

Item No.

6d_attach 1

Date of Meeting

December 5, 2017

PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

**DRAPER MACHINE WORKS, INC.,
a Washington corporation**

as Seller

and

**PORT OF SEATTLE,
a Washington municipal corporation**

as Purchaser

**Salmon Bay Marina
2100 West Commodore Way, Seattle, Washington**

LIBD/2473757.2

4849-7978-4527\2

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2017 (the "Effective Date"), by and between DRAPER MACHINE WORKS, INC., a Washington corporation ("Seller"), and THE PORT OF SEATTLE, a Washington municipal corporation ("Purchaser"). (Seller and Purchaser are sometimes referred to herein individually as a "Party", and collectively as the "Parties").

In consideration of the mutual covenants set forth in this Agreement, and other good and valuable consideration, Seller and Purchaser hereby agree as follows:

1. **Description of the Property.** Subject to the terms set forth in this Agreement, at the Closing, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all right, title and interest of Seller in and to:
 - (a) **Real Property.** The real property commonly known as Salmon Bay Marina located at 2100 West Commodore Way (the "Marina"), in Seattle, King County, Washington. The Marina is comprised of (1) a fee interest in the land legally described on Exhibit A attached hereto, together with all appurtenant easements and any other rights, including, without limitation, development rights and other intangible rights, and interests appurtenant or relating thereto, but excluding those rights reserved to the grantor through deed dated December 29, 1945 recorded in the Official Records under Recording Number 3534741 [**WHAT SPECIFIC RIGHTS ARE THESE AND IS IT A PROBLEM GOING FORWARD? DO THEY HAVE ANY VALUE THAT COULD BE USED AS A CLAIM TO REDUCE THE PRICE?**](the "Land"); (2) a leasehold interest in the aquatic lands described in that certain Waterway Use Authorization No. 20-009207 between Seller and the State of Washington Department of Natural Resources (the "DNR Lease") and legally described on Exhibit B attached hereto (the "Aquatic Lands"), and (3) all buildings, structures, improvements located on or affixed to the Land and the Aquatic Lands (the "Improvements"). The Land, the Aquatic Lands and the Improvements and are referred to collectively herein as the "Real Property";
 - (b) **Leases and Contract Rights.** All rights under all Moorage Agreements and Kayak Storage Agreements (each defined in Section 3(c)(1) below), contracts, agreements, utility arrangements, warranties, guarantees, indemnities, applications, permits (including but not limited to that certain Land Use Permit issued by the City of Seattle under Permit Number 3012950 ("City Permit"), that certain Water Permit issued by the Army Corps of Engineers under Permit Number NWS 2012-1261 ("ACE Permit"), and that certain Approved Substantial Development Permit and Approved Shoreline Conditional Use Permit_ issued by the Washington Department of Ecology Number_2015-NW-2845 ("DOE Permit"), [**PLEASE CONFIRM DETAILS**] plans, drawings, specifications, surveys, maps, engineering reports and other technical descriptions, books and records, and other tangible and intangible rights used in connection with or relating to the Real Property.
 - (c) **Insurance Policies.** All rights under any and all insurance policies either obtained by Seller or with respect to which Seller is the assignee or successor in interest that may provide coverage for any condition of environmental contamination on or emanating

from the Real Property, or the existence of Hazardous Substances in any state on or emanating from the Real Property, however they came to be there (including but not limited to those certain insurance policies described on Exhibit C attached hereto), referred to collectively herein as the “Insurance Policies.”

- (d) Third Party Claims. All rights of action, recovery, or contribution Seller might have against third parties for any condition of environmental contamination on or emanating from the Real Property, or the existence of Hazardous Substances in any state on or emanating from the Real Property, however they came to be there (including but not limited to rights Seller has against [Marine Construction and Design Inc.]a Washington corporation _____ (“MARCO”) [*Seller: Please confirm correct entity name*]][*still working on this*] in MARCO’s capacity as the owner of property adjacent to the Real Property and in MARCO’s capacity as a former leaseholder of the Real Property) (collectively, the “Third Party Claims”).

The Real Property, the leases, contract and other rights set forth in Section 1(b) above, the Insurance Policies and other rights set forth in Section 1(c) above and on Exhibit C attached hereto, and the Third Party Claims set forth in Section 1(d) above are collectively referred to as the “Property.”

