

MARINA LEASE
Between
THE CITY OF SEATTLE
Department of Parks and Recreation
And
MARINA MANAGEMENT, L.L.C.

This MARINA LEASE Agreement (“Lease”) is made and entered into as of the Effective Date (defined below) by and between **THE CITY OF SEATTLE** (“City”), a first class city of the State of Washington, acting by and through its Superintendent of Parks and Recreation (“Superintendent”), and **MARINA MANAGEMENT, L.L.C.**, a Washington limited liability company (“Tenant”).

BACKGROUND

- A. City owns uplands and leases from the Department of Natural Resources tidelands and aquatic lands which are commonly known as Leschi Moorage Facility. Additionally, City owns tidelands, aquatic lands, an island, and uplands which are commonly known as the Lakewood Moorage Facility. In this Lease, the Leschi Moorage Facility and Lakewood Moorage Facility are collectively referred to as the “Marinas.” The Marinas are located on the western shore of Lake Washington.
- B. The Marinas were created in the mid-20th century as a response to the post-war boom in boating and were operated using a concession model, meaning a private operator ran day-to-day operations but did not perform major maintenance. Historically, the only way to access the moorages has been by renting a slip or through the generosity of others who have a boat moored at the facility. Between 1981 and 2015, Schober & Associates, Inc. operated the Marinas under an agreement with the Seattle Department of Parks and Recreation (“DPR”). DPR took over operations from Schober & Associates, Inc. in October 2015 and has continued to operate them ever since.
- C. DPR has jurisdiction over the Marinas.
- D. DPR conducted a request for proposals process which required any successful respondent to provide increased public access to the Leschi and Lakewood Marinas in the form of new public access to the Marinas (especially at Lakewood and Ohler’s Island), public programming, community events, and public/guest moorage.
- E. Tenant was selected to improve, operate and lease the Marinas in large part because of Tenant’s successful history in managing and developing public moorage facilities.

- F. City and Tenant intend to enhance the Marinas consistent with the surrounding neighborhoods, improve public access, and provide safe and accessible public moorages on the shores of Lake Washington that reflect the beauty and spirit of the Pacific Northwest.
- G. City and Tenant wish to continue and enhance the marine uses that contribute to the economic, cultural, and recreational vitality of the surrounding communities.
- H. Tenant has a demonstrated history of commitment to customer service and an ability to work with a diverse community and has a proven track record of working successfully on marine projects with minimal disruption to marina operations.
- I. Tenant is committed to and has demonstrated the ability to improve public access and provide community benefits without compromising the quality and security of marina operations and the Tenant has demonstrated experience in the marine recreational and hospitality business and not just the boat storage business.
- J. Tenant will bring proven expertise in financing, construction management, and operations of marinas to complete tenant improvements to DPR's Lake Washington moorages, and will also add public amenities to accomplish the goal of creating public and private uses that contribute to the economic, cultural, and recreational vitality of the Marina communities.
- K. City is satisfied that providing these services will ensure sustainability of the moorage facilities and therefore be in the best interest of the City, moorage tenants, and neighboring communities;

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the City and Tenant covenant and agree as follows.

ARTICLE 1 PROPERTY LEASED & TERM OF LEASE

Section 1.01 Property. The real property subject to this Lease (“Property”) consists of the Leschi Moorage Facility, located at 201 Lakeside Avenue South, Seattle, Washington, and the Lakewood Moorage Facility, located at 4400 Lake Washington Boulevard South, Seattle, Washington. The Leschi Moorage Facility consists of two non-contiguous parcels commonly referred to as “Leschi North” and “Leschi South.” Portions of the Leschi Moorage Facility

subject to this Lease are aquatic lands leased from the State of Washington Department of Natural Resources (“DNR”) by City. Copies of Aquatic Land Leases No. 20-090021 (North Leschi) and No. 22-002758 (South Leschi) (the “DNR Leases”) have been provided to Tenant and are incorporated into this Lease by reference. The Property is legally described in **Attachment B**.

Section 1.02 Grant of Lease. City demises and leases and subleases to Tenant, and Tenant leases and subleases from City, the Property, together with all appurtenant easements and other rights. The Property includes the Marinas and improvements commonly used in the operation of the Leschi and Lakewood Moorage Facilities. The Property is leased to Tenant in its present AS-IS condition and state of repair and without any representation or warranty of any kind by City, express or implied. Tenant acknowledges that the Marinas were built more than fifty years ago and although the facilities have been improved from time to time, a substantial amount of capital maintenance and improvements have been deferred. Tenant has examined the Property and is thoroughly familiar with the physical condition of the Property, as well as applicable Laws, and has found all of the same to be satisfactory for its use of the Property. Tenant hereby accepts the Property subject to all of the foregoing and expressly without recourse to City as to the physical condition or suitability of the Property for the Permitted Use.

Section 1.03 Term. The term of this Lease shall commence on the Effective Date and shall continue for an initial term of twenty years (the “Term”), conditioned upon the City and DNR entering into extensions of the DNR Leases. If, despite good faith efforts, the City is unable to extend the DNR Leases, then this Lease shall expire on **November 29, 2022**. If the DNR Leases are not extended, but DNR allows the City to continue as master tenant on a holdover basis, this Lease shall continue for the duration of any holdover term or subsequent extension; provided that the Term shall not exceed twenty years, plus Extended Terms, if any. While the City will make good faith efforts to extend the DNR Leases, the City shall have no liability for failure of the condition.

Section 1.04 Option to Extend. So long as (i) the DNR Leases remain in full force and effect and allow for additional extensions, and (ii) Tenant has completed the Tenant Capital Improvements described in Article 8 and (iii) Tenant is not otherwise in default under this Lease, then, after the initial Term, Tenant may extend this Lease for up to two successive periods of ten years (each, an “Extended Term”), on the same terms and conditions herein. If the Lease is extended under this Section 1.04, all references in this Lease to the “Term” shall mean and include the Extended Term(s). Tenant shall exercise its option to an Extended Term by providing the Superintendent written notice of Tenant’s exercise of option no later than ten (10) months prior to the expiration of the then-current Term.

ARTICLE 2 REVENUE AND OPERATING EXPENSES

Section 2.01 Collection of Revenue; Tenant Obligation for Payment of Operating Expenses. During the Term Tenant shall use its best efforts to promptly and diligently collect

revenues from the operation of the Marinas, including and not limited to slip rental fees, guest moorage revenue, pump out, storage, rentals, and concessions. Tenant shall be solely responsible for paying for Tenant’s Operating Expenses related to the management and operation of the Marinas under this Lease in the ordinary course of business, as and when Operating Expenses become due. Additionally, as part of its Operating Expenses and upon invoice from City, Tenant shall be responsible for paying annual DNR lease payments, which are paid in advance and subject to adjustment as provided under the terms of the DNR Leases.

Section 2.02 Security Deposit. Upon the Effective Date, Tenant shall pay City a cash deposit in the sum of \$10,000.00 (“Security Deposit”). If Tenant defaults on any provision of this Lease, City may, without prejudice to any other remedy it has, apply all or part of the Security Deposit to pay:

- (a) any sum due under this Lease;
- (b) any amount that City may spend or become obligated to spend in exercising City’s rights under this Lease; or
- (c) any expense, loss or damage that City may suffer because of Tenant’s Default.

If City applies any portion of the Security Deposit, Tenant shall, within 30 days after demand by City, deposit with City an amount sufficient to restore the Security Deposit to its original amount. Tenant is not entitled to any interest on its Security Deposit. At termination of the Lease, if Tenant is not in default, the Security Deposit shall be returned to Tenant.

ARTICLE 3 RENT, RECORDS AND AUDIT

Section 3.01 Rent. In addition to Tenant’s Capital Improvements under Article 8, Tenant shall pay City rent in the amount of three percent (3%) of Tenant’s Gross Revenue (defined in Article 33) (“Rent”). Rent shall be payable quarterly in arrears, without invoice or deduction of any kind, and shall be due no later than thirty days after the end of each quarter during the Term (April 30, July 30, October 30, and January 30). Tenant’s Rent payment shall be accompanied by the applicable amount of Leasehold Excise Tax due under Section 4.02 and the Quarterly Report described in Section 3.06.

Section 3.02 Records. At all times during the Term of this Lease, Tenant shall keep, or cause to be kept, true and complete records of financial transactions in the operation of all business activities conducted on or from the Property and all Operating Expenses incurred in performance of this Lease. These accounting records must be kept in conformance with Tenant’s standard accounting practice and must be supported by source documents such as sales slips, cash register tapes, purchase invoices, billing records, or other pertinent documents showing proof of receipt.

Section 3.03 Rental Agreements. All rentals of slips shall be documented by written rental agreement which, at a minimum, set forth the term of the rental agreement and the payment obligations thereunder.

Section 3.04 Location of Records. The financial and accounting records from the operation of the Property (and documentation of property taxes paid by Tenant with respect to its property located on the Property) shall be kept separate from Tenant’s other records and made available for inspection within the city of Seattle for a period of at least 6 years after the end of the year to which they pertain.

Section 3.05 Accounting Year. Tenant’s “Accounting Year” shall be 12 full calendar months, beginning on January 1 and ending December 31.

Section 3.06 Reporting. Within 30 days following the end of each quarter of each Accounting Year throughout the Term, Tenant shall provide City with a summary written report (“Quarterly Report”) setting forth, among such other information as City may reasonably request, the Gross Revenues, Adjusted Gross Revenue, Operating Expenses and vacancy rates for the Property during the preceding quarter. Within 90 days after the end of each Accounting Year, Tenant shall submit to City a statement (the “Annual Report”) certified as to accuracy by Tenant, in a form consistent with generally accepted accounting principles that sets forth in itemized form the following information for said Accounting Year:

- a) Gross Revenues;
- b) Adjusted Gross Revenues;
- c) Operating Expenses;
- d) Cost of Capital Improvements completed; and
- e) Vacancy rates.

If the Annual Report shows any underpayment of Rent to City, Tenant shall remit the balance due to City with the Annual Report. If the Annual Report shows any overpayment of Rent to City, the overpayment shall be a credit against the amount due to City for the upcoming quarter. All reports shall be prepared at Tenant’s own expense.

Section 3.07 Audits. City shall, through its duly authorized agents or representatives, have the right to examine and audit Tenant’s accounting records for the purpose of determining the accuracy of the accounting records and the accuracy of all financial and accounting reports prepared or submitted by Tenant as required under this Article 3. City bears the cost of any such additional audit, unless the audit reveals a discrepancy of greater than 5%, in which case Tenant is responsible for the audit costs.

ARTICLE 4 TAXES AND OTHER CHARGES (IMPOSITIONS)

Section 4.01 Utilities. City shall be responsible for the cost of any utility installations, connections, or relocations that are required in connection with or as part of any City Capital Improvement which City is obligated to make under Section 8. Otherwise, Tenant shall arrange for all utility and other services for the Property and shall pay or caused to be paid, and hold City free and harmless from, all charges for installing, connecting, maintaining, and furnishing all necessary utilities, utility facilities, and services within the Property during the Lease Term, including but not limited to, gas, water, electricity, telephone service, drainage, sewage and other public utilities, and removal of garbage, rubbish, and weeds from the Property. Tenant shall collect, sort, and separate all solid waste products on the Property into such categories as may be required by Law or DPR rule. Tenant shall pay all charges for any installation, connection, relocation or other modification to any utility facilities or services necessary to complete the Tenant Capital Improvements, including but not limited to, gas, water electricity, telephone service, sewage and other public utilities, regardless of whether such utilities are outside of or within the Property.

