

## **DEVELOPMENT CONTRIBUTION AGREEMENT**

This DEVELOPMENT CONTRIBUTION AGREEMENT (“Agreement”) is made effective as of \_\_\_\_\_, 2014, by and between FOSS WATERWAY DEVELOPMENT AUTHORITY, a Washington public development authority chartered by the City of Tacoma, and its successors and assigns (“FWDA”), and FOSS WATERWAY MANAGEMENT LLC, a Washington limited liability company (“FWM”) (collectively, the “Parties”).

### **RECITALS**

A. FWDA is landlord and FWM is tenant under the Agreement of Marina Lease dated March 16, 2006 (“Initial Lease”), as amended by the Amendment No. 1 Marina Lease last executed on March 29, 2007, Amendment to Agreement of Marina Lease dated December 31, 2011, Second Amendment to Agreement of Marina Lease dated January 1, 2013, Third Amendment to Agreement of Marina Lease dated January 1, 2014, and Fourth Amendment to Agreement of Marina Lease of even date herewith (“Fourth Amendment”) (collectively, the “Marina Lease”), concerning certain real property, including the improvements thereon, located on the Thea Foss Waterway in Tacoma, Washington (“Property”). Portions of the Property are aquatic lands leased from the State of Washington Department of Natural Resources by FWDA and the City of Tacoma as co-tenants under the Aquatic Lands Lease No. 22-002775 (“DNR Lease”).

B. The Fourth Amendment adjusts certain obligations of the Parties under the Marina Lease commencing as of January 1, 2015 and continuing throughout the term of the Marina Lease (which expires December 31, 2025, subject to certain extension rights).

C. In consideration of the mutual promises and covenants set forth in the Fourth Amendment, the Parties desire that FWM make a payment to FWDA as follows, to be applied by FWDA as set forth herein.

### **AGREEMENT**

In furtherance of the Recitals set forth above, which are incorporated herein by reference, and in consideration of the mutual promises and covenants set forth below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties acknowledge and agree to the following:

1. Development Payment. Contemporaneously with its execution and delivery of this Agreement, FWM shall pay to FWDA One Million Five Hundred Thousand Dollars (\$1,500,000.00) (“Development Payment”). In the event that the Development Payment is subject to any tax or charge causing a potential tax obligation for FWM, FWM shall be responsible for timely paying such tax or charge at its sole cost and expense. FWM shall indemnify, defend and hold FWDA harmless from and against any assessment, imposition, lien or other FWM liability related to any such taxes, unless such taxes were collected by FWDA from FWM.

2. Disposition of Development Payment. Upon receipt of the Development Payment, FWDA hereby agrees to (a) apply One Million Dollars (\$1,000,000.00) of the Development Payment towards the repayment of the *[loan]* FWDA incurred to fund the construction of the *[Marinas]* and (b) place Five Hundred Thousand Dollars (\$500,000.00) of the Development Payment in a reserve fund established by FWDA with the Greater Tacoma Community Foundation and dedicated to the ongoing maintenance of the George H. Weyerhaeuser Jr. Park, Central Park and Waterway Park on the Thea Foss Waterway.

3. Termination Payment. In the event that the Marina Lease is terminated on or before December 31, 2024, for reasons other than the default or breach of FWM under the Marina Lease or any default or breach under the DNR Lease caused by FWM, and so long as FWM is not in default under the Marina Lease, FWDA shall pay FWM a lease termination payment at termination (the “Termination Payment”) that is equal to the applicable termination payment as shown on Exhibit A to this Agreement.

4. Fourth Amendment. In consideration of the promises made herein, FWDA and FWM agree to execute and deliver the Fourth Amendment simultaneously with the execution and delivery of this Agreement. If the mutual execution and delivery of the Fourth Amendment is delayed or otherwise does not occur simultaneously with the mutual execution and delivery of this Agreement, this Agreement shall be voidable by FWDA upon written notice to FWM.

5. Entire Agreement. This Agreement constitutes the entire agreement between FWDA and FWM with respect to the subject matter of this Agreement.

6. Counterparts. This Agreement may be executed in one or more facsimile or PDF counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

7. Authority. FWDA and FWM each represent and warrant to the other that the person executing this Agreement on such party’s behalf has executed the Agreement pursuant to proper and presently effective authorization.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**FWDA:**

FOSS WATERWAY DEVELOPMENT  
AUTHORITY, a Washington public  
development authority chartered by the City  
of Tacoma

By: \_\_\_\_\_  
Su Dowie, Executive Director

Date: \_\_\_\_\_

**FWM:**

FOSS WATERWAY MANAGEMENT  
LLC, a Washington limited liability  
company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A  
EARLY TERMINATION

Year	Amount of Termination Payment
2015	\$1,500,000.00
2016	\$1,350,000.00
2017	\$1,200,000.00
2018	\$1,050,000.00
2019	\$900,000.00
2020	\$750,000.00
2021	\$600,000.00
2022	\$450,000.00
2023	\$300,000.00
2024	\$150,000.00
2025	\$00.00