

**STATE OF OREGON  
DEPARTMENT OF STATE LANDS  
AMENDED AND RESTATED  
SUBMERGED AND SUBMERSIBLE LAND LEASE**

11874-ML

This Lease is an amendment to and restatement of that certain submerged and submersible lands lease, 11874-ML, dated the 5<sup>th</sup> day of April, 1999, by and between the State of Oregon, by and through the Oregon State Land Board and the Department of State Lands, and City of Newport, as Lessee:

The State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("State"), hereby leases to the person(s) herein named ("Lessee"), the following described lands on the terms and conditions stated herein (the "Lease"):

NAME of LESSEE:  
City of Newport

ADDRESS:  
169 SW Coast Hwy  
Newport, OR 97365

Legal classification of Lessee is a Municipal Corporation,

Lands situated in Lincoln County more fully described as follows:

A parcel of state-owned submerged land in the Yaquina River beginning at the point of intersection of the Mean Low Tide line of the right bank and the extended South line of South West Fall Street;

thence riverward along said extension a distance of 60 feet to a point;

thence North 45°27' East a distance of 30 feet;

thence shoreward at right angles to the shoreline a distance of 60 feet to the Mean Low Tide line;

thence downstream along said Mean Low Tide line a distance of 60 feet to the Point Of Beginning, encompassing 0.05 acres, more or less, all in Section 8, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon.

Total number of acres: 0.05 acres, (2,266 square feet) more or less.

*This description is used to establish the approximate location and extent of the area subject to this Department of State Lands authorized use and was not prepared by a licensed surveyor. All locations, bearings, and distances were developed in the Oregon Coordinate Reference System Standard; Oregon Statewide Lambert Conformal Conic, NAD 1983, International Feet, GRS 1980 Spheroid.*

Hereinafter referred to as the "Leasehold".

## **SECTION 1 - LEASE TERM; RENEWAL; TERMINATION**

- 1.1 **Term:** This Lease will continue for a period of 15 years commencing on November 1, 2018, the month and date of which will be known as the "Lease Anniversary Date," and expiring on October 31, 2033, unless terminated earlier as provided under Section 1.4 or Section 7.2 below.
- 1.2 **Renewal:** Lessee may apply to renew this Lease for successive 15 year terms by submitting a completed lease renewal application form to State not less than 180 days prior to the expiration of the current term. Upon receipt of the application, State shall renew this Lease unless:
  - 1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes or Oregon Administrative Rules; or
  - 1.2.2 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0260.
- 1.3 **Notice of Intent Not to Renew:** Except as otherwise provided in this Lease, State shall provide written Notice to Lessee two years in advance if State intends not to renew this Lease for all or any portion of the Leasehold. If State determines not to renew this Lease, but less than two years remain in the Lease term, State shall, at Lessee's request, extend the term of this Lease to complete the two year Notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.
- 1.4 **Termination Upon Mutual Consent:** This Lease may be terminated by mutual written consent of Lessee and State.
- 1.5 **Holdover:** If Lessee does not vacate the Leasehold at the expiration or upon termination of the Lease, State may treat Lessee as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and Rent. State may unilaterally establish a new Rent for the month-to-month tenancy, payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this Section, the tenancy will be terminable at the end of any monthly rental period upon Notice from State given not less than 30 days prior to the termination date specified in the Notice.

## SECTION 2 – RENT; OTHER ASSESSMENTS

2.1 Initial Annual Rent: The rental payment to be paid by Lessee to State (the "Rent") for the first year of the Lease is \$1,192.37, based on the following Flat Rate. Receipt of the first year's Rent is hereby acknowledged.

	<b>Use Class</b>	<b>Area (square ft.)</b>	<b>Rate Choice</b>	<b>Annual Rent</b>
a)	Marine Industrial/Marine Services	2266 square feet	Flat Rate	\$1,192.37
			<b>TOTAL</b>	<u>\$1,192.37</u>

2.2 Annual Rent Adjustment: The Rent will be adjusted annually in accordance with the provisions of OAR 141-082-0305 in effect at the time. Each payment is due on the Lease Anniversary Date established in Section 1.1.

2.3 Address for Rent Payments: Until State provides Notice of a change in address (using a method described in Section 10.4), Lessee shall deliver all Rent payments to the following address:

Department of State Lands  
775 Summer St. NE, Suite 100  
Salem, OR 97301-1279

2.4 Assessments: Lessee shall pay all taxes or assessments, or both, that are levied against the Leasehold, whether or not such taxes or assessments, or both, have been levied in the past against the Leasehold or State by the assessing agency.

