



P.O. Box 1180 • Port Townsend, Washington 98368-4624

Administration: (360) 385-0656

Operations: (360) 385-2355

Fax: (360) 385-3988

**Port of Port Townsend
1st Monthly (Special) Meeting Agenda
Monday, May 9, 2016, 1:00 PM
Port Commission Building
333 Benedict Street, Port Townsend, WA**

- I. Call to Order / Pledge of Allegiance
- II. Approval of Agenda
- III. Consent Agenda
 - A. Approval of Meeting Minutes – April 27, 2016.....1
 - Approval of Special Meeting Minutes – April 28, 2016.....2
 - Approval of Special Meeting Minutes – April 29, 2016.....3
 - Approval of Special Meeting Minutes – May 2, 2016.....4-6
 - B. Operations Reports – April 2016.....7-9
 - C. Approval of Warrants
- IV. Public Comments (not related to Agenda)
- V. Second Reading
 - A. Commission Code of Conduct.....10-12
 - B. Fine Yacht Interiors Lease.....13-33
 - C. Port Townsend Brewing Co. Lease.....34-48
- VI. First Reading
- VII. Potential Immediate Action Items
 - A. Executive Director Selection.....49
- VIII. Other Business
 - A. Boatyard Stormwater Feasibility RFQ Update.....50
- IX. Staff Comments
- X. Public Comments
- XI. Commissioner Comments
- XII. **Next Meeting: Wednesday, May 25, 2016 at 5:30 PM, Port Commission Building,
333 Benedict Street, Port Townsend, WA**
- XIII. Executive Session (if called):
- XIV. Adjournment

**PORT COMMISSION SPECIAL MEETING EXECUTIVE SESSION ONLY- Thursday,
April 28, 2016**

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

Present: Commissioners – Hanke, Tucker & Clinefelter
Auditor - Berg
Minutes – Berg/Nelson
Attorney – Goodstein

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Hanke called the special meeting, executive session to order at 8:30 AM.

II. EXECUTIVE SESSION:

To discuss Personnel – Qualifications of an Applicant for Public Employment, pursuant to RCW 42.30.110 (g).

Interview #1: 8:30 AM

Interview #2: 10:30 AM

III. NEXT SPECIAL MEETINGS/PUBLIC WORKSHOP:

Special Meeting – Executive Session only, to discuss Personnel – Qualifications of an Applicant for Public Employment, pursuant to RCW 42.30.110 (g), Friday, April 29, 2016 at 8:30 AM in the Commission Building, 333 Benedict Street, Port Townsend, WA.

V. ADJOURNMENT:

The Special Meeting Executive Session adjourned at 11:59 AM with no further business to come before the commission.

ATTEST:

Peter W. Hanke, President

Brad A. Clinefelter, Secretary

Stephen R. Tucker, Vice President

**PORT COMMISSION SPECIAL MEETING EXECUTIVE SESSION ONLY- Friday,
April 29, 2016**

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

Present: Commissioners – Hanke, Tucker & Clinefelter
Auditor - Berg
Minutes – Berg/Nelson
Attorney – Lake

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Hanke called the special meeting, executive session to order at 8:30 AM.

II. EXECUTIVE SESSION:

To discuss Personnel – Qualifications of an Applicant for Public Employment, pursuant to RCW 42.30.110 (g).

Interview #3: 8:30 AM

Interview #4: 10:30 AM

III. NEXT SPECIAL MEETINGS/PUBLIC WORKSHOP:

Special Meeting – including an Executive Session only, to discuss Personnel – Qualifications of an Applicant for Public Employment, pursuant to RCW 42.30.110 (g), Monday, May 2, 2016 at 9:30 AM in the Commission Building, 333 Benedict Street, Port Townsend, WA.

V. ADJOURNMENT:

The Special Meeting Executive Session adjourned at 12:55 PM with no further business to come before the commission.

ATTEST:

Peter W. Hanke, President

Brad A. Clinefelter, Secretary

Stephen R. Tucker, Vice President

PORT COMMISSION SPECIAL MEETING– Monday, May 2, 2016

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

Present: Commissioners – Hanke, Tucker & Clinefelter
Executive Director – Crockett
Auditor - Berg
Minutes – Berg/Nelson
Attorney – Lake

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Hanke called the special meeting to order at 9:30 AM.

Ms. Berg explained the May 6, 2016 candidate forum process and discussed the time allowance with two vs. three candidates.

Executive session, duration of ten minutes with possible action.

II. RECESS TO EXECUTIVE SESSION:

The regular session recessed into Executive Session at 9:33 AM to discuss Personnel – Qualifications of an Applicant for Public Employment, pursuant to RCW 42.30.110 (g).

At 9:44 AM the session was extended five minutes.

III. RECONVENING OF REGULAR SESSION:

The regular meeting reconvened at 9:49 AM.

Commissioner Tucker moved to bring Sam Gibboney, Josh Peters and Greg Englin to the May 6, 2016 Executive Director Candidate Public Forum.

Commissioner Clinefelter seconded the motion.

Motion carried by unanimous vote.

IV. NEXT SPECIAL MEETINGS/PUBLIC WORKSHOP:

Special Meeting – Executive Director Candidate Forum, with possible Executive Session on Friday, May 6, 2016 at 9:00 AM, in the Commission Building, 333 Benedict Street, Port Townsend, WA.

Special Public Workshop Monday, May 9, 2016 at 9:30 AM, Special Commission Meeting, with possible Executive Session at 1:00 PM in the Commission Building.

