

FIRST AMENDMENT TO PURCHASE AND SALE  
AGREEMENT

(Sites 9 and 10 on the Foss Waterway)

WHEREAS, the City of Tacoma and Foss Harbor, LLC entered into a Purchase and Sale agreement on June 27, 2022; and

WHEREAS, the parties desire to extend the Contingency Period provided in the Agreement to address a modified site configuration caused by the City of Tacoma's recent construction of a seawall butting Site 10.

NOW THEREFORE, parties agree to amend the Purchase and Sale Agreement as follows:

1. Section 5.1.1, Due Diligence, Contingency Period is amended to read 303 calendar days rather than 120 days;

The Purchase and Sales Agreement and all Exhibits remain in full force and effect except for these extensions of time.

Signed:  
City of Tacoma

Elizabeth Pauli  
City Manager  
Date: \_\_\_\_\_

Signed:  
Foss Harbor, LLC

*Theodore M. Johnson, Jr.*

Ted Johnson  
Managing Member  
Date: 2/3/23

## LEASE FOR MUNICIPAL DOCK

THIS LEASE ("Lease") is made as of February \_\_\_\_\_, 2023 by and between the City of Tacoma, a Washington first class City ("Landlord") and Foss Harbor Marine, LLC, a Washington limited liability company ("Tenant").

### 1. PREMISES AND TERM.

1.1 Premises. In consideration of the terms and covenants of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, a portion of the real property described on Exhibit "A" attached, located in Tacoma, Washington (the "Premises"). The taking of possession by Tenant under this Lease shall be deemed conclusively to establish that the Premises are in good and satisfactory condition, as of when possession was so taken. Tenant acknowledges that no representations as to the condition of the Premises have been made by Landlord and Tenant accepts the Premises "as is," having had a full and complete opportunity to inspect the same.

1.2 Term. The Lease Term (as defined below) shall commence upon the date of mutual execution and delivery of this Lease by all parties and the date of mutual execution and delivery of the Purchase and Sale Agreement (Site 10), which has as an attachment a Development Agreement (Sites 10 and 11) (collectively, the "Site 10 and 11 Agreements") involving the properties commonly known as Foss Waterway Sites 10 and 11 between Landlord and Foss Harbor LLC, Tenant's affiliate, whichever is later (the "Commencement Date"). The term of this Lease shall be ten (10) years from the Commencement Date ("Lease Term").

1.3 Extensions of Term. Tenant may extend the Lease for an additional five (5) years, for up to a total of six (6) such five (5) year extensions. The extensions will be automatic unless tenant gives notice at least 60 days prior to the expiration of the Lease Term or extension term, as applicable, of its intention not to extend. Tenant's lease of the Premises for each extension term shall be on the same terms and conditions as this Lease, including without limitation increases to Base Rent as described in Section 2.2 below. If Tenant is not in material compliance with this Lease, as reasonably determined by Landlord, then Landlord may give written notice of the noncompliance to Tenant at least 60 days prior to the expiration of the lease term or the extension term, as applicable. If the noncompliance cannot practically be remedied within 60 days, the notice shall establish a reasonable longer time for compliance. If Tenant fails to remedy the noncompliance within the 60 days or the reasonable time provided, it will forfeit the right to extend.

1.4 Landlord's Reconfiguration Option. At any time during the term of the Lease, Landlord may at its expense conduct a boundary line adjustment, subdivision or similar change (collectively "BLA") to create a separate Landlord-owned shore land parcel that is not subject to this Lease. Landlord shall exercise this right with a good faith effort to minimize impacts on the Tenant and shall not complete a BLA for the

purpose of establishing a separate parking facility. Upon the displacement of any parking stalls by the Landlord as a consequence of the BLA, rent under this lease will be reduced on the per stall rate established herein.

