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**Port of Port Townsend
1st Monthly Meeting Agenda
Wednesday, December 11, 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
- IV. Consent Agenda
 - A. Approval of Regular Business Meeting Minutes – November 26, 2019.....1-3
 - B. Approval of Warrants
 - C. Revised Organizational Chart 4
- V. Second Reading -- *none*
- VI. First Reading -- *none*
- VII. Regular Business
 - A. Resolution 712-19 to establish a dedicated reserve account for IDD monies 5-6
 - B. Schooner Martha Lease 7-25
 - C. Revision Marine Lease..... 26-43
 - D. 2020 Rate Correction.....44-46
 - E. Co-op Property Acquisition & Lease Amendments 47-50
- VIII. Staff Comments
- IX. Commissioner Comments
- X. Next Public Workshop / Regular Business Meeting:
Thursday, January 2, 2020: Special Meeting (to approve warrants) at 9:30 am
Wednesday, January 8, 2020: Workshop at 9:30 am, Meeting at 1:00 pm
Port Commission Building, 333 Benedict Street, Port Townsend, WA
- XI. Executive Session
 - A. Evaluating the Qualifications of Applicants for Public Employment RCW 42.30.110 (1)(G)
- XII. Adjournment

PORT COMMISSION SPECIAL BUSINESS MEETING – Tuesday, November 26, 2019

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

Present: Commissioners Hanke, Putney & Tucker
Executive Director Pivarnik
Deputy Director Toews
Attorney Deets
Port Recorder Erickson
Excused: Finance Director & Port Auditor Berg

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Putney called the meeting to order at 1:02 p.m.

II. APPROVAL OF AGENDA:

Commissioner Tucker moved to approve the Agenda as amended.
Commissioner Hanke seconded the motion.
Motion carried by unanimous vote.

III. PUBLIC COMMENTS (00:00):

Bertram Levy asked if the environmental fee were based on the length of the boat on the waterline, which is the part of the boat that is impacting the water. There was general agreement that this would be a fair way to charge this fee. Commissioner Putney clarified that the space for storage in the yard would be charged on the overall length.

IV. CONSENT AGENDA (01:40):

- A. Approval of Regular Business Meeting Minutes – November 13, 2019
Amendment to the November 13 meeting minutes: Under VII. A. 2020 Rates, the 5th comment attributed to Commissioner Tucker should be attributed to Commissioner Putney.
- B. Approval of Warrants
Warrant #061343 through #061351 in the amount of \$14,872.37 for Payroll & Benefits and Electronic Payment in the amount of \$68,674.72 for Payroll & Benefits.
Warrant ##061352 through #061407 in the amount of \$79,439.77 for Accounts Payable.
Electronic Debit in the amount of \$9,818.97 for Combined Excise Tax Return.

Commissioner Tucker moved to approve the Consent Agenda as amended.
Commissioner Hanke seconded the motion.
Motion carried by unanimous vote.

V. SECOND READING – None

VI. FIRST READING - None

VII. REGULAR BUSINESS (02:44)A. October Financials

Executive Director Pivarnik commented that operationally the Port is doing very well. Being fair and consistent with our rates and by applying CPI to increases has brought us to a point where we are no longer looking at losses, but have money to reinvest in our infrastructure. He stated that he was really impressed and wanted to thank staff for all their hard work making sure we are as spare as possible.

Commissioner Putney commented that staff leadership also had something to do with this, and was happy that the Port is in a better place.

B. 2020 Rates (04:29)

Executive Director Pivarnik reminded the commission that these rates were proposed at the last meeting, with some discussion on boat ramp annual passes. Referring to October Financials in the ramp category, the Port is making more money on the ramp than we ever have. Although we are selling fewer numbers of ramp passes than in past years, the bottom line is positive.

Commissioner Tucker pointed out that there was a substantial drop in the number of passes sold. He suggested that the Port might do the same thing we did with the seasonal yard rates, and lower them for a year to see what the difference is. We could get the same amount of revenue, with more people utilizing the service. He compared amounts charged for annual passes in the area, and found them to vary greatly, but one gold standard would be the state park ramp fee, which is \$80 for an annual pass.

Commissioner Putney wondered if annual passes were down because of the restricted recreational uses--open season is only a few days for different fisheries, and an annual pass wouldn't be worth it for those small windows. Also, the state parks is a tax-supported system, of which the ramp fees are a small part.

Commissioner Hanke stated that he'd rather keep the annual pass at \$100 for a year, and see how it goes, and then decide on future rates based on whether it grows or declines.

After a short discussion, an idea surfaced to have a three-month winter special for annual ramp passes. Annual ramp passes would cost \$80 for first three months of the year (January 1-March 31), then \$100 starting April 1. Commissioners all agreed this would be a good thing to try, keep track of, and decide whether to continue with this in future.

Commissioner Tucker moved to approve 2020 Rates as discussed with that one change to ramp fees.

Commissioner Hanke seconded the motion.

Motion carried by unanimous vote.

VIII. STAFF COMMENTS (13:57):

Executive Director Pivarnik commented that the Port is losing one of the key members of our staff, TJ Quandt, who is leaving us to become the Harbormaster at the Port of Olympia. That means the Port will be hiring a new Harbormaster and also using this as an opportunity to reorganize. In the meantime, Terry Khile and Chris Sparks will be assuming a lot of TJ's responsibilities.

IX. COMMISSIONER COMMENTS (15:45):

Commissioner Putney commented that he enjoyed attending Washington Public Ports Association (WPPA) annual meeting; he took some interesting classes and learned a lot.

