

**FOURTH AMENDMENT TO
AGREEMENT OF MARINA LEASE
BY AND BETWEEN
FOSS WATERWAY DEVELOPMENT AUTHORITY
AND
FOSS WATERWAY MANAGEMENT LLC**

This FOURTH AMENDMENT TO AGREEMENT OF MARINA LEASE (“Fourth Amendment”) is made effective as of _____, 2014, by and between FOSS WATERWAY DEVELOPMENT AUTHORITY, a Washington public development authority chartered by the City of Tacoma (“Landlord”), and FOSS WATERWAY MANAGEMENT LLC, a Washington limited liability company (“Tenant”) (collectively, the “Parties”).

RECITALS

A. Landlord is landlord and Tenant 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 (“First Amendment”), Amendment to Agreement of Marina Lease dated December 31, 2011 (“2011 Amendment”), Second Amendment to Agreement of Marina Lease dated January 1, 2013 (“Second Amendment”), and Third Amendment to Agreement of Marina Lease dated January 1, 2014 (“Third Amendment”), concerning certain real property, including the improvements thereon, located on the Thea Foss Waterway in Tacoma, Washington (“Property”). As used herein, “Amended Lease” shall mean the Initial Lease as modified by the First Amendment, 2011 Amendment, Second Amendment and Third Amendment; “Lease” shall mean the Amended Lease as modified by this Fourth Amendment.

B. Portions of the Property are aquatic lands leased from the State of Washington Department of Natural Resources by Landlord and the City of Tacoma as co-tenants under the Aquatic Lands Lease No. 22-002775 (“DNR Lease”).

C. For purposes of clarity, the “Property” includes without limitation the following structures and improvements: City Marina; Multi-Use Float at 15th Street; Delin Docks; and Dock Street Marina (including without limitation the 16th Street Float, Human Powered Watercraft Float and the Kayak Float therein) (collectively, the “Marinas”), as depicted on Exhibit A attached hereto.

D. The Parties desire to modify the rent owing under the Amended Lease, require Tenant to assume certain maintenance, repair and replacement obligations concerning the Property and the shoreline along the same (“Shoreline”) and make other certain changes on the following terms and conditions.

E. Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Amended Lease.

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. Rent. As of January 1, 2015 (“Effective Date”), Tenant’s total rent obligation under the Lease shall be based on Base Rent only and shall no longer include a percentage rent component; accordingly, Article 2 of the Initial Lease, as modified by the First Amendment, shall be modified as follows:

1.1 Base Rent. Section 2.02 shall be revised to read as follows:

Section 2.02 Base Rent. Tenant shall pay to Landlord annual base rent (“Base Rent”) in the amount in the column labeled “Base Rent” in Table 1. The annual Base Rent includes Landlord’s annual rent owed to DNR under the DNR Lease. Tenant shall pay the annual Base Rent in equal monthly installments. The amounts in the column labeled “DNR Estimated Rent” in Table 1 represent an estimate of Landlord’s rent obligations under the DNR Lease. At the end of each year, the Parties shall adjust the Base Rent for the following Lease Year based on the actual annual rent to be due under the DNR Lease and update Table 1 accordingly.

Table 1 – Base Rent

Period (All months in the year)	DNR Estimated Rent	Base Rent
2015 (Year 10)	\$27,805.06	\$27,805.06
2016 (Year 11)	\$28,639.21	\$28,639.21
2017 (Year 12)	\$29,498.38	\$29,498.38
2018 (Year 13)	\$30,383.34	\$30,383.34
2019 (Year 14)	\$31,294.84	\$31,294.84
2020 (Year 15)	\$32,233.68	\$32,233.68
2021 (Year 16)	\$33,200.69	\$33,200.69
2022 (Year 17)	\$34,196.71	\$34,196.71
2023 (Year 18)	\$35,222.61	\$35,222.61
2024 (Year 19)	\$36,279.29	\$36,279.29
2025 (Year 20)	\$37,367.67	\$37,367.67

1.2 Annual Percentage Rent. Section 2.04 and its Table 3 and any and all references to annual percentage rent in the Lease shall be deleted in their entirety and of no further force and effect.