V. ADJOURNMENT:

The Special Meeting adjourned at 9:49 AM with no further business to come before the commission.

ATTEST:

Peter W. Hanke, President

Brad A. Clinefelter, Secretary

Stephen R. Tucker, Vice President

PORT COMMISSION MEETING– April 27, 2016

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

Present: Commissioners – Tucker, Clinefelter and Hanke
Executive Director – Crockett
Auditor – Berg
Planning Analyst – Toews
Attorney – Lake
Minutes – Nelson

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Hanke called the meeting to order at 5:30 PM.

II. APPROVAL OF AGENDA:

Mr. Crockett pointed out that in the Executive Session there are three separate items for discussion only, no action, and total duration of one hour.

Commissioner Tucker moved to approve the Agenda as presented.

Commissioner Clinefelter seconded the motion.

Motion carried by unanimous vote.

III. CONSENT AGENDA (1:22):

- A. Approval of Special Public Workshop Minutes – April 11, 2016
Approval of Special Meeting Minutes – April 11, 2016
Approval of Special Meeting Minutes – April 21, 2016
- B. Resolution No. 645-16 – Modifying the Amount of the Auditor’s Revolving Fund
- C. Approval of Warrants
Warrant #056046 through #056055 in the amount of \$14,869.07 for Payroll & Benefits
Electronic Payment in the amount of \$57,993.22 for Payroll & Benefits
Warrant #056056 through #056092 in the amount of \$212,197.91 for Accounts Payable
Electronic Debit in the amount of \$8,100.31 for WA State Dept. of Revenue Combined
Excise Tax Return for March 2016

Commissioner Tucker moved to approve the Consent Agenda as presented.

Commissioner Clinefelter seconded the motion.

Motion carried by unanimous vote.

IV. PUBLIC COMMENTS (Not related to agenda):

None

V. SECOND READING (Action Items):

VI. FIRST READING (Discussion Only):

A. Fine Yacht Interiors Lease (1:44):

Mr. Toews explained Gwendolyn Tracy’s prior lease was one of the old Sperry leases. He explained the term for the new lease is three years with three three-year options and two additional storage units are included in her lease. He informed that a Hazardous Substance Agreement is not included in the lease, as it does not pertain to her business. Mr. Toews also discussed Ms. Tracy sublets to two tenants.

Commissioner Tucker asked if her tenant work with hazardous substances and if they do, that agreement should be a part of her lease. Mr. Toews will check on this and bring any changes/additions to the next meeting.

B. Port Townsend Brewing Company Lease (8:28):

Mr. Toews reported this lease is also a standard Port lease, and a Hazardous Substance Agreement does not pertain. He discussed the four distinct areas written into the lease.

Commissioner Tucker stated when tenants use parking spaces for sitting areas they are taking those spaces away from cars. He believes tenants should pay for these spaces if they are using them in this matter.

Commissioner Hanke asked a question on tenant’s insurance requirements for liability coverage and why every business, no matter their size or risk, is required to carry the same amount.

Mr. Crockett added that \$1M in coverage is pretty much standard in the Port industry. He added that last year, Ports were discussing the possibility of increasing the liability amount to \$2M.

VII. POTENTIAL IMMEDIATE ACTION ITEMS):

A. Organizational Chart (20:07):

Mr. Crockett stated that with Mr. Pivarnik's departure and his own upcoming retirement, he recommends approving the revised Org Chart. He reminded the commission approves the Org Chart and he approves the job descriptions and salaries. He pointed out the two big changes: One, the Deputy Director position is gone; and two, Mr. Toews part-time position, effective May 1, 2016, would become full-time and his new title would be Director of Planning, Properties and Environmental. He explained the yard, moorage and maintenance departments would now report to the Executive Director (ED) and Mr. Cairns would now report to Mr. Toews. Mr. Crockett added that the new ED could reorganize as she/he would like.

Commissioner Tucker moved to approve to take Immediate Action on this item.

Commissioner Clinefelter seconded the motion.

Motion carried by unanimous vote.

Commissioner Hanke moved to adopt the revised Organizational Chart.

Commissioner Clinefelter seconded the motion.

Motion carried by unanimous vote.

VIII. OTHER BUSINESS:

A. Boat Yard Permit Update (23:18):

Mr. Crockett explained he attended the Department of Ecology's Public Hearing on the Draft Permit last Wednesday. He discussed the hearing and briefed the commission on verbal comments he provided on the Draft. Mr. Crockett reported Friday is the due date for written comments and he will memorialize his in a letter to DOE, along with words of support for the Northwest Marine Trades Association and WA Public Ports Association.

B. Point Hudson Breakwater (28:49):

Mr. Crockett discussed Coast & Harbor's Scope of Work for the "band aid fix" as directed by the commission. He stated the cost of deliverables in the Scope would be \$11,800. He explained the change could cause additional permitting, and, Mr. Toews will check with RCO to see if a change in the project would jeopardize the \$1.1M in RCO grant money awarded to the Port. Mr. Toews will bring that information back to the next commission meeting. Options for repairs to the breakwater were discussed.

Commissioner Clinefelter stated he feels strongly about checking into the repair option, unless it does jeopardize the RCO grant money.

All commissioners were comfortable with the Executive Director signing the Scope of Work.

VIII. STAFF COMMENTS (38:51):

Ms. Berg explained the reason for Resolution No 645-16. Accounting is adding cash drawers for each customer service agent, which would hold each agent responsible for their own drawer, therefore needing to increase the Auditor's Revolving Fund. Discussion followed regarding workplace violence training.