#### 1.5 Landlord's Termination Options.

1.5.1 Recovery for Public Use. Landlord may terminate the Lease at any time on nine (9) months prior written notice to Tenant for use of some or all of the Premises for public purposes, including but not limited to providing support facilities for or access to waterborne ferry services. Landlord may not terminate the Lease to install a parking lot unless the parking is to serve a transportation use as described above. If such public use can be accommodated, in the sole discretion of Landlord, on some portion but not all of the Premises, the Lease may be terminated only as to that portion of the Premises required for such use. Upon the displacement of any parking stalls by Landlord as a consequence of recovering a portion of the Premises for public use, rent under this Lease will be reduced pro rata for the lost stalls at the then applicable per stall rate, as provided herein. Notwithstanding the foregoing, the termination will not be effective until the Landlord, has secured all required permits for its planned public use proposed, and has funding available for the full cost of all required work.

1.5.2 Development. At any time after the fifth year of the Term of the Lease, the Lease may be terminated by Landlord on one (1) year's advance notice for development of the Premises; provided however, that the termination will not be effective until the Landlord, or its third-party designee developer, has secured all permits for its proposed development, and has funding available for the full cost of development.

1.5.3 Nonperformance of Tenant Development Obligation. In the event Tenant has failed to timely undertake and complete its obligations under the Development Agreement (Sites 10 and 11) between the Landlord and Tenant (or its affiliate party to such Agreement), the Lease may be terminated by Landlord or its public entity successor in interest. Such termination shall be effective upon three (3) months prior written notice to Tenant, following Landlord's determination, in its reasonable discretion, of Tenant's (or its affiliate party to the Development Agreement) failure to perform its development obligations under such Agreement. In addition, and notwithstanding anything to the contrary in this Lease, this Lease shall automatically terminate if (a) Landlord lawfully terminates the Purchase and Sale Agreement (Site 10) and/or Development Agreement (Sites 10 and 11) or (b) Tenant or its affiliate, as applicable, fails to timely commence construction on Site 10 on Site 11 in accordance with the Site 10 and 11 Agreements.

1.6 Landlord's Temporary Construction Option. Landlord shall have an ongoing right to temporarily retake possession of all or part of the Premises ("Construction Area") in connection with any construction at the Foss Waterway. Landlord shall provide Tenant with at least thirty (30) days prior written notice of its

intent to exercise its rights under this paragraph, which notice shall identify the Construction Area and the date on which Landlord intends to temporarily retake possession of the same ("Construction Date"). Tenant shall surrender possession of the Construction Area to Landlord on the Construction Date, with the Construction Area free of Tenant's personal property. Base Rent shall be temporarily reduced on a pro rata basis during any such period of temporary construction.

1.7 Tenant's Termination Option. At any time after the fifth year of the Term of the Lease, the Lease may be terminated by Tenant on one (1) year's advance notice to Landlord.

1.8 Tenant's Purchase Option. For so long as Tenant owns its Foss Waterway marina, Tenant shall have a one-time right when the Premises is developed for a project that includes construction of structured parking to pay for the inclusion of additional parking stalls for marina use within any such structured parking developed on the Premises. Tenant may pay for the construction of additional stalls up to the same number of surface parking stalls available on site that are lost as a result of the development of the Premises; except that the number of parking stalls that Tenant has the right to pay to include in the project shall be reduced stall for stall by any reduction in the overall demand for marina parking at the Foss Waterway resulting from (i) Tenant's (or its affiliate's) development of additional parking stalls for marina parking on Sites 9, 10, 11 or elsewhere at the Foss Waterway and/or (ii) any reduction in the number of marina slips currently owned by Tenant (or its affiliate(s)). Displacement of parking stalls by Landlord's exercise of its reconfiguration option in Section 1.4 herein, shall not be considered a voluntary reduction. Tenant shall pay the full actual cost of construction and shall have the right to inspect and audit records to verify actual costs. There are sixty-four (64) existing parking stalls at the Premises and the current stall count for marina support is 180. Landlord shall update the number of parking stalls subject to Tenant's purchase option under this paragraph at least once per calendar year pursuant to a mutually agreeable formula based on marina parking requirements.