Section 4.02 Tenant's Liability for Taxes. The stated amount of any Rent and other fees described herein does not include any applicable taxes, if any (including without limitation, Washington state and local leasehold excise tax, Washington state and local sales tax or other taxes which may be levied in connection with the transactions contemplated in this Lease or the Tenant's operations on the Property). Notwithstanding anything in this Lease to the contrary, Tenant shall be responsible for and shall pay when due any foreign, federal, state or local taxes (including any penalties, interest or additions to any such taxes) arising as a result of this Lease (including without limitation any Washington State and local leasehold excise tax), the operations of Tenant on the Property, the possession, use or ownership of any of City's or Tenant's property that is located on the Property during the Lease term and the transactions contemplated under this Agreement.

Tenant confirms that, in addition to and not in lieu of any other undertakings by Tenant under this Agreement, Tenant has the obligation to collect from its customers and remit to the appropriate taxing authority any sales, use, or similar taxes that are imposed with respect to Tenant's operations.

ARTICLE 5 PERMITTED USE

Section 5.01 Permitted Use. Tenant shall use, operate and manage the Property only and exclusively for the purposes of (i) berthing boats; (ii) taking legally authorized and appropriate steps to remove or sell derelict or abandoned vessels (iii) providing berthing spaces for owners of boats who wish to reside on their boats subject to the limitations herein; (iv) other uses that are generally consistent with waterfront recreation areas, including, but not limited to, food services, bicycle, kayak, and other recreational equipment rental; and (v) providing services

related to any the activities described in subsections (i)-(iv), or any other commercially reasonable services arising in connection with operation of the Marinas. Other uses, activities and programs must receive the prior written consent of City, which consent shall not be unreasonably withheld or delayed. Tenant’s use of the aquatic lands covered by the DNR Leases must be in accordance with the “Permitted Use” section (Section 5.3) of the DNR Leases.

Section 5.02 Limitations on Use. Tenant shall not use or occupy, nor permit or suffer the Property or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, or for any business, use or purpose in any material way in violation of any present or future governmental Laws, ordinances, requirements, orders, directions, rules or regulations. Tenant shall immediately upon the discovery of any such unlawful or illegal use take all reasonable steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants or other persons guilty of such unlawful or illegal use. Tenant’s use of the aquatic lands covered by the DNR Leases is further restricted by the “Restrictions on Use” section (Section 5.6) of the DNR Leases.

Section 5.03 Continuous Operation; Public Access. Tenant shall conduct its business operations on the Property continuously throughout the Term and shall keep the Marinas open for business from dawn to dusk each and every calendar day except for closures to accommodate remodeling, repair or renovation. Tenant shall provide for meaningful access and use of the Marinas by the general public during business hours, subject to reasonable limitations to protect for public safety and private property located on the Property through slip rentals, transient moorage or other licensed uses.

Section 5.04 City’s Programming Rights. City shall have the right to enter the Property from time to time to conduct recreation and education programs directly related to the aquatic environment. The Parties agree to cooperate in developing a schedule for City’s access prior to the commencement of any programming. All programs will be supervised by an authorized representative of the City. Access will be limited to those areas that are generally accessible to the public.

ARTICLE 6 MARINA OPERATION & MANAGEMENT

Section 6.01 Marina Management. Tenant has the authority to manage and control the Marinas, subject to the terms of this Lease. This includes the authority to charge each Slip Tenant their pro-rata portion of insurance, maintenance, taxes, and other expenses, and to preclude or allow Live-Aboards as Tenant sees fit in its sole discretion, subject to the limitations under Section 6.03. Tenant shall provide, at all in-water and upland facilities, all services normally expected of a first-class marina and required for the sound operation, maintenance and management of first class permanent and transient moorage facilities in Puget Sound. Tenant shall be the exclusive operator and manager of the Property and shall do all things and take all actions necessary for the operation of the Property in accordance with this Lease. Tenant will continuously operate and manage the Property in accordance with Laws. Tenant will not enter into any multi-year contracts or grant any rights with respect to the use or operation of the

Property that would extend beyond the Term of this Lease unless such agreements contain provisions reasonably acceptable to City regarding assignment or termination. Tenant will provide City with a copy of any such contract. Without limiting the generality of the foregoing, Tenant is authorized to and shall:

(a) collect all Property revenues and in connection therewith, use best efforts to collect all fees, rents and other amounts due from the licensees, concessionaires and other users of the Property; and shall cause notices to be served upon the licensees, concessionaires and other users to quit and surrender space occupied or used by it if and when desirable, necessary and appropriate in the sole opinion of Tenant; and shall ask for, demand, collect and give receipts for all amounts which at any time may be due from any licensees, concessionaires and other users of the Property;

(b) negotiate final payments and/or final settlements without additional cost to City with all parties involved in the use or operation of the Property; and shall commence, defend and settle without additional cost to City such legal actions and proceedings concerning the use or operation of the Property as are necessary or required in the sole opinion of Tenant and retain counsel selected by Tenant in its sole discretion in connection therewith;

(c) Tenant shall employ, pay, including payment of employment taxes and industrial insurance premiums, and shall supervise all personnel that Tenant determines to be necessary for the operation of the Property, including such personnel as shall be necessary to maintain and ensure public order and safety in and around the Property. Such personnel shall be employees (or independent contractors, as the case may be), of Tenant, and Tenant shall determine all matters with regard to its employees, including, without limitation, compensation, bonuses, fringe benefits, hiring and replacement;

(d) purchase and maintain all materials, tools, machinery, equipment, spare parts and supplies necessary for the operation of the Property;

(e) prepare and/or coordinate, and administer a preventative maintenance program sufficient to maintain the Property, its machinery, systems, equipment and Property tenant improvements in accordance with the requirements of this Lease;

(f) maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Property;

(g) procure and negotiate contracts with concessionaire(s) for the operation of concessions at the Property;

(h) procure and negotiate contracts with all service providers and suppliers of the Property;

(i) use its reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Property and prepare and file any and all reports required by any insurance carriers in connection therewith and provide copies thereof (other than any confidential or privileged written or electronic communications or documents) upon request to City;

(j) promptly furnish to City, upon receipt by Tenant, copies of all legal notices received by Tenant affecting the Property (other than any confidential or privileged written or electronic communications or documents);

(k) promptly notify City of any suit, proceeding or action that is initiated in connection with the Property; and

(l) ensure that City has no obligation for any Property Operating Expenses, other costs and expenses or to make any payment of any kind, except as otherwise expressly provided in this Lease, it being the intention of the Parties that this Lease is intended to be and shall be construed as an absolute net lease except as otherwise expressly provided for in this Lease.

Section 6.02 Slip Leases. Tenant shall assume the obligations of City for all the slip leases subject to the conditions set forth in the DNR Lease, and any applicable codes, rules or regulations of the City or a state or federal agency with regulatory authority over the Property or Marinas.

Section 6.03 Live-Aboards. Tenant may allow no more than ten vessels to be used as Live-Aboards in the Marinas subject to the following conditions: (i) Tenant shall request proof of weekly pump out of all Live-Aboards' vessels and (ii) Tenant shall take all commercially reasonable steps to ensure that such use is in compliance with applicable regulations and codes, including the Seattle City Code and consistent with the DNR Lease.

Section 6.04 Best Practices. Tenant agrees to manage the Marinas as a responsible environmental steward of Lake Washington and its shoreline by adhering to Washington State Department of Ecology's Best Management Practices ("DOE Best Management Practices").

Section 6.05 Transient Recreational Boating. To provide for Transient Recreational Boating, Tenant shall operate the transient moorage, associated dock areas, and recreational boater support facilities at the Marinas, in a manner that assures that recreational boaters have continuous and reasonable access. Tenant may use card, punch code, or similar privileged locking devices to restrict access to recreational boater restrooms, showers, or moorage floats, provided however, that the general recreational boating public must have access to such facilities at reasonable times (for example, daylight hours) without restriction, except during periods of maintenance or repair.

Section 6.06 Slip Rental Rates and Moorage Fees. Existing slip rental rates and moorage fees will remain in place at the Marinas until December 31, 2017. Thereafter, Tenant may set slip rental rates and moorage fees for each individual Marina, but only after Tenant completes all Capital Improvements described in Attachment A for that particular Marina, as follows:

(a) Slips 30 Linear feet and under. Rental rates and moorage fees for slips 30 linear feet and under shall not exceed the Moorage Rate Maximum (defined in Section 33.01); and

(b) Slips over 30 Linear Feet. Tenant shall prepare, or cause to be prepared, a rate change proposal to the Superintendent that includes a current market survey in advance of any proposed rate increase. Tenant must submit proposed rate changes to the Superintendent for approval at least 60 days prior to the proposed effective date of any rate or fee changes. Superintendent's approval shall not be unreasonably withheld and the basis for approval shall be whether the proposed rates are reasonably in line with the rates from the market survey.

Section 6.07 Parking Lots. The parking lots, shown in Attachment B, will be maintained and managed by Tenant. Management obligations include management of tenant parking passes and day-to-day operation. Maintenance obligations, in addition to the obligations set forth in the definitions of Maintenance and Routine Repair as set forth in Article 7, include regular cleaning and striping of the parking lots, and removal of all waste and recycling. Any significant changes to the parking lot will need to be approved by DPR.

Section 6.08 Non-discrimination. Tenant shall at all times comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

ARTICLE 7 MAINTENANCE

Section 7.01 Tenant's Maintenance. Throughout the Lease term, Tenant shall perform all Maintenance and Routine Repairs (both defined in Article 33), or cause the performance of all Maintenance and Routine Repairs as necessary to keep and maintain the Property, including the Tenant Capital Improvements (defined in Section 8.02) in good condition and in a manner consistent with other first class marinas and the requirements of this Lease, except that City shall provide routine landscaping to a level consistent with that provided at other comparable Seattle Parks and Recreation facilities. Tenant shall schedule an annual maintenance review and walk-through of the Marinas with City in the first quarter of each Lease year to discuss the maintenance of the Marinas.

Section 7.02 City's Inspection. In addition to the annual review, City may periodically inspect the Marinas to ensure that Tenant is complying with Tenant's obligation to maintain the Property. If City identifies non-compliance, it will provide written notice to Tenant identifying Tenant's non-compliance with Maintenance. If Tenant fails to comply with the identified non-compliance within 30 days after City provides its written notice, the failure shall constitute an Event of Default; provided, however, that if City gives notice of a default of such Maintenance non-compliance that cannot be cured within a thirty (30) day period, such non-compliance shall not be deemed to continue so long as Tenant, after receiving such notice, proceeds to cure the non-compliance as soon as reasonably possible and continues to take all steps necessary to complete the same as soon as reasonably possible. No non-compliance shall be deemed to continue if and so long as Tenant shall be so proceeding to cure the same in good faith.