Mr. Toews provided an update on the Boat Yard Feasibility Study. He explained staff is interviewing four firms Friday and next Monday, and hopes to have a firm selected prior to the next commission meeting.

Mr. Crockett reported he would miss Thursday's NODC meeting, as he is meeting with one of the Executive Director candidates.

IX. PUBLIC COMMENTS (44:02):

Carol Tabler commented on Boat Yard Permit compliance, options for DIYs (Do It Yourselfers) who work on their own boats, and suggested full encapsulation of boat projects.

X. COMMISSIONER COMMENTS (48:36):

Commissioner Clinefelter asked what was being done about the difficulties at the heavy haulout wash down and the problem of water flowing into the gravel.

Mr. Crockett explained staff is working on a team approach now, rather than having only one person do the monitoring of wash downs. Mr. Toews added staff is looking for collective input and they plan on meeting weekly or so.

Commissioner Clinefelter asked what temporary measures were in place now to alleviate this.

Mr. Toews answered a windscreen has been set up with a rope around the wash down pad, helping to direct the flow into the sump and not into the gravel.

XI. NEXT MEETINGS/PUBLIC WORKSHOP:

Below is a list of upcoming Special Commission Meetings, pursuant to RCW 42.30.110

(g)-Evaluating Qualifications of Applicants for Public Employment:

Thursday, April 28, 2016, 8:30 AM – 12:30 PM, Executive Session only

Friday, April 29, 2016, 8:30 AM – 12:30 PM, Executive Session only

Monday, May 2, 2016, 9:30 AM, Special Meeting

Monday, May 9, 2016, 9:30 AM Public Workshop and 1:00 PM Special Meeting

All the above meetings will be held in the Port Commission Building, 333 Benedict St, Port Townsend.

Mr. Crockett added tentatively, a Public Forum on the Executive Director finalists is scheduled for Friday, May 6, 2016 from 9:00 AM – Noon. This would include a panel of interviewers and 2 to 3 candidates. (More to come early next week.) He stated we hope to have a selection by the May 9, 2016 commission meeting.

XII. EXECUTIVE SESSION:

The regular session recessed into Executive Session at 6:28 PM, duration one hour with no action.

A. Litigation, pursuant to RCW 42.30.110 (i)

B. Real Estate, pursuant to RCW 42.30.110 (c)

C. Evaluate the qualifications of applicants for public employment, pursuant to RCW 42.30.110 (g).

At 7:28 PM, Ms. Nelson notified any public waiting outside the session was extended another ten minutes.

XIII. RECONVENING AND ADJOURNMENT OF REGULAR MEETING:

The meeting reconvened and adjourned at 7:39 PM there being no further business to come before the Commission.

ATTEST:

Brad A. Clinefelter, Secretary

Peter W. Hanke, President

Stephen R. Tucker, Vice President

BOATHAVEN OPERATIONS REPORT/MOORAGE

MONTH: APRIL 2016

DATE: 5/5/2016

MONTHLY PERMS: 355

MONTHLY GUESTS: 28

# OF SLIPS BY SIZE	OCCUPIED	empty	% occ.
25' 34	32	2	94%
27' 11	10	1	91%
30' 105	103	2	98%
35' 24	24	0	100%
40' 44	43	1	98%
45' 41	40	1	98%
50' 32	31	1	97%
OVER 52' 7	7	0	100%
TOTAL: 298	290	8	AVG: 97%

LINEAR SPACE/FT	OCCUPIED	% OCCUPIED
LIMITED ACC. 1455	1392	96%
TOTAL: 3806	3626	AVG: 98%

	CURR	PREV MO	YTD
NIGHTLY GUESTS:	261	196	808
CREDIT SYSTEM:	25	25	97
TEMP TIE UP:	16	0	20
FREE NIGHTS:	0	0	0
PTYC:	12	6	27
RAMP/DAILY:	49	36	161
RAMP/ANNUAL:	44	40	202
RAMP NOT PAID:	3	2	15

WAIT LISTS	
25' PLEA:	22
27' PLEA:	0
30' PLEA:	58
35' PLEA:	43
40' PLEA:	47
45' PLEA:	22
50' PLEA:	22
OVER 52':	9
OVERWID	0
30' COMM.	0
40' COMM.	0
50' COMM:	0

TOTAL OCCUPANCY %: 97%

Port of Port Townsend

POINT HUDSON MARINA & RV PARK

MONTHLY OCCUPANCY REPORT

2016

& 5 YEAR COMPARISON

MARINA NIGHTLY GUEST NIGHTS											
	2012		2013		2014		2015		2016		
	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	
JAN	28	28	58	58	53	53	83	83	70	70	JAN
FEB	96	124	80	138	57	110	104	187	92	162	FEB
MAR	73	197	95	233	77	187	101	288	56	218	MAR
APRIL	240	437	159	392	209	396	163	451	235	453	APRIL
MAY	541	978	605	997	585	981	619	1070	0		MAY
JUNE	749	1727	606	1603	520	1501	537	1807	0		JUNE
JULY	1035	2762	1089	2692	993	2494	1018	2625	0		JULY
AUG	1178	3940	1188	3880	996	3490	1033	3658	0		AUG
SEPT	831	4771	899	4779	778	4268	958	4616	0		SEPT
OCT	175	4946	214	4993	120	4388	221	4837	0		OCT
NOV	86	5032	138	5131	114	4502	73	4910	0		NOV
DEC	65	5097	64	5195	52	4554	60	4970	0		DEC