X. NEXT PUBLIC WORKSHOP / REGULAR BUSINESS MEETING (16:45):

Wednesday, December 11, 2019. Workshop at 9:30 am, Meeting at 1:00 pm
Port Commission Building, 333 Benedict Street, Port Townsend, WA

XI. EXECUTIVE SESSION (17:01)

A. Evaluating the Qualifications of Applicants for Public Employment RCW 42.30.110 (1)(g)

Commissioner Putney commented that the commission did not anticipate there would be any decisions coming out of this session, and they anticipated that it would take an hour.

Executive Director Pivarnik commented that the Port had made an arrangement for commissioner-elect Petranek to attend this executive session to start a process for looking at applicants for the Executive Director position. She will be joining the executive session to give her input.

XII. ADJOURNMENT (18:45):

The meeting adjourned at 1:21 p.m. into executive session, there being no further business to come before the Commission.

ATTEST:

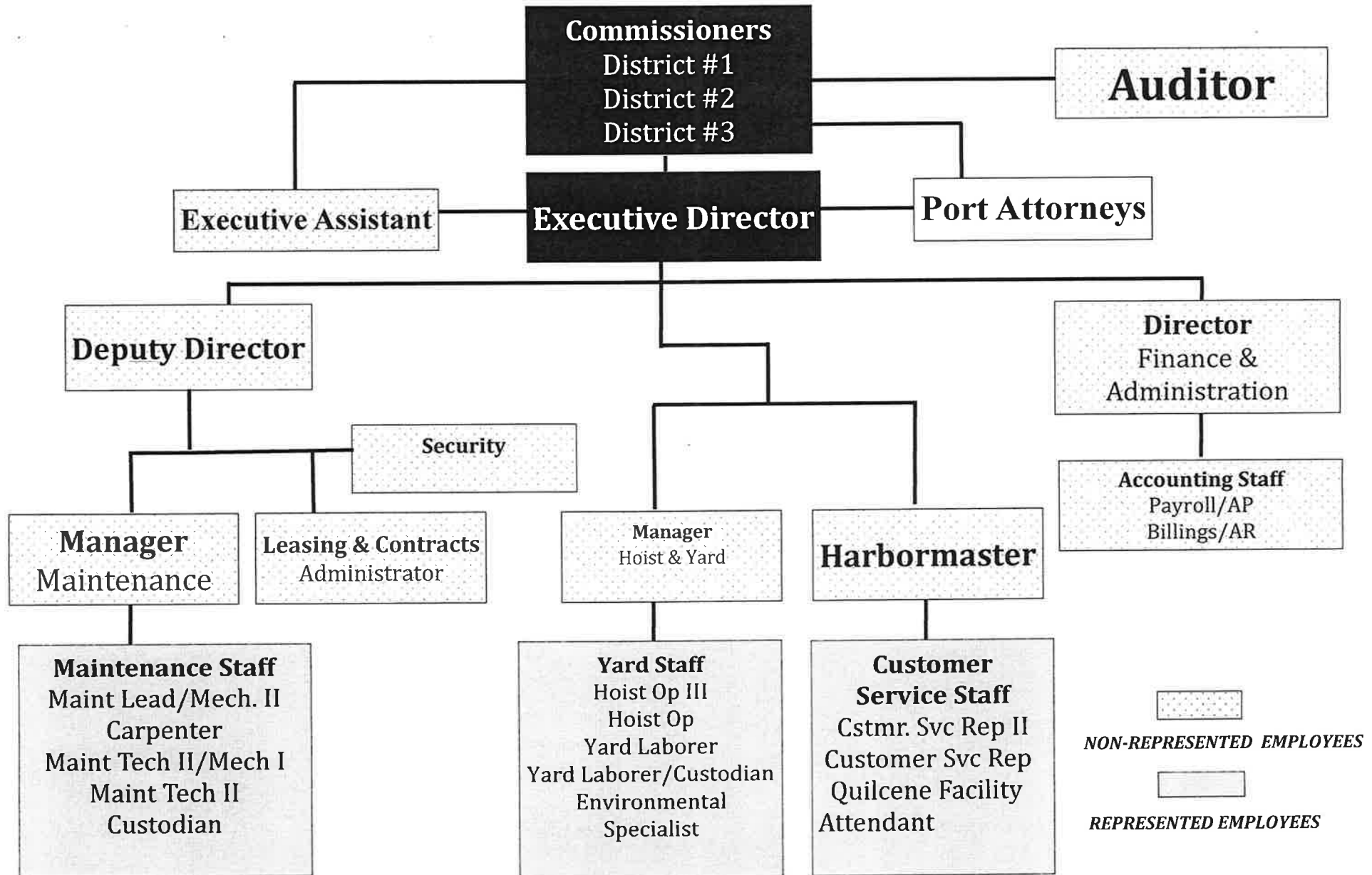
Stephen R. Tucker, Secretary

William W. Putney III, President

Peter W. Hanke, Vice President

PORT OF PORT TOWNSEND

Organizational Chart



PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 11, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. A. Resolution 712-19 to establish a dedicated reserve account for IDD monies
STAFF LEAD	Name, Title
REQUESTED	<input type="checkbox"/> Information <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	1. Resolution 712-19 to establish a dedicated reserve account for IDD monies

RESOLUTION NO. 712-19

A Resolution of the Commission of the Port of Port Townsend

ESTABLISHING AN INDUSTRIAL DEVELOPMENT DISTRICT (IDD) RESERVE FUND

WHEREAS, the Commission of the Port of Port Townsend adopted Resolution 698-19 at its regular Meeting on March 27, 2019, approving the use of a second multi-year levy period of up to twenty years under the authority of RCW 53.36.160; and

WHEREAS, consistent with RCW 53.36.160(2), a petition was filed with the Jefferson County Auditor containing a sufficient number of signatures of registered voters in the County to submit the levy period adopted under Resolution 698-19 to the voters for ratification under the ballot title "Port of Port Townsend Special Election – Proposition 1"; and