Section 7.03 City’s Right to Repair and Maintain. In the event (a) Tenant fails to timely commence after notice from City to perform any work required under the provisions of this Lease, or (b) Tenant fails to diligently prosecute to completion any work required to be performed under this Lease, or (c) in the event of an Emergency, immediately upon notice to Tenant, City may, at its option, and in addition to any other remedies which may be available to it under this Lease, enter, or cause its authorized representatives to enter, the Property and perform such work, such entry to be as reasonably necessary therefor. Tenant shall, within thirty (30) days following City’s demand and notice, pay and reimburse City for all costs reasonably incurred by City for such work. This Section 7.03 shall in no way affect or alter Tenant’s obligations to pay for or perform Maintenance under Section 7.01, nor impose or be construed to impose upon City any obligation to pay for or perform such Maintenance or Routine Repairs inconsistent with the provisions of this Lease, other than as may be expressly provided for in this Lease.

ARTICLE 8 CAPITAL IMPROVEMENTS

Section 8.01 Coordination of Capital Improvements. Each party acknowledges and agrees that the Property is in need of significant Capital Improvements (defined in Section 33) which are not feasible for either party to fund and complete independently. While City and Tenant will each be responsible for certain Capital Improvements to the Property, both parties agree to cooperate so that the Tenant Capital Improvements and City Capital Improvements are accomplished through coordination of permitting, planning, design, construction and scheduling in a manner which utilizes and maximizes both public and private funding sources for the benefit of the Property and Parks users.

Section 8.02 Tenant Capital Improvements. Tenant shall complete the tenant projects specified in **Attachment A**, including design, procurement, permitting, construction and replacement of the floats and associated dock and user amenities at each moorage facility (“Tenant Capital Improvements”). Tenant shall complete each phase of the Tenant Capital Improvements at its sole cost and expense as a private project, subject to the requirements under this Lease. Required elements of the Tenant Capital Improvements are described on **Attachments A, C, D, and E**.

Section 8.03 City Capital Improvements. City shall invest the remaining funding allocated for improvements to the Marinas, up to \$3.8 million, in the design, procurement, permitting and construction of City projects specified in **Attachment A** (“City Capital Improvements”). City shall not be obligated to expend any funds on City Capital Improvements in excess of appropriation authority for the Marinas. City shall complete each phase of the City Capital Improvements as a public work project, subject to the requirements under this Lease.

Section 8.04 Project Deliverables. Each party agrees that the Capital Improvements shall be completed in a manner which: (i) prioritizes the greatest needs first, (ii) minimizes

impacts to the moorage users and the adjacent community, and (iii) ensures financial feasibility for each project identified in **Attachment A**.

Section 8.05 Grants. The parties acknowledge that completion of all three phases will require supplemental funding from grants or other third party sources in addition to the financial commitment of each party herein. Accordingly, the parties will jointly seek grants and other funding sources to supplement the investment each party will make in Capital Improvements. Each party agrees to cooperate and assist the other in the solicitation of federal, state and county grants or other sources of non-City public funding to support the financing of Capital Improvements mutually agreed upon by the parties or to bring any building, structure or service within the Property into compliance with any applicable local, state or federal law or regulation, including without limitation, the Americans with Disabilities Act of 1990. Tenant may apply for grants in City's name subject to the City's prior written approval, however, City retains the right to accept or not accept grant funds applied for in City's name. Any grant proceeds or other third party funding shall be applied as required under the grant agreement and subject to any requirements of the grant, however any grant funds, private donations, or other funding received by either party shall supplement, but not replace, limit or otherwise amend, the respective obligations of each party under Sections 8.02 and 8.03.

Section 8.06 Requirements Applicable to Tenant Capital Improvements. Tenant shall not commence construction of any phase of the Tenant Capital Improvements (or any subsequent Capital Improvement or emergency repairs) until (i) the Superintendent has reviewed and provided written approval of the design and engineering plans and funding plan, (ii) Tenant has provided evidence demonstrating to the Superintendent's reasonable satisfaction that Tenant has sufficient funds available to complete that phase of the Tenant Capital Improvements, and (iii) Tenant has provided a construction schedule for the Superintendent's review and approval. The Superintendent's review and approval under this Section is for the benefit of Seattle Parks and Recreation's purposes only, and shall not relieve Tenant from obtaining all regulatory approvals required by Law, nor shall the Superintendent's review and approval form the basis for any City liability. All Tenant Capital Improvements shall be subject to the following:

(a) City will conduct a public process to gather input and address concerns of Marina and neighborhood stakeholders prior to the implementation of any Capital Improvement project. The Tenant will assist in conducting such meetings and provide representation.

(b) Tenant shall provide timely reports and periodic updates on the status of all capital projects on a publicly accessible website and in addition may disseminate such information by e-mail, notification in a local marine publication, Twitter, Facebook, or other social media.

(c) Tenant shall construct the Tenant Capital Improvements in a good workmanlike manner, in lien free condition and in compliance with all applicable Laws and permits, including but not limited to the requirements of the Americans with Disabilities Act (ADA). Tenant acknowledges that in some cases the requirements of the ADA may differ from local building codes, and in such cases the requirements of the ADA shall govern.

(d) If any construction or repair work undertaken by Tenant utilizes public funds, it shall be subject to any applicable funding source requirements, which may include and not be limited to prevailing wage requirements under RCW 39.12.020, SMC 20.42 (Equality in Contracting) and SMC 20.45 (Nondiscrimination in Benefits) and the Seattle Parks and Recreation standards for LEED construction.

(e) Tenant shall diligently pursue completion of the Tenant Capital Improvements according to the construction schedule approved by the Superintendent.

(f) Following construction of the Tenant Capital Improvements, the Tenant shall provide the City with as-built drawings of the improvements.

Section 8.07 Contractor Insurance. The Tenant shall provide, upon request, evidence acceptable to the City that every contractor engaged by the Tenant to perform work on the Property maintains insurance in such amounts with such coverages offered by such companies as shall be satisfactory to the City, including but not limited to Worker’s Compensation Insurance (including Employers’ Liability Insurance) and insurance against liability for injury to persons and property arising out of all such contractor’s operations, and the use of owned, non-owned or hired automotive equipment in the pursuit of all such operations.

Section 8.08 SEPA. Review of this Lease under the State Environmental Policy Act (“SEPA”) is phased and will occur in conjunction with SEPA review of applications for development permits for the uses and Capital Improvements authorized by the Lease. If permits are denied or conditioned on the basis of SEPA or other laws in a manner that renders the Capital Improvements or Permitted Use not feasible, either party may terminate this Lease upon sixty (60) days’ notice. Each party shall be responsible for any costs associated with review and mitigation, if any, of that party’s Capital Improvements.

Section 8.09 Changes to Accommodate Permits. Due to the marine environment and other factors, the Capital Improvements are complex and require cooperation and permits from several public agencies. Each party recognizes that securing necessary permits for the anticipated scope of work and in a timely fashion is not within the full control of the Tenant or the City. As such, the schedule for phasing the projects and the scope of the Capital Improvements provided on **Attachment A** may be altered and amended to accommodate permitting requirements, DNR lease requirements, or other matters outside the reasonable control of the parties.

ARTICLE 9 IMPROVEMENT OWNERSHIP

Section 9.01 Ownership of Improvements. Unless otherwise mutually agreed upon in writing, during the Term Tenant shall own and be responsible for repair and maintenance of the Tenant Capital Improvements, and be responsible for repair and maintenance of City Capital Improvements. The City shall own City Capital Improvements. Any Capital Improvements now or later erected on the Property and remaining when the Lease expires or terminates shall

automatically become City's property, or DNR's property if required under the DNR Leases, without the payment of any consideration to Tenant. Until the Lease expires or terminates, Tenant Capital Improvements are Tenant's property; provided, however, that Tenant may not remove the improvements from the Property without City's prior written consent. City's improvements, now or later constructed in the Marinas, shall at all times remain City's property.

Section 9.02 Removal of Trade Fixtures and Improvements. Upon termination of this Lease or the DNR Lease, Tenant shall remove its trade fixtures and personal property improvements, unless otherwise agreed between Tenant, City, and DNR. Additionally, at its cost, Tenant shall remove any Tenant Capital Improvements which DNR requires to be removed under the terms of the DNR Leases.

ARTICLE 10 DNR LEASE

Section 10.01 DNR Leases. A portion of the Property, namely those portions that are aquatic lands owned by the State of Washington, is subject to the DNR Leases. For those portions, this Lease constitutes a sublease under the DNR Leases, and is therefore subordinate to the terms of the DNR Leases .

Section 10.02 Subletting Under the DNR Leases. This section is intended to confirm and ensure compliance with the subletting conditions in each DNR Lease section 7 by either imposing the requirement to meet the condition or identifying the section in this Lease that meets the condition.

(a) City has provided 30 days prior notice to DNR of this Lease and has obtained DNR written approval of the Lease.

(b) If the terms of this Lease conflict with the terms of the DNR Lease, the DNR Lease term shall control.

(c) The Term of this Lease ends before the DNR Lease termination date (Section 1.02).

(d) The Lease terminates if the DNR Lease terminates (Section 1.03).

(e) Tenant acknowledges that it has received copies of the DNR Leases.

(f) Tenant's permitted use under the Lease is within the permitted use authorized by the DNR Lease (Article 5).

(g) The Lease requires moorage slip leases to be consistent with DNR Lease terms (Section 6.02).

(h) There is no privity of contract between the Tenant and the State of Washington, DNR.

(i) The Lease requires removal of the Tenant’s trade fixtures and improvements upon termination of this Lease or earlier termination of the DNR Lease (Section 9.02).

Section 10.03 Improvements Under the DNR Leases. This section is intended to confirm and ensure compliance with the conditions in Section 6 of each DNR Lease regarding improvements. Nothing in this Lease undermines or adversely affects or amends the requirement for DNR’s prior written consent before either party makes any Capital Improvements on the aquatic lands covered by the DNR Lease.

ARTICLE 11 INSURANCE

Section 11.01

Tenant shall procure and maintain, at its sole expense and for the duration of the Lease Term, insurance coverage as listed below.

(a) Marina operator’s legal liability or equivalent coverage to include coverage for boat repair, alterations, maintenance, storage, mooring, hauling, launching and fueling and to include sudden and accidental pollution liability with total limits of \$10,000,000, which may be satisfied with any combination of primary and excess/umbrella/bumbershoot limits.

(b) Commercial General Liability (CGL), Marine General Liability (MGL) or equivalent including: premises; products-completed operations; contractual liability; stop gap/employer’s liability.

Minimum limits of liability Shall be:

1,000,000	Each Occurrence Combined Single Limit Bodily Injury and Property Damage (CSL) Products/Completed Operations Aggregate
\$2,000,000	General Aggregate
\$2,000,000	Each Accident/ Disease—Policy Limit/ Disease—Each Employee
\$1,000,000	Stop Gap/Employer’s Liability

(c) Business Automobile Liability Insurance for owned, non-owned, leased and hired vehicles as appropriate written on a form CA 00 01 or equivalent with minimum limits of liability of \$1,000,000 CSL.