2.5 Liens: With the exception of mortgages or other security interests authorized by State under Section 6, Lessee shall immediately cause to be discharged any lien or other charge placed on the Leasehold or its Improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Lease if Lessee fails to discharge any lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten days Notice to do so by State. Lessee shall pay and indemnify State for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether the costs, damages or charges are incurred prior or subsequent to any termination of this Lease.

2.6 Late Charges and Interest: Late payments by Lessee of Rent and other charges due under the Lease will cause State to incur costs and other damages not otherwise addressed in this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. In recognition of the foregoing, the parties agree that, notwithstanding other remedies permitted under the Lease and in addition to these remedies, if Lessee has not made full payment of amounts due within 20 days of the date payment is due, Lessee shall pay an additional charge equal to five percent of the amount of the late Rent or other charge. In addition, all amounts due and owing under this Lease, including late charges, will bear

interest at the lower of: (a) the highest interest rate allowable by law, or (b) 12% per year.

### **SECTION 3 - USE AND RESTRICTIONS ON USE**

- 3.1 **Authorized Use:** This Lease grants to Lessee the right to use the Leasehold for the specific purpose(s) described below in accordance with the Lease terms and conditions, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Fish processing plant

- 3.2 **Restrictions on Use:** Lessee shall:

3.2.1 comply with all applicable local, state and federal laws and regulations affecting the Leasehold and its use, including local comprehensive land use planning and zoning ordinances, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use;

3.2.2 dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the Leasehold, and, if Lessee allows debris, garbage or other refuse to accumulate within the Leasehold, allow State to remove the debris, garbage and other refuse, and collect the cost of such removal from Lessee;

3.2.3 not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the Leasehold except with written permission of State, and promptly report to State the cutting or removal of vegetation by other persons;

3.2.4 conduct all operations within the Leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or the growth of noxious weeds;

3.2.5 maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements (each an "Improvement") in a good state of repair; and

3.2.6 not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.

- 3.3 **Condition of Leasehold and Improvements:** Lessee represents that it has inspected the Leasehold and Improvements, if any, and accepts the Leasehold and all Improvements in their present condition, AS IS. State has made no oral or

written representations concerning the condition of the Leasehold or its Improvements, if any, nor their fitness or suitability for any purpose.

- 3.4 Limitation on Improvements: Lessee may not construct or place upon the Leasehold any Improvement that exceeds \$15,000 in cost or value unless Lessee has first obtained the prior written authorization of State or the Improvement is exempt under OAR 141-082-0265. State shall not unreasonably withhold or delay its approval for Improvements consistent with the purposes of this Lease. All Improvements must be consistent with the authorized use(s) of this Lease stated in Section 3.1 and in compliance with all applicable laws, regulations, and ordinances as stated in Section 3.2.1.
- 3.5 Disposition of Unauthorized Improvements or Structures: Lessee shall remove all unauthorized Improvements from the Leasehold upon receiving Notice from State, unless State elects to remove the Improvements at Lessee's cost and expense.
- 3.6 Removal of Authorized Improvements: Lessee shall remove all authorized Improvements within 90 days after the termination or expiration of the Lease or modification of the Lease under Section 4.2, unless otherwise agreed by the parties or the Improvement is exempt under OAR 141-082-0265. Lessee is responsible for any damage done to the Leasehold as a result of the removal of any Improvement. Any Improvement remaining on the Leasehold after the 90 days will at the option of State become the property of State, unless otherwise agreed by the parties.

3.7 Liability: Lessee shall defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses, including expert witness fees and costs and attorney's fees in an administrative proceeding, at trial, or on appeal ("Claims") arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold. As used in this Section 3.7 only, "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents. Lessee shall have control of the defense and settlement of any Claim; however, neither Lessee nor any attorney engaged by Lessee shall defend the Claim in the name of the State, nor purport to act as legal representative of State, without the approval of the Attorney General, nor shall Lessee settle any Claim on behalf of State without the approval of the Attorney General. State may, at its election and expense, assume its own defense and settlement in the event that State determines that Lessee is prohibited from defending State, that Lessee is not adequately defending the State's interests, or that an important governmental principle is at issue and the State desires to assume its own defense.