## 2. RENT.

2.1 Initial Rent. Tenant shall pay to Landlord rent for the Premises, in advance on the first day of each calendar month, without demand, deduction or set off, for the entire Term at the rate of One thousand nine hundred-twenty dollars (\$1,920.00) per month (calculated on \$30.00 per stall per month for sixty-four (64) stalls) (the "Base Rent"), except that the first monthly payment of Base Rent will be payable on the date of mutual execution and delivery of this Lease. In addition, Tenant shall pay to Landlord any and all leasehold excise taxes (and Landlord agrees to remit leasehold excise taxes to the Washington State Department of Revenue), real and personal property taxes, regular and special assessments, license fees, surface water charges and other taxes or charges of any kind and nature payable by Landlord as a result of any public or quasi-public authority, private party, or owner's association levy, assessment or imposition against, or arising out of this Lease or Landlord's ownership of or interest in the Premises (collectively referred to as the "Charges"). Tenant's failure to pay the

amount of the Charges within thirty (30) days of invoice shall constitute a default hereunder and Tenant shall be responsible for any penalties, fines or other charges imposed on Landlord in connection with delinquent payment of the Charges. All payments required to be made by Tenant to Landlord shall be payable to Landlord at the address set forth in Section 11 or at such other address as Landlord may specify from time to time by written notice.

2.2 Rent Increases. The calculated Base Rent will increase every year of the Term of the Lease at the rate of 1.5% per year, but the actual Base Rent payment due from Tenant will be increased every five (5) years to the cumulative increase. In effect, the Base Rent due from Tenant will increase by 7.5% every five (5) years.

2.3 Interest and Late Charges. All rent and other amounts hereunder not paid within ten (10) days of the date when due shall bear interest from the date due at the rate of four percent (4%) per annum over the prime rate announced from time to time in the Wall Street Journal Money Rates section (or, if unavailable, another national business publication selected by Landlord). In addition, a late charge of five percent (5%) will be added to any amounts hereunder not paid within ten (10) days of the date when due. Acceptance of this charge by Landlord will not be a waiver of Tenant's default with respect to the overdue amount and shall be in addition to the other remedies of Landlord provided under this Lease or by law.

2.4 Utilities. No utilities are currently furnished to the Premises. If utility services are furnished at the request of tenant during the Lease Term, Tenant shall be liable for, and shall pay throughout the Term of this Lease, all charges for such furnished utility services, including, but not limited to, electricity, gas, water, sewerage, and garbage disposal. Because the Premises are part of a larger premises to which utility services are furnished on a consolidated or joint basis, Tenant agrees to pay to Landlord Tenant's pro rata share of the cost of any such utility services furnished at Tenant's request. Tenant's pro rata share of any such services may be computed by Landlord on any reasonable basis, and separate metering or other exact segregation of cost shall not be required. All charges for utility installation shall be for the expense of Tenant.

3. USE. The Premises shall be used only for the purposes of marina parking and a path to allow Tenant's customers, their contractors and guests and the public, access from the Premises site to new Foss Waterway Site 9 south of the Murray Morgan Bridge. The pedestrian path shall remain open to the public during the Term of this Lease. The Premises shall not be used by Tenant for any other purpose, including without limitation for storing pods, trailers or delivery trucks. Prior to construction of any improvements (including without limitation the pedestrian path), Tenant shall submit detailed plans of the improvements for Landlord's review and approval. Said approval may only be granted by Landlord, which approval shall not be unreasonably withheld. Tenant's use of the Premises shall comply with all applicable laws, rules, regulations and ordinances.

3.1 Temporary Esplanade. Notwithstanding anything to the contrary in this Lease, Tenant agrees that the Landlord may construct, at its expense and in its sole discretion, a temporary public waterfront esplanade across the City-owned shoreline frontage adjacent to the Premises, in a location reasonably determined by Landlord, and that the same shall not constitute an interference with Tenant's use and enjoyment of the Premises.