1.3 Payments; Reimbursements; Taxes; Association Fees. Sections 2.05 through 2.08 shall remain in full force and effect.

2. Gross Revenue; Berth Rental Agreements.

2.1 Gross Revenue. As of the Effective Date, Article 3 of the Initial Lease shall be modified by deleting Sections 3.01, 3.02, 3.08, 3.09, 3.10 thereof; in addition, any and all references to “Gross Revenue” in the Amended Lease shall be deleted.

2.2 Berth Rental Agreements. As of the Effective Date, and notwithstanding anything to the contrary in the Lease, including without limitation Section 3.05 of the Initial Lease, (i) all berth rental agreements entered into by Tenant or any amendments thereto, as applicable, shall include a requirement that the named tenant thereunder comply with the DOE Best Management Practices, as the same may be modified from time to time, or any other management practices reasonably required by Landlord and (ii) any changes to the form of the berth rental agreements currently in use shall be subject to the prior written approval of Landlord.

3. Security Deposit. The Parties hereby acknowledge and agree that pursuant to Section 2.09 of the Initial Lease Tenant has paid to Landlord a security deposit in the amount of \$25,000.00.

4. Maintenance. From and after the Effective Date, and notwithstanding anything to the contrary in the Lease, Tenant, at its sole cost and expense, shall maintain, repair, operate, manage and replace the shore side and the Property, including without limitation the Marinas and Improvements, and any systems and utilities serving the same, (a) in a good, attractive, safe and secure working condition; (b) in compliance with any applicable insurance reports and/or inspections of the Property; (c) in compliance with all Laws; (d) in compliance with Tenant’s Maintenance Plan (as described in Article 7 of the Initial Lease); (e) in compliance with the terms and conditions of the DNR Lease, including any extensions thereof, or of any re-leasing of the Property by Landlord; and (f) in compliance with the Schedule of Tenant Capital Improvements (defined below). Tenant’s maintenance, repair and replacement obligations under the Lease shall include without limitation making any and all capital improvements, repairs and replacements to the Property and shore side. Tenant shall provide Landlord with a construction schedule for any planned improvements, replacements or repairs costing more than \$100,000.00

at least forty-five (45) days before commencing performance of the same. Before Tenant engages in any maintenance, repair or replacement activity costing more than \$100,000.00, Tenant shall provide Landlord with a construction bond for such work in a commercially reasonable form acceptable to Landlord.

Notwithstanding the foregoing, Tenant shall not be responsible for the capital replacement of the Multi-Use Float on 15th Street or the Human Powered Watercraft Float so long as the same are non-revenue generating; rather, any capital replacement of the Multi-Use Float on 15th Street and/or the Human Powered Watercraft Float, while the same are non-revenue generating, shall be performed by Landlord as deemed necessary by Landlord and pursuant to a schedule determined by Landlord. Furthermore, the capital replacement of the guest docks in the Dock Street Marina, when deemed necessary pursuant to the Schedule of Tenant Capital Improvements (as defined in the following paragraph), shall be made at Landlord and Tenant's shared and equal expense according to a mutually acceptable schedule.

5. Capital Improvements. Section 8.01 of the Initial Lease and its Table 5, as modified by the First Amendment, are hereby deleted and replaced with the new Section 8.01 and form Table 5 set forth in Exhibit B attached hereto. The Parties acknowledge and agree that Table 5 attached hereto sets forth the form schedule to be prepared by Landlord for certain reasonable capital improvements, repairs and replacements to the Property that Tenant is obligated to make pursuant to this Lease ("Schedule of Tenant Capital Improvements") in addition to others that may be required pursuant to the Lease. From and after the Effective Date, Landlord shall have the right to amend the Schedule of Tenant Capital Improvements every five (5) years to identify other reasonable capital improvements, repairs and replacements to the Property that Landlord requires Tenant to make during the next five (5) year period, in addition to others that may be required pursuant to the Lease, and Tenant agrees to perform the same at its sole cost and in a timely manner. Notwithstanding the foregoing, the first such five (5) year period to be covered by a Schedule of Tenant Capital Improvements shall not commence prior to January 1, 2025.