- 3.8 Waste Water Disposal: In addition to any other applicable laws and regulations, Lessee shall obtain any permits required by state or local authorities and shall comply with Oregon Department of Environmental Quality and Oregon State

Marine Board requirements for sewage collection and waste water disposal for boats and floating structures.

**3.9 Hazardous Substances:**

3.9.1 Lessee shall not use, store, or dispose of, or allow the use, storage, or disposal within the Leasehold of any material that may pose a threat to human health or the environment, including without limitation, hazardous substances, pesticides, herbicides, or petroleum products (a "Hazardous Substance") except in strict compliance with applicable laws, regulations and manufacturer's instructions, and Lessee shall take all necessary precautions to protect human health and the environment and to prevent the release of any Hazardous Substance on or from the Leasehold.

3.9.2 Lessee shall keep and maintain accurate and complete records of the amount of all Hazardous Substances stored or used on the Leasehold, and shall immediately notify State of any release or threatened release of any Hazardous Substance on or from the Leasehold or otherwise attributable to operations or activities on the Leasehold.

3.9.3 If any Hazardous Substance is released, and the release arises from or is attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold, Lessee shall promptly and fully remediate the release in accordance with state and federal regulations and requirements. If Lessee fails to so remediate, State may remove and remediate any release of a Hazardous Substance on or from the Leasehold or attributable to operations or activities conducted or allowed by Lessee on the Leasehold and collect the cost of removal or remediation from Lessee either as additional Rent or as damages.

3.9.4 In addition to any duty to indemnify specified elsewhere in this Lease, Lessee shall indemnify State to the fullest extent allowed by Oregon law against any claim or costs arising from or related to a release of a Hazardous Substance arising from or attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold.

3.10 Weed Control: Lessee shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the Leasehold as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests or diseases, or as may be authorized or directed by State.

**SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE**

4.1 Change of Leasehold Area or Use: Lessee may request that State amend the Lease to expand or reduce the size, or change the authorized use, of the Leasehold using a form provided by State. However, no such amendment will be

effective unless authorized in writing by State. State shall process and review requests to amend the Lease in the same manner as a new lease application.

- 4.2 Special Conditions Applicable to Reductions in Leasehold Area. This Lease may be amended to reduce the Leasehold area only if the portion of the Leasehold to be removed from the Lease does not contain any Improvement. If the amendment results in a reduction of Rent due under the Lease, the reduction will be effective commencing on the Lease Anniversary Date that falls at least 12 months after the later of: (a) the date of the reduction in the Leasehold area; or (b) the date on which the amendment is fully executed.
- 4.3 Lessee Liable for Violations. Notwithstanding any reduction in the Leasehold area under this section, Lessee shall remain liable for any violation of Section 3.8 or 3.9 occurring on lands removed from the Leasehold prior to the amendment removing such lands.

## SECTION 5 – RESERVATIONS

- 5.1 Access: State reserves a right of access to the Leasehold, which, subject to any applicable provisions of the Oregon Residential Landlord and Tenant Act, ORS chapter 90, the State may exercise at all reasonable times to inspect and manage the State's interest in the Leasehold and to evaluate and ensure compliance with the terms and conditions of this Lease. State may examine pertinent records of Lessee for the purpose of ensuring compliance with the Lease.
- 5.2 Minerals: State reserves all rights to coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes including, without limitation, the right to explore, mine, develop, produce and remove such minerals and other deposits, along with the right of ingress and egress for these purposes, and to terminate this Lease as to all or any portion of the Leasehold when required for these purposes with 120 days prior written Notice to Lessee or as otherwise provided by law.
- 5.3 Easements: State reserves the right at any time to grant easements across the Leasehold for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, along with the right of ingress and egress for these purposes, subject to the inclusion in any such grant of easement of a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in the Lease.
- 5.4 Public Access and Recreational Use: All state-owned submerged and submersible land must remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by State to public

entry pursuant to the provisions of applicable Oregon Administrative Rules. Lessee may request State, but State is not obligated, to close the Leasehold to public entry or restrict recreational use by the public on all or portions of the Leasehold to protect persons or property from harm arising from or in connection with Lessee's activities.

This reservation does not grant the public any right to use or occupy, without Lessee's permission, Lessee-owned property or structures authorized under this Lease.

- 5.5 Other: State reserves all other rights not expressly granted to Lessee under this Lease.