3.2 Pedestrian Path. Within six (6) months after Landlord has issued permits for the work Tenant will construct at its expense a path at least six (6) feet in width to allow Tenant's marina customers, contractors and guests, and the public, access from the Premises site (and the asphalt esplanade if it has been constructed by the City) to new Foss Waterway Site 9 south of the Murray Morgan Bridge. Tenant shall have no obligation to construct a permanent or temporary esplanade across the Muni Dock Site or under the 11th Street Bridge. The location and design of the pedestrian path shall be subject to the Landlord's prior written approval, not to be unreasonably withheld.

#### 4. OWNERSHIP OF IMPROVEMENTS.

4.1 Ownership During Lease Term. Landlord and Tenant acknowledge, covenant, and agree that any and all appurtenances and additions thereto, and any and all other permanent improvements constructed at any time by the Tenant within or upon the Premises shall be and become the property of and belong to the Landlord.

4.2 Ownership on Termination of Lease. Upon termination of this Lease, any improvements installed by Tenant on the Premises shall become the property of the Landlord or shall be removed by the Tenant at Landlord's option.

5. TENANT'S MAINTENANCE. Tenant shall at its own expense keep and maintain the parking surface of the Premises (including any existing landscaping located thereon) in as good condition as the Premises exists as of the commencement of this Lease, including but not limited to sweeping, re-striping, landscaping and regular removal of trash and debris, keeping the surface of the Premises in a neat, clean, safe and sanitary condition. Landlord shall be responsible for all other maintenance, repair and replacement of the Premises.

6. ASSIGNMENT. Tenant shall not have the right to encumber, convey, assign, transfer, mortgage or sublet the whole or any part of the Premises under this Lease. This prohibition does not apply to an assignment of the Lease (except for the parking purchase opportunity provided in Section 1.8 which may not be assigned) in the context of a transfer by Tenant of all its ownership interests in its Foss Waterway marinas to the extent any such transfer is permitted under the Shorelands Lease dated July 10, 2001 (and as amended) by and among Landlord and Tenant's affiliate, Foss Harbor Marine LLC, to a qualified third party approved by Landlord, which approval shall not be unreasonably withheld.

## **7. INSURANCE.**

7.1 Liability Insurance. Tenant shall, at its own expense, maintain liability insurance with a company satisfactory to Landlord in the minimum limits of \$1,000,000 per person, and \$2,000,000 per accident occurrence for bodily injuries or death, and \$2,000,000 per accident occurrence for property damage, to indemnify both Tenant and Landlord (including naming Landlord as an additional insured) against any such liability or expense. Tenant shall further deliver a certificate of such insurance showing all aforementioned coverages to be in effect and providing that it shall not be canceled without at least thirty (30) days prior notice to Landlord.

7.2 Property and Casualty Insurance. Tenant shall insure all personal property on the Premises or kept stored thereon at full replacement value.

7.3 Waiver of Subrogation. If either Landlord or Tenant experience any injury, loss or damage to themselves or their respective real or personal property, and to the extent of any applicable commercial insurance policies covering such injury, loss or damage, including any extended coverage endorsements thereto, the appropriate insurance company(ies), and not Landlord or Tenant, shall be solely liable to compensate the party(ies) who experienced the injury, loss or damage, and this shall be so regardless of whether Landlord or Tenant was responsible for such injury, loss or damage, and for any reason, including without limitation negligence. To the extent of any applicable commercial insurance policies actually carried by each party (or to the extent of any applicable commercial insurance policies required under this Lease), each of Landlord and Tenant hereby waive their respective rights of recovery, claims, actions, or causes of action that it may have against the other as a result of any injury, loss or damage to the Premises or any improvements, fixtures or personal property of such party thereon. Landlord and Tenant agree to provide proof to the other party in connection with the execution of this Lease that such waivers have been successfully obtained from the respective insurance companies.

## **8. INDEMNITY.**

8.1 Landlord shall not be liable to Tenant or Tenant's officers, directors, trustees, employees, agents, contractors servants, guests, invitees or visitors (collectively, "Tenant Parties"), or to any other person for any damage, expense, loss or liability, including injury to person or damage to property on or about the Premises, resulting from and/or caused in part or whole by the act or omission of Tenant, its employees, agents, servants, guests, invitees, and visitors, or of any other person entering upon the Premises, or caused by the condition of the Premises, or due to any other cause unless caused by the negligence of Landlord, and Tenant hereby releases Landlord from any such liability.

