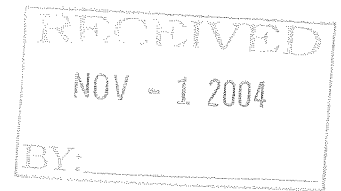


**STATE OF OREGON  
DEPARTMENT OF STATE LANDS  
SUBMERGED AND SUBMERSIBLE LAND LEASE**



ML-10508  
APP# 20537

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

NAME of LESSEE:  
Port of Siuslaw

ADDRESS:  
PO Box 1220  
Florence, OR 97439

Legal classification of Lessee is a Political Subdivision,

Lands situated in Lane County more fully described as follows:

Beginning at a point where the Southerly extension of the Westerly line of Block 2, Morse's Addition to the Town of Florence, intersects with the line of Mean Low Tide on the right bank of the Siuslaw River, said point also being the Southwesterly corner of Tax Lot 13200 in the NE ¼ of the NE ¼ of Section, Township 18 South, Range 12 West, Willamette Meridian, Lane County, Oregon;

thence riverward perpendicular to the thread of the stream 60 feet to a point;

thence Easterly, upstream on a line which lies parallel with the thread of the stream a distance of 340 feet;

thence shoreward on a line which is perpendicular to the thread of the stream 160 feet more or less to a point which intersects with the line of Mean Low Tide;

thence Westerly, downstream along the line of said Mean Low Tide to the point of beginning containing 0.78 acres, more or less, of state-owned submerged land.

Total number of acres: 0.78 acres, more or less.

Hereinafter referred to as the "Leasehold".

## SECTION 1 - LEASE TERM AND RENEWAL

- 1.1 Term: This Lease shall continue for a period of 15 years commencing on September 1, 2004, the month and date of which shall be known as the "Lease Anniversary Date," and expiring on August 31, 2019, which date shall be known as the "Lease Expiration Date."
- 1.2 Renewal: Lessee shall have an option to renew this Lease for an additional period of 15 years after the original and each renewal lease term provided that Lessee has submitted a completed lease renewal application form to State not less than one hundred and eighty (180) days prior to the Lease Expiration Date. Upon receipt of such application, this Lease shall be renewed by State unless:
- 1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes and Oregon Administrative Rules; or
- 1.2.2 Lessee is no longer the preference right holder as provided in ORS 274.040(1) and defined in OAR 141-082-0020(48); or
- 1.2.3 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.
- 1.3 Except as otherwise provided in this Lease, State shall provide Lessee two (2) years advance written notice of its intent to not renew this Lease for all or any portion of the Leasehold. In the event State determines not to renew this Lease, but less than two (2) years remain in the Lease term, State shall, at Lessee's request, extend the term of this Lease to complete the two (2) year notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.

## SECTION 2 - AUTHORIZED USES

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

Non-Marine Use – 14,889 square feet  
Marine Industrial – 5,194 square feet  
Commercial Marina – 2,488 square feet

### SECTION 3 - RENT CALCULATION AND ADJUSTMENTS

- 3.1 Initial Annual Rent: The rental payment to be paid by Lessee to State (the "Rent") for the first year of the Lease shall be \$7,910.00, based on the Flat Rate as provided in Section 3.1.1. Receipt of the first year's Rent is hereby acknowledged.

3.1.1 The initial annual Rent shall be calculated as follows:

	Use Class	Area (square ft.)	Rate Choice	Annual Rent
a)	Commercial Marina	2,488 square feet	Flat Rate	\$51.00
b)	Marine Industrial	5,194 square feet	Flat Rate	\$1,808.00
c)	Non-Marine Uses	14,889 square feet	Flat Rate	\$6,051.00
TOTAL				<u>\$7,910.00</u>

- 3.2 Annual Rent Adjustment: The Rent shall be adjusted annually in accordance with the provisions of OAR 141-082-0100 in effect at the time. Each payment shall be due on the Lease Anniversary Date established in Section 1.1.