## **SECTION 6 – ASSIGNMENTS; SUBLEASES**

### **6.1 Assignment and Sublease:**

6.1.1 Except as provided in Section 6.2, Lessee may not assign this Lease or sublease the Leasehold or any portion of the Leasehold nor enter into any third party agreement respecting the Lease or the Leasehold without first obtaining the prior written consent of State pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing using an application form prescribed by State. The application must be received by State at least 30 calendar days prior to the proposed effective date of the sublease or assignment. State shall make a good faith effort to complete its review of Lessee's application within 30 days following receipt. If the application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications may be extended and the proposed sublease or assignment may be delayed pending the completion of such review.

6.1.2 State reserves the right to condition its consent to an assignment or sublease as State deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest will be required to comply with all of Lessee's obligations under this Lease, and the applicable Oregon Administrative Rules. Lessee will remain liable for the performance of all obligations under this Lease unless State's written consent expressly releases Lessee from further liability.

6.1.3 For the purposes of this section, if Lessee is a corporation or partnership or limited liability company, the transfer of any corporate stock or partnership or membership interest (including by operation of law) will be deemed an assignment subject to the provisions of this section if the result of the transfer is a change of management control or controlling interest in Lessee.

6.1.4 Lessee may not grant a mortgage or security interest in this Lease



without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the creditor will require the prior written approval of State.

6.2 **Permitted Assignments and Subleases:** Notwithstanding Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of Lessee's interest in the Leasehold are permitted and written Notice to State is not required:

6.2.1 subleases of portions of Lessee's interest in the Leasehold area in the ordinary course of Lessee's business for the purposes approved under Section 3.1;

6.2.2 the sublease of the entire Leasehold for a term that is less than one year for a purpose specified in Section 3.1; or

6.2.3 the transfer of Lessee's interest in the Lease to a surviving spouse or immediate family member following the death of Lessee; except that, any other transfer of ownership following the death of Lessee is considered an assignment requiring State's approval.

## **SECTION 7 – DEFAULT**

7.1 **Default:** The following are events of default:

7.1.1 Failure of Lessee to pay any rent, tax, reimbursement or other charge or payment due under the Lease within 20 days after the date payment is due. For the purposes of this subsection, if the due date for payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, payment is due on the date set forth in the Notice from State to Lessee informing Lessee of its obligation to pay the charge or payment.

7.1.2 Failure of Lessee to comply with any non-payment-related term or condition or obligation of the Lease within 30 days after Notice by State specifying the nature of the deficiency, or, in the event of an emergency, within the time specified by State to resolve the emergency. Upon timely request from Lessee, State may in its good faith discretion permit the deadline for curing non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the 30 day period; (2) the interests of State will not be harmed by an extension; (3) default was not due to the willful act or gross negligence of Lessee; and (4) State and Lessee mutually agree upon a written plan and timeline for curing the non-compliance.

7.1.3 Any of the following:

- a) insolvency of Lessee;
- b) the filing by Lessee of a voluntary petition in bankruptcy;

- c) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee;
- d) the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 days after filing; or
- e) attachment of or the levying of execution on the Leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

If Lessee consists of two or more individuals or business entities, the events of default specified in this paragraph apply to each individual or entity unless within ten days after an event of default occurs the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned under Section 6 of this Lease, the events of default specified in this subsection apply only with respect to the one then exercising the rights of Lessee under the Lease.

7.1.4 Notwithstanding the above, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or the discharge of its Constitutional obligations with respect to the land, State may declare an immediate default without any right of Lessee to cure the deficiency.

7.2 Termination of Occupancy Upon Default: State may terminate Lessee's right to occupy the Leasehold for any default by Lessee that remains uncured past the time provided in Section 7.1. State shall exercise its right to terminate Lessee's occupancy under this section by providing Notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under the Lease upon the date provided in the Notice. State may recover from Lessee all costs arising out of State's re-entry and, if State and Lessee mutually agree to terminate the Lease as provided in Section 1.4, all costs of re-letting the Leasehold. If State and Lessee mutually agree to terminate the Lease, State may recover the amount of unpaid rent that otherwise would have been required to be paid under the Lease from the date of default until a new Lease has been secured or, if State and Lessee do not agree to terminate the Lease and State is unable to secure another lessee for the Leasehold, until such time as the Lease expires. Lessee shall dispose of all Improvements as specified in Section 3.6 of this Lease. If Lessee owns a floating home and has placed the home on the Leasehold pursuant to the provisions of Section 3.1 of this Lease, the lease termination provisions of ORS chapter 90 will apply to the extent the provisions of this Lease are inconsistent with this chapter.