WHEREAS, in the election conducted on November 5, 2019, the voters of Jefferson County voted to approve Proposition 1, thereby affirming the multiyear levy period adopted by the Commission of the Port of Port Townsend under Resolution 698-19; and

WHEREAS, the Port of Port Townsend has now complied with all of the requirements of the law relating to the adoption of a second multiyear levy period and intends to authorize an industrial development district tax levy for collection for up to the next 20 years starting in the calendar year 2020, or until the total years of levy amounts reach approximately \$16,809,660;

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The Port of Port Townsend shall maintain a separate fund for the collection of the IDD Levy revenues. This will be an IDD Capital Reserve Fund with the County Treasurer and tracked separately in the Port's accounting system.
2. Monies in the fund shall be used in carrying out the powers granted to the Port under Chapter 53.25 RCW. If IDD levy revenues are not expended in the year in which the levies are made, they may be accumulated in the IDD Capital Reserve Fund and carried over from year to year.
3. In the event IDD levy revenues collected by the Port exceed what is necessary to complete the projects identified in the Port's Comprehensive Scheme of Harbor Improvements (as may be amended), the excess shall be used solely for the retirement of general obligation bonded indebtedness.

ADOPTED this 11th day of December 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:

William W. Putney III, President

Peter W. Hanke, Vice-President

Stephen R. Tucker, Secretary

APPROVED AS TO FORM:

Port Attorney

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 11, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. B) Schooner Martha Foundation Proposed Lease
STAFF LEAD	Eric Toews, Deputy Director
REQUESTED	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Memo B. Term Sheet C. Schooner Martha Proposed Lease

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/11/2019
TO: Port Commission
FROM: Sue Nelson, Lease & Contracts Administrator
SUBJECT: Schooner Martha Foundation – Proposed Lease Agreement

BACKGROUND: Robert D’Arcy and Schooner Martha Foundation have been a tenant in good standing, renting shop space at Point Hudson since 2010. They have been on hold-over status since November 30, 2010.

DISCUSSION: The shop space rented by the Schooner Martha Foundation is a 1,600-sf building, that has a partial dirt floor, no plumbing and no heat system. Staff proposes a rate of \$0.43 per sf for the building. The proposed agreement also includes 150-sf (3’x50’) of land for the storage of equipment and materials @ \$0.25/sf.

Lease term is a five (5)-year with one (1) five (5)-year option.

In the event the Schooner Martha Foundation 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.

Port staff is honored to continue a lease agreement with Mr. D’Arcy and the Foundation.

RECOMMENDATION: Authorize the Executive Director to execute the attached lease with Schooner Martha Foundation, a Washington State Non-profit.

ATTACHMENTS

- Summary of Key Terms
- Draft Port-Schooner Martha Foundation Lease

PORT OF PORT TOWNSEND:
Summary of Key Terms – Schooner Martha Foundation
(December 11, 2019)

1. **TENANT:** Robert D'Arcy, Director, Schooner Martha Foundation.
2. **PREMISES:** Approximately 1,600 square feet of marine-related light industrial building shop space and 150 square feet of ground space to be used for storage of equipment and materials, immediately adjacent to and west of the building.
3. **TERM:** Five (5)-year, beginning on January 1, 2020 and ending on December 31, 2024. Option to extend the lease term by one (1) five (5)-year term. Notification to extend the Lease will be done in writing ninety (90) days prior to the end of the lease or any extended term.
4. **RENT:** \$725.50 per month (calculated at approximately 43¢ per square foot for 1,600 sf of shop space, and 25¢ per square foot for 150 sf of ground space) plus LHT (i.e., $\$725.50 + 12.84\% (\$93.16) = \$818.66$). Rent adjusted per CPI-U beginning year 2; base rent may be adjusted beginning in year three (i.e., based on market rate study).

Original rental agreement was building space only, 1,600 sf at 33¢ per square foot.

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 $\$725.50 + \text{LHT}$, the rent in holdover status would be + 25%, or $\$906.88 + \text{LHT}$).
6. **USE OF PREMISES:** Boat shop, storage and office space in the building, and storage of equipment and materials on the ground portion.
7. **SECURITY:** Three (3) month security + LHT (\$2,455.98) at lease inception; lessee already has a deposit of \$592.41 on file with the Port from an agreement to be superseded by this lease; thus, \$1,863.57 deposit balance to be paid upon 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 AND LAND LEASE

THIS LEASE AGREEMENT made this _____ day of December 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 SCHOONER MARTHA FOUNDATION, a Washington State Non-profit, 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:

An approximately 1,600 square foot building located on Jackson Street behind Puget Sound Express, Port Townsend, WA (located in Point Hudson) together with approximately 150 square foot area of land (3' x 50') located immediately adjacent to and west of the above-described building.

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.

Although not included within the Premises, the Port shall allow Lessee, its agents, employees and other persons transacting business with it to have unimpeded access to the loading door on the south wall of the Premises at all times, subject to emergencies. The access area is immediately appurtenant to the premises measures approximately 32' wide x 16' deep, as depicted on Exhibit "A".

2. **TERM:** The term of this Lease is five (5) years, beginning January 1, 2020, ending at midnight, December 31, 2024, unless extended or sooner terminated as provided in this Lease. The Lessee shall also have an option to extend the lease term by one (1) five (5)-year term. Notification to extend the Lease will be done in writing ninety (90) days prior to end of the initial lease term.
3. **RENT:** Lessee agrees to pay as rental for the leased premises the sum of **Seven Hundred and Twenty-Five Dollars & Fifty Cents (\$725.50)** 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.