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

- 4.1 Modification of Leasehold Area or Use: Lessee may request that State expand or reduce the size, or change the authorized use, of the Leasehold using a form provided by State. However, no such change shall occur unless authorized in writing by State.

4.1.1 This Lease may be amended to reduce the Leasehold area only if the portion of the Leasehold to be removed from the Lease is not in use and does not contain any structures or improvements (an "Improvement"). If the amendment results in a reduction of Rent due under the Lease, such reduction shall become effective commencing on the Lease Anniversary Date that falls at least twelve (12) months after the later of: (a) the date of the change of area; or (b) the date of the issuance of State's written approval.

4.1.2 Requests to change an authorized use or increase the Leasehold area shall be processed and reviewed in the same manner as a new lease application.

4.1.3 Notwithstanding any reduction in the Leasehold area under this section, Lessee shall remain liable for any violation of Section 5.5 or 5.6 occurring on lands removed from the Leasehold prior to the amendment removing such lands.

## SECTION 5 - RESERVATIONS AND RESTRICTIONS

5.1 Compliance: State shall have access to the Leasehold at all reasonable times for the purpose of evaluating and ensuring compliance with the terms and conditions of this Lease. State shall have the right to examine pertinent records of Lessee for the purpose of ensuring compliance with the Lease.

5.2 Reservations: State reserves:

5.2.1 All rights to coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes including, without limitation, the right to explore, mine, develop, produce and remove such minerals and other deposits with the right of ingress and egress thereto, and to terminate this Lease as to all or any portion of the Leasehold when required for these purposes with one hundred twenty (120) days prior written notice to Lessee or as otherwise provided by law.

5.2.2 The right to enter in and upon the Leasehold at any time for purposes of inspection or management.

5.2.3 The right at any time to grant easements across the Leasehold for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, with right of ingress and egress thereto. State shall include in any such grant of easement a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in the Lease.

5.2.4 All rights not expressly granted to Lessee are reserved by State.

5.3 Public Access and Recreational Use Reservation: All state-owned submerged and submersible land shall remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by State to public entry pursuant to the provisions of applicable Oregon Administrative Rules. Lessee may request State, but State is not obligated, to close the Leasehold to public entry or restrict recreational use by the public on all or portions of the Leasehold to protect persons or property from harm arising from or in connection with Lessee's activities.

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

5.4 Restriction on Use: Lessee shall:

5.4.1 Comply with all applicable local, state and federal laws and regulations affecting the Leasehold and the use thereof, including local comprehensive land use planning and zoning ordinances, and correct at

Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use;

5.4.2 Dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the Leasehold; provided that, if Lessee allows debris, garbage or other refuse to accumulate within the Leasehold, State shall have the right to remove the debris, garbage and other refuse, and collect the cost of such removal from Lessee;

5.4.3 Not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the Leasehold except with written permission of State. Lessee shall promptly report to State the cutting or removal of vegetation by other persons;

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

5.4.5 Maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the Leasehold in a good state of repair; and

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

5.5 Waste Water Disposal: In addition to any other applicable laws and regulations, Lessee shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and waste water disposal for boats and floating structures.

5.6 Hazardous Substances:

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

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

5.6.3 In the event any Hazardous Substance is released, Lessee shall promptly and fully remediate such release in accordance with State and federal

regulations and requirements. If Lessee fails to so remediate, State shall have the right to remove and remediate any release of a Hazardous Substance on the Leasehold or attributable to operations or activities conducted or allowed by Lessee on the Leasehold and to collect the cost of such removal or remediation from Lessee.

5.6.4 In addition to any duty to indemnify described elsewhere in this Lease, Lessee shall indemnify State against any claim or costs arising from or related to a release of a Hazardous Substance on or from the Leasehold.