### 7.3 State's Right to Cure Defaults:

7.3.1 If Lessee fails to perform any obligation under this Lease, State may perform the obligation of the Lease 30 days after providing Notice to Lessee. All of State's expenditures to carry out the obligation must be reimbursed by Lessee on demand with interest at the rate of one percent per month accrued from the date of expenditure by State.

7.3.2 Notwithstanding Section 7.3.1, but subject to ORS chapter 90 if applicable, if any violation of a term or condition of this Lease, including without limitation use of the Leasehold in a manner not permitted under the Lease, is causing or threatens to cause personal injury or damage to the Leasehold or other property, or if damage to the Leasehold arises from some other cause, State may immediately enter upon the Leasehold and take such action as it deems necessary to stop the use or mitigate the injury or damage. If the injury or damage is due to a violation of the terms or conditions of this Lease, Lessee will be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate the injury or damage. State, at its option, may send Notice to Lessee of the violation and, upon receipt of the Notice, Lessee shall immediately cease the violation and repair the injury or correct all damage caused by the violation. State's failure to provide Notice of a violation may not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

## **SECTION 8 – INSURANCE; BONDS**

- 8.1 LESSEE shall maintain during the term of this Lease, the required insurance coverages described in attached Exhibit B.
- 8.2 Bond: State reserves the right to require Lessee to furnish to State a surety bond or an equivalent cash deposit or certificate of deposit, in an amount to be determined by State in the exercise of its reasonable discretion, which names the State of Oregon as co-owner to ensure that Lessee will perform in accordance with all terms and conditions of the Lease.

## **SECTION 9 - ADDITIONAL CONDITIONS AND STIPULATIONS**

- 9.1 None.

## **SECTION 10 - MISCELLANEOUS**

- 10.1 Entire agreement: This Lease, together with the attached exhibits and attachments, constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Lease will bind either party unless in writing. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given, and will be valid and binding only if it is signed by each party. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Lease. This Lease supersedes all prior or existing lease or rental agreements between the parties with respect to the Leasehold described in this Lease.

- 10.2 No Partnership: State is not a partner nor in a joint venture with Lessee in connection with any business carried on in connection with this Lease or the Leasehold and has no obligation for Lessee's debts or other liabilities.
- 10.3 Non-Waiver: Waiver by either party of strict performance of any provisions of this Lease will not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

10.4 Notices:

10.4.1 Any communication required by the terms of this Lease to be given in writing (hereafter, a "Notice") must be given or be served by:

- a) depositing the same in the United States mail, postage prepaid; registered or certified mail, with return receipt requested; or
- b) personal delivery service with all charges billed to shipper; or
- c) expedited delivery service with all charges billed to shipper; or
- d) prepaid telegram, telex or facsimile;

addressed to the party for whom the Notice is intended at the address set forth below or at such other address as the party may designate from time to time.

For Notices to Tenant:

City of Newport  
169 SW Coast Hwy  
Newport, OR 97365

For Notices to Landlord:

Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301-1279

10.4.2 Notice is deemed received:

- a) upon receipt if sent by telegram, telex or facsimile or if personally delivered (as long as delivery is confirmed by the receiving telex or facsimile operator, including electronic confirmation of receipt, or by the courier delivery service, as the case may be); or
- b) three business days after the date of deposit in a post office or other official depository under the care and custody of the United States Postal Service, if sent by United States mail; or
- c) on the date of delivery by any expedited delivery service, or
- d) on the date any party declines to accept any Notice given as provided in this section.

10.4.3 Each party shall have an address, for Notice purposes, that is within the continental United States and, if any party resides outside the continental United States, the party shall designate an agent for the purpose of receiving Notices whose address is within the continental United States. Any party may

change its address for the purpose of receiving Notices by delivering a Notice of the change of address to the other party as described in this section 7.3.

10.4.4 Communications between the parties that are not required by this Lease to be in writing may be by any mutually acceptable method.