2. **Purchase Price.** The purchase price for the Property is Fifteen Million Six Hundred Seventy-Nine Eight Thousand One Hundred Twenty DOLLARS (\$15,679,120) (the “Purchase Price”). At Closing, Purchaser shall deposit with Escrow Agent (defined in Section 8.1(a) below) by wire transfer of immediately available funds an amount equal to the Purchase Price, subject to proration as set forth in Section 10.2 hereof.
3. **Due Diligence.** Purchaser has completed its due diligence of the Property and in connection therewith, acknowledges that Seller has permitted Purchaser and/or its agents access to the Real Property to perform any and all investigations and inspections desired by Purchaser, access to the Property Documents (defined below), access to government agencies or authorities relevant to the evaluation of the Property, and access to other third parties that are parties to Property Documents and/or relevant to the evaluation of the Property. Purchaser acknowledges that it has performed the inquiries, reviews, investigations and inspections it deems necessary in connection with the acquisition of the Property. Accordingly, with the execution of this Agreement, but without limitation on the representations and warranties of Seller set forth in this Agreement and the documents to be executed in connection with this Agreement, Purchaser hereby approves the following matters existing as of the date hereof:
- (a) the physical condition of the Real Property as of the date hereof, including without limitation:
- (1) soil, seismic, hydrological, geological and topographical conditions;
 - (2) the availability of adequate utilities and public access;
 - (3) the condition of any and all Improvements located on the Real Property;
 - (4) the installation, condition and capacity of existing, constructed infrastructure, including its suitability to serve the Improvements located on the Real Property;

- (5) the status and nature of any existing or proposed taxes or assessments against the Real Property and the amount of any tax or assessment liability;
 - (6) the character and amount of any fee or charge which may be imposed in connection with the future development of any portion of the Real Property;
 - (7) whether or not the Real Property is located in a Special Flood Hazard Area; and
 - (8) the status of the Real Property with respect to all applicable laws, including any laws respecting Hazardous Substances (as defined in Section 13);
- (b) applicable government ordinances, rules and regulations and evidence of compliance therewith, including without limitation zoning and building regulations;
- (c) those agreements, contracts, documents, instruments, reports, surveys, books and records comprising a part of the Property or otherwise relating to the Real Property which Seller has made available to Purchaser described below, together with such other agreements, contracts, documents, instruments, reports, surveys, books and records that Purchaser has discovered or reviewed in connection with its due diligence investigation of the Property, including but not limited to the following (collectively, the "Property Documents"):
 - (1) existing leases, licenses and use or occupancy agreements and all amendments and modifications thereto for moorage at the Marina, but specifically excluding the agreements for the moorage or dockage of any houseboat at the Marina (collectively, the "Moorage Agreements"), and storage leases pursuant to which any third party has a right to store a kayak in the Improvements (the "Kayak Storage Agreements"), all as more particularly described on Exhibit D attached hereto;
 - (2) reports concerning the condition of the Improvements, including but not limited to that certain appraisal prepared by Kidder Mathews at the request of Purchaser dated March 13, 2017 (collectively, the "Property Condition Reports"), as described on Exhibit E attached hereto;
 - (3) ; **[ANY RISK HERE?]**
 - (4) documents pertaining to the environmental condition of the Real Property, which, to the best of Seller's Knowledge, consist of the documents described on Exhibit G attached hereto (the "Environmental Documents"); and
 - (5) all licenses, permits, zoning regulations, improvement agreements, bonds, development agreements, and any and all other governmental approvals and/or authorizations relating to the Real Property.

With respect to any Property Documents made available by Seller to Purchaser that were prepared by third parties, Seller makes no representations or warranties as to the accuracy or completeness thereof (except as otherwise expressly provided herein).

- (d) any and all other matters concerning the current and future use, feasibility or value, or governmental permissions or entitlements pertaining to or that are a part of the Property, or any other matter or circumstance relevant to Purchaser in its discretion concerning the Property, its ownership and operation and any future development potential.