## **SECTION 6 - REQUIREMENTS**

- 6.1 Assignment and Sublease: Except as provided in Section 6.2, Lessee shall not assign this Lease or sublease the Leasehold or any portion of the Leasehold nor enter into any third party agreement respecting the Lease or the Leasehold without first obtaining the prior written consent of State pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing and must be received by State at least thirty (30) calendar days prior to the effective date of sublease or assignment. State shall make a good faith effort to complete its review of such applications within thirty (30) days. If the application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended and the proposed sublease or assignment shall be delayed pending the completion of such review. State reserves the right to condition its consent as it deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest shall be required to comply with all of Lessee's obligations under this Lease, and the applicable Oregon Administrative Rules. Lessee shall remain liable for the performance of all obligations under this Lease unless State's written consent expressly releases Lessee from further liability hereunder.

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

6.1.2 Lessee shall not grant a mortgage or security interest in this Lease without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the creditor shall require the prior written approval of State.

- 6.2 Permitted Assignments and Subleases: Notwithstanding the provisions of Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of Lessee's interest in the Leasehold shall be allowed without further State approval:

6.2.1 Subleases of portions of Lessee's interest in the Leasehold area, in the ordinary course of Lessee's business for the purposes approved under this Lease as specified in Section 2.1;

6.2.2 Subleases of the entire Leasehold for a term that is less than one year for a purpose specified in Section 2.1; or

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

6.3 Condition of Leasehold and Improvements: Lessee has inspected the Leasehold and Improvements, if any, and accepts the Leasehold and any such Improvements in their present condition, AS IS. State has made no oral or written representations concerning the condition of the Leasehold, or its Improvements, if any, nor their fitness or suitability for any purpose.

6.4 Liability: Lessee agrees to defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses (including expert witness fees and costs and attorney's fees in an administrative proceeding, at trial, or on appeal) arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold. As used in this Section 6.4 only, "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents.

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

6.6 Bond: State reserves the right to require Lessee to furnish to State a surety bond or an equivalent cash deposit or certificate of deposit, in an amount to be determined by State in the exercise of its reasonable discretion, which names the State of Oregon as co-owner to ensure that Lessee will perform in accordance with all terms and conditions of the Lease.

## **SECTION 7 - MISCELLANEOUS**

7.1 No Partnership: State is not a partner nor in a joint venture with Lessee in connection with any business carried on in connection with this Lease or the Leasehold and shall have no obligation with respect to Lessee's debts or other liabilities.

7.2 Non-Waiver: Waiver by either party of strict performance of any provisions of this Lease shall not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

- 7.3 Notices: Any notice required under this Lease to be sent to Lessee by State shall be sent by certified mail and shall expressly be deemed to be delivered after the certified letter is deposited in the United States mails addressed to Lessee at the address given by Lessee in the signature block of this Lease or as shown on the most recent written notice of record with this Lease. Lessee shall provide State with a written notice of any change of address, change in corporation/partnership/ownership, or change in person(s) authorized to represent Lessee. State shall provide written acknowledgment of such Lessee written notices. Lessee's failure to receive such written acknowledgment within thirty (30) days of the date Lessee sent the original notice shall be constructive notice to Lessee that: (1) State has not properly received the notice, and (2) such attempted notice shall be of no force and effect until such time as the notice is actually received and acknowledged by State.
- 7.4 Liens: With the exception of mortgages or other security interests authorized by State under Section 6.1.2, Lessee shall immediately cause to be discharged any lien or other charge placed on the Leasehold, including land or improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Lease if Lessee fails to discharge any such lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten (10) days notice to do so by State. Lessee shall pay and indemnify State for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether such costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 7.5 Default: The following shall be events of default:
- 7.5.1 Failure of Lessee to pay any rent, tax, reimbursement or other charge or payment due hereunder within twenty (20) days of the date such payment is due. For the purposes of this subsection, if the due date for such payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, such payment shall be due on the date set forth in the notice from State to Lessee informing Lessee of its obligation to pay such charge or payment.
- 7.5.2 Failure of Lessee to comply with applicable laws, Oregon administrative rules or any non-payment-related term or condition or obligation of the Lease within thirty (30) days after written notice by State specifying the nature of the deficiency. Upon timely request from Lessee, State may in its good faith discretion permit the deadline for curing such non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the thirty (30) day period; (2) the interests of State will not be harmed by an extension; (3) such default was not due to the willful act or gross negligence of Lessee; and (4) State and Lessee are able to mutually agree upon a written plan and timeline for curing the non-compliance.
- 7.5.3 Insolvency of Lessee; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of



bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the Leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days. If Lessee consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual or entity unless within ten (10) days after an event of default occurs the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned under Section 6.1 of this Lease, the events of default specified in this subsection shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

7.5.4 Notwithstanding the above, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or its fiduciary duties under law, State may declare an immediate default without any right of Lessee to cure the deficiency.

- 7.6 Termination of Occupancy Upon Default: State shall have the right to terminate Lessee's right to occupy the Leasehold for any default by Lessee that remains uncured past the time provided in Section 7.5. State shall exercise its right to terminate Lessee's occupancy under this Section by providing notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under the Lease upon the date provided in the notice. State shall be entitled to recover from Lessee all costs arising out of State's re-entry and, if State and Lessee mutually agree to terminate the Lease as provided in Section 7.8, all costs of re-letting the Leasehold. If State and Lessee mutually agree to terminate the Lease, State shall be entitled to recover the amount of unpaid rent that otherwise would have been required to be paid under the Lease from the date of default until a new Lease has been secured or, if State and Lessee do not agree to terminate the Lease and State is unable to secure another lessee for the Leasehold, until such time as the Lease expires. All Improvements located on the Leasehold shall be disposed of as provided by Section 9.3 of this Lease. If Lessee owns a floating home and has placed such home on the Leasehold pursuant to the provisions of Section 2.1 of this Lease, the lease termination provisions of ORS 90.630 shall apply to the extent the provisions of this Lease are inconsistent with such statute.

7.7 State's Right to Cure Defaults:

7.7.1 If Lessee fails to perform any obligation under this Lease, State shall have the option to perform the obligation of the Lease after thirty (30) days written notice to Lessee. All of State's expenditures to carry out the obligation shall be reimbursed by Lessee on demand with interest at the rate of one percent (1%) per month accrued from the date of expenditure by State.

7.7.2 Notwithstanding the foregoing, in the event any violation of a term or condition of this Lease, including without limitation use of the Leasehold in a manner not permitted under the Lease, is causing damage to the Leasehold, or if damage to the Leasehold arises from some other cause, State may immediately

enter upon the Leasehold and take such action as it deems necessary to stop such use or mitigate such damage. If the damage is due to a violation of the terms or conditions of this Lease, Lessee shall be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate such damage. State, at its option, may send notice to Lessee of such violation and, upon receipt of such notice, Lessee shall immediately cease such violation and repair or correct all damage caused by the violation. State's failure to provide any notice of a violation shall not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

- 7.8 Termination Upon Mutual Consent: This Lease may be terminated by mutual written consent of Lessee and State.
- 7.9 Weed Control: Lessee shall control noxious weeds including aquatic weeds, plant pests and diseases within the Leasehold as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which may now or in the future have authority with regard to the prevention or control, or both, of noxious weeds, plant pests or diseases, or as may be authorized or directed by State.
- 7.10 Holdover: If Lessee does not vacate the Leasehold at the time required at expiration or upon termination of the Lease, State shall have the option to treat Lessee as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and Rent. State shall have the option to unilaterally establish a new Rent for the month-to-month tenancy, with said Rent payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this paragraph, the tenancy shall be terminable at the end of any monthly rental period upon written notice from State given not less than thirty (30) days prior to the termination date which shall be specified in the notice.
- 7.11 Governing Law; Venue: This Lease and all matters related to the rights and responsibilities hereunder are governed by and subject to the laws of the State of Oregon and the administrative rules of the Department of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties hereunder, and such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease. Any claim, action, suit or proceeding (collectively, a "Claim") between State and Lessee that arises from or relates to the Lease shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. LESSEE, BY EXECUTION OF THIS LEASE, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF ALL SUCH COURTS.
- 7.12 Binding on Successors: This Lease shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto, but nothing in this

section shall be construed as a consent by State to any disposition or transfer of the Lease or any interest herein by Lessee except as otherwise expressly provided in this Lease.