¹ Calculated as follows: Building space @ 43¢ per s.f. x 1,600 s.f. = \$688.00 rent, Land space @ 25¢ per s.f. x 150 = \$37.50; \$688.00 + \$37.50 = \$725.50; Leasehold Excise Tax (LHT) @ 12.84% x \$93.16 = \$725.50 + \$93.16 = \$818.66.

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 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 Four Hundred Fifty-Five Dollars & Ninety-Eight Cents (\$2,455.98)**² in order to guarantee performance under this Lease. However, Lessee has an existing deposit of **Five Hundred Ninety-Two Dollars & Forty-One Cents (\$592.41)** currently on file with the Port under an agreement now superseded by this Lease. Accordingly, Lessee shall deposit an additional **One Thousand Eight Hundred Sixty-Three Dollars & Fifty-Seven Cents (\$1,863.57)** in order to satisfy the requirements of this paragraph 5. This Lease shall not be effective until the full deposit of **Two Thousand Four Hundred Fifty-Five Dollars & Ninety-Eight Cents (\$2,455.98)** 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 **boat shop, storage and office space** and shall not use them for any other purposes without the prior written consent of the Port. Additionally, that portion of the premises lying outside the building shall be used exclusively for the storage of equipment and materials. 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

² Required security for all Port leases is three (3) months (minimum) + LHT, calculated as follows: \$725.50 per month + 12.84% Leasehold Tax = \$93.16, total \$818.66; \$818.66 x 3 = \$2,455.98.

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. 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 or 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 **sixty (60)** or more days before the termination date specified

in the notice. The Lessee and the Port's Executive Director will agree to appropriate compensation to be provided Lessee for loss of use, cost of relocation, and/or cost of improvements. 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:

Robert D'Arcy
SCHOONER MARTHA FOUNDATION
PO Box 1811
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 December 2019 is hereby approved by the Port of Port Townsend, on this ____ day of December 2019 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN THE PARTIES AND CONTAINS A LIMITED WAIVER OF IMMUNITY UNDER TITLE 51 RCW, AN INDEMNIFICATION AND A RELEASE.

LESSEE: SCHOONER MARTHA FOUNDATION

By: _____
Robert D'Arcy, Director, Schooner Martha Foundation

ATTEST:

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Jim Pivarnik, Executive Director

Port Attorney

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 DIRECTOR of SCHOONER MARTHA FOUNDATION, 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 December 2019.

**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 December 2019.

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

My commission expires: _____

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 11, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. C) Revision Marine, LLC Proposed New Lease
STAFF LEAD	Eric Toews, Deputy Director
REQUESTED	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Memo B. Term Sheet C. Draft – Revision Marine, LLC

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/11/2019
TO: Port Commission
FROM: Sue Nelson, Lease & Contracts Administrator
SUBJECT: Revision Marine – Proposed Lease Agreement

BACKGROUND: In 2007, a two-year lease with three one-year options was signed by Tim Hoffman of Steelhead Marine for the building space located at 301-10th Street. Greg Stupica of Lowest Hadlock Shipwrights (LHS) was a sub-tenant. In 2018 Mr. Hoffman notified the Port in writing that his business would no longer occupy this space, which had been in hold-over status. Mr. Stupica continued operating LHS out of the building located at 301-10th. At some point, Revision Marine became a sub-tenant of LHS, who was not in possession of a lease agreement with the Port.

After many discussions, with Chris Brignoli and Matt Mortensen, they have requested that Revision Marine, LLC be authorized as the leaseholder of the building located at 301-10th Street, Port Townsend.

Mr. Brignoli and Mr. Mortensen each have long histories of working for marine trades businesses over the years, located within the Boat Haven.

DISCUSSION: The building, located in the Boat Haven Industrial Park, consists of approximately 2,400 square feet of shop/warehouse/office space, with a proposed monthly rate of 62¢/sf. The proposed agreement also includes an approximate area of 1,800 square feet of land for the exclusive use only of storing equipment and materials, at the rate of 25¢/sf.

Lease term is five (5)-years with no options.

In the event Revision Marine, LLC 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, to be paid within an eighteen-month installment term.

Port staff is pleased and excited to enter into a new lease agreement with Revision Marine.

RECOMMENDATION: Authorize the Executive Director to execute the attached lease with Revision Marine, LLC, a Washington Limited Liability Company.

ATTACHMENTS

- Memo
- Summary of Key Terms
- Draft - Revision Lease

PORT OF PORT TOWNSEND:
Summary of Key Terms – Revision Marine, LLC
(December 11, 2019)

1. **TENANT:** Chris Brignoli & Matt Mortensen, Co-owners, Revision Marine, LLC.
2. **PREMISES:** Approximately 2,400 square feet of marine-related light industrial building space and 1,800 square feet (30'x60') of ground space to be used exclusively and only for storage of equipment and materials, immediately adjacent to and west of the building.
3. **TERM:** Five (5)-year, beginning on January 1, 2020 and ending on December 31, 2024.
4. **RENT:** \$1,938.00 per month (calculated at approximately 62¢ per square foot for 2,400 sf of building space, and 25¢ per square foot for 1,800 sf of ground space) plus LHT (i.e., $\$1,938.00 + 12.84\% (\$248.84) = \$2,186.84$). 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 $\$1,938.00 + \text{LHT}$, the rent in holdover status would be + 25%, or $\$2,422.50 + \text{LHT}$).
6. **USE OF PREMISES:** Boat building, repair, service and maintenance. Leased ground portion to be used exclusively and only for storage of equipment and materials.
7. **SECURITY:** Three (3) month security + LHT (\$6,560.52) at lease inception; lessee already has a deposit of **\$1,570.72*** on file with the Port from an agreement to be superseded by this lease; thus, **\$4,989.80*** deposit balance to be paid within an eighteen-month period, with the first installment to be paid upon execution of this lease. ** deposit amts updated 12/10/19*
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:
LAND & BUILDING LEASE**

THIS LEASE AGREEMENT made this ____ day of December 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 REVISION MARINE, LLC, a Washington limited liability company, hereinafter referred to as "Lessee,"

WITNESSETH:

That the parties hereto do mutually agree as follows:

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

An approximately 2,400 square foot building located at 301 – 10th Street, Port Townsend, WA (located in the Boat Haven Industrial Park) together with approximately 1,800 square foot area of land (30' x 60') located immediately adjacent and south of the above-described building

hereinafter referred to as "the premises." The premises are depicted on Exhibit "A" which is attached hereto and which by this reference is incorporated herein as if fully set forth herein.

