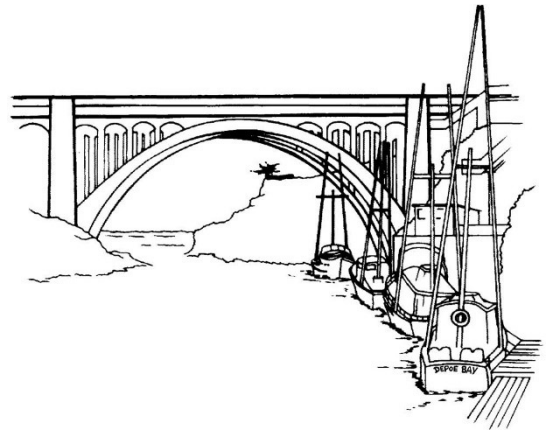


# City of Depoe Bay

## Harbor Commission Regular Meeting

February 28, 2024 – Wednesday, 3:30 PM

Depoe Bay City Hall – 570 SE Shell Avenue



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### *The Meeting Location is Accessible to the Public*

#### **To Join from Your Computer, Tablet, or Smartphone:**

<https://us02web.zoom.us/j/83555027726?pwd=KzdZeWpkVWwvYXdmMXFWRytwQitUUT09>

Meeting ID: 835 5502 7726

Passcode: 389233

#### **To Join from Your Phone:**

Phone: (253) 215-8782

Meeting ID: 835 5502 7726

Passcode: 389233

Public comments may be made via email up to two hours before the meeting start time at [info@cityofdepoebay.org](mailto:info@cityofdepoebay.org)

Please Note: In the event of Zoom Technical Difficulties the Telephone Conference System will be utilized. Dial (888) 204-5987, Access code 9599444

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### **AGENDA**

- A. Call Meeting to Order and Establish a Quorum
- B. Changes and Additions to the Agenda
- C. Correspondence
- D. Approval of Minutes: January 31, 2024
- E. Public Input
- F. Liaison Officer Report
- G. Harbormaster and City Recorder Reports
- H. Unfinished Business
  - 1) Docks 2-4 Replacement Project Update
  - 2) Dock Leases
- I. New Business
  - 1) Sea Wall Maintenance Issues
  - 2) Fiscal Year 2024-25 Harbor Budget Discussion
- J. Commissioner Concerns
- K. Adjourn

Depoe Bay City Hall is accessible to the disabled. If special accommodations are needed, please call City Hall at 541-765-2361 48 Hours in advance of the meeting so that appropriate assistance can be provided.  
TTY# 1-800-735-2900

Depoe Bay Harbor Commission  
Regular Meeting  
Wednesday, January 31, 2024  
3:30 PM  
Depoe Bay City Hall

PRESENT: J. Burright, L. Martin, Chair J. O'Brien, D. Zimmerman, T. Mick (arrived at 3:35 PM)  
STAFF: City Recorder K. Wollenburg, Deputy City Recorder C. Duering, Harbormaster R. Hildenbrand, Public Works Director B. Weidner

A. CALL MEETING TO ORDER

Chair O'Brien called the meeting to order and established a quorum at 3:33 PM.

B. CHANGES AND ADDITIONS TO THE AGENDA

Chair O'Brien stated that he would like to add Harbor Docks 2-4 Replacement Project Rebid to Unfinished Business.

C. CORRESPONDENCE

There was none.

D. APPROVAL OF MINUTES: November 29, 2023

**Motion:** Zimmerman moved to approve the November 29, 2023, minutes. Martin seconded.

**Vote:** Motion passed.

**Ayes:** Burright, Martin, O'Brien, Zimmerman, Mick

E. ELECTION OF CHAIR AND VICE-CHAIR

Zimmerman nominated O'Brien for chair. Martin agreed with Zimmerman.

Martin moved that O'Brien continue to chair the Harbor Commission. Zimmerman seconded.

**Vote:** Motion passed.

**Ayes:** Burright, Martin, Zimmerman, Mick

Zimmerman moved that Martin continue to be vice-chair of the Harbor Commission. O'Brien seconded.

**Vote:** Motion passed.

**Ayes:** Burright, O'Brien, Zimmerman, Mick

O'Brien stated that he would like the Deputy City Recorder to continue as secretary and chief advisor to the Harbor Commission.

#### F. PUBLIC INPUT

There was none.

#### G. LIAISON OFFICER REPORT

O'Brien reported on the January 23, 2024, City Council meeting: 1) Harbor Staff Expenses.

He stated that Martin is the liaison officer for February.

#### H. HARBORMASTER AND CITY RECORDER REPORTS

Hildenbrand summarized his report (copy attached to the original of these minutes). He reported on 1) Pump-out station holding tank maintenance; 2) Moorage docks, launch ramp, and fuel bunker signage; 3) Fish cleaning station maintenance; 4) Expansion of the security camera system; 5) Fuel bunker generator transfer switch repair.

Discussion followed regarding 1) Oregon Sea Grant funding; 2) Vandalism and penalties.

#### I. UNFINISHED BUSINESS

##### 1) Harbor Dock Leases Discussion

Chair O'Brien stated that Mick has a potential conflict of interest.

Chair O'Brien noted that staff provided the Commission with documents at the October 25, 2023, Harbor Commission meeting that included copies of the dock leases, termination letters, harbor survey, City Council minutes, and a memo that provided a brief history of the dock leases (copies attached to the original of these minutes). There has been no action by the City Council to renew the harbor dock leases since they were terminated in June 2006.

The City Recorder stated that the City Council wants the Harbor Commission to make a recommendation on what should be charged.