4. Title.

- 4.1 Title Commitment. Within five (5) days after the Effective Date, Seller shall provide to Purchaser a commitment for an ALTA owner's extended coverage title insurance policy (the "Title Commitment") issued by Old Republic Title Ltd. (the "Title Company"), together with copies of all documents underlying any encumbrances to title ("Exceptions") shown as special exceptions on Schedule B of the Title Commitment. Prior to 5:00 p.m. Pacific Time on the date that is thirty (30) days after receipt of the Title Commitment, Purchaser shall give notice to Seller of Purchaser's approval or disapproval of the Title Commitment (the "Title Notice"). With respect to any Exception consisting of a financial encumbrance such as a mortgage, deed of trust, or other debt security, or any attachments, delinquent real estate taxes, mechanic's or materialmen's liens outstanding against the Real Property ("Financial Encumbrances"), such matter shall automatically be deemed a disapproved Exception without any notice from Purchaser. Seller hereby covenants to remove or cause to be satisfied any Financial Encumbrances on or before the Closing Date.
- 4.2 Title Cure Period. Except with respect to Financial Encumbrances, which are governed by the last sentence of Section 4.1, Seller shall have the right, but not the obligation, within fifteen (15) days after receipt of the Title Notice (the "Title Cure Period"), to agree to remove any disapproved Exceptions before the Closing Date. If Seller gives notice within the Title Cure Period that Seller will remove any such disapproved Exception on or before the Closing Date, such Exception shall be deemed removed for purposes hereof, Seller shall be obligated to remove such Exception on or before the Closing Date, and Seller's failure to remove the same on or before the Closing Date shall be a default by Seller hereunder.
- 4.3 Waiver of Uncured Exceptions. If Seller does not agree within the Title Cure Period to remove any disapproved Exception on or before the Closing Date, Purchaser shall have five (5) business days thereafter (such date, the "Title Waiver Date") to give Seller notice that Purchaser does not waive its objections to such Exception. If Purchaser does not give such notice, the parties shall proceed with Closing. If Purchase does give such notice, the title contingency shall be deemed not satisfied and this Agreement shall terminate, and thereafter Seller and Purchaser shall have no further rights or obligations under this Agreement, except those that expressly survive such termination. **[PLEASE CLARIFY WHAT RISKS HAVE SURFACED IN THE RECENT TITLE REPORT AND HOW PROPOSED CHANGES WOULD BE DEALT WITH?]**
- 4.4 Approved Title. The condition of title as approved by Purchaser is referred to herein as the "Approved Title." In addition Purchaser approves exceptions 1-15, 17-20 and 24 which appear on Schedule B II of Old Republic Title Ltd. Title commitment order number 5207142752-S effective September 8, 2017 at 8 a.m.**[NO. I SUSEPCT THERE ARE ISSUES HERE THAT WE DO NOT APPROVE OF/SEPARATE TITLE DISCUSSION NECESSARY.]**

4.5 Survey; Extended Coverage and Endorsements to Title. Purchaser shall be responsible, at its sole cost and expense, for the delivery to the Title Company of any survey (or survey update) required by the Title Company for the issuance of an extended coverage title insurance policy. Purchaser may request that the Title Company issue an extended coverage policy of title insurance and provide certain endorsements to the Title Policy. Purchaser must determine prior to the Title Waiver Date whether the Title Company will be in a position to issue an extended coverage title insurance policy and the endorsements thereto that Purchaser will require, and following Purchaser's waiver of its title contingencies under Section 4.3 above, the failure or inability of the Title Company to issue any such policy or endorsements will not be deemed to be a failure of any condition to Closing. The additional premium cost for an extended coverage title insurance policy and any such endorsements shall be paid by Purchaser.