(d) Umbrella/Excess/Bumbershoot Liability Insurance Over CGL/MGL Liability Minimum Limit of Liability Shall be \$9,000,000 CSL (\$10,000,000 Minimum Total Limits Requirement in any combination of primary and excess policies)

(e) Worker's Compensation Insurance for Washington state as required by TITLE 51 RCW *and*, when legally required, U.S.L. & H. Liability Insurance in compliance with the statutory requirements of Longshoreman and Harbor Workers' Compensation Act.

(f) Property Insurance under which the Property, Tenant's personal property and all alterations, additions and improvements to the Property, including Capital Improvements, are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (earthquake optional), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form" (ISO form CP 1030 or equivalent) with no exclusion for bulkheads, pilings, piers, wharves or docks; (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Property; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Property;. The deductible shall not exceed \$5,000. There shall not be an exclusion for ice or impact of watercraft. Coverage shall contain a waiver of coinsurance or agreed amount endorsement(s). City of Seattle shall be named as a loss payee, as its interest may appear, as respects property insurance covering the Property including alterations, additions and Capital Improvements under such policy. Any loss payable under any policy described in this Section shall be used to rebuild and/or repair the damaged portions of the Property and the improvements thereon.

(g) Business Interruption Insurance. Tenant shall, at Tenant's own cost and expense, procure and maintain during the entire term of this Lease, business interruption insurance to insure that the payments required under this Lease shall be paid to City for at least 1 year in the event the Property is totally or partially damaged or destroyed so as to render Tenant's business activities at the Marinas impossible or impracticable. Tenant shall maintain coverage based on the prior year's costs of operation under the Lease.

(h) Crime fidelity, theft, disappearance, and destruction liability (to include employee theft, wire transfer, forgery and mail coverage, and client coverage with minimum limit \$3,000,000 per occurrence and in the aggregate. The policy shall cover "client's property," not just when legally liable and shall have a Joint Loss Payee Endorsement in favor of the City of Seattle.

(i) Shall coordinate with the City on the placement of Builder's Risk Property Insurance, when required by the City for construction work.

(j) If applicable, watercraft liability or protection & indemnity (P&I) insurance for any watercraft, including barges, whether owned or non-owned, with a minimum limit of liability of \$1,000,000. Such insurance shall include the City of Seattle as an additional insured for primary and noncontributory limits of liability and waive all rights of subrogation against the City.

Section 11.02 Insurance Terms and Conditions.

(a) City of Seattle as Additional Insured. The CGL/MGL, Marine Operator's Legal Liability, and, if applicable, Watercraft Liability/P&I, insurance shall include "the City of Seattle" as an additional insured for primary and non-contributory limits of liability.

(b) No Limitation of Liability. Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only; they shall not be construed to limit the liability of Tenant or any insurer for any claim that is required to be covered hereunder to less than the applicable limits of liability stated in the declarations. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by tenant, whether those limits are primary, excess, contingent or otherwise. Tenant expressly understands and agrees that this provision shall override any limitation of liability or similar provision in any agreement or statement of work between the City and Tenant.

(c) Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited. Tenant's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Tenant's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Tenant's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Tenant's CGL policy shall NOT include any of the following Endorsements (or their *equivalent endorsement or exclusions*): (a) contractual liability limitation, (CGL Form 21 39 or equivalent), (b) amendment of insured contract definition, (CGL Form 24 26 or equivalent), (c) limitation of coverage to designated premises or project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the employer's liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Tenant's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Contract with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Tenant or reduced and/or offset against the Contract.

(d) Claims Made Form. If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this contract. Claims made coverage shall be maintained by the Tenant for a minimum of three (3) years following the expiration or earlier termination of this Lease, and the Tenant shall provide the City with evidence of insurance for each annual renewal. If renewal of the claims made form of coverage becomes unavailable or economically prohibitive, the Tenant shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability assumed under the contract.

(e) Deductibles and Self-Insured Retentions. Any self-insurance retention or deductible in excess of \$ 25,000 that is not "fronted" by an insurer and for which claims the tenant or its third-party administrator is directly responsible for defending and indemnifying

must be disclosed on the certificate of liability insurance. Tenant agrees to defend and indemnify the City under its self-insured or deductible layer and upon City's request advise the full delivery address of the individual or department to whom a tender of a claim should be directed.

(f) Notice of Cancellation. Under RCW 48.18.290 ("Cancellation by insurer") applicable to insurers licensed to do business in the State of Washington, the City, as a certificate holder for the insurance requirements specified herein and an additional insured, has an interest in any loss which may occur; written notice of cancellation must therefore be actually delivered or mailed to the City not less than 45 days prior to cancellation (10 days as respects non-payment of premium). As respects surplus lines placements, written notice of cancellation shall be delivered not less than 30 days prior to cancellation (10 days as respects non-payment of premium).

(g) Qualification of Insurers. Insurers shall maintain A.M. Best's ratings of A- VII unless procured as a surplus lines placement under RCW chapter 48.15, or as may otherwise be approved by the City.

(h) Annual Review of Policy Amounts. The amounts and extent of coverage set forth in this Lease shall be subject to adjustment on an annual basis, based on City's review of such amounts and extent of coverage in consultation with its insurance advisors, and based on customary insurance requirements for facilities of size, value and operation similar to the Marinas. In the event that City determines, in its sole discretion that the policy amounts are insufficient, Tenant shall increase the amount of any such policy to the amount specified by City.

- (i) Evidence of Insurance. Tenant must provide the following evidence of insurance:
- a. A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein;
 - b. An attached City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL/MGL, Marine Operator's Legal Liability, and, if applicable, Watercraft Liability/P&I.
 - c. A copy of all other amendatory policy endorsements or exclusions of Tenant's insurance CGL/MGL, Marine Operator's Legal Liability, and, if applicable, Watercraft Liability/P&I, policy that evidences the coverage required.

At any time upon the City's request, Tenant shall also cause to be timely furnished a copy of declarations pages and schedules of forms and endorsements. In the event that the City tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, Tenant shall also cause a complete and certified copy of the requested policy to be timely furnished to the City. Send evidence of insurance to Seattle Parks and Recreation Superintendent Jesús Aguirre at 100 Dexter Ave. N, Seattle, WA 98109.

(j) Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Tenant waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to

the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Property, except such rights as they have to proceeds of such insurance held by the City or the Tenant or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

ARTICLE 12 DAMAGE OR DESTRUCTION

Section 12.01 Repair, Replacement, Reconstruction. If the Property is totally or partially damaged or destroyed during the Lease Term, from a risk covered by insurance that Tenant is required to carry under this Lease or that Tenant actually carries, the Lease does not automatically terminate. If one or more of the Marinas is totally destroyed, either party may elect to terminate this Lease without liability by written notice to the other within forty-five (45) days after the damage or loss, and in such case the Lease shall be terminated and the insurance proceeds shall be equitably allocated between the parties based upon the value of their Capital Improvements as depreciated over the Term of the Lease prior to the loss. If one or more of the Marinas is partially damaged or destroyed and the insurance proceeds are available for restoration, Tenant shall, within 90 days after the date of such damage or destruction, commence and diligently prepare plans and specifications for and thereafter to carry out the repair, replacement, or reconstruction of the Property at least equivalent to, or more suitable than, the alterations, additions and improvements that were damaged or destroyed.

Section 12.02 Right to Terminate. Notwithstanding Section 12.01, if any portion of the Property is totally or partially damaged or destroyed within the final 2 years of the Term or the final 5 years of an Extended Term, then either party may terminate this Lease without liability by written notice to the other within forty-five (45) days after the damage or loss, and in such case the Lease shall be terminated and the insurance proceeds shall be equitably allocated between the Parties based on the value of their Capital Improvements as depreciated over the Term of the Lease prior to the loss. If the Lease is not terminated then:

If the cost of repair and replacement is less than 20% of the replacement cost of the Property before such damage or destruction (or, if the cost of such repairs and restoration exceeds this percentage, and Tenant nonetheless, at its sole option, elects to restore the Property), then to the extent permitted by Law, and provided that insurance proceeds are sufficient, Tenant shall perform the work required to restore the Property to its condition before the damage or destruction or to such other condition agreeable to the parties, and this Lease will remain in full force and effect for the remainder of the Term. Tenant shall commence and diligently pursue to completion the repair, replacement or reconstruction of the Property within 90 days of the date of such damage or destruction, subject to Tenant's receipt of insurance proceeds

(a) Notwithstanding the foregoing, if the insurance proceeds are inadequate due to Tenant's failure to maintain the insurance required under Section 11 above, Tenant shall not be released from liability if this Lease is terminated.

(b) Except in the event of gross negligence, intentional misconduct or breach of this Lease, a party shall not be liable to the other for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Property or to the termination of this Lease as provided herein.

Section 12.03 Assumption of Property Risk. The placement and storage of Tenant's Business Personal Property in or about the Property shall be the responsibility, and at the sole risk, of Tenant.

Section 12.04 Adjustments of Claims. The Tenant shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Tenant under this Agreement.

Section 12.05 Tenant's Responsibility. The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Tenant's liability hereunder. Notwithstanding said insurance, the Tenant shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Tenant, or any of its agents, officers and employees or through use or occupancy of the Property.

ARTICLE 13 ASSIGNMENT, SUBLETTING

Section 13.01 Assignment. Notwithstanding anything to the contrary in the Lease, Tenant shall not have the right to assign its entire interest in the Lease without obtaining City's prior written consent, which consent may be withheld or conditioned in City's sole discretion.

ARTICLE 14 MORTGAGING OF LEASE BY TENANT

Section 14.01 Tenant's Right to Mortgage Lease. Tenant shall have the right, at any time and from time to time, with City's written consent or approval, not to be unreasonably withheld, to mortgage and/or pledge the interest of the Tenant under this Lease to one or more Lenders. Tenant agrees to furnish City with a copy of each such mortgage or pledge. Until and unless such time as Tenant provides City with such a copy, neither Tenant nor Leasehold Mortgagee shall be able to enforce this Article against the City.

Section 14.02 City's Covenants. City agrees, for the benefit of the Tenant and of each Leasehold Mortgagee, to comply with the following provisions, all of which shall be binding on the Tenant and each Leasehold Mortgagee, as set forth herein:

(a) There shall not be entered into between City and Tenant any agreement of cancellation, surrender, acceptance of surrender or modification of this Lease unless Leasehold Mortgagee has been given notice. This Lease shall not merge in the fee of the Property prior to natural expiration of the Term without the prior written consent of such Leasehold Mortgagee. Without limiting the foregoing, there shall be no waiver, release or other relinquishment of any right of the Tenant with respect to this Lease, including any right of Tenant with respect to any Event of Default of City.

(b) City, upon serving Tenant any notice, demand or other communication pursuant to the provisions of this Lease, shall at the same time serve by certified mail, return receipt requested, copies of such notice upon each Leasehold Mortgagee that has complied with the notice provisions of this paragraph.

(c) With respect to those Events of Default the curing of which requires entry upon the Property, then whenever a Leasehold Mortgagee desires to cure an Event of Default, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of the Event of Default the additional period needed by the Leasehold Mortgagee in the exercise of reasonable diligence to enter upon the Property.