Chair O'Brien proposed that if it can be accurately determined that the property owners are occupying City property in the harbor (and that is still unclear to me as to where the line is based on what I have read) the City pursue lease agreements with the property owners and that leases reflect the current value and rates for such leases.

Discussion followed regarding: 1) Identifying current property owners; 2) Property boundaries; 3) Low and high water lines, and the meander line; 4) Comparable lease rates; 5) Harbormaster's discussion summary with the Port of Newport, Garibaldi, and Toledo (copy attached to original of these minutes); 6) Piling installation and ownership; 7) Councilor Recht's comment regarding Port of Newport lease rates; 8) Terms of the terminated dock leases; 9) The

City Attorney has advised the Council that there is no market rate; 10) Determining the value of a dock that is included with a facility lease; 11) Hiring an appraiser; 12) Based on the lack of action since 2006 by City Council to make the rent retroactive would be unconscionable.

In conclusion, the Harbor Commission agreed that they need to find adequate resources to determine an acceptable rate. Martin offered to contact the Lincoln County Assessor and the Harbormaster will contact additional harbor/port facilities.

The Harbor Commission requested copies of the harbor survey on 11x17 paper.

## 2) Moorage Fees – Other Government Agencies

Chair O'Brien stated that the Council did not offer research vessels the fifty percent (50%) discount as recommended by the Harbor Commission.

He approached the Council regarding the matter and the Council agreed to authorize a fifty percent (50%) discount on annual and transient moorage fees on government vessels and **university research vessels**. The US Coast Guard is exempt from paying all moorage fees.

The Deputy City Recorder stated that the Oregon Department of Fish and Wildlife (ODF&W) was pleased with the discounted rate and renewed their 2023-2024 annual moorage.

## 3) Harbor Docks 2-4 Replacement Project Rebid

Chair O'Brien announced that three (3) out of the five (5) original bidders submitted a bid. The apparent low bid was Advanced American Construction, Inc. He summarized the bid opening results (copy attached to the original of these minutes). The bidders have seven (7) business days from the date of the Intent to Award (copy attached to the original of these minutes) to protest.

Discussion followed regarding the next steps.

The City Recorder announced that the grant with a deadline for disbursement of funds has extended the deadline to June 2025.

## J. NEW BUSINESS

There was none.

## K. COMMISSIONER CONCERNS

Burright: If a person damages or destroys property over \$1,000 it is criminal mischief 1. Make sure the camera video is date and time-stamped. It would be nice to arrest the person(s) responsible for vandalizing the restroom doors.

Mick: I still have a hard time seeing that the harbor is losing as much money as some people are saying. My main concern is the viability of the harbor.

O'Brien confirmed that Mick received the 2023-2024 Annual Budget Supplemental Information Personnel Services Allocations and Material and Services Summary (copies attached to the original of these minutes).

Zimmerman: Don't run the stop sign by the US Coast Guard Station.

Martin: I would like to discuss the 2024-2025 harbor budget at the next meeting. The process last year was successful. I appreciate the Harbormaster's report and that signage has been installed.

O'Brien: I would like to thank everyone for their input and participation. The next meeting will be February 28, 2024.

L. ADJOURN

There being no further business, the meeting was adjourned at 4:30 PM.

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Chair Jack O'Brien

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Carla Duering  
Deputy City Recorder



# City of Depoe Bay VenTek RCS

## Payment Settlement Report

SELECTED BY SETTLEMENT TIME

21 Feb 2024 10:13:50AM

Date: January 01, 2024 to January 31, 2024

Time: ALL

Date & Time	Account	Batch ID	Items	Amex	Visa	MC	Discover	Total \$
<b>Location: Lot Terminal: 3021999 (3021999)</b>								
1/1/2024 11:50:06PM	000075334599.001	AutoSettled	1	0.00	10.00	0.00	0.00	10.00
	Visa 9615	2197		0.00	10.00	0.00	0.00	10.00
1/17/2024 11:50:41PM	000075334599.001	AutoSettled	1	0.00	0.00	10.00	0.00	10.00
	MC 8253	2198		0.00	0.00	10.00	0.00	10.00
1/23/2024 11:50:30PM	000075334599.001	AutoSettled	1	0.00	10.00	0.00	0.00	10.00
	Visa 6397	2199		0.00	10.00	0.00	0.00	10.00
<b>Lot Terminal: 3021999 (3021999)</b>			<b>3</b>	<b>0.00</b>	<b>20.00</b>	<b>10.00</b>	<b>0.00</b>	<b>30.00</b>
<b>Total for Location: Lot</b>			<b>3</b>	<b>0.00</b>	<b>20.00</b>	<b>10.00</b>	<b>0.00</b>	<b>30.00</b>
<b>Grand Total</b>			<b>3</b>	<b>0.00</b>	<b>20.00</b>	<b>10.00</b>	<b>0.00</b>	<b>30.00</b>

# Harbor Dock Leases

## Terminated 2006

Rental Schedule Rate - Per Year

Based on Original Lease Terms - Maximum 5% Increase Every Five Years

	Janet Fader	Imperial Marine
<b>1975</b>	\$ 760.00	\$ 480.00
<b>5 Years</b>	\$ 798.00	\$ 504.00
<b>10 Years</b>	\$ 837.90	\$ 529.20
<b>15 Years</b>	\$ 879.80	\$ 555.66
<b>20 Years</b>	\$ 923.78	\$ 583.44
<b>25 Years</b>	\$ 969.97	\$ 612.62
<b>30 Years</b>	\$ 1,018.47	\$ 643.25
<b>35 years</b>	\$ 1,069.40	\$ 675.41
<b>40 Years</b>	\$ 1,122.87	\$ 709.18
<b>45 Years</b>	\$ 1,179.01	\$ 744.64
<b>50 Years</b>	\$ 1,237.96	\$ 781.87

