Lessee shall survive the expiration or termination of the lease agreement and the sale of the property. If Lessor so requests, Lessee shall accept the tender of defense of, and shall retain counsel of Lessor's selection and at Lessee's expense to defend, any third-party claim asserted against Lessor in

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

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

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

14. **INSPECTION OF PREMISES.** Lessee agrees to permit and cooperate with any on-site inspections and testing requested by Lessor, including inspections and testing conducted by consultants or engineers hired by Lessor to evaluate Lessee's compliance with the applicable environmental requirements and the provisions of this Rider. Lessor shall provide Lessee within 24 hours advance notice of Lessor's intent to conduct such inspection or testing.

15. **DESIGNATED REPRESENTATIVE RESPONSIBLE FOR COMPLIANCE.** CHRISTIAN GRUYE whose work telephone number is 360-385-1080 and whose cell phone number is 360-_____ shall be the Lessee's designated representative who shall be primarily responsible (1) for Lessee's compliance with the provision of this Rider, (2) for handling contact with Lessor pertaining to environmental compliance, and (3) for signing on behalf of Lessee the annual declaration of compliance pursuant to Paragraph 12 above. Lessee shall promptly notify Lessor of any changes in the identity or telephone numbers of the designated representative.

16. **ADDITIONAL PROVISIONS.**

LESSOR:

LESSEE:

Jim Pivarnik

Christian Gruye

Title: Executive Director

Title: CEO, Brion Toss Yacht Rigging, Inc.

Date: _____

Date: _____

(Attachment No. 1 to Hazardous Substances Rider)

DISCLOSURE BY LESSEE

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

1. Release(s) of Hazardous Substances by Lessee:
(If none, initial here: _____)

2. Indication(s) of Contamination at Premises:
(If none, initial here: _____)

3. Lessee Violation(s) of Environmental Regulations:
(If none, initial here: _____)

4. Environmental Claims or Litigation Against Lessee:
(If none, initial here: _____)

Lessee: BRION TOSS YACHT RIGGING, INC.

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

Title: _____ / Date: _____

(Attachment No. 2 to Hazardous Substances Rider)

DECLARATION OF COMPLIANCE

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

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

Lessee: BRION TOSS YACHT RIGGING, INC.

By: _____
Signature

Title: _____/Date: _____