6. Assignment. Notwithstanding anything to the contrary in the Lease, including without limitation Article 13 of the Initial Lease, Tenant shall not assign, sell, transfer, sublease, convey, or otherwise dispose of all or any portion of its interest in the Lease and/or the Improvements without obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld; provided that, with respect to subleases, Landlord may not withhold consent for Tenant's sublease to any slip tenant, unless such sublease would be restricted by the terms of the Lease. Without limiting the reasonable bases under which Landlord may withhold such consent, it shall be reasonable for Landlord to withhold such consent if Tenant is in default under the Lease or if the proposed transferee is not a qualified marina operator based upon lack of experience or lacks the financial capacity or management experience to perform Tenant's

obligations under the Lease. However, nothing in this paragraph is meant to modify the terms and conditions of Article 14 (Mortgaging of Lease by Tenant) of the Initial Lease, and the parties agree that Tenant's right to mortgage and/or pledge its interest under the Lease shall be governed by such article.

7. Option to Extend. So long as the DNR Lease remains in full force and effect and subject to the terms and conditions of this Fourth Amendment, Tenant shall have the option to extend the Term of the Lease for ten (10) successive periods of five (5) years (each, an "Extended Term"). This option to extend may be exercised by Tenant only by giving Landlord written notice ("Notice") no more than twelve (12) months and no less than six (6) months prior to the last day of the Term or then-current Extended Term. Tenant's options to extend shall apply to all of the Property then leased by Tenant under the Lease. The second paragraph of Section 1.02 of the Initial Lease is hereby deleted in its entirety and of no further force and effect.

If Tenant fails to comply with the Schedule of Tenant Capital Improvements or is otherwise in default under the Lease on the date of Tenant's delivery of the Notice or at any time prior to the commencement of an Extended Term, then Tenant's options to extend the Lease for any further Extended Terms shall, at Landlord's option, automatically terminate.

If Tenant validly exercises its option to extend pursuant to this Section 7, then from and after January 1, 2026, all of the terms, covenants and conditions of the Lease shall continue in full force and effect as written, except that in addition to paying the rent owing under the DNR Lease, as the same may be amended or extended, (i.e., "Base Rent"), from and after January 1, 2026, Tenant shall also pay to Landlord "Annual Rent" in the amount of \$60,000.00 per year in 2014 Dollars. For purposes of the prior sentence, the term "in 2014 Dollars" means the amount of \$60,000.00 adjusted annually as of each January 1 (with the first such annual adjustment commencing January 1, 2015) by the greater of (a) one and one-half percent (1.5%) and (b) the cumulative percentage increase in the annual growth in the CPI-U, All Items Consumer Price Index for All Urban Consumers [*Need to add area of coverage: e.g., "U.S. City Average"*] ("CPI") as reported by the U.S. Department of Labor's Bureau of Labor Statistics based upon the 12 month period ending each November 31 of the previous year with no future amendment to Annual Rent based upon a revised CPI for the period used. For purposes of clarity, if CPI is used as set forth above, the Annual Rent owing for 2026 will be equal to \$60,000 increased by the cumulative percentage increase in the annual growth of CPI as referenced above as of January 1, 2015 and as of each subsequent January 1 thereafter. A sample calculation of the Annual Rent owing in the first Extended Term using CPI is attached hereto as Exhibit C. If for any reason whatsoever the CPI ceases to be measured or published as set forth in this paragraph, or is otherwise unascertainable for purposes of this paragraph, then Landlord shall in its reasonable discretion select an alternative national measure or index on which to base CPI for each calendar year during an Extended Term (based on the approximate value of \$60,000 in calendar year 2014). Tenant shall

pay Annual Rent in equal monthly installments in the same manner and on the same day as Base Rent. Landlord shall place all sums of Annual Rent paid by Tenant in a reserve fund established by Landlord 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.

8. Development Contribution Agreement. In further consideration of the changes and modifications made herein to the Amended Lease, Landlord and Tenant agree to execute, deliver and comply with the Development Contribution Agreement of even date herewith. If the mutual execution and delivery of the Development Contribution Agreement is delayed or otherwise does not occur simultaneously with the mutual execution and delivery of this Fourth Amendment, or if Tenant fails to comply with the terms and conditions of the Development Contribution Agreement, this Fourth Amendment shall be voidable by Landlord upon written notice to Tenant.