	Tradewinds Charters
<b>1976</b>	\$ 1,600.00
<b>5 Years</b>	\$ 1,680.00
<b>10 Years</b>	\$ 1,764.00
<b>15 Years</b>	\$ 1,852.20
<b>20 Years</b>	\$ 1,944.81
<b>25 Years</b>	\$ 2,042.05
<b>30 Years</b>	\$ 2,144.15
<b>35 years</b>	\$ 2,251.36
<b>40 Years</b>	\$ 2,363.93
<b>45 Years</b>	\$ 2,482.13
<b>50 Years</b>	\$ 2,606.23

	Sea Trollers
<b>1981</b>	\$ 1,260.00
<b>5 Years</b>	\$ 1,323.00
<b>10 Years</b>	\$ 1,389.15
<b>15 Years</b>	\$ 1,458.61
<b>20 Years</b>	\$ 1,531.54
<b>25 Years</b>	\$ 1,608.11
<b>30 Years</b>	\$ 1,688.52
<b>35 years</b>	\$ 1,772.95
<b>40 Years</b>	\$ 1,861.59
<b>45 Years</b>	\$ 1,954.67
<b>50 Years</b>	\$ 2,052.41

	Monty Roberts
<b>2006</b>	\$ 882.00
<b>5 Years</b>	\$ 926.10
<b>10 Years</b>	\$ 972.41
<b>15 Years</b>	\$ 1,021.03
<b>20 Years</b>	\$ 1,072.08
<b>25 Years</b>	\$ 1,125.68
<b>30 Years</b>	\$ 1,181.96
<b>35 years</b>	\$ 1,241.06
<b>40 Years</b>	\$ 1,303.12
<b>45 Years</b>	\$ 1,368.27
<b>50 Years</b>	\$ 1,436.69

Note: Jimco/Rocky Creek Development Leases Terminated June 1997 (See Bill of Sale)

## **AGREEMENT FOR LEASE OF PREMISES**

THIS AGREEMENT is made and entered into this 18th day of February, 2022, by and between the City of Depoe Bay, an Oregon municipal corporation, hereinafter called "Lessor", and Living Pacific Seafood LLC, an Oregon limited liability corporation, hereinafter called "Lessee."

### **1. PREMISES:**

In consideration of the covenants, agreements and stipulations herein contained on the part of the Lessee to be paid, kept and faithfully performed, the Lessor does hereby lease, demise and let unto the said Lessee those certain premises, as is, situated in the County of Lincoln, State of Oregon, more particularly described as follows:

Beginning at the original Northeast corner of Block 1, BREAKERS ADDITION TO DEPOE BAY, Lincoln County, Oregon; thence North 80° 39' East, 130.0 feet to the Northeast corner of a tract as described in Book 126, page 583 of Deed Records, which point is the true point of beginning of the tract herein to be described; thence South 9° 21' East, 79.0 feet; thence South 11° 28' West, 53.5 feet; thence South 39° 53' East, 58.1 feet; thence North 80° 39' East, 74 feet, more or less, to the Westerly line of the dredged boat basin at Depoe Bay; thence North-westerly, along said Westerly line of the Boat Basin, 182 feet, more or less, to a point that is North 80° 39' East of the true point of beginning; thence South 80° 39' West, 47 feet, more or less, to the true point of beginning;

TOGETHER WITH an easement for water transmission line as disclosed by instrument recorded March 15, 1983, in Book 139, Page 1118, Film Records, including the terms and provisions thereof.

### **SUBJECT TO:**

- a. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways;
- b. Rights and easements for commerce, navigation, fishery, and recreation;
- c. Any adverse claim based on the assertion that some portion of the said land is the tide, submerged or submersible lands, or has been created by artificial means or has accreted to such portion so created;
- d. Public utility easements, if any;
- e. Terms and provisions of Decree disclosed by deed from Sunset Investment Company to the Port of Newport, recorded August 27, 1938, in Book 79, Page 202 Deed Records;
- f. An easement created by instrument, including the terms and provisions thereof, dated October 20, 1938, recorded October 21, 1938, in Book 79, Page 480 in favor of the United States Government;



- g. Terms and provisions of Bargain and Sale Deed from the Port of Newport to the City of Depoe Bay, recorded November 27, 1974, in Book 53, Page 975, Film Records.

TO HAVE AND TO HOLD the said described premises unto the said Lessee from February 18, 2022, to and including 12:01 a.m., February 18, 2024.

**2. RENT:**

Lessee shall pay to Lessor a monthly rental amount as follows. Rent is due in advance on the first day of each month. Rent paid by the 5th day of the month due shall be accepted by Lessor as timely. Rent for the first year shall be \$ 2,377.37 per month.

For each subsequent year after the first year, including each year of any renewal term, on the yearly anniversary of the effective date of this lease, monthly rent shall increase by 2.5% over the previous year's monthly rent. (For example, the monthly rent will increase to \$2,436.80 for the second year.

Lessor shall grant credit toward Lessee's rent balance for specified leasehold improvements installed by Lessee during the term of the lease, according to the schedule of improvements attached as Exhibit A. These credits shall be one-time credits, credited towards Lessee's rent obligations. Any leasehold improvement for which a credit is given shall become fixed to the Premises and property of Lessor. Such improvements shall not be considered trade fixtures and Lessee waives any rights to remove the improvement upon the termination of the lease agreement. Specific improvements and the corresponding credit amount shall be added to Exhibit A from time to time upon the written agreement of the parties. To be eligible for a rent credit, the parties must first agree to add the improvement to Exhibit A prior to the installation of the improvement. When an improvement is added to Exhibit A, Exhibit A will be updated and each party provided with a copy. Lessee will only be credited with the improvement credit once the improvement's installation is complete.