- 10.5 Governing Law; Venue: This Lease and all matters related to the rights and responsibilities of the parties under it are governed by and subject to the laws of the State of Oregon and the administrative rules of the Department of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties under this Lease, and all such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease. Any claim, action, suit or proceeding (collectively, a "Claim") between State and Lessee that arises from or relates to the Lease must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; except that, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. However, in no way is this section or any other provision of this Lease to be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of all such courts.
- 10.6 Binding on Successors: This Lease is binding on and will inure to the benefit of the successors and assigns of the parties to it, but nothing in this section may be construed as a consent by State to any disposition or transfer of the Lease or any interest in it by Lessee except as otherwise expressly provided in this Lease.
- 10.7 Nondiscrimination: The Leasehold must be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 10.8 Right To Sue More Than Once: State may sue periodically to recover damages accrued to date and no action for damages will bar later actions for damages subsequently accruing.
- 10.9 Remedies Cumulative: The remedies contained in this Lease are in addition to, and do not exclude, any other remedy available at law or in equity, and the exercise by either party of any one or more of its remedies does not preclude the exercise by it at the same or different times of any other remedies for the same default or breach by the other party.

- 10.10 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party is entitled to recover all costs and disbursements incurred, including such sums as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings. State's obligation under this section is subject to the limitations of Article XI, section 7 of the Oregon Constitution.
- 10.11 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 10.12 Survival. Termination or expiration of the Lease will not extinguish or prejudice State's right to enforce the provisions of this Lease relating to indemnification, access to records, governing law, venue and consent to jurisdiction.

*[remainder of page intentionally left blank]*

Lessee, by the signature below of its authorized representative, hereby acknowledges that Lessee has read this Lease, understands it and agrees to be bound by its terms and conditions.

**STATE:**

The State of Oregon, acting by and through the Oregon State Land Board and the Department of State Lands  
775 Summer ST NE, STE 100  
Salem, OR 97301-1279

Kirk Jarvie / Kirk Jarvie  
DSL Authorized Signature/ Printed Name

August 16, 2019  
Date

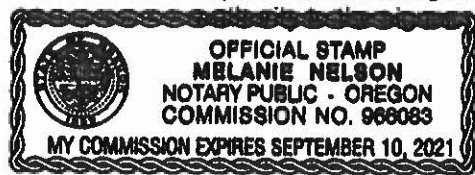
**LESSEE:**

City of Newport  
A Municipal Corporation  
169 SW Coast Hwy  
Newport, OR 97365

[Signature] / City Manager  
Signature/Title  
(Note requirement below)

07-05-19  
Date

Note: If Lessee is a corporation, partnership, limited liability company or other form of business entity, signer warrants that s/he has the authority to sign the Lease on behalf of such entity by resolution of its Board of Directors or equivalent, or through delegation of



STATE OF \_\_\_\_\_ )  
County of Lincoln ) ss.

The foregoing instrument was acknowledged before me this 5 day of July, 2019, by Spencer Nebel (name of officer or agent of corporation) the City Manager (title of officer or agent) of City of Newport (name of business entity) an Oregon (state or place of incorporation) Municipal Corporation (corporation, general partnership, limited liability company, etc.) on behalf of said Municipal Corporation (corporation, general partnership, limited liability company, etc.)

Melanie Nelson  
Signature  
My commission expires Sept.

**CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS**

By signature on this Lease for Lessee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Lessee and that Lessee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

Signature: 