RV NIGHTLY GUEST NIGHTS											
	2012		2013		2014		2015		2016		
	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	
JAN	176	176	180	180	285	285	304	304	286	286	JAN
FEB	221	397	261	441	150	435	291	595	281	567	FEB
MAR	229	626	359	800	249	684	244	839	392	959	MAR
APRIL	445	1071	209	1009	546	1230	652	1491	634	1593	APRIL
MAY	638	1709	637	1646	706	1936	955	2446	0		MAY
JUNE	645	2354	910	2556	1015	2951	1036	3482	0		JUNE
JULY	1247	3601	1275	3831	1169	4120	1202	4684	0		JULY
AUG	1300	4901	1293	5124	1228	5348	1287	5971	0		AUG
SEPT	1076	5977	1079	6203	1120	6468	1072	7043	0		SEPT
OCT	580	6557	694	6897	796	7264	771	7814	0		OCT
NOV	290	6847	352	7249	432	7696	403	8217	0		NOV
DEC	246	7093	165	7414	269	7965	269	8486	0		DEC

PERMANENT & SEASONAL TENANT SUMMARY				
	AVAIL/GOAL	OCUPIED	%	
LTD ACCESS MOORAGE	40 SLIPS	38 38	95%	
COMMERCIAL MOORAGE	850 FEET	745 745	88%	
SEASONAL MOORAGE	32 SLIPS	23 23	72%	
SEASONAL RV'S	10 SITES	10 10	100%	
UNDESIRABLE	3 SLIPS	1 1	33%	

PORT OF PORT TOWNSEND

MEETING OF: May 9, 2016

AGENDA ITEM: V. Second Reading
A. Commission Code of Conduct

BACKGROUND:

A draft Commission Code of Conduct was discussed at a previous Commission meeting. Staff has not received any suggested changes from the commission. The proposed code is fashioned after others that have been adopted by other Port Commissions.

Executive Director's Recommendation:

Approve the proposed Commission Code of Conduct.

Commission Code of Conduct

With accountability to the citizens of Jefferson County, as Port Commissioners we will conduct ourselves lawfully, with integrity and high ethical standards, also to establish a sustainable model of appropriate behaviors to build public confidence and credibility.

We will conduct the Port's official business with social and fiduciary responsibility that fosters and maintains public trust.

1. To build trust among citizens, fellow Commissioners and to ensure an environment conducive to effective governance, we will:

- a. focus on issues rather than personalities;
- b. exercise honesty in all written and interpersonal interaction, never intentionally misleading or misinforming each other;
- c. respect decisions of the "Commission" and will not undermine those decisions. A Commissioner may express his or her vote on an issue, but underscore that the decision of the "Commission" will move forward;
- d. come prepared to meetings, reading materials in advance, engaging with staff with questions prior to the meetings;
- e. make every reasonable effort to protect the integrity, and promote the positive image, of the Port and one another; and
- f. maintain confidentiality appropriate to sensitive issues and information that otherwise may tend to compromise the integrity of legal standing of the Commission and the Port of Port Townsend, especially those matters discussed in executive session,

2. We will not attempt to exercise individual authority over the organization. The Commission has hired an Executive Director to manage all aspects of the organization.

- a. We will not attempt to assume personal responsibility for resolving operational problems or complaints;
- b. We will not personally direct any and all parts of the operational organization;
- c. We will not publicly express individual negative judgments about the staff performance. Any such judgments of the staff performance will be expressed in executive session;
- d. We will refer any requests for access to Port records to the Executive Director; and

e. We will treat Port employees with respect, using appropriate tone and language, when personal interaction (spoken and written) is involved.

3. We will serve the interests of the entire organization. We recognize this responsibility to the whole to be greater than:

a. any loyalty a Commissioner may have as an elected official; or

b. loyalty based upon public perception.

4. Process for Addressing Commissioner Violations. The Commission and each of its Commissioners are committed to faithful compliance with the provisions of the Commission's Code of Conduct. The Commission recognizes that its failure to deal with deliberate or continuing violations of its policies risks the loss of confidence in the Commission's ability to govern effectively. Therefore, in the event of an allegation of a Commissioner's extraordinary, willful and/or continuing violation of the Code of Conduct, the Commission shall investigate the issue and may use the following process:

a. Discussion in executive session between the alleged offending Commissioner and the full Commission per RCW 42.30.0110 (f) and upon request, Legal Counsel;

b. If the Commission determines the alleged violation(s) are well founded, and that circumstances warrant action, the Commission may take appropriate action in public session to include, verbal warning, written warning, letter of censure, and or removal by the Commission from one or more leadership or committee positions to which the offending Commissioner has been appointed; (i.e., removal from President or Vice President standing, removal from representing the Port on various boards and committees).

This Code of Conduct includes compliance with the adopted Commission Ethics Resolution no. ____

Signed by the Port of Port Townsend Commission on this ____ day of _____.

PORT OF PORT TOWNSEND

MEETING OF: May 9, 2016

AGENDA ITEM: V. Second Reading
B. Fine Yacht Interiors Lease

BACKGROUND:

The Commission considered this matter during its regular meeting of 4/27/16 (First Reading). Concerns were raised regarding staff's recommendation to waive the Port's standard Hazardous Substances Warranty and Agreement required for most Boat Haven marine trades leases. Staff indicated that the use of the premises was benign in nature, unlikely to involve hazardous substances, and that therefore, the standard warranty language was unnecessary.