**3. ACCEPTANCE OF LEASE:**

Lessee accepts said lease and agrees to pay to the order of Lessor the rental above stated for the full term of this lease at the times and in the manner aforesaid. It is understood that the Lessee takes the premises "as is", subject to all faults, defects, and hazards. Lessee has received and has knowledge of the April 2014 Engineering Report describing the structural problems with the premises.

**4. USE:**

Lessee may use the demised premises for the following use(s): fish processing and related uses.

**5. LIMITS ON USE:**

- a. Lessee will not make any unlawful, improper or offensive use of said premises; it will not suffer any strip or waste thereof; it will not permit any objectionable noise or odor to escape or to be emitted from said premises or do anything or permit anything to be done upon or about said premises in any way tending to create a nuisance. Lessee agrees to maintain

said leasehold premises in a condition that is safe and which will allow the Oregon Rating Bureau (fire rating) to rate said premises at standard or better rates. In the event that there shall exist on the leased premises any substandard condition, Lessee shall immediately clear and remedy the same upon receipt of written notice from Lessor, and in the event of Lessee's failure to do so, Lessee shall be liable to the Lessor for any increased insurance premiums occasioned by such conditions.

- b. Lessee shall conform its use of the premises to the following weight limits: 1) the first floor and dock load limits of 250 pounds per square foot (psf); 2) second-floor load limits as outlined in the Live Load Limits-Existing Second Floor Plan attached as Exhibit B, with no public use allowed. The load limits here may be adjusted upwards through Lessee-funded improvements and subsequent report by a licensed structural engineer satisfactory to Lessor.
- c. The parties acknowledge that available parking on the premises is limited. Prior to Lessee parking any vehicles on the premises, Lessee shall submit a parking plan to Lessor for Lessor's approval. Once approved, Lessee shall limit parking on the premises to the approved parking plan. The Lessor's approval of a proposed parking plan will not be unreasonably withheld.
- d. The premises shall not be used for residential habitation or lodging of any type.

**6. SPECIAL PROVISIONS:**

**a. EMPLOYMENT RECRUITMENT PROCEDURES:**

The Lessor restored the premises with grant funds targeted at developing and expanding jobs within the City, for the benefit of the residents of the City of Depoe Bay. Except to the extent as may be otherwise required or prohibited by law, Lessee shall undertake at least the following means for soliciting employees to work on the premises:

Employment recruitment ads shall be placed with local newspapers.

This provision shall not give rise to a claim by an applicant against the Lessee nor against the Lessor. In the event of a breach of this subsection, Lessor may enforce its terms by injunction or, at Lessor's option, termination of the leasehold.

**b. FACILITY OPERATIONS; NUISANCE:**

(i.) The parties acknowledge that Lessee intends to use the premises for the processing of fresh seafood and seafood by-products. Lessee will install equipment relating to the control of emissions and odors. Lessee shall, in the operation of the premises (including, without limitation, its transportation, storage, processing, and disposal systems), exert its best efforts to control emissions and odors beyond the boundaries of the premises of any odor which would be unreasonably offensive to an individual of reasonable sensitivities. Lessee shall not dispose of fish carcasses, seafood processing waste or gurry into the waters of the harbor.

(ii.) Lessee shall carry out its activities hereunder in such a manner that they shall not constitute a nuisance. As used in this subsection (c), the term "nuisance" shall have the same meaning as that term is recognized in the law, and shall include any activity of

which the owners or possessors of neighboring lands would be entitled to obtain abatement or for which such persons would be entitled to recover damages. Lessee shall, in accordance with the indemnification provisions of this Lease, save, hold, defend and indemnify Lessor harmless against any such claims. If Lessor shall receive any complaints respecting the facility, Lessor may forward the same to Lessee for the appropriate response, and Lessee shall use its good faith and best efforts to respond to and address such complaints, and shall take such action as may be appropriate.

(iii.) No materials shall be accepted from, nor delivered to, any person or entity transporting such materials in a manner, not in compliance with the provisions hereof. All products accepted for delivery at, or delivered for transport from, the facility shall be conveyed in trucks, trailers or other vehicles meeting all applicable laws, rules requirements or regulations of any governmental body having jurisdiction thereof, and which shall not allow the leakage, spillage or discharge of any materials whatsoever. Such materials shall not be allowed to stand for any substantial period of time in any such vehicle or conveyance on the premises, and no material shall be stored upon the premises except in vessels or containers which will minimize the escape of odors from the boundaries of the premises, and ensure compliance with all the requirements of this Lease, including but not limited to those subsections above. Any leakage or spillage taking place upon the premises, as part of the delivery process or otherwise, which would cause emanation of odor beyond the boundaries of the premises, shall be promptly and immediately remedied.

(iv.) Notwithstanding any provision herein which would otherwise provide a longer time to cure a default of these provisions, if Lessor shall so elect, Lessor may give written notice to Lessee that Lessor will require the cure of such failure to comply within ten (10) days after receipt of such notice from Lessor, in which event Lessee shall commence to cure the failure to comply, and shall complete such cure within fifteen (15) days.

c. **WASTEWATER TREATMENT:**

Lessee shall comply with all applicable wastewater treatment regulations, either as now existing or as hereafter adopted.

d. **LOADING HOURS/NUISANCE:**

Lessee shall not suffer or permit any activity which constitutes a nuisance or unreasonable inconvenience to the tenants or the City sharing use of the building or dock, or to adjacent neighbors. Lessee shall not cause, suffer or permit loading or unloading trucks between the hours of 7:00 p.m. to 7:00 a.m. Lessee shall not cause, suffer or permit refrigeration units on trucks to be run on the premises between the hours of 7:00 p.m. to 7:00 a.m.