8.2 Tenant hereby releases and shall defend, indemnify and hold harmless Landlord and Landlord's officers, directors, trustees, employees, agents,

contractors servants, guests, invitees or visitors (collectively, "Landlord Parties") from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, that arises out of (a) any activity, work, condition or thing permitted or suffered to exist or done at the Premises; (b) the negligence or willful misconduct of any of the Tenant Parties; or (c) any breach or default by Tenant in the performance of any obligation on Tenant's part to be performed under this Lease. This indemnity does not apply (i) to claims, suits, actions or liabilities to the extent they are caused by the negligent acts or omissions or willful misconduct of Landlord, its agents, employees, contractors or invitees, or (ii) to the indemnity herein. In the absence of comparative or concurrent negligence on the part of any of the Landlord Parties the foregoing indemnity shall also include reasonable costs, expenses and attorney's fees incurred in connection with any indemnified claim or incurred by Landlord in successfully establishing the right to indemnity (including in any bankruptcy proceeding). Tenant shall at Landlord's request assume the defense of any claim subject to this indemnity. Landlord agrees to cooperate fully with Tenant and Tenant's counsel in any matter where Tenant elects to defend, provided Tenant promptly reimburses Landlord for reasonable costs and expenses incurred in connection with its duty to cooperate. When the claim is caused by the joint negligence or willful misconduct of any of the Tenant Parties and the Landlord Parties, Tenant's duty to indemnify and defend shall be proportionate to Tenant's allocable share of joint negligence or willful misconduct.

8.3 The indemnification obligations contained in this Section shall not be limited by any worker's compensation, benefit or disability laws, and the indemnifying party hereby waives any immunity that said indemnifying party may have under the Industrial Insurance Act, Title 51 RCW, and similar worker's compensation, benefit or disability laws.

8.4 THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS LEASE THAT EACH OF THE INDEMNIFICATION PROVISIONS OF THIS LEASE (SPECIFICALLY INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OF THIS LEASE.

9. **CONDEMNATION**. If all of the Premises is taken for any public or quasi-public use under government law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), this Lease shall terminate when the physical taking of the Premises occurs. If any part of the Premises is subject to a Taking, this Lease shall continue in full force and effect without abatement of any of Tenant's obligations hereunder. Landlord shall receive the entire award for any Taking of the Premises.

10. **MECHANIC'S LIENS**. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature upon, or in any manner to bind, the interest of Landlord in the Premises in favor of any person dealing with Tenant,



including those who may furnish materials or perform labor for any construction or repairs, and each such lien shall attach to, if at all, only the leasehold interest granted to Tenant by this instrument. Tenant will pay or cause to be paid all sums due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon. Tenant will discharge, by bond or otherwise, any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant within ten (10) days after filing. Tenant will indemnify, defend and hold Landlord harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Premises or under the terms of this Lease.

11. **NOTICES**. All notices, demands or requests which may or are required to be given by one party to the other under this Lease shall be given in writing and hand delivered, or sent by United States registered or certified mail, postage prepaid, return receipt requested, and addressed to the Landlord's address or Tenant's address below, as the case may be. Notices shall be deemed to have been given upon receipt or attempted delivery when delivery is not accepted. Either party may change its address upon notice given to the other.

**TENANT:**

Foss Harbor Marine, LLC  
821 Dock Street  
Tacoma, WA 98402

**LANDLORD:**

City of Tacoma  
747 Market Street  
Rm. 744  
Tacoma, WA 98402

12. **HAZARDOUS MATERIALS**.

(a) **Hazardous Substances Defined**. As used in this Lease, the term "Hazardous Substance" means any hazardous, toxic, dangerous, or extremely dangerous substance, material, or waste, which is or becomes regulated by the United States Government, the State of Washington, or any local governmental authority. The term includes, without limitation, any substance containing constituents regulated as specified above.