Commissioner Tucker observed that, while the canvas shop use may be unlikely trigger the need for the Hazardous Substances Warranty and Agreement, subtenants of Ms. Tracy using the downstairs space for boat repair, construction and other marine related uses might justify use of the standard warranty language. Staff agreed to research the question further prior to the Commission's second reading of the lease.

On Tuesday, May 3, staff again viewed the premises, including the use occurring in the downstairs wood shop. While the current use appears not to involve hazardous materials, the description of the use of the premises in the lease (see Paragraph 6) is arguably broad enough to permit uses that could involve such materials in future. Following discussion with Ms. Tracy, staff now recommends inclusion of the standard Hazardous Substances Warranty and Agreement. The revised lease incorporates a new paragraph 17 referencing the warranty and agreement (with subsequent sections renumbered accordingly), which is now attached as "Exhibit 'A'".

Executive Director's Recommendation:

Authorize Executive Director to approve the new three (3) year lease, as revised the Hazardous Substances Warranty and Agreement included, with Fine Yacht Interiors/Gwendolyn Tracy.

PORT OF PORT TOWNSEND LAND & BUILDING LEASE

THIS LEASE AGREEMENT made this 1st day of June 2016, 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 Fine Yacht Interiors, Inc., a Washington sole proprietorship, hereinafter referred to as "Lessee,"

WITNESSETH:

That the parties hereto do mutually agree as follows:

1. **LEASED PREMISES:** The Port hereby leases to Lessee, and Lessee hereby hires and leases from the Port, certain real property (hereinafter "the premises") located in Jefferson County, Washington,
 - a. Approximately 2,200 square feet of building space in the Port's building located at 910 Haines Place, Port Townsend, WA 98368; and
 - b. Two (2) storage lockers (lockers #19 and #20) together comprising approximately 80 square feet (i.e., 40 square feet each) situated on the east end of the Port's building located at 910 Haines Place, Port Townsend, WA 98368.hereinafter referred to collectively as "the premises."
2. **TERM:** The term of this Lease is three (3) years, beginning June 1, 2016 and ending at midnight, May 31st, 2019, unless sooner terminated as provided in this Lease. The Lessee shall also have an option to extend the lease term by three (3) additional three (3) year terms. Notification to extend the Lease will be done in writing 90 days prior to end of the initial, or any extended, lease term.
3. **RENT:** Lessee agrees to pay as rental for the leased premises the sum of **One Thousand One Hundred and Sixty-One Dollars and Thirteen Cents (\$1,161.13)** plus all applicable taxes. The rent for each month shall be paid to the Port in advance on or before the first day of each and every month of the lease term, and shall be payable at such place as the Port may hereinafter designate. The rental rate may be adjusted every three (3) years to the prevailing 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 and annually throughout the term of the lease will

PORT OF PT/FINE YACHT INTERIORS
LEASE AGREEMENT

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 either an increase exceeding 4%, or 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 two (2) month's rent plus applicable taxes in the amount of Two Thousand Six Hundred Twenty Dollars and Forty-Four Cents (\$2,620.44) in order to guarantee performance under this Lease. The deposit shall be held by the Port as security for Lessee's faithful performance of all of their obligations under this Lease. However, because the Lessee has an existing deposit of \$1,240.67 with the Port under an agreement now superseded by this Lease, this Paragraph 5 shall be satisfied by Lessee's deposit of an additional **One Thousand Three Hundred Seventy-Nine Dollars and Seventy-Seven Cents (\$1,379.77)** with the Port. This Lease shall not be effective until full deposit of the required amount is made with the Port. The deposit shall be held by the Port as security for Lessee's faithful performance of all of its obligations under this Lease. Any interest earned on amounts deposited shall be retained by the Port. The deposit shall be returned to Lessee upon termination of this Lease, less any charges owing to the Port or expenses incurred by the Port in repairing damage caused by Lessee or restoring the leased premises to the condition required upon termination of this Lease.
6. **USE OF PREMISES:** Lessee shall use the premises as a canvas shop (for the design and manufacture of yacht interiors) and boat repair, construction and other marine related uses, and shall not use them for any other purpose without the prior written consent of the Port. Lessee shall use the entire premises for the conduct of said business continuously during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or for reasons beyond Lessee's reasonable control. Lessee agrees that it will not disturb the Port or any other tenant of the Port's by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the premises.
7. **UTILITIES:** The Port will bill the Lessee \$92.20 per month for the first year of this agreement for water, stormwater, sewer and garbage. This amount will be reviewed on an annual basis for adjustments based on actual charges. Lessee shall be liable for all utility services furnished to the premises, including, but not limited to, light, heat, electricity, gas, and janitorial services.

PORT OF PT/FINE YACHT INTERIORS
LEASE AGREEMENT

8. **ACCEPTANCE OF PREMISES – “AS IS” – NO WARRANTIES:** Lessee has examined the leased premises and accepts them in their present condition. The Port makes no representations or warranties with respect to the condition 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:** At the expiration or sooner termination of this Lease, Lessee shall return the premises to the Port in the same condition in which received (or, if altered by Lessee with the Port's consent, then the premises shall be returned in such altered condition), reasonable wear and tear and damage by fire or unavoidable casualty excepted. Lessee shall, at it's own expense, and at all times:
- a. Keep the premises, and the adjoining roadways and walkways, 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. **DAMAGE, DESTRUCTION OR HAZARDOUS CONDITION:**
- 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.
- c. Should the Port, upon its own initiative and following consultation with a structural engineer, conclude that the condition of all or a portion of the premises constitutes a hazard to the Lessee and its employees, guests and invitees and that the cost of remedying such hazardous condition is prohibitive, which shall within the Port's sole discretion to determine, the Port shall have the option to terminate this Lease on one-hundred and twenty (120) days' notice. In the event that this paragraph shall become applicable, the Port shall immediately advise Lessee upon receipt of written findings from a structural engineer regarding the existence of a hazardous condition and the Port's decision to terminate this Lease. For the period from the time of the engineer's finding of the existence of a hazardous condition to the date of termination of the Lease, the monthly minimum rental shall be abated in the same proportion as the untenable portion of the premises bears to the whole thereof. Lessee shall not be entitled to any damages or compensation for business interruption or loss of revenue for early termination of the Lease under this provision.