**7. TAXES, UTILITIES & OTHER FEES:**

Lessee shall pay for all water, heat, light, power and other services or utilities used in the leased premises during the term of this lease and shall be responsible for the personal property taxes on all personal property located on the premises during the Lessee's occupancy thereof.

Upon request, Lessee will promptly deliver to Lessor receipts or other satisfactory evidence of such payment.

#### **8. DEPOSIT:**

Lessee shall pay a deposit equal to two (2) month's rent upon execution of this lease agreement.

#### **9. FIRE INSURANCE:**

Lessee agrees to insure the premises against loss by fire, vandalism or another casualty, with extended coverage, in a company or companies satisfactory to the Lessor, for the maximum insurable value thereof, and both the Lessor and the Lessee shall appear as named insured under such policy, as their respective interests shall appear.

Lessee shall be responsible to provide insurance upon the fixtures, appurtenances and personal property located upon the premises against loss by fire, vandalism or other casualties.

#### **10. CONDITION OF PREMISES; REPAIRS AND IMPROVEMENTS:**

- a. Lessee hereby agrees to maintain and keep the leased premises in good order and repair during the entire term of this lease at Lessee's own cost and expense; to keep the premises neat and clean; to not permit or suffer the exterior of the premises to be used for storage of equipment or containers; and to replace all glass which may be broken or cracked during the term hereof, including that in the windows and doors of the premises, with glass of as good or better quality as is now used. Lessee further agrees that it will make no alterations, additions or improvements to or upon said premises without the written consent of the Lessor first being obtained. However, such written consent shall not be unreasonably withheld by the Lessor.
- b. The Lessor shall not be required to make any repairs whatsoever.
- c. The Lessee shall maintain the premises and the equipment, which shall include all necessary repairs and maintenance to the entirety of the premises and above described equipment, including but not limited to the building, including exterior, interior, roof, plumbing, electrical, heating, and any other mechanical equipment or system, and generally all parts and portions of any and all improvements located thereon, which shall also include the obligation to maintain the premises as a neat, clean and safe condition.

#### **11. INSPECTION:**

The Lessor, its agents, and representatives, at any reasonable time, may enter upon or into said premises for the purpose of examining the condition thereof and for any other lawful purpose.

#### **12. TRANSFER OR SUBLEASE:**

Lessee will not assign, transfer, pledge, hypothecate, surrender or dispose of this lease, or any interest therein, or permit any other person or persons whomsoever to occupy the premises without the written consent of the Lessor first being obtained. However, such written consent may be withheld by Lessor for any or no cause. This Lease is personal to said Lessee; Lessee's interest, in whole or in part, cannot be sold, assigned, transferred, seized or taken by operation

of law, nor under or by virtue of any execution or legal process, attachment or proceeding instituted against the Lessee, nor under or by virtue of any bankruptcy or insolvency proceedings had in regard to the Lessee, or in any other manner except as above mentioned.

**13. LIENS:**

Lessee shall keep the demised premises free from all liens of every kind and description caused, incurred, permitted or suffered by any act or omission of Lessee, and Lessee shall not have the right or authority to incur any mechanics', laborers', materialmen's' or any other liens.

**14. COMPLIANCE WITH LAW:**

- a. Lessee, at Lessee's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Lessee's use of the premises, including without limitation, any laws requiring alteration of the premises because of Lessee's specific use (fish processing and food health requirements), and all applicable federal, state, and local laws, regulations or ordinances pertaining to air and water quality, hazardous materials (as hereinafter defined), waste disposal, air emissions, and other environmental matters, all zoning and other land use matters, and utility availability, and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Lessor or Lessee with respect to the use of occupation of premises.
- b. In the furtherance of, and not in limitation of, Lessee's obligations under the foregoing paragraph, throughout the term of this Lease, Lessee shall do or cause to be done all things necessary to preserve and keep in full force and effect permits required for the conduct of its business and operations from the time of commencement of this lease until its expiration or termination.
- c. Lessee shall comply at Lessee's own expense with all laws and regulations of any municipal, county, state, federal or other public authority respecting the condition and use of said leased premises, including but not limited to federal and state laws and regulations regarding workplace conditions if any employee of the Lessee or sublessee (if permitted by Lessor) performs any work on the premises.

**15. USE OF HAZARDOUS MATERIAL:**

Lessee shall not cause or permit any hazardous material to be brought upon, kept or used in or about the premises by Lessee, its agents, employees, contractors, or invitees without the prior written consent of Lessor, which shall not be unreasonably withheld as long a Lessee demonstrates to Lessor's reasonable satisfaction that such hazardous material is necessary or useful to Lessee's business and will be used, kept, and stored in a manner that complies with all laws regulating any such hazardous material so brought upon or used or kept in or about the premises.

As used herein, the term "hazardous materials" means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R.

172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302) and amendments thereto, petroleum products, or such other substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law.

#### **16. AMERICANS WITH DISABILITIES ACT:**

If compliance is required, Lessee shall take all proper and necessary action, at its own expense, to cause the demised premises to be kept, maintained, used and occupied in compliance with the Americans With Disabilities Act of 1990 (ADA) and with all applicable laws, ordinances, rules, regulations and any other state or local requirements governing the accessibility of public spaces.