(d) City shall accept performance, by, or on behalf, of any Leasehold Mortgagee who has complied with the notice provisions of Section 14.02 as if the same had been performed by Tenant. Such acceptance shall not thereby create any additional rights as against City in such Leasehold Mortgagee, nor shall such Leasehold Mortgagee thereby be subrogated to any interest or right of City.

(e) Whenever requested in writing by any Leasehold Mortgagee or transferee, City shall, within twenty (20) days after such request, execute, acknowledge and deliver to such Leasehold Mortgagee or transferee as Tenant may designate, a certificate certifying (1) whether this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), (2) the Effective Date and expiration dates of the term of this Lease, (3) whether or not to the knowledge of City, there are then existing any Events of Default under this Lease (and, if so, specifying same), (4) whether there are any outstanding notices of Event of Default or termination, and the nature thereof, and (5) if notice of Event of Default has been given, the period remaining for the cure of said Event of Default as then estimated by City.

ARTICLE 15 DISCHARGE OF LIENS

Section 15.01 Limitations on Creation of Liens. City shall not create or permit to be created any lien, encumbrance or charge upon the Property or any part thereof or the income therefrom, and City shall not suffer any other matter or thing whereby the future estate, rights and interest of Tenant in the Property or any part thereof might be impaired. Tenant shall have the right at any time and from time to time to create or permit to be created any lien on, and only on, its leasehold interest in the Property only as permitted under Article 14, but Tenant shall keep the Property free from, and indemnify City with respect to, any other lien Tenant incurs against

the Property. If within sixty (60) days following the filing or other assertion of any such lien, Tenant does not cause such lien to be released in a manner satisfactory to City (such as by posting a bond or other acceptable security), City shall have the right but not the obligation to cause such lien to be released by any means City deems proper including, without limitation, payment of such lien; all reasonable sums paid and expenses incurred by City in connection therewith including, without limitation, reasonable attorneys' fees and costs, shall payable by Tenant to City within five (5) days of written demand therefor. Tenant agrees to indemnify, protect, defend and hold City harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorney's fees and costs) incurred in connection with any such liens. Tenant's obligations pursuant to this Section 15.01 shall survive the expiration or earlier termination of this Lease.

ARTICLE 16 CITY NOT LIABLE FOR INJURY OR DAMAGE

Section 16.01 Limitation on Liability. Except as expressly provided herein, City shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening, on or after the Effective Date, on, in or about the Property and its appurtenances, nor for any injury or damage to the Property or to any property belonging to Tenant or any other person which may be caused by any fire, breakage, leakage or defect or by water or rain that may leak into, issue or flow from any part of the Property or by the use, misuse or abuse of any of the structures, areas of egress or ingress, or which may arise from any other cause whatsoever, except to the extent caused by the negligence or misconduct of City or City's breach of any of its representations and/or obligations hereunder.

ARTICLE 17 INDEMNIFICATION OF CITY

Section 17.01 Tenant's Indemnification of City. In addition to any other indemnities to City specifically provided in this Lease, Tenant shall indemnify, defend, protect, and save harmless City against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against City by reason of any of the matters in (a) through (d) below occurring during the term of this Lease (except to the extent that the following accrued prior to the date hereof or were caused by City's negligence or misconduct or City's breach of any of its representations and/or obligations hereunder):

- (a) any work or thing done in, on or about the Property or any part thereof by Tenant, or any of Tenant's agents, contractors, servants, employees, licensees or invitees;
- (b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Property or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto;

(c) any act or omission on the part of Tenant or any subtenant or any of its or their agents, contractors, servants, employees, licensees or invitees;

(d) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in any Leasehold Mortgage or in any subleases or other contracts and agreements affecting the Property, on Tenants part to be kept, observed or performed.

ARTICLE 18 CITY’S RIGHT OF ACCESS

Section 18.01 Access. City shall have the right to enter onto the Property during normal business hours, as designated by Tenant, in order to review the condition of the Property and to perform City’s obligations hereunder.

ARTICLE 19 DEFAULT, REMEDIES

Section 19.01 Event of Default. Each of the following events shall be an “Event of Default” hereunder:

(a) With respect to Tenant, which may also be referred to as “Tenant’s Default:”

(i) Any action taken or suffered by the Tenant under any insolvency or bankruptcy act, including the appointment of a receiver to take possession of all or substantially all of the assets of the Tenant, provided that if such action is not initiated by the Tenant, Tenant shall have ninety (90) days in which to terminate, set aside, or otherwise cure such action;

(ii) Any general assignment by Tenant on behalf of creditors;

(iii) Vacation or abandonment of the Property by Tenant with no indication of an intent to resume operations;

(iv) Failure by Tenant to perform or comply with any of the other terms, covenants, or conditions contained in this Lease within thirty (30) days after written notice from City specifying the default; provided, however, that if City gives notice of a default of such a nature that it cannot be cured within a thirty (30) day period (which expressly excludes any failure to pay the City any monetary sum due under this Lease), such default shall not be deemed to continue so long as Tenant, after receiving such notice, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same as soon as reasonably possible. No default shall be deemed to continue if and so long as Tenant shall be so proceeding to cure the same in good faith.

(b) With respect to City, which may also be referred to as “City’s Default:” Failure by City to perform any of its obligations under this Lease; provided, however, that if Tenant gives notice of default of such a nature that it cannot be cured within a thirty (30) day period, such default shall not be deemed to continue so long as City, after receiving such notice, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same as soon as reasonably possible. No default shall be deemed to continue if and so long as City shall be proceeding to cure the same in good faith.

Section 19.02 Termination of Lease. It is understood and agreed that in the Event of Default on the part of Tenant not cured in a manner consistent with Sections 19.01(a)(iv) City may, at its option, terminate this Lease by giving Tenant written notice, and thereupon this Lease shall cease and terminate and Tenant’s rights in and to the Property shall also terminate, and Tenant shall quit and surrender possession of the Property; provided, however that City shall give notice thereof to Tenant’s Leasehold Mortgagee (provided Tenant shall have notified City in writing of the name and address of such Leasehold Mortgagee) such notice to be given simultaneously with any notice to Tenant. Tenant’s Leasehold Mortgagee shall have the right to cure Tenant’s default provided the time in which such Leasehold Mortgagee may cure the default shall run simultaneously with Tenant’s cure period.

Section 19.03 City’s Rights and Remedies. In case of Tenant’s Default, City, in addition of all the rights and remedies City may have or as is provided by Law, shall have the following rights and remedies:

(a) This Lease shall continue in effect so long as City does not terminate Tenant’s right to possession of the Property after a breach of this Lease, and City may enforce all of its rights and remedies, including the right to recover any amount due under the Lease as it becomes due; and

(b) After notice as hereinabove provided, City may elect to terminate this Lease after the occurrence of any act of default and in such event, City may declare this Lease and Tenant’s right to possession terminated and reenter the leased Property and remove Tenant’s property therefrom and store for Tenant’s account and at Tenant’s expense.

Section 19.04 Tenant’s Rights and Remedies. In case of City’s Default, then Tenant shall be entitled to exercise all of its rights and remedies at law and equity, including termination of this Lease, if City has not cured such Event of Default within sixty (60) days after receipt of written notice, subject to Subsection 19.01 (b).

Section 19.05 Reimbursements. Tenant shall reimburse City upon demand for all costs and expenses, including reasonable attorney’s fees, paid or incurred by City in curing any Tenant’s Default or arising out of any indemnity given herein by Tenant to City. City shall reimburse Tenant upon demand for all costs and expenses, including reasonable attorney’s fees, paid or incurred by Tenant in curing any of City’s Defaults or arising out of any indemnity given herein by City to Tenant, provided that City has not cured City’s Defaults within 30 days of receipt of notice of City’s Defaults.

ARTICLE 20 ENVIRONMENTAL PROVISIONS

Section 20.01 Tenant's Compliance. Tenant shall throughout the term of this Lease comply in all material respects with all Environmental Laws affecting or relating to the Property and shall not perform or suffer or permit to be performed, any acts, or omit or refuse to take any required actions, in material violation of Environmental Laws. In particular, and not in limitation of the foregoing, Tenant agrees as follows:

(a) Tenant shall comply in all respects with Environmental Laws and shall notify City of any Release of a Hazardous Material of any reportable quantity or of any violation of Environmental Laws affecting the Property that is known to Tenant. In the event of a Release at the Property which occurs after the Effective Date of the Lease and which is caused by Tenant or any Subtenant, Tenant shall take any Remedial Actions that are reasonably required to abate said Release or otherwise comply with Environmental Laws. However, City shall be responsible for taking, and for assuming all costs of, Remedial Actions required by Environmental Laws (other than with respect to demolition or construction of the Improvements) to investigate, monitor, and/or abate Releases of Hazardous Materials on the Property or any adjacent property which are caused by activities that took place prior to the Effective Date of the Lease, even if such pre-Lease Release or continuing discharge is not discovered until after the Effective Date of the Lease. For the purpose of this subsection 20.01(b), "Release" shall include any release occurring in the course of construction activities including any release of pre-existing Hazardous Materials caused by such construction activities.

(b) Notwithstanding the foregoing, Tenant shall have no compliance, performance or payment obligations with respect to this Section for any violation by City or any of its agents, representatives, officers or employees of any Environmental Law.

Section 20.02 Tenant's Indemnification of City. Tenant agrees to defend, indemnify and hold harmless City and the City or DNR (each an "Indemnitee") from and against any and all Environmental Liabilities which result from (i) Releases, or threatened Releases, at the Property caused by Tenant or any Subtenant after the Effective Date of this Lease; (ii) any violations of Environmental Laws with respect to the Property committed by the Tenant or any Subtenant; and (iii) any breach of any warranty or representation regarding environmental matters made by the Tenant hereunder. However, the Tenant shall not have any indemnity or other obligation under this Section for any Environmental Liabilities or costs arising out of (a) the negligence or misconduct of City, or any of its employees, agents, officers or representatives for any violation of Environmental Laws, Release or continuous Release of Hazardous Materials on the Property which occurred or began prior to the Effective Date of this Lease; and/or (b) any violation of Environmental Laws or Release of hazardous Materials on the Property or any migration of such a Release onto the Property that is not caused by Tenant, its Contractors, or its Subtenants.

Section 20.03 City's Indemnification of Tenant. City agrees to defend, indemnify and hold harmless Tenant and its affiliates and each employees, agents, officers or representatives from and against any and all Environmental Liabilities which may result from (i) Releases,

continuing Releases, migrating Releases, or threatened Releases at the Property which occur or begin prior to the Effective Date of this Lease; (ii) any violations of Environmental Laws with respect to the Property caused by the City; and (iii) Releases or any continuing Releases of Hazardous Materials migrating onto or beneath the Property from adjacent properties. However, the City shall not have any indemnity obligation under this Section arising out of the negligence or misconduct of the Tenant, or any of its employees, agents, officers, contractors, or representatives or arising out of any Releases caused by Tenant's activities, even if such Releases are of substances on or under the Property prior to the Commencement Date.