- 13. 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.

- 14. 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 14 shall be met prior to occupancy.

- 15. 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 15 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.

16. **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.
17. **HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT:** Lessee has examined the Hazardous Substance Warranty and Agreement, consisting of six (6) pages, which is attached as Exhibit "A" 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.
18. **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.
19. **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 the City of Port Townsend. 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.
20. **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(s), 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's 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.

- 21. 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.
- 22. 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. Lessee and the Port Executive Director will agree compensation to Lessee for loss of use, cost of relocation, and/or cost of improvement.
- 23. 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.

- 24. 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.
- 25. 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.
- 26. 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.
- 27. 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 21 hereof.

- 28. 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.
- 29. SURRENDER OF PREMISES - ATTORNEYS' FEES:** At the expiration or sooner termination of this Lease, Lessee shall promptly vacate the premises or re-negotiate a lease for the premises with 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.
- 30. HOLDING OVER:** If Lessee shall, with the consent of the Port, hold over after the expiration or sooner termination of the term of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to the Port the same rate of rental as set forth herein, unless a different rate shall be agreed upon, and shall be bound by all of the additional provisions of this Lease Agreement in so far as they may be pertinent.
- 31. 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.
- 32. 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.
- 33. 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:
Gwendolyn Tracy
Fine Yacht Interiors
P.O. Box 1191
Port Townsend, WA 98368

or to such other respective addresses as the parties 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.

34. **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.
35. **"LESSEES" INCLUDES LESSEE, ETC.:** It is understood and agreed that for convenience the word "Lessees" and verbs and pronouns in the plural 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 Lessees or Lessee under this Lease Agreement.
36. **CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
37. **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.
38. **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.

PORT OF PT/FINE YACHT INTERIORS
LEASE AGREEMENT

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.

- 39. 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.
- 40. 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 their 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 1st day of June 2016 is hereby approved by the Port of Port Townsend, on this 9th day of May 2016 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

LESSEE

Gwendolyn Tracy, Proprietor
Fine Yacht Interiors

ATTEST:

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Larry Crockett, Executive Director

Port Attorney

PORT OF PT/FINE YACHT INTERIORS
LEASE AGREEMENT

STATE OF WASHINGTON

COUNTY OF JEFFERSON

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

Dated: _____

Signature of
Notary Public: _____

My Appointment Expires: _____

EXHIBIT "A"

HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT

RIDER TO LEASE AGREEMENT DATED: June 1, 2016, BETWEEN THE PORT OF PORT TOWNSEND (the "Port") and FINE YACHT INTERIORS ("Lessee").

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

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

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

shall provide to the Port a copy of each such existing permit, license, and identification number before occupancy, and shall provide a copy of any such permit, license, and identification number which Lessee may obtain in the future within seven (7) days of receipt by Lessee.

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

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

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

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

9. **NOTIFICATION TO PORT OF CHANGES IN OPERATION.** Lessee agrees to notify the Port in writing at least seven (7) days in advance of any previously undisclosed action which the Lessee plans to take which poses a material risk of a release of hazardous substance into the environment, including but not limited to material changes in Lessee's methods of hazardous waste disposal, material increases in the volume of Lessee's hazardous waste disposal, or material changes in the nature of any hazardous wastes which Lessee anticipates it will generate.
10. **COPIES OF ENVIRONMENTAL CORRESPONDENCE.** Lessee agrees to provide the Port with copies of all past and future correspondence to or from the Washington Department of Ecology, the U.S. Environmental Protection Agency, and any other government agency which has had or may have contact with Lessee regarding environmental concerns pertaining to the premises.
11. **NOTIFICATION OF SPILLS OR RELEASES.** Lessee shall comply with all notification requirements under the applicable federal, state and local environmental statutes and regulations, including but not limited to the timely notification of the appropriate government authorities of any spills or releases of toxic or hazardous substances into the environment or onto the premises. Lessee shall notify the Port within 24 hours of discovery of any such spills or releases, and shall provide copies of all correspondence and documents related to such spills or releases to the Port with seven (7) days after receipt or creation, as the case may be.
12. **PORT'S REMEDY FOR BREACH OR VIOLATION.** In the event Lessee permits a release of a hazardous substance to occur at or near the premises, or breaches any provision of this Rider, the Port shall be entitled (1) to terminate the Lease Agreement immediately, (2) to require Lessee to cease all operation which pose a risk of releasing a hazardous substance into the environment, and (3) to require Lessee to begin an immediate cleanup of any and all contamination at the premises to the extent necessary to achieve full compliance with the applicable environmental laws and regulations. The Port shall be entitled to obtain immediate injunctive relief from a court of competent jurisdiction to enforce this provision. These remedies shall be in addition to, and not in substitution for, any other remedies available to the Port under applicable law.
13. **ANNUAL DECLARATION OF COMPLIANCE.** Within ten (10) days of receipt of a written request by the Port, Lessee shall provide to the Port a declaration of Lessee's compliance or non-compliance with the applicable environmental laws and regulations and with the provisions of this Rider, in the form set forth in

Attachment No. 2. The Port anticipates that it will request such a declaration annually, approximately on the anniversary date of this Rider.