5. Seller's Representations and Warranties.

- 5.1. Representations and Warranties. To induce Purchaser to enter into this Agreement and to consummate the transaction contemplated herein, Seller hereby makes the representations and warranties in this Section 5.1 as of the date of this Agreement and as of the Closing Date (unless another date is expressly stated), subject to the limitations set forth in Sections 5.2 through 5.4, upon which Seller acknowledges and agrees that Purchaser is entitled to rely.
- (a) Organization and Power. Seller is duly formed or organized and validly existing in the jurisdiction of its formation or organization, and is qualified to do business in the jurisdiction in which the Real Property is located, and has all requisite power and authority to own and operate the Real Property as currently owned and operated.
- (b) Authority and Binding Obligation. (i) Seller has full power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed and delivered by Seller under this Agreement, and to perform all obligations arising under this Agreement and such other documents, (ii) the execution by the undersigned on behalf of Seller, and the delivery and performance of this Agreement by Seller, has been duly and validly authorized by all necessary action on the part of Seller, and (iii) this Agreement and such other documents now or hereafter to be executed and delivered by Seller under this Agreement, when executed and delivered, will each constitute the legal, valid and binding obligations of Seller enforceable against Seller in accordance with its terms, except to the extent Purchaser itself is in material default hereunder and such enforceability is affected thereby.
- (c) Consents and Approvals; No Conflicts. Subject to recordation of any Closing Documents (defined in Section 9.2(a)) and except for the consent to assignment of the DNR Lease by the State of Washington Department of Natural Resources, the City Permit by the City of Seattle, the DOE Permit by the State of Washington Department of Ecology, and the ACE Permit by the by the US Army Corp of Engineers, (i) no filing with, and no permit, authorization, consent or approval of, any Governmental Authority or other Person is necessary for the consummation by Seller of the transaction contemplated by this Agreement, and (ii) neither the execution and delivery of this Agreement by Seller, nor the consummation by Seller of the transaction contemplated under this Agreement, nor compliance by Seller with any of the terms of this Agreement will: (A) violate any provision of Seller's organizational or governing documents; (B) violate any Applicable Law to which Seller is subject; or (C) result in a violation or breach of, or constitute a default under, any Service Contracts or other contract rights affecting the Real Property.
- (d) DNR Lease. Seller is current on its payment obligations under the DNR Lease. Seller has not received any notices from the State of Washington Department of Natural Resources with respect to any default under the DNR Lease, and to the actual Knowledge of Seller (defined in Section 5.2 below), Seller is not in default of any of the terms of the DNR Lease with respect to any obligation of the grantee to

be performed thereunder.**[ASSUME THIS IS AN ANNUAL PAYMENT? PROPOSAL ON A PRO-RATED PAYMENT BASED ON A FINAL CLOSING DATE?]**

- (e) Moorage Agreements and Kayak Storage Agreements. Before the date of this Agreement, Seller had provided copies of the Moorage Agreements and Kayak Storage Agreements to Purchaser. As of the date of this Agreement Exhibit D contains a representative copy of the Moorage Agreement and Kayak Agreement in use by the Seller at this time of this Agreement. The Moorage Agreements and the Kayak Agreements represented by the names on the Rent Roll**[CONFIRM WE HAVE THIS DOCUMENT?]** are the only leases, use or occupancy agreements or agreements for slips located in the Marina or an area within the Improvements for storage of a kayak. Except to the extent identified on Exhibit D, as of the date of this Agreement there are no amendments or modifications to the Moorage Agreements or Kayak Storage Agreements. Seller has not previously conveyed any interest in the Moorage Agreements or Kayak Storage Agreements. There are no agreements between Seller and third parties other than the Moorage Agreements or Kayak Storage Agreements that will be in effect as of the Closing Date, except as listed on the Rent Roll. There are no defaults under the Moorage Agreements or the Kayak Storage Agreements except as identified on the Rent Roll dated _____, a copy of which is attached hereto as Exhibit H. As of the date of this Agreement Exhibit H contains a true and complete list of all prepaid rents (including last months' rental fees held under Moorage Agreements) and parking deposits currently held by Seller under the Moorage Agreements and the Kayak Storage Agreements (collectively, the "Security Deposits") and except as set forth on Exhibit H, no rent has been paid more than thirty (30) days in advance of the date due. Except as set forth on the Rent Roll attached as Exhibit H, there is no free rent to which any tenant or occupant is entitled. Seller does not collect cleaning and/or damage deposits. Seller has not received any written notice of default from any tenant or occupant under any of the Moorage Agreements or Kayak Storage Agreements, and, to the actual Knowledge of Seller (defined in Section 6.2 below), Seller is not in default of any of the terms of any Moorage Agreement or Kayak Storage Agreement with respect to any obligation of the landlord or lessor to be performed thereunder. **[HOW IS THIS SECTION AFFECTED BY A DELAY BY UP TO 180 FROM AGREEMENT DATE TO ACTUAL CLOSING?]**
- (f) Condemnation. Seller has not received any written notice of any pending condemnation or other proceedings in eminent domain, and to Seller's Knowledge, no such condemnation or eminent domain proceedings are threatened against Seller or the Real Property or any portion thereof.
- (g) Compliance with Applicable Law. Seller has not received any written notice of a violation of any Applicable Law with respect to the Real Property that has not been cured or dismissed, and to Seller's Knowledge, no such violation is threatened or exists.
- (h) Litigation. Seller has not (i) been served with any court filing in any litigation with respect to the Real Property in which Seller is named a party, or (ii) received written notice of any charge or complaint from any Governmental Authority or