(b) **Release Defined**. As used in this Lease, the term "release" shall be defined as provided in 42 U.S.C. § 9601 and RCW 70.105D.020. In the event a conflict exists between the two definitions, the broader definition shall apply. For purposes of this Lease, the term release shall also include a threatened release.

(c) **Use, Storage, and Disposal**. Notwithstanding any other provision of this Lease, Tenant shall not use, store, threat, generate, sell, or dispose of any Hazardous Substances on or in any manner that affects the Premises, improvements, and common areas without the prior written consent of Landlord.

(d) Compliance with Laws. Tenant shall, at its sole cost and expense, comply with all laws, statutes, ordinances, regulations, rules, and other governmental requirements regarding the proper and lawful generation, use, sale, transportation, storage, treatment, and disposal of Hazardous Substances (hereinafter "Laws") or in any manner that affects the Premises.

(e) Monitoring. Landlord or its designated agents may, at Landlord's sole discretion and at reasonable times, enter upon the Premises for the purpose of: (1) monitoring Tenant's activities conducted thereon; and (2) conducting environmental testing and sampling to determine compliance with applicable Laws and the terms of this Lease. If such monitoring discloses the release of Hazardous Substances in violation of this Lease, the cost of such monitoring shall be paid by Tenant, pursuant to Paragraph 12(h). In addition, within five days of Landlord's written request, Tenant shall provide Landlord with a detailed written description of tenant's generation, use, sale, transportation, storage, treatment, and disposal of Hazardous Substances on, or which may otherwise affect, the Premises. Landlord's discretionary actions, pursuant to this subparagraph, shall not constitute a release, waiver or modification of Tenant's obligations otherwise specified in this Lease.

(f) Notifications. Tenant shall notify Landlord within 24 hours of any Release of Hazardous Substances that may affect the Premises and shall promptly provide Landlord with a copy of any notifications given to any governmental entity regarding any such release. Tenant shall promptly provide Landlord with copies of any inspection report, order, fine, request, notice, or other correspondence from any governmental entity regarding the release of Hazardous Substances that may affect the Premises. Tenant shall provide Landlord with a copy of all reports, manifest, material safety data sheets ("MSDs"), and identification numbers regarding Hazardous Substances at the same time they are submitted to the appropriate governmental authorities.

(g) (g) Environmental Assessment. Lessee shall, upon written request from Landlord, based on a substantial reason to believe there has been a release of Hazardous Substances, within 60 days following expiration or other termination of the Lease, provide Landlord with an environmental assessment prepared by a qualified professional approved in advance by Landlord. The environmental assessment shall, at a minimum certify that a diligent investigation of the Premises has been conducted, including a specific description of the work performed, and either: (1) certify that diligent investigation of the Premises has revealed no evidence of a release of Hazardous Substances or violation of applicable Laws; or (2) if a release or violation of applicable Laws is detected, identify, and describe: (i) the types and levels of Hazardous Substances detected; (ii) the physical boundaries of the release, including property other than the Premises; (iii) the actual and potential risks to the environment from such release or violation; and (iv) the procedures and actions necessary to remedy the release or violation in compliance with applicable Laws. Tenant shall pay the expense

of obtaining the environmental assessment and of performing all remediation in accordance with Paragraph 12(h).

(h) (h) Hold Harmless and Indemnity. Lessee shall defend (with attorneys approved in writing with Landlord), indemnify, and hold Landlord and its agents harmless from any loss, claim, fine, or penalty arising from the release of Hazardous Substances to the extent caused by Tenant. Such obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs, environmental consultants' fees, attorneys' fees, fines and penalties, laboratory testing fees, claims by third parties and governmental authorities for death, personal injuries, property damage, business disruption, lost profits, natural resource damages and any other costs, and landlord's expenses as provided in Paragraphs 12(d), (e), and (g). Tenant's obligation, pursuant to this subparagraph, shall survive expiration or other termination of this Lease.