Section 20.04 Notification. The Parties agree that in the event that any investigation, litigation or proceeding is threatened in writing or instituted against either Tenant or City, or any Remedial Action is requested of either Tenant or City, for which the other Party hereto may be entitled to indemnify or defense hereunder, the Party against which the investigation, litigation or proceeding is threatened or instituted shall promptly notify the other Party in writing.

Section 20.05 Settlement. City shall give Tenant reasonable prior notice of any settlement, compromise or similar disposition by City of any investigation, litigation or proceeding pursuant to which Tenant has an obligation to defend; provided, however, that City shall not have the right, without Tenants prior written consent, to settle, compromise or similarly dispose of any investigation, litigation or proceeding if such action (i) imposes any obligation or liability on Tenant or (ii) impairs Tenant's use or intended use of the Property.

ARTICLE 21 NOTICES

Section 21.01 Definition of Notice. As used in this Lease, notice includes but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment.

Section 21.02 Requirements. All notices must be in writing.

Section 21.03 Delivery. All notices shall be delivered via overnight courier, by hand delivery or by certified mail, return receipt requested, to the appropriate party at the addresses set forth below. All communications shall be deemed served upon delivery of, or if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address specified below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

Notice to City:

The City of Seattle
Department of Parks and Recreation
Attention: Manager

Contracts and Business Resources
6310 NE 74th Street
Seattle, WA 98105

Notice to Tenant:

Marina Management, LLC
2601 West Marina Place, Suite C
Seattle, Washington 98199
Attn: Dwight Jones

Section 21.04 Other Parties. Either Party may by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a Party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

Section 21.05 Attachments. The following attachments are made a part of this Agreement:

Attachment A	Moorage Project Deliverables
Attachment B	North Leschi, South Leschi, and Lakewood Legal Descriptions and Maps
Attachment C	Schematic Site Plan – Leschi South
Attachment D	Schematic Site Plan – Leschi North
Attachment E	Schematic Site Plan – Lakewood
Attachment F	Approximate Slip Counts
Attachment G	Public Benefits and Reporting Requirements

ARTICLE 22 CONDEMNATION

Section 22.01 Termination of Lease. If at any time during the term of this Lease, all or substantially all of the Property shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between City, Tenant and those authorized to exercise such right under threat of exercise of such right, this Lease and the term hereby granted shall terminate and expire on the date of such taking and the sums of money and other charges herein reserved and provided to be paid by Tenant shall be apportioned and paid to the date of such taking.

(a) The term “substantially all of the Property” shall be deemed to mean such portion of the Property as, when so taken, would leave remaining a balance of the Property which, due either to, the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, zoning laws or building regulations then existing or prevailing, readily accommodate the business of Tenant or improvements or restoration contemplated by Tenant to be built on the Land and adjoining land.

(b) If all or substantially all of the Property shall be taken or condemned as provided in this Article and this Lease terminated as a result, the condemnation award shall be equitably apportioned between City and Tenant as follows:

(i) There shall be first paid any and all reasonable fees and expenses incurred in connection with the collection of the award;

(ii) Then, if practical, the proceeds shall be paid to restore the Property, unless a Leasehold Mortgagee's security has been impaired and such Leasehold Mortgagee demands application of the proceeds to the unpaid indebtedness of Tenant, in which case there shall be next paid to the Leasehold Mortgagee the unpaid indebtedness secured by any such Leasehold Mortgage(s); and

(iii) The balance of the award shall be applied and distributed to Tenant and City equitably considering each party's investment in Capital Improvements, except that City shall receive from the award the following: a sum attributable to the value of City's reversionary interest in the Property.

Section 22.02 Retention of Remaining Portion of Property. If less than substantially all of the Property be so taken or condemned and the remaining portion of the Property can be restored by Tenant to an economically operable facility of comparable kind and quality to the facility existing prior to the taking, Tenant shall have the right either to terminate this Lease or retain the remaining portion of the Property; provided, however, if Tenant retains the remaining portion of the Property, any payments due under this Lease shall not be reduced, but Tenant shall retain the entire award.

ARTICLE 23 CERTIFICATES BY CITY AND TENANT

Section 23.01 Tenant's Certificate of Lease. Tenant agrees at any time and from time to time upon not less than ten (10) days' prior notice by City or any Leasehold Mortgagee to execute, acknowledge and deliver to City or such Leasehold Mortgagee, or any other Party specified by City or by such Leasehold Mortgagee, a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications) and the dates to which Impositions and other amounts and charges due under this Lease have been paid, and stating whether or not to the best knowledge of the signer of such certificate City is in default in the performance of any covenant, agreement or condition contained in this Lease on City's part to be performed, and, if so, specifying each such default of which the signer may have knowledge.

Section 23.02 City's Certificate of Lease. City agrees at any time and from time to time upon not less than ten (10) days' prior notice by Tenant to execute, acknowledge and deliver to Tenant, or any other Party specified by Tenant, a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in

full force and effect as modified and stating the modifications) and the dates to which Impositions and other amounts and charges due under this Lease have been paid, and stating whether or not to the best knowledge of the signer of such certificate Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease on Tenant's part to be performed, and, if so specifying each such default of which the signer may have knowledge.

ARTICLE 24 CITY'S CONSENTS

Section 24.01 Reasonable Modifications of Lease. City shall consent to any reasonable modifications of this Lease if a Leasehold Mortgagee requires modifications, provided that such modifications do not change fundamental economic or substantive Lease terms. City shall be reasonable in its consideration where City's consent is requested. City's consent is deemed denied if City does not give its consent within 45 days of the request.

ARTICLE 25 NO ORAL AGREEMENTS

Section 25.01 Integration. This Lease contains the entire understanding of the Parties. The Parties acknowledge that there is no other written or oral understanding between the Parties with respect to the Marinas. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by each of the Parties.

ARTICLE 26 QUIET ENJOYMENT

Section 26.01 Quiet Enjoyment. City agrees that, so long as City has a leasehold under the DNR Leases and if and so long as Tenant shall faithfully perform the agreements, terms, covenants and conditions hereof, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Property for the term hereby granted without disturbance by or from City and free of any encumbrance created or suffered by City, except those to which this Lease is subject and subordinate.

ARTICLE 27 INVALIDITY OF CERTAIN PROVISIONS

Section 27.01 Survival of Lease. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and

each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 28
RECORDING OF MEMORANDUM

Section 28.01 Recording. City and Tenant shall execute and record in the official records a memorandum of lease and Tenant’s rights thereunder, in a form mutually acceptable to the parties.

ARTICLE 29
REPRESENTATIONS AND WARRANTIES

Section 29.01 Mutual Representations and Warranties. City and Tenant each for itself represents and warrants to the other Party as follows:

(a) The consummation of the transactions contemplated by this Lease are duly authorized by the appropriate authority and will not violate any provision of its governing documents or constitute an Event of Default or require any notice, consent or filing or result in the breach of any term or provision of any contract, governmental regulation, any judgment, decree, writ, injunction, order of any court or governmental authority or agreement to which it or any of its affiliates are a party so as to affect the consummation of such transactions;

(b) It is aware of no action, suit or proceeding pending or threatened against it or any portion of the Property which may adversely affect the consummation of the transaction contemplated by this Lease.

Section 29.02 City’s Representations and Warranties. City represents and warrants to Tenant as follows:

(a) There has been no action filed for, and to City’s actual knowledge, there are no plans to file an action for eminent domain or condemnation, that in any way affects the Property, or any notice from any governmental authority regarding the annexation of all or any portion of the Property;

(b) No judgment has been rendered against City with respect to City’s authority to lease the Property to Tenant that has not been satisfied; and

(c) Except as set forth in DNR Leases and any other limitation in this Lease, there is in effect no contract or agreement entered into by City relating to the sale, management, maintenance, or operation of the Property that materially interferes with City’s obligations under this Lease.

Section 29.03 Tenant’s Representations and Warranties. Tenant represents and warrants to City as follows:

(a) Tenant represents that it is duly organized, validly existing and in good standing under the laws of the State of Washington and has all the necessary powers to enter into this Lease and to carry on its business as now owned and operated by it; and

(b) Tenant represents and warrants that Tenant has not employed, retained, relied upon, received assistance or solicited aide from any official, agent, representative or employee of City or any person related by blood or marriage to any said City employee, official, agent or representative in the negotiation of this Lease or in the operation of the Property. Tenant warrants that it will not in the future knowingly employ, retain or become affiliated in any fashion with any officer, agent, representative or employee of City, any business entity in which any such officer, agent, representative or employee is interested or any person related by blood or marriage to any such officer, agent, representative or employee in the performance of this Lease. Violation of this provision shall be deemed a material breach and an Event of Default. In the event the City determines such employment, retention or affiliation exists, City, in addition to any other remedy it may have under this Lease, or at law or equity, may request Tenant to terminate its affiliation, employment or retention of said person and Tenant shall comply with City's request. In the event of the termination of said affiliation, employment or retention, Tenant shall release, indemnify, hold harmless and defend City and all of its agents, officers, employees and representatives from any and all liability, injury, damage or claim of any sort, including attorneys' fees, or other damages or injuries arising out of said termination.

ARTICLE 30 EASEMENTS AND LAND USE

Section 30.01 Existing Easements. Subject to City's representation and warranty set forth herein, this Lease and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by City into or over the Property for any purpose whatsoever, and to be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such, telephone, telegraph, light, heat, or power lines as may from time-to-time be determined by City to be in the best interests of the development or use of the Property. Tenant accepts the Property subject to all existing easements and rights of way, but City agrees that any future easements and rights-of-way shall be so located and installed as to not interfere with the business of Tenant. Tenant shall be obligated to make all payments as provided for in this Lease notwithstanding the fact that the Tenant or the City or any other party lawfully exercises its rights under any such easement(s) and/or right(s) -of-way.

Section 30.02 Cooperation. Tenant and the City shall each be responsible to work cooperatively together and with DPR to accomplish both the management and operation of the Marinas and to accomplish the Tenant and City Capital Improvements.

ARTICLE 31 PUBLIC BENEFITS

Section 31.01 Community Involvement and Accessibility. Tenant must fulfill the public benefits and reporting requirements described in Attachment G. Tenant is committed to maintaining a strong presence in the community and to providing public access to Ohler’s Island, the shoreline and adjacent water. Public programming, community events, existing boating programs, fishing, and partnerships with the Mt. Baker Rowing and Sailing Center and other organizations serving the public will be supported and welcome at the moorage facilities. There will be regular outreach to the community and tenants to share project updates, address public safety in and around the moorage facilities, promote events, and build partnerships to collaborate on moorage, lake, and neighborhood issues. Tenant shall be sensitive to neighborhood impacts of such events and consider the facilities capacity to accommodate such activities.

Public access will be consistent with operating hours and requirements under Section 5.03. An annual report on public benefit will be a part of the annual financial report. The Parties will review the schedule for public programming and public access on a quarterly basis. Tenant acknowledges that a successful boating concession is one that enables people from all communities and all income levels to participate in its programs and use its facilities. Tenant is committed to accommodating the small boat tradition and programs and expanding opportunities for boaters and non-boaters to use the marines and area waters. Opportunities to use the property for small boat rentals, community barbeques and shoreline access for family friendly activities should be encouraged.