other Person pursuant to any administrative, arbitration or similar adjudicatory proceeding with respect to the Real Property which has not been settled or dismissed. To Seller's Knowledge, no such litigation, charge or complaint has been threatened.

- (h) Finders and Investment Brokers. Except for CBRE, Inc. (the "Broker"), Seller has not dealt with any Person who has acted, directly or indirectly, as a broker, finder, financial adviser or in such other capacity for or on behalf of Seller in connection with the transaction contemplated by this Agreement in a manner which would entitle such Person to any fee or commission in connection with this Agreement or the transaction contemplated in this Agreement.
- (i) Foreign Person. Seller is not a "foreign corporation" for purposes of the withholding provisions of Section 1445 of the Code.
- (j) Bankruptcy. Seller has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any Applicable Law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceedings, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.
- (k) Service Contracts. Seller CONFIRMS IT has no Service Contracts.
- (l) Material Documents. Neither Seller nor Seller's agents, representatives or contractors has executed or assumed any, and to Seller's Knowledge there is no, document or agreement that will be binding on Purchaser or the Property after Closing other than the following:
 - (1) the DNR Lease;
 - (2) the Moorage Agreements;
 - (3) the Kayak Storage Agreements;
 - (4) the City Permit ;
 - (5) ACE Permit;
 - (6) DOE Permitand
 - (7)[CONFIRM AMOUNT] the exceptions included in the Title Policy.
- (m) Environmental Site Assessments. Seller has delivered to Purchaser complete copies of the Environmental Documents described on Exhibit G, and to Seller's Knowledge, such Environmental Documents are the only environmental site

assessments concerning the Real Property in Seller's possession. To Seller's Knowledge, there are no hazardous materials conditions or environmental matters concerning the Real Property except as disclosed by the Environmental Documents.[DISCUSS]

- (n) Commissions. Seller does not engage an agent with regards to Moorage Agreements and Kayak Agreements. Seller has paid no commissions regarding the Moorage Agreements and Kayak Agreements. Seller owes no person or entity a commission for arranging a Moorage Agreement or a Kayak Agreement.[OKAY]
- (o) Service Contracts. Seller has no leasing, property management, maintenance or service contracts.[REPEAT?]

- (n) Prohibited Persons and Transactions. Neither Seller nor any person or entity owning an interest in Seller is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Assets Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, and Seller is not knowingly engaged and will not knowingly engage in any dealings or transactions or be otherwise associated with such persons or entities.
- (o) Purchase Options. Other than the right of Purchaser pursuant to this Agreement, Seller has not granted to any person or entity a conditional or unconditional right or option to purchase all or any part of the Property.
- (p) Defined Terms. As used in this Section 5.1 and the remainder of this Agreement, the following defined terms have the following meanings:
 - (1) “Applicable Law” means all statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority and similar quasi-governmental agencies or entities, and any judgment, injunction, order, directive, decree or other judicial or regulatory requirement of any court or Governmental Authority of competent jurisdiction affecting or relating to the Person or property in question.
 - (2) “Governmental Authority” means any federal, state or local government or other political subdivision thereof, including, without limitation, any agency or entity exercising executive, legislative, judicial, regulatory or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person or property in question.
 - (3) “Person” means any natural person, corporation, general or limited partnership, limited liability company, association, joint venture, trust, estate, Governmental Authority or other legal entity, in each case whether in its own or a representative capacity.