2. **TERM:** The term of this Lease is five (5) years, beginning at midnight, January 1, 2020, and ending at midnight, December 31, 2024 unless sooner terminated as provided in this Lease.
3. **RENT:** Lessee agrees to pay as rental for the leased premises the sum of **One Thousand Nine Hundred Thirty-Eight Dollars and Zero Cents (\$1,938.00)** per month 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

¹ Calculated as follows: Building space @ 62¢ per s.f. x 2,400 s.f. = \$1,488.00 rent, Land space @ 25¢ per s.f. x 1,800 = \$450.00; \$1,488.00 + \$450.00 = \$1,938.00; Leasehold Excise Tax (LHT) @ 12.84% x \$1,938.00 = \$248.84; \$1,938 + \$248.84 = \$2,186.84.

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:** Lessee shall deposit with the Port security in the amount of **Six Thousand Five Hundred Sixty Dollars & Fifty-Two Cents (\$6,560.52).**² Lessee has an existing deposit of **One Thousand Five Hundred Seventy Dollars & Seventy-two Cents (\$1,570.72*)** currently on file with the Port under an agreement now superseded by this Lease. Accordingly, Lessee shall deposit an additional **Four Thousand Nine Hundred Eighty-nine Dollars & Eighty Cents (\$4,989.80*)** in order to satisfy the requirements of this Paragraph 5 ("the additional deposit"). The additional deposit shall be made in eighteen (18) equal monthly installment payments of **Two Hundred Seventy-Seven Dollars & Twenty-two Cents (\$277.22*)** concurrent with the monthly rental payments set forth in Paragraph 3 herein above. The deposit shall be held by the Port as security for Lessee's faithful performance of all 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. **deposit amounts updated 12/10/19*
6. **USE OF PREMISES:** Lessee shall use the premises for the purpose of boat building, repair, service and maintenance, and shall not use them for any other purpose without the prior written consent of the Port. Additionally, that portion of the premises lying outside the building shall be used exclusively for the storage of equipment and materials, and shall not be used for the storage, repair, or construction of boats. Lessee shall use the entire premises for the conduct of said business in a first-class manner continuously during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or redecorating or for reasons beyond Lessee's reasonable control. Lessee agrees that it will not disturb the Port or any other tenant of the Port's by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the premises.
7. **UTILITIES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all utility services furnished to the premises, including, but not limited to, light, heat, electricity, gas, water, sewerage, garbage disposal, and communications. WiFi and/or fiber services are not included in the rent.
8. **ACCEPTANCE OF PREMISES:** Lessee has examined the leased premises and accepts them in their present condition "as is" and without further maintenance liability on the part of the Port. The Port makes no representations or warranties with respect to the condition, suitability, zoning

² Required security for all Port leases is three (3) months (minimum + LHT, calculated as follows: \$1,938 per month x 3 = \$5,814.00; \$5,814.00 x 12.84% LHT = \$746.52; = \$5,814.00 + \$746.52 = \$6,560.52.

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 or 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. Such written approval shall also include agreement for disposition of the improvements upon termination of this Lease.
11. **INSPECTION - "FOR RENT" SIGNS:** The Port reserves the right to inspect the leased premises at any and all reasonable times throughout the term of this Lease, PROVIDED, that it shall not interfere unduly with Lessee's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for thirty (30) days prior to the expiration or sooner termination of this Lease.
12. **POSSESSION:** If the Port shall be unable for any reason to deliver possession of the premises, or any portion thereof, at the time of the commencement of the term of this Lease, the Port shall not be liable for any damage caused thereby to Lessee, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any rent until such time as the Port can deliver possession, PROVIDED, that if Lessee shall, in the interim, take possession of any portion of the premises, it shall pay as rental the full rental specified herein reduced pro rata for the portion of the premises not available for possession by Lessee, AND PROVIDED FURTHER, that if the Port shall be unable to deliver possession of the premises at the commencement of the term of this Lease, Lessee shall have the option to terminate this Lease by at least thirty (30) days written notice, unless the Port shall

deliver possession of the premises prior to the effective date of termination specified in such notice. If Lessee shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable.

13. DAMAGE OR DESTRUCTION:

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

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

- 15. INSURANCE:** Lessee agrees to maintain during the lease term liability insurance as set forth below, at Lessee's sole expense. All such insurance shall name the Port of Port Townsend as an additional insured and shall be with insurance companies acceptable to the Port.

- a. Comprehensive General Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000.00 combined single limit for each occurrence. Such insurance shall include but not be limited to bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, and products/completed operations liability.
- b. Comprehensive Business Automobile Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000.00 combined single limit for each occurrence. Such insurance shall include but not be limited to bodily injury liability, property damage liability, hired car liability, and non-owned auto liability.
- c. Workers Compensation Insurance as will protect tenant's employees from claims under Washington Workers Compensation Act as well as all Federal Acts applicable to the tenant's operations at the site such as but not limited to U.S. Longshoremen and Harborworkers Act, Jones Act, and Federal Employers Liability section of the Washington Workers Compensation Policy and all Federal Acts Insurance shall not be less than \$1,000,000.00 for each occurrence.