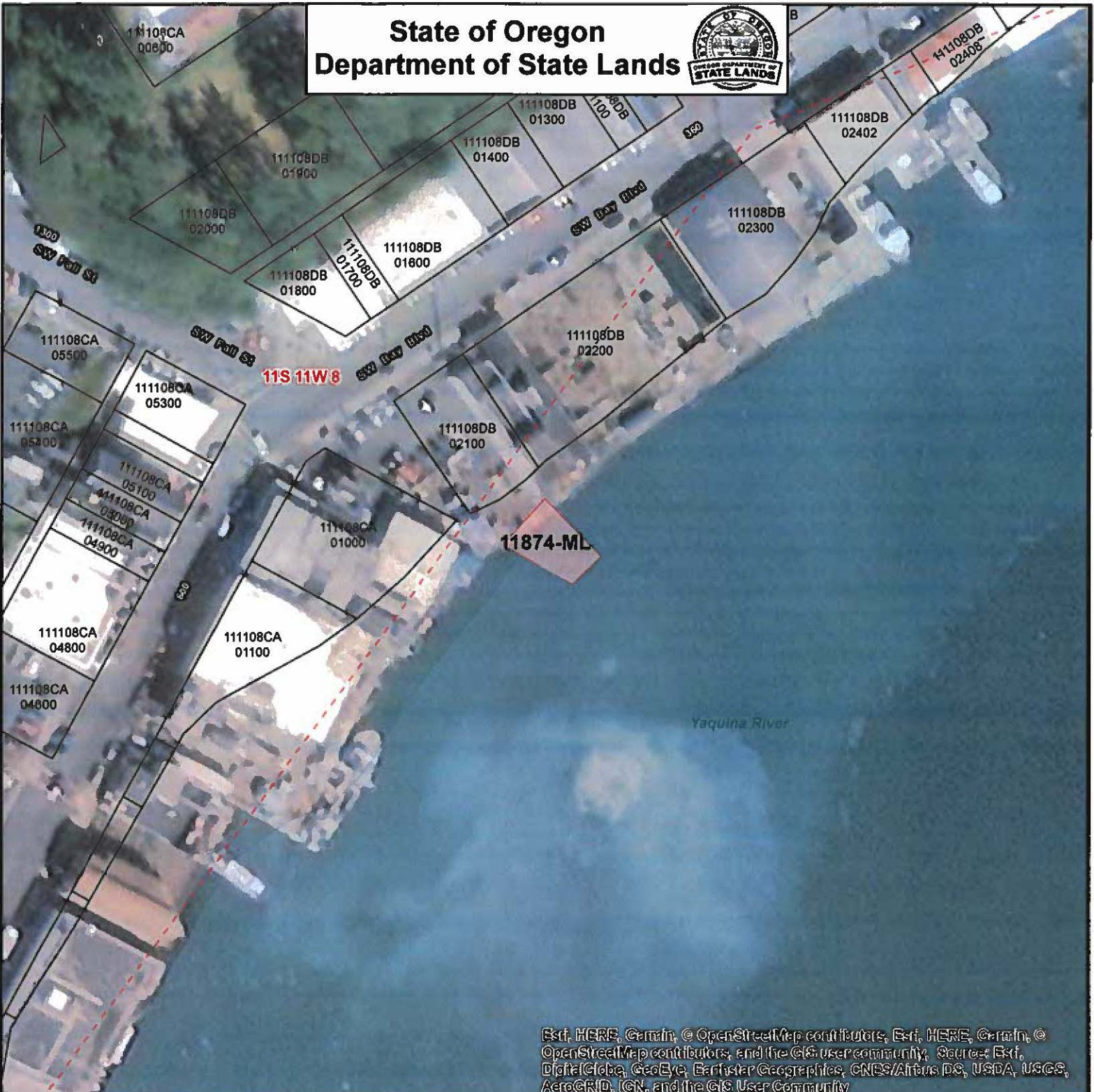
Date: 07-05-19

Printed Name: Spencer R. Nebel

Title: City Manager



# State of Oregon Department of State Lands



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## EXHIBIT A

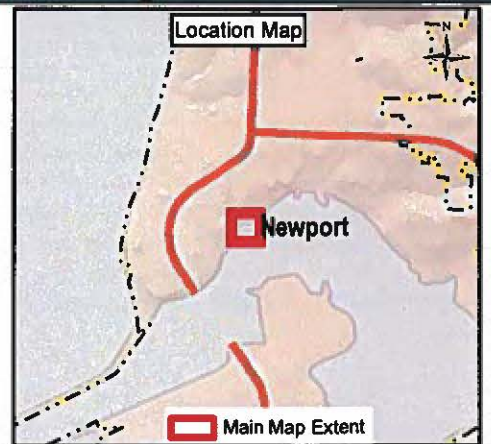
**11874-ML Waterway Lease**  
**T11S, R11W Section 08**  
**2,266 Square Feet**  
**LINCOLN County**

 Use Area

This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



Map Projection:  
 Oregon Statewide Lambert  
 Datum NAD83  
 International Feet  
 State of Oregon  
 Department of State Lands  
 775 Summer St NE, Suite 100  
 Salem, OR 97301  
 503-986-5200  
 www.oregon.gov/DSL  
 Date: 11/1/2018



**Exhibit B  
INSURANCE REQUIREMENTS**

During the term of the Lease, Lessee shall maintain in force at its own expense, each insurance item noted below: **(State must check boxes for #2, #3, and #4 to indicate whether insurance is required or not.)**

1. **Required by State of lessee with one or more workers, as defined by ORS 656.027.**

**Workers' Compensation.** All employers, including Lessee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Lessee shall require and ensure that each of its sublessees (if permitted) complies with these requirements.