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

15. **DESIGNATED REPRESENTATIVE RESPONSIBLE FOR COMPLIANCE.** Gwendolyn Tracy, whose work telephone number is 360-379-0661 and whose home telephone number is 360-316-9584 shall be the Lessee's designated representative who shall be primarily responsible (1) for Lessee's compliance with the provision of this Rider, (2) for handling contact with the Port pertaining to environmental compliance, and (3) for signing on behalf of Lessee the annual declaration of compliance pursuant to Paragraph 12 above. Lessee shall promptly notify the Port of any changes in the identity or telephone numbers of the designated representative.

16. **ADDITIONAL PROVISIONS.**

PORT/LESSOR:

LESSEE:

Larry Crockett

Gwendolyn Tracy, Fine Yacht Interiors

Title: Executive Director

Title: _____

Date: _____

Date: _____

(Attachment No. 1 to Hazardous Substances Rider)

DISCLOSURE BY LESSEE

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

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

Lessee: Fine Yacht Interiors

By: _____
Gwendolyn Tracy, Fine Yacht Interiors

Title: _____

Date: _____

(Attachment No. 2 to Hazardous Substances Rider)

DECLARATION OF COMPLIANCE

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

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

Lessee: Fine Yacht Interiors

By: _____
Gwendolyn Tracy

Title: _____

Date: _____

PORT OF PORT TOWNSEND

MEETING OF: May 9, 2016

AGENDA ITEM: V. Second Reading
C. Port Townsend Brewing Company Lease

BACKGROUND:

This lease was brought to the commission at the April 27, 2016 meeting for a "First Reading". No changes have been made to the lease since that meeting.

Executive Director's Recommendation:

Authorize Executive Director to approve the new five (5) year lease with the Port Townsend Brewing Company, Inc.

PORT OF PORT TOWNSEND LAND & BUILDING LEASE

THIS LEASE AGREEMENT made this 1st day of May 2016, 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 the Port Townsend Brewing Company, Inc. a Washington for profit corporation, hereinafter referred to as "Lessee,"

WITNESSETH:

That the parties hereto do mutually agree as follows:

1. **LEASED PREMISES:** The Port hereby leases to Lessee, and Lessee hereby hires and leases from the Port, certain real property (hereinafter "the premises") located in Jefferson County, Washington, depicted upon Exhibit "A" which is attached hereto and incorporated herein by this reference, and which is more particularly described as follows:
 - a. Approximately 2,360 square feet of fenced yard area used as an outdoor "beer garden" situated immediately adjacent and to the west of 330 10th Street, Port Townsend, WA 98368;
 - b. Approximately 225 square feet of fenced yard area, formerly a portion of the Port Townsend Lumber Yard, situated immediately adjacent and to the west of both the above described "beer garden" and 330 10th Street, Port Townsend, WA 98368;
 - c. Approximately 1,000 square feet of floor space in Lessor's building located at 325 A & B 10th Street, Port Townsend, WA 98368; and
 - d. Approximately 3,000 square feet of floor space in Lessor's building located at 330 10th Street, Port Townsend, WA 98368, hereinafter referred to collectively as "the premises."

2. **TERM:** The term of this Lease is five (5) years, beginning May 1, 2016 and ending at midnight, April 30th, 2021, unless sooner terminated as provided in this Lease. The Lessee shall also have an option to extend the lease term by three (3) additional five (5) year terms. Notification to extend the Lease will be done in writing 90 days prior to end of the initial, or any extended, lease term.

2. **RENT:** Lessee agrees to pay as rental for the leased premises the sum of **Two Thousand Eight Hundred and Eighty-Seven Dollars and Fifty-Four Cents (\$2,887.54)** plus all applicable taxes. The rent for each month shall be paid to the Port in advance on or before the first day of each and every month of the lease term, and shall be payable at such place as the Port may hereinafter designate. The rental rate may be adjusted every three (3) years to the prevailing 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 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 two (2) month's rent plus applicable taxes in the amount of **Six Thousand Five Hundred Sixteen Dollars and Sixty Cents (\$6,516.60)** in order to guarantee performance under this Lease. The deposit shall be held by the Port as security for Lessee's faithful performance of all of their 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 as a brewery, for the manufacture, storage, wholesaling, distribution and retailing of beer, and shall not use them for any other purpose without the prior written consent of the Port. Lessee shall use the entire premises for the conduct of said business continuously during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or for reasons beyond Lessee's reasonable control. Lessee agrees that it will not disturb the Port or any other tenant of the Port's by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the premises.
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 – "AS IS" – NO WARRANTIES:** Lessee has examined the leased premises and accepts them in their present condition. The