5.2. LIMITATION ON SELLER’S REPRESENTATIONS AND WARRANTIES. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY CLOSING DOCUMENT AND SUBJECT TO THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THIS AGREEMENT OR ANY CLOSING DOCUMENT, NEITHER SELLER NOR ANY OF ITS AGENTS OR REPRESENTATIVES HAVE MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE REAL PROPERTY OR ANY PORTION THEREOF. PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS NOT RELYING ON ANY STATEMENT MADE OR INFORMATION PROVIDED TO PURCHASER BY SELLER OR ANY OF AGENTS OR REPRESENTATIVES, EXCEPT FOR THE

REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY SELLER IN THIS AGREEMENT OR IN ANY CLOSING DOCUMENT.

Purchaser's Initials _____

- 5.3. Effect of Purchaser's Knowledge. If Purchaser has Knowledge prior to Closing of a breach of any representation or warranty made by Seller in this Agreement and Purchaser nevertheless elects to close this transaction, such representation or warranty by Seller with respect to such matter shall be deemed to be modified to reflect such Purchaser's Knowledge. "Knowledge" means, with respect to Purchaser, (a) the actual knowledge of Jeffrey Utterback, Director - Real Estate and Economic Development of Purchaser, which individual Purchaser represents and warrants is the individuals within Purchaser's organization who is most likely to possess the information that is the subject of a particular representation or warranty set forth herein, (b) any matter disclosed in any written documents or written materials provided by Seller to Purchaser prior to Closing, and (c) any matter disclosed by any Purchaser due diligence reports or by any on-site inspections conducted by or at the direction of Purchaser.

6. Purchaser's Representations and Warranties.

- 6.1. Representations and Warranties. To induce Seller to enter into this Agreement and to consummate the transaction contemplated hereby, Purchaser hereby makes the representations and warranties in this Section 6.1, subject to the limitation in Section 6.2, upon which Purchaser acknowledges and agrees that Seller is entitled to rely.
- (a) Authority and Binding Obligation. (i) Purchaser has full power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed and delivered by Purchaser under this Agreement, and to perform all obligations arising under this Agreement and such other documents, and (ii) this Agreement and such other documents now or hereafter to be executed and delivered by Purchaser under this Agreement, when executed and delivered, will each constitute the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with its terms, except to the extent Seller itself is in material default hereunder and such enforceability is affected thereby.
- (b) Consents and Approvals; No Conflicts. With the exception of the approval of the Port of Seattle Commissioners of the transaction contemplated by this Agreement at an open public meeting, (i) no filing with, and no permit, authorization, consent or approval of, any Governmental Authority or other Person is necessary for the consummation by Purchaser of its obligations under this Agreement, and (ii) neither the execution and delivery of this Agreement by Purchaser, nor the consummation by Purchaser of the transaction contemplated under this Agreement, nor compliance by Purchaser with any of the terms of this Agreement will violate any Applicable Law to which Purchaser is subject.
- (c) Finders and Investment Brokers. Other than Broker, Purchaser has not dealt with any Person who has acted, directly or indirectly, as a broker, finder, financial adviser or in such other capacity for or on behalf of Purchaser in connection with the transaction contemplated by this Agreement in any manner which would

entitle such Person to any fee or commission in connection with this Agreement or the transaction contemplated in this Agreement.

- (d) Prohibited Persons and Transactions. Purchaser is not knowingly engaged and will not knowingly engage in any dealings or transactions or be otherwise associated with any persons or entities with whom U.S. persons or entities are restricted from doing business under regulations of OFAC of the Department of the Treasury (including those named on the OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

- 6.2. Effect of Seller's Knowledge. If Seller has Knowledge prior to Closing of a breach of any representation or warranty made by Purchaser in this Agreement and Seller nevertheless elects to close this transaction, such representation or warranty by Purchaser with respect to such matter shall be deemed to be modified to reflect such Seller's Knowledge. "Knowledge" means, with respect to Seller, the actual knowledge of Charles Draper Jr. sPresident of Seller, which individuals Seller represents and warrants are most likely to possess the information that is the subject of a particular representation or warranty set forth herein.