Lessee shall indemnify, hold harmless, and defend Lessor against any and all claims of liability for the failure of the premises to comply with disability access requirements under the ADA or state and/or other related federal law, rules and regulations. This indemnity extends to claims based on (1) non-compliance of the premises, including fixtures and improvements provided and installed by Lessee or (2) policies, practices, and procedures of Lessee, or (3) auxiliary aids or services provided by Lessee or which should have been provided by Lessee which were not provided. This indemnity does not apply if a claim concerns (1) non-compliance of the common areas including fixtures and improvements resulting from acts or failures to act by Lessor, or (2) policies, practices or procedures of Lessor, or (3) auxiliary aids or services provided by Lessor (or which should have been provided by Lessor but were not) unless the claim concerning the common areas is by an employee of Lessee or by an applicant for employment with Lessee.

#### **17. INDEMNIFICATION:**

Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees) which arise during or after the lease term as a result of contamination by hazardous materials as a result of Lessee's use or activities, or of Lessee's agent or contractors. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of hazardous materials present in the soil or groundwater on or under the premises. Without limiting the foregoing, if the presence of any hazardous material on the premises caused or permitted by Lessee or its agents or contractors results in any contamination of the premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the premises to the condition existing prior to the release of any such hazardous material to the premises, provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the premises. The foregoing indemnity shall survive the expiration or earlier termination of this lease.

#### **18. DISCLOSURE:**

At the commencement of this lease, and on January 1<sup>st</sup> of each year thereafter (each such date being hereafter called "disclosure dates"), including January 1<sup>st</sup> of the year after the termination of this Lease, Lessee shall disclose to Lessor the names and amounts of all hazardous materials, or any combination thereof, which are stored, used, released, or disposed of on the premises, or which Lessee intends to store, use, release, or dispose of on the premises.

#### **19. LIABILITY:**

Lessor shall not be responsible or liable in any way for the injury or death of any person (including Lessee's or sublessee's employees) or damage to any property caused in or about the premises, nor shall Lessor be liable for any damage or loss suffered by the business or occupation of Lessee arising or resulting from any such accident or injury to goods or persons happening in or about the premises. Lessee does hereby covenant to save, hold and defend Lessor harmless from any loss, damage or liability resulting from or arising out of any such accident or injury, and in the event of any suit or action for damages being brought by any person whomsoever, Lessee agrees at its own cost and expense to defend Lessor against any such suit or action and any and all appeals thereof and to satisfy and discharge any judgment which may be awarded against Lessor on account thereof. Lessee will at all times indemnify and hold harmless the Lessor, its agents, and employees, against any and all actions or causes of action, claims, demands, liabilities, losses, damages, or expenses of any kind or nature which Lessor shall or may at any time sustain or incur by reason of Lessee's operations hereunder.

#### **20. LIABILITY INSURANCE:**

Lessee agrees at all times during its occupancy of the premises, at its own expense, to maintain and keep in effect general liability insurance policies in form and with insurer satisfactory to the Lessor insuring both the Lessor and the Lessee against all liability for damages caused by the negligence of the Lessee, its employees or agents, to persons or property in or about the premises; the amount of said liability insurance shall not be less than \$1,000,000 for injury to one person or \$1,500,000 for injuries arising out of any one occurrence and not less than \$600,000 for property damage. Lessor and Lessee shall appear as named insured under such policy.

In addition, Lessee shall maintain endorsements, or separate policies, for coverage of pollution discharges and hazardous materials storage.

Lessee agrees to and shall indemnify and hold Lessor harmless against any and all claims and demands arising from acts or omissions of the Lessee, its officers, agents, invitees, and/or employees, as well as those arising from Lessee's failure to comply with any covenant of this lease upon its part to be performed and shall, at its own expense, defend the Lessor against any and all suits or actions arising out of such negligence, actual or alleged, and all appeals thereof, and shall satisfy and discharge any judgments which may be awarded against Lessor in any such suit or action.

Lessor may require the Lessee to provide it copies of any policies of insurance required hereunder, together with satisfactory proof that such policies are in full force and effect. The parties recognize that the aforementioned policy limits are relatively low, and Lessor shall have

the right, from time to time, to request a reasonable increase in the liability limits of the aforementioned policy of liability insurance, to conform to the limits of the Oregon Tort Claims Act.

## **21. OWNERSHIP OF IMPROVEMENTS:**

All partitions, plumbing, wiring, additions to or improvements upon said leased premises except trade fixtures, whether installed by Lessor or the Lessee, shall be and become part of the building as soon as installed and are the property of the Lessor; provided, however, except as otherwise provided in this lease, that trade fixtures attached to the premises with the Lessor's consent shall remain the independent property of the Lessee, provided however that if the removal of the trade fixture would damage the premises, then the trade fixture shall be deemed to have been affixed to the premises and shall be the property of the Lessor.

## **22. DESTRUCTION OF PREMISES:**

In the event of the destruction of the building in which said leased premises are located by fire or other casualties to the extent of fifty percent (50%) or more of the sound value of said building, the Lessor may or may not elect to repair said building; written notice of Lessor's said election shall be given to Lessee within fifteen (15) days after the occurrence of said damage; if said notice is not so given, Lessor conclusively shall be deemed to have elected not to repair; in the event Lessor elects not to repair said building, then in that event, this lease shall terminate with the date of said damage. If the building in which said leased premises are located is but partially destroyed and the damage so occasioned shall not amount to the extent indicated above, or if greater than said extent and Lessor elects to repair, as aforesaid, then the Lessor shall repair said building with all convenient speed and shall have the right to take possession of and occupy, to the exclusion of the Lessee, all or any part of said building in order to make the necessary repairs, and the Lessee hereby agrees to vacate, upon request, all or any part of said building which Lessor may require for the purpose of making necessary repairs, and for the period of time between the day of such damage and until such repairs have been substantially completed, there shall be such abatement of rent as the nature of the injury or damage and its interference with the occupancy of said leased premises by said Lessee shall warrant; however, if the premises be but slightly injured and the damage so occasioned shall not cause any material interference with the occupation of the premises by said Lessee, then there shall be no abatement of rent and the Lessor shall repair said damage with all convenient speed.