- 7.13 Nondiscrimination: The Leasehold shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 7.14 Right To Sue More Than Once: State may sue periodically to recover damages accrued to date and no action for damages shall bar later actions for damages subsequently accruing.
- 7.15 Remedies Cumulative: The remedies contained in this Lease shall be in addition to, and shall not exclude, any other remedy available at law or in equity, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.
- 7.16 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings.
- 7.17 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 7.18 Compliance With Applicable Law: State's performance under this Contract is conditioned on Lessee's compliance with the provision of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.
- 7.19 Late Charges and Interest: It is understood by both parties that late payments by Lessee of rent and other charges due hereunder will cause State to incur costs and other damages not otherwise addressed in this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. As recognition of the foregoing, the parties agree that, notwithstanding other remedies permitted hereunder and in addition thereto, if Lessee has not made full payment of amounts due within twenty (20) days of the date such payment is due, Lessee shall pay an additional charge equal to five percent (5%) of the amount of the late Rent or other charge. In addition, all amounts due and owing under this Lease, including late charges, shall bear interest at the lower of: (1) the highest interest rate allowable by law, or (2) twelve percent (12%) per year.

- 7.20 Survival. Termination or expiration of the Lease shall not extinguish or prejudice State's right to enforce the indemnification, access to records, governing law, venue and consent to jurisdiction provisions of this Lease.

## SECTION 8 - INSURANCE

- 8.1 Commercial General Liability: Lessee shall obtain at Lessee's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage with an insurance company acceptable to State. This insurance shall include personal injury coverage, contractual liability coverage for the indemnities provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000.00. Annual aggregate limit shall not be less than \$1,000,000.00.
- 8.2 Pollution Liability: Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Leasehold. Combined single limit per occurrence shall not be less than N/A. Annual aggregate limit shall not be less than N/A.
- 8.3 Workers' Compensation Insurance: All employers, including Lessee, that employ subject workers who perform work under this Lease in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Lessee shall ensure that each of its sublessees (if permitted) complies with these requirements.
- 8.4 Revisions/Amendments/New Requirements: The amounts and types of insurance (including those specified in Section 8) and the party responsible for procuring the insurance shall be established and reviewed when circumstances warrant. The requirements may be revised or amended by State periodically at State's sole discretion after State:
- (a) consults with its insurance advisor;
  - (b) consults with Lessee;
  - (c) considers the commercial reasonableness of any requirements, amendments or revisions; and
  - (d) considers State's need for adequate insurance protection and State's fiduciary obligations.

Within thirty (30) days notice to Lessee of State's revision or amendment of the insurance requirements, Lessee shall provide State with satisfactory evidence that Lessee has obtained new insurance coverage which conforms with the revised/amended insurance requirements. If mutually agreed in writing, Lessee may have additional time to obtain such insurance.

- 8.5 Named Insured Parties: The liability insurance coverages required for performance of the Lease shall include the State of Oregon, the Department of State Lands and its Departments, sections, officers and employees as additional insureds but only with respect to Lessee's activities to be performed under this Lease.
- 8.6 Certificate(s) of Insurance: As evidence of the insurance coverages required by this Lease, Lessee shall furnish certificate(s) of insurance to State prior to the execution of this Lease, and not less often than annually thereafter and as reasonably requested by State. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities reasonably acceptable to State. Lessee shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.
- 8.7 "Tail" Coverage: If any of the required liability insurance is on a "claims made" basis, "tail" coverage will be required at the termination or expiration of this Lease for a duration of twenty-four (24) months, or the maximum time period reasonably available in the marketplace. Lessee shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for twenty-four (24) months following termination or expiration of the Lease. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Lease. If continuous "claims made" coverage is used, Lessee shall be required to keep the coverage in effect for a duration of not less than twenty-four (24) months from the termination or expiration of the Lease.