Section 31.02 Environmental Stewardship. Tenant will provide leadership in protecting the marine environment. The marinas should be committed to maintaining and enhancing the water quality of Lake Washington and seek out ways to involve its customers in Best Management Practices. One of these efforts should include the development of a hazardous waste disposal facility where customers can safely dispose of marine-related waste such as oil, anti-freeze and batteries. The goal of such a program is to make the proper handling and disposal of such items safe and easy. Additionally, there shall be ongoing educational efforts that support proper environmental stewardship. Ecologically sound practices should be encouraged and promoted in all marina operations.

ARTICLE 32 MISCELLANEOUS

Section 32.01 City’s Indemnification of Tenant. In addition to any other indemnification by City of Tenant agreed to under the terms of this Lease, to the extent permitted by law City shall indemnify Tenant for any cost or liability incurred by Tenant arising from (i) any aspect of management or ownership of the Property that was not conducted in compliance with applicable Law prior to the Effective Date or (ii) City’s permitting, design or installation of City Capital Improvements.

Section 32.02 Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 32.03 Time of the Essence. Time is of the essence of each and every term and provision of this Lease.

Section 32.04 Not a Joint Venture or Partnership. Nothing in this Lease may be construed to create a joint venture or partnership between City and Tenant.

Section 32.05 Written Amendments. This Lease cannot be changed or terminated orally, but only by an instrument in writing executed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.

Section 32.06 Washington Law. This Lease is governed by and construed in accordance with the internal laws of the State of Washington.

Section 32.07 Binding on Successors. The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of City and Tenant and their respective heirs, personal representatives, executors, administrators, successors and (except as otherwise provided herein) assigns.

Section 32.08 Execution in Counterparts. This Lease may be executed in several counterparts and all such executed counterparts shall constitute one (1) Lease, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

Section 32.09 Attorney Fees and Cost. If either Party undertakes efforts against the other party to enforce their legal rights under this Lease, each Party shall be responsible for its own attorney's fees and costs, except as provided for under any defense or indemnity obligation under this Lease or under Article 19.

Section 32.10 Force Majeure. Neither the City nor the Tenant shall be liable for any damages for failure to perform any obligation under this Lease if such failure results from an act of nature; war-like operations; civil commotion; riot; labor dispute including a strike or walkout, but not a lockout; sabotage; federal or state regulation or control; or other unforeseeable conditions beyond reasonable control of such party.

ARTICLE 33 DEFINITIONS

Section 33.01 Definitions. The following defined terms are used in this Lease:

“City” means the City of Seattle, a Washington municipal corporation.

“Effective Date” means the date on which this Lease is fully executed by an authorized representative of each party following an authorizing ordinance of Seattle City Council and consent of DNR.

“Capital Improvement” means any project to repair, replace, or improve any Marina facility, breakwater, or upland facility, that (i) substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; (ii) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; or (iii) is intended to become a permanent installation.

“Emergency” means any condition or situation which threatens (or if not promptly acted upon will threaten) the health, safety or welfare of users of the Property or the structures or systems of the Property itself or any portion thereof.

“Environmental Claim” means any complaint, summons, citation, notice, directive, order, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication from any governmental authority, or any third party involving violations of Environmental Laws or Releases of Hazardous Materials.

“Environmental Law” means, to the extent applicable to the Marinas or Tenant, all present and future federal, state or local laws, ordinances, codes, regulations, rules, orders or decrees regulating, relating to or imposing liability or standards of conduct concerning environmental matters, including, but not limited to, matters related to air pollution, water pollution, noise control, Hazardous Material, soil condition or industrial hygiene. Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§9601 *et seq.*; the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §§6901 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §7401; the Clean Water Act, 33 U.S.C. §§1251 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§300(f) *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§2601 *et seq.*; the Washington State Model Toxics Control Act, RCW Ch. 70.150D; the Washington State Hazardous Waste Management Act, RCW Ch. 70.105; the Washington Water Pollution Control Act, RCW Ch. 90.48; the Washington Clear Air Act, RCW Ch. 70.94; the Washington Industrial Safety and Health Act, RCW Ch. 49.17; the Washington State Environmental Policy Act, RCW Ch. 43.21C; rules and regulations of the EPA and the Washington Department of Ecology; and any so-called “superfund” or “superlien” law.

“Environmental Liabilities and Costs” mean any monetary obligations, losses, liabilities (including strict liability), damages, punitive damages, consequential damages, treble damages, costs and expenses (including, without limitation, all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any Release or threatened Release of Hazardous Materials, Remedial Actions, Environmental Claims or violations of any Environmental Law.

“Environmental Lien” means any lien in favor of any governmental authority for Environmental Liabilities and Costs for Remedial Action Costs incurred by the governmental authority.

“Event of Default” has a meaning provided in Section 19.01.

“Gross Revenue” includes, but is not limited to, all moneys and other consideration (cash, credit, barter, pre-paid, exchange or otherwise) generated or received by Tenant from its operations on the Property. Gross Revenue also includes slip rental, any other fees charges to moorage users, or other consideration received by Tenant from its subcontractors, subtenants, agents, employees, representatives, or concessionaires (if any) for the conduct of its business pursuant to this Lease or for any other use of the Property by any person or entity.

Gross Revenue includes all transactions made on or from the Property, whether for cash or for credit, regardless of whether a final collection is made in credit transaction. Gross Revenue equals the total money or other consideration arising from the final transaction and is not limited to the value directly attributable to on-Property operations. All money or other consideration shall be deemed received at the time of the transaction, whether for cash or credit. All transactions shall be promptly recorded in Tenant’s books and records, utilizing an accounting system consistent with generally accepted accounting principles. Rebates, vouchers and similar adjustments given after the close of the transaction shall not be subtracted from Gross Revenues.

Gross Revenues shall not include the following: (i) any grant funds received by Tenant specified for a Capital Improvement, (ii) any sales tax or other tax imposed directly on sales, or (iii) any amount of money refunded to and not merely credited to the account of moorage users who return or do not accept food, beverages, merchandise, or services sold or rented by Tenant on the Property.

“Hazardous Materials” mean any hazardous, toxic, or dangerous waste, substance, material, pollutant or contaminant, as defined in or regulated now or in the future by Environmental Laws. Hazardous Materials include, without limitation, petroleum products or by-products, radon gas, polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials and urea formaldehyde.

“Improvements” mean any and all buildings, structures, equipment, fixtures, furniture, furnishings, appurtenances and personal property of every kind and description now existing or at any time hereafter erected, constructed, affixed or attached to or placed in or placed upon the Land or the buildings, improvements or structures thereon, or used for or adapted to in any way the use, enjoyment, occupancy and operation of the Land or the buildings, improvements and structures thereon, and any and all alterations, renewals and replacements thereof, additions thereto and substitutes therefore.

“Lakewood” means the Marina located 4500 Lake Washington Blvd. S.

“Laws” mean collectively all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations and requirements of all municipal and governmental departments, commissions, boards and any authority having jurisdiction over the Property or any similar body exercising similar functions, and all Environmental Laws.

“Lease” means this Marina Lease, including all renewals or extensions of the Lease.

“Leasehold Mortgage” means any mortgage or deed of trust created by Tenant and constituting a lien on the Improvements and the leasehold interest of Tenant hereunder.

“Leschi North” means the Marina located 320 Lake Washington Blvd.

“Leschi South” means the Marina located 100 Lakeside Ave. S.

“Maintenance” means all work (including all labor, supplies, materials and equipment) which is of a routine, regular, and predictable nature and reasonably necessary for the cleaning and routine upkeep of any property, structures, surfaces, facilities, fixtures, equipment or furnishings, or any other component of the Property in order to preserve such items in a manner reasonably suitable for their ongoing use. Maintenance shall include, but not be limited to, the following: (i) preventative or routine maintenance that is stipulated in the operating manuals for the components as regular, periodic maintenance procedures; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm and lighting systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for HVAC, plumbing, and electrical and structural systems such as periodic cleaning, lubrication, and changing air filters; (v) touch-up painting; (vi) cleaning prior to, during and following all events held at the Property; (vii) changing of standard, isolated light bulbs, fuses and circuit breakers, as they burn out; and (viii) any other work of a routine, regular and generally predictable nature that is reasonably necessary to keep the Property in a first class condition. Maintenance shall not include any work included within the term “Capital Improvements” whether or not predictable in nature.

“Moorage Rate Maximum” means, as of January 1, 2018, \$12.00 per linear foot. The “Moorage Rate Maximum” shall be increased annually on January 1 of each year in an amount equal to the percentage increase in the purchasing power of the dollar during the preceding year shown by the Consumer Price Index for Urban Wage Earners and Clerical Workers for Seattle-Tacoma-Bremerton, WA, First Six Months, published in or about August of each year by the U.S. Department of Labor Bureau of Labor Statistics.

“Operating Expenses” means all expenses or obligations, as determined on a cash basis, of whatever kind or nature made or incurred by Tenant for the management, operation, maintenance or repair of the Property; salaries, wages and benefits of personnel working at the Property; contract labor expenses; ordinary maintenance and repairs; utilities; deposits for utilities; telephone expenses; expenses incurred under license agreements with licensees or other users of the Property; security expenses; fees payable to concessionaires or other subcontractors; refuse removal expenses; cleaning expenses; taxes (but excluding any taxes, fees or charges Tenant may be obligated to collect and submit to a taxing or other government authority on behalf of others); building maintenance supplies; insurance premiums; data processing expenses; advertising expenses relating to Property advertising and sponsorships; pest control; office supplies; freight and delivery expenses; expenses for leasing of equipment; and credit and debit facilities and telecheck fees and expenses. “Operating Expenses” do not include any payments to third party lenders, Tenant income tax obligations, replacement reserves, capital improvements or depreciation.

“Party” means Tenant or City (collectively, “Parties”).

“Property” means the Land, the Improvements, and personal property as defined herein.

“Remedial Action” means all actions taken to (a) investigate, clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (d) any other actions authorized by 42 U.S.C. 9601.

“Routine Repairs” mean repairs which are intended to fix or restore to a reasonable condition property, structures, surfaces, facilities, fixtures, equipment or furnishings, or any other component of the Property. Routine Repairs do not include any Capital Improvement or installation or expense which is not normally expensed or depreciated within three (3) years.

“Slip Tenants” mean sublessees who rent a designated portions or portions of the Marinas from Tenant.

“Transient Recreational Boating” means recreational boats using moorage for a maximum of 14 consecutive days.

IN WITNESS WHEREOF, the Parties execute this Lease as of the day and year written on the Lease cover page.