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

- 16. **WAIVER OF SUBROGATION:** The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts, including any extended coverage endorsements thereto, PROVIDED, that this Paragraph 16 shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of the Port or Lessee.
- 17. **INCREASE IN COST OF INSURANCE:** Lessee shall not use the demised premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the leased premises are a part, and to the extent allocable to the term of this Lease, may be added to the amount of rental hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.
- 18. **HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT:** Lessee has examined the Hazardous Substance Warranty and Agreement, consisting of six (6) pages, which is attached as Exhibit "B" hereto and which by this reference is incorporated herein as fully set forth herein, and acknowledges full understanding of its obligations under said Hazardous Substances Warranty and Agreement.

19. **TAXES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all license and excise fees and occupation taxes covering the business conducted on the premises, and all taxes on property of Lessee on the leased premises and any taxes on the leased premises or leasehold interest created by this Lease Agreement.
20. **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:** Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Lessee also agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations. Lessee further agrees that all buildings, structures or other improvements, approved by the Port, will be properly permitted by Jefferson County. Any fees for any inspection of the premises during or for the lease term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.
21. **ASSIGNMENT OR SUBLEASE:** Lessee shall not assign or transfer this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, otherwise, without the written consent of the Port first had and obtained. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this Lease more than one-half (1/2) of the outstanding shares of any class of stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, such change in the ownership of the stock of the Lessee shall be deemed an assignment of this Lease within the meaning of this paragraph. If the Port shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent. The Port's consent will not unreasonably be withheld.
22. **DEFAULTS:** Time is of the essence of this Lease Agreement, and in the event of the failure of Lessee to pay the rentals or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein set forth to be kept and performed, the Port may elect to terminate this Lease and reenter and take possession of the premises with or without process of law, PROVIDED, however, that Lessee shall be given fifteen (15) days' notice in writing stating the nature of the default in order to permit such default to be remedied by Lessee within said fifteen (15) day period. If upon such reentry there remains any personal property of Lessee or of any other person upon the leased premises, the Port may, but without the obligation so to do, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Lessee shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from

Lessee to the Port, and the balance, if any, shall be paid to Lessee. Notwithstanding any such reentry, the liability of Lessee for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee shall make good to the Port any deficiency arising from a re-letting of the leased premises at a lesser rental than that hereinbefore agreed upon. Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Port. Any failure by the owners, officers, or principals of Lessee to pay rentals, storage fees, moorage or any other charges owed to the Port under separate contract shall constitute default under provisions of this Lease Agreement.

23. **TERMINATION BY PORT:** In the event that the Port, at its sole discretion, shall require the use of the premises for any purpose for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to the Lessee sixty (60) or more days before the termination date specified in the notice. The Lessee and the Port's Executive Director will agree to appropriate compensation to be provided Lessee for loss of use, cost of relocation, and/or cost of improvements. 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.
24. **TERMINATION FOR GOVERNMENT USE:** In the event that the United States Government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the premises or any part thereof, the Port may, at its option, terminate this Lease as of the date of such taking, and, if Lessee is not in default under any of the provisions of this Lease on said date, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.
25. **TERMINATION BECAUSE OF COURT DECREE:** In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.
26. **SIGNS:** No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted or within the leased premises, including the windows and doors thereof, without the approval of the Executive Director of the Port first had and obtained. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the premises, and correct any unsightly condition, caused by the maintenance and removal of said signs, etc.

27. **INSOLVENCY:** If Lessee shall file a petition in bankruptcy, or if Lessee shall be adjudged bankrupt or insolvent by any court, or if a receiver of the property of Lessee shall be appointed in any proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on Lessee's interest in the premises or on any personal property kept or maintained on the premises by Lessee, the Port may at its option, terminate this Lease.
28. **WAIVER:** The acceptance of rental by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. No waiver by the Port of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been cured by Lessee, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of Paragraph 22 hereof.
29. **PROMOTION OF PORT COMMERCE:** Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Lessee further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Lessee.
30. **SURRENDER OF PREMISES - ATTORNEYS' FEES:** At the expiration or sooner termination of this Lease, Lessee shall promptly remove building from leased property or re-negotiate a lease at the same or different site at the Port. In the event that the Port shall be required to bring any action to enforce any of the provisions of this Lease, or shall be required to defend any action brought by Lessee with respect to this Lease, and if the Port shall be successful in such action, Lessee shall, in addition to all other payments required herein, pay all of the Port's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.
31. **HOLDING OVER:** Any holding over by the Lessee after the expiration of this Lease shall be construed as a tenancy at sufferance (unless such occupancy is with the written consent of the Port) in which event the Lessee will be a tenant from month to month, upon the same terms and conditions of this Lease, except at a rent for such holdover period of 125% of the rental rate in effect for the month preceding such holdover. Acceptance by the Port of rent after such termination shall not constitute a renewal.
32. **ADVANCES BY PORT FOR LESSEE:** If Lessee shall fail to do anything required to be done by it under the terms of this Lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Lessee, and upon notification to Lessee of the cost thereof to the Port, Lessee shall promptly pay the Port the amount of that cost.

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

To Lessor:

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

To Lessee:

REVISION MARINE
301 – 10th Street
Port Townsend, WA 98368
Phone: (360) _____

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

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

the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

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

- 40. NON-DISCRIMINATION EMPLOYMENT:** The Lessee covenants and agrees that in all matters pertaining to the performance of this Lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and non-discriminatory treatment of all persons without respect to race, creed or national origin and, in particular:
- a. Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities, and
 - b. Lessee will comply strictly with all requirements of applicable federal, state or local laws or regulations issued pursuant thereto relating to the establishment of non-discriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, creed, color, sex, sexual orientation, or national origin.
- 41. EASEMENTS:** The Parties recognize that the Port facilities are continuously being modified to improve the utilities and services used and provided by the Port. The Port or its agents shall have the right to enter the demised premises of the Lessee, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, and all other services required by the Port for its use. The Port is hereby granted a continuous easement or easements that the Port believes is necessary within the lease premises of the Lessee, without any additional cost to the Port for the purposes expressed hereinabove; PROVIDED however, that the Port by virtue of such use does not permanently deprive the Lessee from its beneficial use or occupancy of its leased area.