## **SECTION 9 - IMPROVEMENTS**

- 9.1 Limitation on Improvements: Lessee shall not construct or place upon the Leasehold any Improvement that exceeds fifteen thousand dollars (\$15,000) in cost or value unless Lessee shall have first obtained the prior written authorization of State or unless such Improvement is exempt under OAR 141-082-0030(4). Approval for Improvements consistent with the purposes of this Lease shall not be unreasonably withheld or delayed. All Improvements must be consistent with the authorized use(s) of this Lease as stated in Section 2.1 and in compliance with all applicable laws, regulations, and ordinances as stated in Section 5.4.1.
- 9.2 Disposition of Unauthorized Improvements or Structures: Unauthorized improvements shall, at the election of State, be removed from the Leasehold by Lessee or, if State so elects, by State at Lessee's cost and expense.
- 9.3 Removal of Authorized Improvements: Any authorized Improvement must be removed within ninety (90) days of the termination or expiration of the Lease or modification of the Lease under Section 4.1.1, unless otherwise agreed by the

## SECTION 10 - ADDITIONAL CONDITIONS AND STIPULATIONS

## SECTION 11 - ENTIRE AGREEMENT

[illegible]

Lessee, by the signature below of its authorized representative, hereby acknowledges that Lessee has read this lease, understands it and agrees to be bound by its terms and conditions. In addition, and without limiting the foregoing, Lessee expressly agrees to all covenants herein and binds him/herself for the payment of the Rent specified in the Lease.

**STATE:**

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

[Signature]  
Authorized Signature

October 25, 2004  
Date

**LESSEE:**

Port of Siuslaw  
Commercial Marina, Marine  
Industrial, and Non-Marine Use  
PO Box 1220  
Florence, OR 97439  
541-997-3426

[Signature]  
Signature/Title PORT MANAGER  
(Note requirement below)

10-21-04  
Date

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

STATE OF \_\_\_\_\_ )  
County of Lane ) ss

The foregoing instrument was acknowledged before me this 21st day of  
October, 2004, by Tom Kartrude (name of officer or agent of  
corporation), the Port Manager (title of officer or agent) of  
Port of Siuslaw (name of business entity),  
a Oregon (state or place of incorporation)  
municipal corporation  
(corporation, general partnership, limited liability company,  
etc.) on behalf of said  
municipal corporation (corporation, general partnership,  
limited liability company, etc.).



[Signature]  
Signature

My commission expires 10-7-06

## CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury that to the best of my knowledge, I am not in violation of any Oregon Tax Laws.

For the purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Signature: 