Tenant shall have no obligation to Landlord under this Paragraph 12(h) if Tenant can establish that Tenant is not a liable person under RCW 70.105D.040(3)(a).

(i) Default and Cure. Notwithstanding any other provision of this Lease, Landlord may, in event of a release of Hazardous Substances or a violation of applicable Laws related to Hazardous Substances affecting the Premises, elect to declare this Lease in default and terminate the same. Such election by Landlord, if made, shall be without prejudice to any other remedy provided in this Lease. Should Landlord not elect to declare a default, it may cure any release of Hazardous Substances or any violation of applicable Laws by Tenant and impose a rent surcharge sufficient to recover such expenses, together with interest at the highest rate allowed by law.

(j) Release of Hazardous Substances. Notwithstanding any other provision of this Lease, and without prejudice to any other such remedy, Landlord, in the event of a release of Hazardous Substances, a violation of applicable Laws, or a breach of Paragraph 12 of this Lease, shall be entitled to the following rights and remedies, at landlord's option:

(1) To terminate this Lease immediately.

(2) To recover any and all damages associated with the default, including, but not limited to, cleanup costs and charges, civil and criminal penalties and fees, by Landlord, and any and all damages and claims asserted by their parties and Landlord's attorneys' fees and costs; and

(3) To renegotiate the terms of this Lease to recover any return on expenditures made by Landlord in order to ensure that the Premises and the use of such Premises comply with all governmental rules, regulations, and requirements.

**13. Inspection and Access.** Landlord, its agents, contractors, and representatives may enter the Premises to inspect or show the Premises, to clean and make repairs, alterations, or additions to the Premises, and to conduct or facilitate repairs, alterations, or additions to any portion of the Premises, and for the purpose of ascertaining the condition of the Premises and for the purpose of determining Tenant's performance of its obligations hereunder, and in the event Tenant has failed to perform such obligations following any required cure period, for the purpose of taking all such action as may be reasonably necessary or appropriate.

Landlord shall have the right to place and maintain "For Rent" signs in a conspicuous place on the Premises for sixty (60) days prior to the expiration of this Lease. Except in emergencies, Landlord shall provide Tenant with reasonable prior notice of entry into the Premises, which may be given orally. If reasonably necessary for the protection and safety of Tenant and its employees, Landlord shall have the right to temporarily close all or a portion of the Premises to perform repairs, alterations, and additions. However, except in emergencies, Landlord will not close the Premises if the work can reasonably be completed on weekends and after normal business hours.

Tenant will allow Landlord and its agents free access at all reasonable times to the Premises to perform soil tests, feasibility studies, and similar site investigations in connection with Landlord's sale or lease of the property (of which the Premises are part), so long as such activities do not materially interfere with the operation of Tenant's business on the Premises and Landlord repairs any damage to the Premises caused by such activities.

**14. Defaults and Remedies.** A default by Tenant in the payment of any amount due under this Lease or a default in the performance of any agreement of Tenant hereunder shall entitle Landlord to terminate this Lease and exercise all remedies available to it. In addition, a default hereunder shall occur if Tenant becomes insolvent, or allows placement of any liens arising out of any work performed, materials furnished or obligations incurred by Tenant, or makes a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, or if a receiver, assignee, or other liquidating officer is appointed for the business of Tenant, or shall file a petition in bankruptcy under any section of the federal bankruptcy laws.

In case of any default by Tenant hereunder, Landlord may give notice to terminate this Lease and pursue all remedies available at law or in equity. In addition, it shall be lawful for Landlord to reenter the Premises and to remove all persons therefrom. Tenant hereby covenants, promises and agrees to pay Landlord the rents herein provided for at the times and in the manner provided for, and to be primarily responsible for the rents and covenants herein contained.

**15. MISCELLANEOUS.**

**15.1 Captions and Governing Law.** The captions inserted in this Lease are for convenience only, they in no way define, limit or otherwise describe the scope or

intent of this Lease, and shall not be used to interpret or construe this Lease. This Lease shall be governed by the laws of the State of Washington, with venue in Pierce County.