CITY:

THE CITY OF SEATTLE

By: _____
_____, Superintendent
Seattle Parks and Recreation
Department of Parks and Recreation

TENANT:

MARINA MANAGEMENT, LLC, a
Washington limited liability company

By: _____

Dwight Jones
Its: _____

**Attachment A
MOORAGE PROJECT DELIVERABLES**

PROJECT	WHO IS RESPONSIBLE	FUNDING SOURCE	ESTIMATED TIMELINE
<p>South Leschi Interior Docks Replacement of the docks for tenants of South Leschi Moorage will include:</p> <ul style="list-style-type: none"> ✓ Approximately 108 slips, with approximately 3,104 total linear feet available for rent (not including approximately 1,400 linear feet of transient moorage), and generally reflects the schematic site plan in Attachment C and the slip counts in Attachment F. ✓ Design and construction to current American with Disabilities Act standards ✓ Facility is updated to current Building Code Standards ✓ Potable water available on the docks ✓ Electricity necessary for boat hook-ups, lighting, security, and any other facility needs. ✓ Security for private boat owners' property ✓ Provisions for sharing information with the public about the project and general operations. Examples may include project bulletin board, website, tenant meetings ✓ Emergency provisions for environmental accidents associated with marinas ✓ Appropriate safety equipment ✓ Navigation aids (where required) 	<p>Marina Management/ Tenant</p>	<p>Tenant Funding</p>	<p>Permit applications will be submitted within 60 days of the Effective Date of the contract. Construction will begin 60 days after permits are issued.</p>

<p>South Leschi Outer Dock Concrete dock will provide:</p> <ul style="list-style-type: none"> ✓ Wave attenuation ✓ Public access ✓ Transient moorage ✓ Pump out stations 	<p>Seattle Parks and Recreation</p>	<p>State of Washington Recreation and Conservation Office (RCO) – Boating Facilities Programs, Boating Infrastructure Grant</p> <p>Washington State Parks</p> <p>To the extent not funded by the above, City of Seattle CIP remaining appropriated funding for the Marinas South Leschi has the most urgent need for improvements. Unspent funds will roll into the subsequent phases.</p>	<p>Grant applications are currently being submitted.</p> <p>Permits applications are underway. Construction will begin after the permits are issued.</p>
<p>North Leschi Refurbishment and/or replacement of the docks for North Leschi Moorage and breakwater. This will include:</p> <ul style="list-style-type: none"> ✓ Approximately 100 slips, with approximately 3,285 total linear feet available for rent (not including the dry moorage and accessible breakwater), and generally reflects the schematic site plan in Attachment D and the slip counts in Attachment F. ✓ Design and construction to current American with Disabilities Act standards ✓ Facility is updated to current Building Code Standards ✓ Potable water available on the docks ✓ Electricity necessary for boat hook-ups, lighting, security, and any other facility needs. ✓ Security for private boat owners' property 	<p>Seattle Parks and Recreation</p>	<p>Remaining funds from City of Seattle CIP funds after South Leschi Breakwater is completed.</p>	<p>Permits applications will be submitted within 60 days of the Effective Date of the contract. Construction will begin after the permits are issued and South Leschi is completed.</p>

<ul style="list-style-type: none"> ✓ Provisions for sharing information with the public about the project and general operations. Examples may include project bulletin board, website, tenant meetings. ✓ Emergency provisions for environmental accidents associated with marinas ✓ Appropriate safety equipment ✓ Navigation aids (where required) ✓ Breakwater for wave attenuation 			
<p>Lakewood Refurbishment and/or replacement of the docks. This will include:</p> <ul style="list-style-type: none"> ✓ Approximately 107 slips, with approximately 3,224 total linear feet available for rent (not including approximately 300 linear feet for the guest moorage dock), and generally reflects the schematic site plan in Attachment E and the slip counts in Attachment F. ✓ Public access to Ohler’s Island ✓ Refurbished docks and pilings ✓ Design and construction to current American with Disabilities Act standards ✓ Ensure the facility is updated to current Building Code Standards ✓ Potable water available on the docks 	<p>Marina Management/ Tenant</p>	<p>Tenant Funding</p>	<p>Permit applications will be submitted within 60 days of the Effective Date of the Lease. Access and improvements to Ohler’s Island will begin when design and permitting is complete. The interior dock improvements will begin 60 days after the South Leschi project and North Leschi interior docks are completed.</p>

<ul style="list-style-type: none">✓ Electricity necessary for boat hook-ups, lighting, security, and any other facility needs.✓ Security for private boat owners' property✓ Provisions for sharing information with the public about the project and general operations. Examples may include project bulletin board, website, tenant meetings.✓ Emergency provisions for environmental accidents associated with marinas✓ Appropriate safety equipment✓ Navigation aids (where required)			
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The finished Tenant Capital Improvements shall generally conform to the examples and schematics relating to slip configuration and breakwaters provided in the Tenant's response to the Request for Proposal dated November 26, 2015 and shown in **Attachment C, D, E, and F.**

ATTACHMENT B

North Leschi Legal Description

LESCHI NORTH DNR Lease Area

Parcel 411460-0996 (320 Lake Washington Blvd. 98122)

LEGAL DESCRIPTION:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M. DESCRIBED AS FOLLOWS: LOTS 9 THROUGH 21 INCLUSIVE, BLOCK 54, YESLER'S 3RD ADDITION TO THE CITY OF SEATTLE AS RECORDED IN VOLUME 6 OF PLATS, PAGE 41, RECORDS OF KING COUNTY WASHINGTON TOGETHER WITH LOTS 11 THROUGH 23, INCLUSIVE, BLOCK 51, LAKE WASHINGTON SHORELANDS, AS PLATTED BY THE DEPARTMENT OF PUBLIC LANDS, STATE OF WASHINGTON, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS, OLYMPIA, WASHINGTON. ALSO, THAT PORTION OF THE HARBOR AREA ON THE NORTH BY THE EASTERLY PRODUCTION OF THE NORTH LINE OF LOT 11 AND ON THE SOUTH BY THE SOUTH LINE OF LOT 23, BLOCK 51, LAKE WASHINGTON SHORELANDS.

South Leschi Legal Description

LESCHI SOUTH DNR Lease Area

Parcel 411460-1195 (100 Lakeside Ave S. 98112)

LEGAL DESCRIPTION:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M. DESCRIBED AS FOLLOWS; BLOCK 52 LAKE WASHINGTON SHORELANDS, TOGETHER WITH THAT PORTION OF THE HARBOR AREA LYING BETWEEN THE INNER AND OUTER HARBOR LINES AND BOUNDED ON THE NORTH BY THE EASTERLY PRODUCTION OF THE SOUTH LINE OF LOT 31, BLOCK 51 AND ON THE SOUTH BY THE EASTERLY PRODUCTION OF THE SOUTH LINE OF BLOCK 52 LAKE WASHINGTON SHORLANDS, AS PLATTED BY THE DEPARTMENT OF PUBLIC LANDS, STATE OF WASHINGTON, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS, OLYMPIA, WASHINGTON.

Leschi Moorages



Lakewood Marina Legal Description

Parcel 524980-4270 (4500 Lake Washington Blvd. S)

LEGAL DESCRIPTION:

THAT CERTAIN PORTION OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 24 NORTH, RANGE 4 EAST, W. M. LYING EASTERLY OF LAKE WASHINGTON BOULEVARD SOUTH; SOUTHERLY OF S. GENESEE STREET PRODUCED EASTERLY; NORTHERLY OF S. SNOQUALMIE STREET PRODUCED EASTERLY; WESTERLY OF THE INNER HARBORLINE OF LAKE WASHINGTON; SITUATED IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON, GRANTED TO THE CITY OF SEATTLE FOR PARK, PARKWAY, AND BOULEVARD PURPOSES, PURSUANT TO CHAPTER 183, LAWS OF 1913

Lakewood Moorage



Attachment C – Schematic Site Plan – Leschi South Marina



Attachment D – Schematic Site Plan – Leschi North Marina



Attachment E – Schematic Site Plan – Lakewood Marina



Attachment F Approximate Slip Counts

The below slip counts are approximate. Slip sizes with an asterisk (*) indicate these are flexible spaces that can be split into smaller slips or utilized as larger slips, depending on demand. For example, ten 50 ft. slips could be configured and rented as twenty 25 ft. slips.

South Leschi

52 25 ft. slips
52 30 ft. slips
2 60 ft. slips *
2 62 ft. slips *

3,104 linear feet of moorage space, not including 1,400 linear feet designed for public access and open to the public for transient moorage.

North Leschi

43 25 ft. slips *
22 30 ft. slips
21 40 ft. slips * (or **42** 20' slips)
10 50 ft. slips * (or **20** 25' slips)
1 60 ft. slip *
1 70 ft. slip *
1 80 ft. slip *

3,285 linear feet of moorage space, not including 516 linear feet of dry moorage and 154 linear feet of accessible breakwater.

Lakewood

71 24 ft. slips
15 30 ft. slips
2 35 ft. slips
5 40 ft. slips*
7 50 ft. slips *
1 54 ft. slip *
5 60 ft. slips
1 96 ft. slip *

Approx. 3,224 linear feet of moorage space, not including 300 linear feet of breakwater with guest moorage.

Attachment G

PUBLIC BENEFITS AND REPORTING REQUIREMENTS

Annual Reporting. Tenant (Marina Management, L.L.C.) shall submit to the City an annual Public Benefit Report describing its programs, activities and educational services. This report will be submitted to the City by March 10th of each calendar year during the Term of the Agreement. The Department of Parks and Recreation (DPR) will review the schedule for public programming and public access on a quarterly basis.

Public benefits provided by and/or operated by Marina Management LLC will include:

New Public Access to the Lake Washington Moorages:

- New transient moorage at South Leschi (1,400 feet) designed for public access and open to the public for short term and overnight moorage, to include at least 4 locations for pump outs
- New accessible breakwater at North Leschi (154 feet) designed for public access and open to the public for watercraft rentals, to include at least 2 locations for pump outs
- New breakwater with guest moorage (300 feet) at Lakewood, to include at least 1 pump out
- Creation of overwater and upland park spaces that did not previously exist in the city
- Facilities open and accessible to the public during regular park hours every day and open to tenants at all times, except for closures to accommodate remodeling, repair, or renovation.
- Lakewood’s Ohler’s Island open and available to the public during regular park hours

Community Programming:

- Free community events – at least 6 times per year. Marina Management will engage the community through its required community outreach and other methods to determine what type of events will be produced. Marina Management will notify DPR in its March 10th annual Public Benefit Report as to the events it expects to produce for the upcoming year. Examples of events include:
 - Annual free fishing derby for community youth at South Leschi
 - A day of free kayaking and paddle board use for youth, with priority for kids enrolled in DPR programs
- Small boat and or paddle craft rentals and storage opportunities at Lakewood on Ohler’s Island (once opened for public access)
- Maintain and improve space for existing programs, including Dragon Boats, Corinthian Yacht Club, Thistle fleet, Footloose Sailing program (serving people with disabilities), and Thunderbirds (supporting Seattle’s small boat tradition)
- Opportunities to use the properties for small boat rentals, community barbeques, and shoreline access for family-friendly activities
- Creates new public programming opportunities for DPR programs such as school age care programs, camps, and Mt. Baker Rowing and Sailing activities

Community Outreach:

- Regular outreach to the community and tenants on public safety in and around the moorages and to share project updates – at least 3 times per year

Environmental Stewardship:

- Operation of the moorages in accord with the Clean Marina Washington goals
- Maintain and enhance the water quality of Lake Washington and seek out ways to involve its customers in best management practices through education and communication
- Installation of a hazardous waste disposal facility for safe disposal of marine-related waste such as oil, anti-freeze, and batteries
- New pump out stations for moorage tenants and the public