2.  **Required by State**  **Not required by State.**

**(Commercial/General) Liability coverage**, insuring against claims for bodily injury, death and property damage. Coverage must include contractual liability coverage for the indemnity provided under this Lease. **The commercial/general liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds. See Number 7 below.**

Lessee shall provide proof of liability or commercial general liability insurance in not less than the following amounts:

**Bodily Injury/Death:**

\$1,000,000/\$2,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

\$2,000,000/\$4,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

\$ \_\_\_\_\_

3.  **Required by State**  **Not required by State.**

**Marine Protection and Indemnity Coverage.** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of the Lease, marine protection and indemnity coverage. Shall not be less than \$ \_\_\_\_\_.

4.  Required by State  Not required by State.

**Pollution Liability:** Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, pollution liability insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Leasehold. Shall not be less than \$\_\_\_\_\_

5. **"Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis, Lessee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Lease, for a minimum of 24 months following the termination or expiration of the Lease.
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Lease, the Lessee shall furnish acceptable insurance certificates to State prior to commencing any work to be performed under the Lease. The certificate must specify all of the parties who are additional insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to State. Lessee shall pay for all deductibles, self-insured retention and self-insurance
7. **Additional Insured.** The commercial general liability and automobile liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds but only with respect to Lessee's activities to be performed under this Lease. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
8. **Change in coverage or cancellation.** Lessee shall notify Lessor when a change in coverage or cancellation occurs. Lessee shall provide Lessor copies of new coverage upon effect of change. As stated in section 2, Lessee shall ensure required insurance coverage is maintained over the term of the lease.

STATE OF OREGON  
DEPARTMENT OF STATE LANDS  
Consent to Sublease  
11874-ML

For good and valuable consideration received, City of Newport hereby requests the Department of State Lands consent to sublease on the terms and conditions of the attached sublease agreement. This request is made in accordance with lease number 11874-ML dated 11/1/18, by and between the State of Oregon, acting by and through the Department of State Lands, as Lessor, and City of Newport, as Lessee, covering the use of the real property and improvements described therein, situated in Lincoln County, State of Oregon and the applicable Oregon Administrative Rules. This consent is not valid until the Department of State Lands issues its written consent by executing this document. Lessee affirms that the attached agreement is a full and complete copy. Enclosed is \$750.00, the required non-refundable application fee.

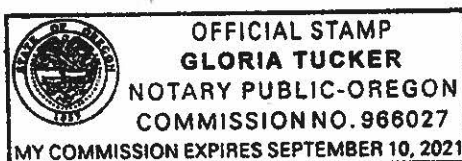
Dated this 31 day of October, 2018.

LESSEE

[Signature]  
Authorized Signature

STATE OF Oregon  
County of Lincoln

The foregoing instrument was acknowledged before me this 31 day of October, 2018, by Spencer Nebel (officer or agent of corporation), the City Manager (title) of City of Newport (corporation), on behalf of the corporation.



[Signature]  
Signature

My Commission Expires: 9/10/21

SUBLESSEE

Pacific Choice Seafood Company hereby acknowledge(s) waterway lease 11874-ML and agree(s) to be bound by all the terms, conditions, obligations, and liabilities in any way connected with the said lease and to faithfully perform all provisions therein contained.

Dated this 21 day of May, 2019.

SUBLESSEE

16797 SE 130th Ave  
(Address)

Pacific Choice Seafood Company  
(Please print)

Clackamas, OR 97015  
(City/State/Zip)

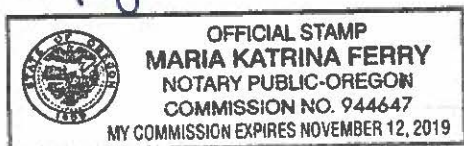
[Signature]  
Signature

503 905 4500  
(Area Code) (Phone Number)

General Counsel  
Title

STATE OF Oregon  
County of Clackamas

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of May, 2019, by Anthony DelPonte (officer or agent of corporation), the General Counsel (title) of Pacific Choice Seafood Company (corporation), on behalf of the corporation.



[Signature]  
Signature

My Commission Expires November 12, 2019

The State of Oregon, acting by and through the Department of State Lands in the above-mentioned Lease, acknowledges and consents to the attached sublease agreement.

Dated this 17<sup>th</sup> day of June, 2019.

DEPARTMENT OF STATE LANDS

By: [Signature]  
DSL Authorized Signature

Kiriz Jarvis  
Printed Name