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

Lease Agreement dated this ____ day of December 2019 as approved by the Port of Port Townsend Port Commission, on the ____ day of December 2019 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN THE PARTIES AND CONTAINS A LIMITED WAIVER OF IMMUNITY UNDER TITLE 51 RCW, AN INDEMNIFICATION AND A RELEASE.

LESSEE

Christopher Brignoli, Co-Owner

Matt Mortensen, Co-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 Christopher Brignoli signed this instrument and that he is authorized to execute the instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

Signature of
Notary Public: _____

My Appointment Expires: _____

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

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

Dated: _____

Signature of
Notary Public: _____

My Appointment Expires: _____

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

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

Dated: _____

Signature of
Notary Public: _____

My Appointment Expires: _____

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 11, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. D) 2020 Rate Correction
STAFF LEAD	Name, Title
REQUESTED	<input checked="" type="checkbox"/> Information <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
ATTACHMENTS	<ol style="list-style-type: none">1. Informational Memo2. Rate Corrections

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/11/2019
TO: Port Commission
FROM: Abigail Berg, Director of Finance & Administration
SUBJECT: 2020 Rate Correction

BACKGROUND

During the November 26, 2019 Port Commission meeting, the proposed 2020 rates port-wide were discussed and approved. Prior to printing the rate cards, a typo was discovered for Limited Access Moorage at Point Hudson. The 2020 rate was listed as \$7.54 per foot/month and it should be \$7.84 per foot/month. There were three (3) other minor corrections found at that time, too. See attached.

DISCUSSION

FISCAL IMPACT

RECOMMENDATION

Staff recommends the Commission approve the corrected rate and other minor edits.

Rate adjustments and other ministerial corrections for 2020 Rates.

2020 Rate Schedule	
POINT HUDSON	

<u>YEAR-ROUND NIGHTLY MOORAGE</u>	<u>Original</u>	<u>Corrected</u>	
<u>LIMITED ACCESS MOORAGE</u>	\$ 7.54 ft/mo*	\$ 7.84 ft/mo*	Rate typo
<u>UNDESIRABLE MOORAGE</u>	\$ 6.38	\$ 6.38 ft/mo*	missing "ft/mo*"
Live-aboard Fee	\$ 80.15 /month	\$ 80.15 /month*	missing "**"
<u>DORY ON DOCK</u>	\$ 64.00 /month	\$ 64.00 /month*	missing "**"

HERB BECK MARINA QUILCENE

	<u>Added</u>
Trailer Vessel <i>(storage only)</i> (min. 1 week charge will be pro-rated)	\$ 6.70 ft/mo*

Note: Single asterisk indicates that 12.84% WA State Leasehold Excise Tax will be assessed for stays of 30 days or more.

PORT OF PORT TOWNSEND

AGENDA COVER SHEET

MEETING DATE	December 11, 2019
AGENDA ITEM	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
AGENDA TITLE	VII. E) Co-op Property Acquisition & Lease Amendments
STAFF LEAD	Jim Pivarnik, Executive Director
REQUESTED	<input type="checkbox"/> Information <input type="checkbox"/> Motion <input type="checkbox"/> Action <input checked="" type="checkbox"/> Discussion, Direction
ATTACHMENTS	

To be presented.

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/11/2019
TO: Port Commission
FROM: Jim Pivarnik, Executive Director
SUBJECT: Shipwrights Co-op property acquisition & lease amendments

BACKGROUND:

The Shipwrights Co-op has been operating in and around the Port for the last 30 years. As you are aware, they presently have two leasehold properties within our yard. One of these properties is in the boatyard and one, the former Townsend Bay property is in the shipyard. Over the years the company's focus has changed a bit to working on larger boats and much of their operation is now at the far end of the yard. Staff has been working with the Co-op to provide additional space in the shipyard for their exclusive use.

This agenda item works to allow an expansion of a land lease in the shipyard of 18,000 ft² adjacent to their existing leasehold through an amendment of their current lease. (see attached survey). It also defines the allowable uses on the property and provides for the current deposit requirements to increase as per the new lease policy.

This agenda item also provides early termination of their former leasehold which allows for a reversionary clause to deed all improvements that they have made over the years to the Port.

DISCUSSION:

Supporting the marine trades and protecting Port assets and income were paramount in working this particular arrangement. It is obvious that the Co-op needs additional space in the yard but it is also important that we protect our income stream for renting shipyard spaces. The proposed agreement allows for expansion in lease area and provides the Port a cash positive position with regards to building and yard income.

RECOMMENDATION:

Authorize the Executive Director to execute a lease amendment with the Port Townsend Shipwrights Co-op lease for an additional 18,000 ft² (per attached survey).

Authorize Executive Director to prepare all documents (quit-claim deed, etc.) and execute early termination of original Co-op leasehold.