Port makes no representations or warranties with respect to the condition 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:** At the expiration or sooner termination of this Lease, Lessee shall return the premises to the Port in the same condition in which received (or, if altered by Lessee with the Port's consent, then the premises shall be returned in such altered condition), reasonable wear and tear and damage by fire or unavoidable casualty excepted. Lessee shall, at it's own expense, and at all times:
 - a. Keep the premises, and the adjoining roadways and walkways, 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. **DAMAGE, DESTRUCTION OR HAZARDOUS CONDITION:**
 - 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.
- c. Should the Port, upon its own initiative and following consultation with a structural engineer, conclude that the condition of all or a portion of the premises constitutes a hazard to the Lessee and its employees, guests and invitees and that the cost of remedying such hazardous condition is prohibitive, which shall within the Port's sole discretion to determine, the Port shall have the option to terminate this Lease on one-hundred and twenty (120) days' notice. In the event that this paragraph shall become applicable, the Port shall immediately advise Lessee upon receipt of written findings from a structural engineer regarding the existence of a hazardous condition and the Port's decision to terminate this Lease. For the period from the time of the engineer's finding of the existence of a hazardous condition to the date of termination of the Lease, the monthly minimum rental shall be abated in the same proportion as the untenable portion of the premises bears to the whole thereof. Lessee shall not be entitled to any damages or compensation for business interruption or loss of revenue for early termination of the Lease under this provision.

- 13. 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.

- 14. 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 14 shall be met prior to occupancy.

- 15. 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 15 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.

16. **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.
17. **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.
18. **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 the City of Port Townsend. 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.
19. **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(s), 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's 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.

- 20. 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.
- 21. 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. Lessee and the Port Executive Director will agree compensation to Lessee for loss of use, cost of relocation, and/or cost of improvement.
- 22. 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.

- 23. 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.
- 24. 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.
- 25. 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.
- 26. 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 20 hereof.
- 27. 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.

28. **SURRENDER OF PREMISES - ATTORNEYS' FEES:** At the expiration or sooner termination of this Lease, Lessee shall promptly vacate the premises or re-negotiate a lease for the premises with 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.
29. **HOLDING OVER:** If Lessee shall, with the consent of the Port, hold over after the expiration or sooner termination of the term of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to the Port the same rate of rental as set forth herein, unless a different rate shall be agreed upon, and shall be bound by all of the additional provisions of this Lease Agreement in so far as they may be pertinent.
30. **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.
31. **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.
32. **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:
Guy Sands
Port Townsend Brewing Company
330 C 10th Street
Port Townsend, WA 98368

PORT OF PT/PT BREWING
LEASE AGREEMENT

or to such other respective addresses as the parties 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.

- 33. 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.
- 34. "LESSEES" INCLUDES LESSEE, ETC.:** It is understood and agreed that for convenience the word "Lessees" and verbs and pronouns in the plural 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 Lessees or Lessee under this Lease Agreement.
- 35. CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
- 36. 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.
- 37. 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.

- 38. 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.

39. 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 their 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 1st day of May 2016 is hereby approved by the Port of Port Townsend, on this 27th day of April 2016 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

LESSEE

Guy Sands
Port Townsend Brewing Company, Inc.

PORT OF PT/PT BREWING
LEASE AGREEMENT

ATTEST:

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Larry Crockett, Executive Director

Port Attorney

PORT OF PT/PT BREWING
LEASE AGREEMENT

STATE OF WASHINGTON

COUNTY OF JEFFERSON

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

Dated: _____

Signature of
Notary Public: _____

My Appointment Expires: _____

PORT OF PORT TOWNSEND

MEETING OF: May 9, 2016

AGENDA ITEM: VII. Potential Immediate Action
A. Executive Director Selection

BACKGROUND:

The commissioners may have a decision on the hiring of the new Port Executive Director.

Executive Director's Recommendation:

Action as appropriate.

PORT OF PORT TOWNSEND

MEETING OF: May 9, 2016

AGENDA ITEM: VIII. Other Business
A. Boatyard Stormwater Study

BACKGROUND:

Despite source controls and improved enforcement of best management practices (BMPs) as part of the Port's "Level 3" environmental response to the Washington State Department of Ecology, the Boat Haven Boatyard continues to fall substantially short of the benchmarks established for both copper and zinc under the National Pollutant Discharge Elimination System (NPDES) Boatyard General Permit. Devising a reconfigured and improved stormwater system is critically necessary to achieve regulatory compliance and to safeguard the jobs that depend upon this infrastructure.

Earlier this spring the Port published a Request for Qualifications (RFQ) from engineering firms interested in preparing a stormwater study and the preliminary design for system improvements to serve the Boatyard. The purpose of the project is to review and assess the Port's existing stormwater collection and treatment system, identify appropriate management and operational changes, and recommend technically feasible and cost-effective stormwater infrastructure system modifications needed assure effective treatment and compliance with environmental regulations.

In addition to recommending specific system improvements, the work will include evaluating and recommending management and operational changes that could substantially reduce the need for expensive technological responses. Examples of such changes might include: regularly scheduled stormwater system cleaning; full vessel encapsulation for bottom paint work; use of an approved "Independent Contractors" list; measures to reduce or eliminate overspray from vessel wash-down pads; and limiting periods of access to certain boatyard areas.

The Port received seven (7) consultant submittals in response to the its RFQ. On April 29 and May 2, Port staff interviewed four (4) firms. The staff interview team, comprised of Larry Crockett, Al Cairns, Larry Aase and Eric Toews have determined that Parametrix Engineering, Planning & Environmental Services is the most qualified firm to conduct the requested work.

Executive Director's Recommendation: For information only – no action requested. Staff is presently negotiating a proposed Contract, Scope of Services and Fee for the proposed work with Parametrix. We hope to bring this before you at your next regularly scheduled meeting on May 25th. However, if we are unsuccessful in our negotiations, the Port has expressly reserved the right to contact, negotiate with, and potentially award the work to one of the other firms short-listed for the project.