9. Section 1.03 of the Initial Lease hereby is deleted in its entirety and replaced with the following:

Section 1.03 Early Termination. Landlord is obligated to terminate the Lease if the DNR Lease is terminated early as provided in the DNR Lease, in which case Landlord shall give Tenant notice of such termination within forty-eight (48) hours of Landlord's receipt of notice from DNR that it has elected to terminate the DNR Lease and this Lease shall terminate as set forth in Landlord's notice.

10. Property Insurance. Tenant agrees that throughout the Term of the Lease, as the same may be extended, Tenant's obligation to at all times carry all risk property, fire and earthquake insurance pursuant to Section 11.03 of the Initial Lease shall apply to all structures, buildings and improvements located upon the Property or shore side. Such insurance shall be maintained by Tenant at its sole cost and expense.

11. Entire Agreement. This Fourth Amendment and the Amended Lease constitute the entire agreement between Landlord and Tenant with respect to the subject matter of this Fourth Amendment.

12. Full Force and Effect. Except as specifically set forth herein, the Amended Lease is and remains in full force and effect and binding on the parties.

13. Counterparts. This Fourth Amendment 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.

14. Authority. Landlord and Tenant each represent and warrant to the other that the person executing this Fourth Amendment on such party's behalf has executed the Fourth Amendment pursuant to proper and presently effective authorization.

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

LANDLORD:

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

By: _____
Su Dowie, Executive Director

Date: _____

TENANT:

FOSS WATERWAY MANAGEMENT
LLC, a Washington limited liability
company

By: _____
Its: _____

Date: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this
instrument, on oath stated that he/she was authorized to execute the instrument and
acknowledged it as the _____ of FOSS WATERWAY DEVELOPMENT
AUTHORITY, a Washington public development authority chartered by the City of Tacoma, to
be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

(Print Name)

Notary Public, in and for the State
of _____, residing at _____
My Commission Expires _____

STATE OF WASHINGTON)
)ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this
instrument, on oath stated that he/she was authorized to execute the instrument and
acknowledged it as the _____ of FOSS WATERWAY MANAGEMENT
LLC, a Washington limited liability company, to be the free and voluntary act of such party for
the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

(Print Name)

Notary Public, in and for the State
of _____, residing at _____
My Commission Expires _____

EXHIBIT A

MARINAS

EXHIBIT C

SAMPLE CALCULATION OF ANNUAL RENT

The Chart below is meant to be an example of how the rent is calculated based on hypothetical annual increases in CPI, but is not the actual schedule to be used. The actual numbers will be based upon the most recent data published by the US Department of Labor's Bureau of Labor Statistics ("BLS") available at www.bls.gov. CPI figures through October 31, 2024 will be taken based on the most recent published figures by the BLS as of the 30th day of November 2024. Thereafter, the annual increases will be taken based upon the most recent published figures on the 30th of November in each subsequent year.

	CPI Increase	Calendar Year	60,000.00	Annual Rent to be paid during Extended Term
10/2013- 10/ 2014	2.67%	2015	61,602.00	
10/2014 -10/2015	3.30%	2016	63,634.87	
10/ 2015- 10/2016	4.00%	2017	66,180.26	
10/2016- 10/2017	3.20%	2018	68,298.03	
10/2017- 10/2018	3.50%	2019	70,688.46	
10/2018- 10/2019	1.90%	2020	72,031.54	
10/2019- 10/2020	2.80%	2021	74,048.42	
10/2020- 10/2021	3.20%	2022	76,417.97	
10/2021- 10/2022	2.20%	2023	78,099.17	
10/2022- 10/2023	4.50%	2024	81,613.63	
10/2023- 10/2024	3.60%	2025	84,551.72	
10/2024- 10/2025	4.00%	2026	87,933.79	87,933.79
10/2025- 10/2026	3.80%	2027	91,275.28	91,275.28
10/2026- 10/2027	4.50%	2028	95,382.66	95,382.66
10/2027- 10/2028	4.00%	2029	99,197.97	99,197.97