In any event, the Lessor's obligation to repair any damage or destruction to the premises shall be limited to the amount of available fire insurance proceeds. In the event the Lessor is required to make any such repairs or elects to do so, any portion of any insurance proceeds which would be paid to the Lessee by reason of its interest in the subject premises shall be payable to the Lessor and shall be included as part of the insurance proceeds available for costs of repair or reconstruction. The Lessee hereby appoints the Lessor its attorney in fact for the purpose of settling, negotiating, or compromising any claim of loss and for collecting any insurance proceeds payable by reason thereof. Lessor shall apply such proceeds in a manner consistent with this Section. In settling, negotiating, or compromising any claim of loss, Lessor shall keep the Lessee reasonably informed as to the course of such negotiations and settlement.

## **23. WAIVER OF LIABILITY:**



Neither the Lessor nor the Lessee shall be liable to the other for losses arising out of damage to or destruction of the leased premises, or the building or improvements of which the leased premises are a part or with which they are connected, or the contents of any thereof when such losses are caused by any of the perils which are or should be included in or insured against by a standard form of fire insurance with extended coverage, as required hereunder. All such claims for any and all losses, however, caused, hereby are waived. However, nothing herein contained shall be deemed to exculpate the Lessee for liability for such losses to the extent that Lessee fails to obtain and keep in effect insurance against such losses as herein required, nor anything herein contained be deemed to exculpate the Lessee for liability for such losses should such exculpation have the effect of voiding or nullifying any insurance coverage for such loss which might otherwise exist for the benefit of the Lessor.

#### **24. CONDEMNATION:**

In case of the condemnation or appropriation of all or any substantial part of the said demised premises by any public or private corporation under the laws of eminent domain, this lease may be terminated at the option of either party hereto on twenty (20) days written notice to the other, and in that case, the Lessee shall not be liable for any rent after the date of Lessee's removal from the premises.

#### **25. HOLDING OVER:**

Strict and literal compliance with the terms and conditions provided for any renewal of this lease shall be a condition precedent thereto, and in the event, the Lessee shall for any reason hold over after expiration of this lease, other than pursuant to a valid renewal hereof, such holding over shall not be deemed to operate as a renewal or extension of this lease but shall create a tenancy from month-to-month which may be terminated at will at any time by the Lessor.

#### **26. NOTICES:**

Any notices required by the terms of this lease to be given by one party to the other, or desired so to be given, shall be sufficient if the writing is in a sealed envelope, deposited in the United States registered or certified mail with return receipt requested and with postage fully prepaid and addressed to the other party at the following address, or such other address as to which either party may have properly notified the other:

LESSOR: Mayor  
City of Depoe Bay  
P.O. Box 8  
Depoe Bay, OR 97341

LESSEE: Living Pacific Seafoods  
PO Box 1343  
Newport, OR 97365

Any such notice shall be presumed to be delivered within forty-eight (48) hours after deposit in any United States registered or certified mail. In the event that the person desiring to give such notice shall become aware that such notice was not so delivered, the notice shall, nonetheless, be deemed to be effective within forty-eight (48) hours after such deposit.

However, within a reasonable time after such discovery, the person desiring to give notice shall take appropriate steps to give actual notice to the other. No further attempts shall be required, however, if such notice cannot be delivered due to the failure of the party for whom such notice is intended to provide information as to such person's address or to accept delivery.

**27. STRICT PERFORMANCE:**

Full, strict, complete, and literal performance, and the time thereof, are of the essence of this agreement; any waiver by the Lessor of any breach of any covenant or agreement herein contained to be kept and performed by the Lessee shall not be deemed or considered a continuing waiver and shall not operate to bar or prevent Lessor from any right or remedy for that breach or for any succeeding breach, either of the same condition, covenant or agreement, or of any other.

**28. ATTORNEYS' FEES:**

If suit or action, including any appeal thereof, is instituted to enforce compliance with any of the terms, covenants, or conditions of this lease, the non-prevailing party in such suit or action agrees to pay the prevailing party's reasonable attorney's fees in addition to the prevailing party's costs incurred in such suit or action.

**29. RIGHT TO ADVERTISE:**

During the period of sixty (60) days prior to the date fixed for the termination of said lease, unless the parties have reached an agreement and have renewed the same as provided herein, the Lessor may post on said premises or in the windows thereof signs of reasonable size notifying the public that the premises are "For Sale" or "For Rent" or "For Lease".

**30. SURRENDER OF PREMISES:**

At the expiration of said term or upon any sooner termination of this Lease, or upon the termination of any extension thereof, or upon the termination of any month-to-month tenancy created hereafter, the Lessee will quit and deliver up said leased premises and fixtures and all future erections or additions to or upon the same, broom clean to the Lessor, or those having Lessor's estate in the premises, peaceably, quietly and in good order and condition, reasonable use and wear thereof, damage by fire, unavoidable casualty, and the elements, to the extent covered by insurance, alone excepted, as the same are now in or such better condition as the premises hereafter may be put in. Lessee shall deliver the keys to the premises at the time of surrender of the premises.

**31. SUCCESSORS:**

All rights, remedies, and liabilities herein given to or imposed upon either of the parties hereto shall extend and inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, successors, and assigns of such parties.

**32. SIGNS:**

During the period of this lease, neither party shall place any signs, emblems, flashing lights, or similar devices upon the premises without consent of the other; Lessor shall not unreasonably withhold consent to the placement of an attractive and aesthetically pleasing sign designating the occupants of the business, trade or profession in which such occupants are engaged, and Lessee shall not withhold consent to placement upon the premises by the Lessor of aesthetically attractive directional signs. All such signs shall be of reasonable size and consistent with the architectural style of the building and with all codes, ordinances, laws, and other applicable requirements.