ATTACHMENTS

Lease termination document for former leasehold
Lease amendment to existing lease
Term sheet

PORT OF PORT TOWNSEND:
Port Townsend Shipwrights, Inc.
Proposed Lease Amendment #1 – Key Terms
(December 9, 2019)

- 1. TENANT:** Port Townsend Shipwrights, Incorporated
- 2. PROPOSED EXPANSION TO PREMISES:** The current premises, located at 919 Haines Place, encompass approximately 75,910 square feet (ft²) of land area generally situated at the northwest corner of Boat Haven, immediately south of the long-term storage yard. The proposed amendment would increase the leasehold by approximately **18,000 ft²** (i.e., a 90' x 200') extending westward along the south fence line of the long-term storage yard. Thus, the amendment would increase the overall square footage of the premises from 75,910 to **93,910 ft²**.
- 3. TERM TO REMAIN UNCHANGED:** The lease term will remain unchanged: 35 years, ending on July 31, 2050.
- 4. PROPOSED INCREASE IN RENT:** Proposed rent would increase as follows:
 - a. From January 1, 2020, to July 31, 2020, the rent would increase from \$4,558.15 plus LHT per month to **\$5,638.15** plus LHT per month (i.e., rent for the expanded premises to be calculated at \$0.06 per ft² x 18,000 ft²); and
 - b. Beginning on August 1, 2020, the rent would increase from \$5,638.15 plus LHT per month to **\$5,929.35** plus LHT.Rent adjusted to CPI-U beginning in year 7 (August 1, 2022) and each year thereafter, consistent with the current lease. Additionally, market rate adjustment (base rate) would also be adjusted beginning in year 15 (August 1, 2030), consistent with the current lease.
- 5. PROPOSED AMENDMENT TO USE OF PREMISES:** Marine vessel repair, refitting, construction, and retail sales of marine supplies and equipment. In addition to the foregoing (which is set forth within the current lease), the following restrictions would apply to the proposed leasehold expansion area to ensure that its use does not result in Lessee being in direct competition with the Port for use of yard space:
 - a. The principal use of the area would be restricted to work on vessels requiring use of the 300-ton lift;
 - b. Smaller vessels could also be worked on in the expansion area, but such use would be restricted;
 - c. Lessee would not solicit clients for the purpose of vessel storage in the expansion area;
 - d. Expansion area could be used for materials and equipment laydown.
- 7. INCREASE IN SECURITY DEPOSIT:** Three (3) month's security + LHT would be required, rather than the two (2) months without LHT that was required under the Original Lease. Thus, the deposit amount would increase from \$7,140.00 to **\$12,085.16**. Because Lessee already has a deposit of \$7,140.00 on file with the Port, an additional **\$4,945.16** would be required prior to execution of Lease Amendment #1.

All other terms and conditions of the Original Lease would remain unchanged.

Review of COOP 4 Space Proposal

Proposal: The COOP proposes the Port provide them with 4 Shipyard spaces on the back-side through the end of their current term lease ending July 31, 2050. The COOP would pay the Port \$12,960/year for these spaces, payment for any additional vessel length over 90 feet during this timeframe and blocking fees. In exchange, the COOP would be released from their leasehold at 3109 Jefferson St., including the three (3) buildings currently on it, and the covered pad across the street. The buildings located on the current COOP leasehold at 3109 Jefferson Street have been appraised at fair market value (FMV) of \$655,000 (per Clarke, White & Veenstra).

IF THE PORT DOES NOT TAKE THE DEAL

			projected Port revenue through 2050		
<u>4 Space historical average w/50% occupancy</u>					
2014-mid year 2019 (5.5 years)	\$	46,026	\$	1,426,812	
2016-mid-year 2019	\$	54,905	\$	1,702,059	

	end date	years remaining	mo pmt	annual	thru term
COOP lease - 919 Haines Place	7/31/2050	31	\$ 4,286	\$ 51,429	\$ 1,594,314
COOP lease - 3109 Jefferson St.	7/31/2034	15	\$ 2,093	\$ 25,118	\$ 376,776
TOTAL PROJECTED REVENUES (based on 5.5 yr historical)				\$	3,397,902
TOTAL PROJECTED REVENUES (based on 3.5 yr historical)				\$	3,673,149

IF THE PORT DOES TAKE THE DEAL

	end date	years remaining	mo pmt	annual	thru term
COOP lease - 919 Haines Place	7/31/2050	31	\$ 4,286	\$ 51,429	\$ 1,594,314

		mo rate	annual	thru term (7/2034)
<u>ROM of three (3) buildings' leaseable rate:</u>				
4,800 sf bldg - metal (currently housing Craftsmen United)		\$ 4,500	\$ 54,000	\$ 810,000
1,152 sf bldg - wooden		\$ 638	\$ 7,656	\$ 114,840
Bandsaw building		\$ 809	\$ 9,708	\$ 145,620
3,036 sf covered cement pad		\$ 1,500	\$ 18,000	\$ 270,000
6 boat yard spaces on 3901 Jefferson St. (50% occupancy)		\$ 3,700	\$ 44,400	\$ 666,000
Reduction for loss of leasehold revenue		\$ (2,093)	\$ (25,118)	\$ (376,776)
			\$ 108,646	\$ 1,629,684

	mo rate	annual	thru term (7/2050)
COOP proposed lease pmt for four (4) spaces	\$ 1,080	\$ 12,960	\$ 401,760
COOP estimated blocking to be paid to Port		\$ 4,608	\$ 142,848
		\$ 17,568	\$ 544,608
TOTAL PROJECTED REVENUES		\$	3,768,606
TOTAL PROJECTED REVENUES		\$	5,506,935 (a)

(a) Assuming the 3 buildings, pad and boat spaces would continue to be leased and rented through 2050.

Variables to consider:

1. These are straight projections, no CPI or estimated market rate adjustments or rate increases are factored.
2. There are no estimates for O&M (operations and maintenance) on the newly acquired buildings or covered pad.
3. Currently, there is only one tenant in the three (3) buildings - Craftsman United. Here we assume the Port can get a long term lease with them, in addition to acquiring new tenants for the other buildings and covered pad.