Date: 10-21-04

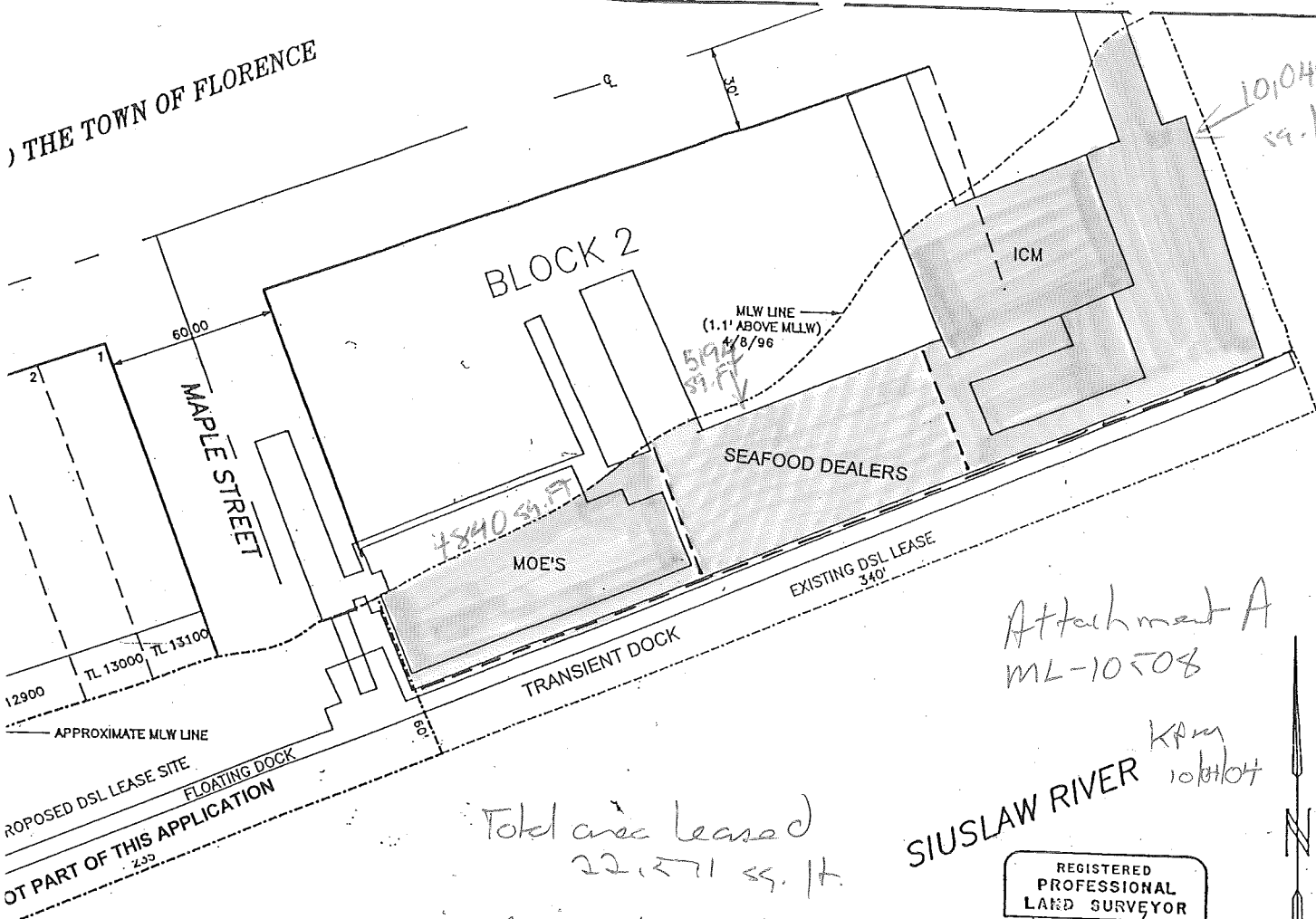
Printed Name: TOM KARTRUDE

Title: PORT MANAGER

J:\AttachmentAwest\ML Waterway Leases\ML-10508 2004 renewal.doc



THE TOWN OF FLORENCE



Attachment A  
ML-10508

SIUSLAW RIVER <sup>KPM</sup> 10104

Total area leased  
22,571 sq. ft.

Commercial Marina - 2488 sq. ft.

Marine Industrial  
5194 sq. ft.

Non-Marine  
14,889 sq. ft.

SKETCH FOR  
PORT OF SIUSLAW  
18-12-34-1-1  
FLORENCE, OREGON  
FEBRUARY 24, 1998

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Eugene M. Wobbe*  
OREGON  
JULY 30, 1978  
EUGENE M. WOBBE  
1093

WOBBE & ASSOCIATES, INC.  
510 KINGWOOD ST., P.O. BOX 3093  
FLORENCE, OREGON 97439

SCALE  
1"=40'