15.2 Amendment. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties.

15.3 Survival. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term and the indemnity provisions shall survive the expiration or earlier termination of the Term, including without limitation all payment obligations with respect to taxes and insurance and all obligations concerning the condition of the Premises.

15.4 Time. Time is of the essence of this Lease with respect to the performance of every provision in which time of performance is a factor.

15.5 Recording. Neither party shall record this Lease or a memorandum thereof without the consent of the other party.

15.6 Brokerage. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and/or that no broker, agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

15.7 Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Tenant shall attorn to each purchaser, successor or assignee of Landlord.

15.8 Attorney Fees. If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Lease, a legal action is instituted, the substantially prevailing party shall be entitled to recover its reasonable costs and attorney fees in connection therewith.

15.9 Entire Agreement. This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter of this Lease.

15.10 Authority. Landlord and Tenant each represents and warrants to the other that the party signing below on its behalf has the full power, capacity, authority and legal right to execute and deliver this Lease and to fully bind it to the terms hereof.

15.11 Counterparts. This Lease may be executed in one or more facsimile or PDF counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

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

CITY OF TACOMA,  
a municipal corporation

FOSS HARBOR MARINE , LLC,  
a Washington limited liability company

By \_\_\_\_\_  
Victoria Woodards  
Mayor

By Theodore M. Johnson, Jr  
Theodore Johnson  
Co-Managing Member

Countersigned:

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
Public Works Director

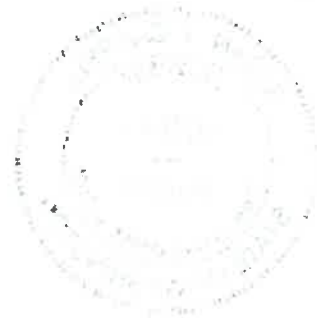
Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney

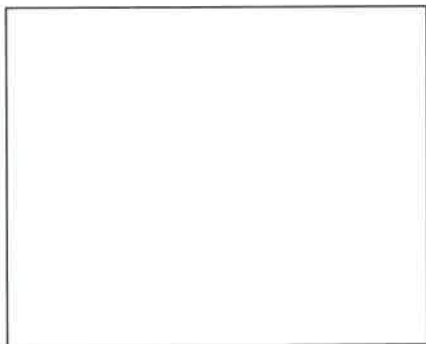
\_\_\_\_\_  
Risk Manager



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 they signed this instrument and on oath stated that they were authorized to execute the instrument and acknowledged it as the Mayor of the City of Tacoma, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: February \_\_\_\_\_, 2023.



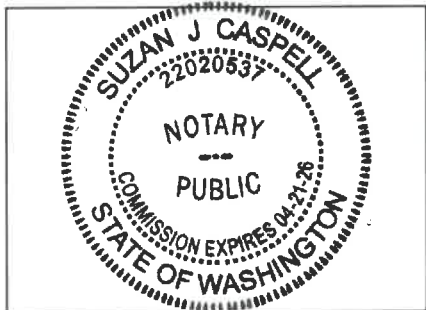
(Use this space for notary stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_


STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Theodore Johnson is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Co-Managing Member of Foss Harbor Marine, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: February 9, 2023.



(Use this space for notary stamp/seal)

  
\_\_\_\_\_  
Notary Public  
Print Name SUZAN J. CASPELL  
My commission expires 4/21/26

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF REAL PROPERTY**

Lease 12,734 square feet of Parcel No. 8950002101, Auditor of Pierce County, State of Washington, Section 04 Township 20 Range 03 Quarter 21 TACOMA TIDELANDS PARCEL "D" OF DBLA 2000-08-30-5001 DESCRIBED AS LOT 7 THROUGH 11 AND WEST 120 FEET OF SOUTH 40 FEET OF LOT 6 BLOCK 63 INCLUDING VACATED DOCK STREET ABUTMENT SUBJECT TO EASEMENT OF REC OUT OF 210-0 & 208-1 SEGMENT MO252 10/3/00 MA/JU