**33. NEAT AND PRESENTABLE CONDITION:**

Lessee agrees at all times during the term of this lease to maintain the leased premises in a clean, neat, orderly and presentable condition.

**34. INTEGRATION:**

This is the complete and entire agreement between the parties and supersedes any other or prior agreement. Any modification hereof shall be effective only if reduced to writing and subscribed by the parties sought to be bound thereby.

**35. RENEWAL OPTION:**

Lessor hereby grants to the Lessee the option of extending the lease for a single renewal term of two (2) years to commence at the end of the lease term. Rent during the renewal term shall increase in the first year, and each successive year thereafter, as rent provided for under Section 2 above.

The option to enter the renewal term hereof must be exercised by notice in writing to the Lessor not less than 120 days prior to the expiration date of the lease term.

The renewal option is exercisable only in the event and upon condition that the lease shall then remain in full force and effect and that the Lessee shall not, neither at the time of giving notice of such renewal nor at the time such renewal term is to commence, be in default with respect to any obligation or requirement on the part of the Lessee to be performed.

**36. LATE FEE:**

If Lessee shall fail to pay the rental amount by the 10th day of the month it is due, there shall be added to the rental amount a late fee of 15 % of the rental amount.

**37. DEFAULT:**

The Lessee's failure to pay the rent provided hereunder, or any portion thereof, for a period of twenty (20) days after the same becomes due and payable, shall be default and shall operate to terminate the tenancy of the Lessee hereunder. No notice to quit or to pay such rent shall be required and the holding of such tenancy thereafter shall be wrongful. However, if the Lessor, after such default in payment of rent, accepts payment thereof, the lease is reinstated for the full term hereof, subject to termination by subsequent defaults in payment of rent or to termination

for other defaults as hereafter provided. Acceptance by Lessor of payment of arrearage of rent, or a portion thereof, shall not reinstate the lease unless the Lessee shall pay or perform, all sums the payment of which is in arrears and all other defaults then existing.

The Lessee shall not be considered in default hereunder, and this lease shall not terminate, by reason of any act or omission of the Lessee in breach of any requirement hereof, (excepting only failure to pay rent or other sums due to the Lessor hereunder or to cure any nuisance resulting from odor), until and unless Lessor shall give to the Lessee notice of such act or omission in breach of this lease agreement, and Lessee shall fail to cure the same within thirty (30) days after such notice. However, whenever such breach shall relate to the provision of insurance or to the payment of any taxes, assessment, rent to the Division of State Lands, if any, or any other sum due to a third party, the same shall be provided or paid within ten (10) days after such notice.

With respect to all matters relating to the condition of the premises (except a nuisance resulting from odor), if the act or omission complained of by Lessor may not reasonably be cured within thirty (30) days, the Lessee shall nonetheless not be deemed in default hereunder if the Lessee shall commence the cure of such breach within ten (10) days following receipt of such notice and shall diligently prosecute such cure to completion.

### **38. REMEDIES:**

In the event, the lease shall terminate for default, as aforesaid, or by reason of any other default as a matter of law, or for any other reason, and if the Lessee shall fail to immediately surrender possession of the leased premises and fixtures, in any of such cases, the Lessor or those having Lessor's estate in the premises, lawfully and at the option of the Lessor, immediately or at any time thereafter, without demand or notice, may enter into and upon the demised premises and every part thereof and repossess the same as of Lessor's former estate and expel Lessee's effects at the expense of Lessee, forcibly if necessary, and store the same and/or lock the demised premises, all without being deemed guilty of trespass or other wrongful act, and as a remedy pursuant thereto and not in derogation thereof, and without prejudice to any other right or remedy which otherwise might be used for arrears of rent, breach of this agreement, or otherwise.

In addition, if the Lessor shall retake possession of the premises, Lessee shall pay to Lessor all of the reasonable costs of reentry and re-letting, including but not limited to the cost of any cleanup, refurbishing, removal, and storage of Lessee's property and fixtures and any other expense occasioned by Lessee's failure to quit the demised premises upon termination or to leave them in the required condition, any cost of repair to the building, attorneys' fees, court costs, brokers' commissions, and advertising costs.

Upon Lessor's recovery of the premises, Lessor may, at its option, require the Lessee to pay to the Lessor the present value of the Lessee's rental obligation under the lease agreement, as diminished by the present value of the fair rental value of the premises for the remainder of the term of the lease agreement, making reasonable allowance for vacancy and costs of re-letting.

All of the Lessor's rights and remedies hereunder shall be cumulative, one with the other, and with any other right or remedy as may exist by force and effect of law or otherwise.

**39. GRAMMATICAL CONSTRUCTION:**

In construing this lease, it is understood that the Lessor or the Lessee may be more than one person, and if the context so requires, the singular pronoun may be taken to mean and include the plural, the masculine may include the feminine and the neuter, and vice versa, and generally, all grammatical changes shall be made, assumed, and implied as are necessary to carry out the intent hereof and to make the provisions of this agreement apply equally to corporations as to individuals.

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate to be effective as of the day and year above set forth, and any corporate signature is affixed hereto only pursuant to the board of directors or other governing bodies thereof.

LESSOR:

City of Depoe Bay

BY:

Kathy Shurt

TITLE:

Mayor

LESSEE:

Living Pacific Seafood, LLC

BY:

[Signature] member

TITLE:

Member

DEC 19 2011

## Exhibit A

### Leasehold Improvement Schedule of Credit Values

Improvement	Credit Value
1)	\$
2)	\$
3)	\$
4)	\$