7. **Real Property Disclosure Statement.** Purchaser and Seller acknowledge that the Property constitutes "Commercial Real Estate" as defined in RCW 64.06.005. Purchaser waives receipt of the seller disclosure statement required under RCW 64.06 for transactions involving the sale of commercial real estate.[NTD: My understanding is that the Port has spent hundreds of thousands of dollars on due diligence. There are statements in the Disclosure Statement are not appropriate for the transaction because of the amount of due diligence and the statements in 5.1 m and 14.][DISCUSS]

8. **Covenants; Actions Pending Closing.**

- 8.1. Further Assurances. From the date of this Agreement until the Closing or termination of this Agreement, Seller and Purchaser shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate the transaction contemplated in this Agreement. After the Closing, Seller and Purchaser shall use commercially reasonable efforts (at no cost or expense to such Party, other than any *de minimis* cost or expense or any cost or expense which the requesting Party agrees in writing to reimburse) to further effect the transaction contemplated in this Agreement. This Section 8.1 shall survive termination and the Closing.
- 8.2. Title. Seller shall not make or permit any changes to the Property or to the condition of title to the Property, except with Purchaser's advance written consent, which Purchaser may withhold in its sole and absolute discretion.
- 8.3. Consent to Assignment of DNR Lease. Promptly following the date on which the 45-Day Notice (defined in Section 10.1 below) is given, Seller shall submit to the State of Washington Department of Natural Resources a request for consent to assignment of the

DNR Lease, which request shall have been submitted to and approved by Purchaser prior to its submission to the State of Washington Department of Natural Resources.

- 8.4. Maintenance and Operation of Property. Except with respect to those actions that are necessary to bring the Property into the condition that is required as of the Closing Date (i.e., the termination of agreements for moorage or storage of vessels, vehicles or other personal property, other than the Moorage Agreements and the Kayak Storage Agreements, and the clearing of the upland areas of the Property and of the Improvements of any personal property other than the kayaks located therein), Seller shall maintain and operate the Property in its current condition and under current business practices, reasonable wear and tear excepted, and shall maintain existing insurance coverage in full force and effect. Seller shall not make any alterations to or upon the Property (other than *de minimis* and immaterial alterations), except with Purchaser's advance written consent.
- 8.5. Storage or Occupancy Agreements.
- (a) **[DISCUSS THE PROCESS IN THE ABSENCE OF THIS CLAUSE][SAME]**
- (c) Termination of Storage Agreements and Moorage Agreements for Non-Seaworthy Vessels. Not more than thirty (30) days after the Effective Date, Seller shall identify and provide to Purchaser a list of any vessels currently moored at the Marina or stored on the Real Property that are not seaworthy. For purposes of this Section 8.5(c), the term "seaworthy" means constructed, outfitted, manned, safe and in all respects fitted for a voyage at sea. Seller shall, at least seven (7) days prior to the Closing Date, provide to Purchaser evidence that (1) all agreements for the moorage or storage of any vessels that are not seaworthy have been terminated, and (2) the vessels identified as such have been removed from the Real Property.
- (d) Termination of Other Storage or Occupancy Agreements. With the exception of the Moorage Agreements and the Kayak Storage Agreements, Seller shall, prior to the Closing Date, terminate all other storage or occupancy agreements affecting the Real Property, including but not limited to any agreements for (1) the moorage or dockage of a houseboat at the Marina [please clarify- "houseboats" at the marina are seaworthy and are under Moorage Agreements][**UNLIKELY THEY ARE SEAWORTHY UNDER THE PORT CRITERIA/PORT PREFERS TO NOT HAVE HOUSEBOATS AS WE DO NOT ALLOW THEM AT ANY OTHER PORT OWNED MARINA**]; and/or (2) the storage of any personal property within any of the Improvements or on any portion of the uplands, and thereafter cause any such houseboats to be removed from the Marina and personal property to be removed from the Improvements and/or uplands.
- 8.6. Security Deposit in this context means last months rent. It makes sense to provide last months rent to the Purchaser, and not return it to the tenant.**[WE PREFER TO NOT RECEIVE THESE DEPOSIT FUNDS AND HAVE THE MOORAGE**

AGREEMENTS TRANSFERRED AND DEPOSITS RETURNED AS PART OF THE FINAL CLOSING.]

- 8.7. Copies of Notices. Seller shall provide Purchaser with a copy of any written notice received by Seller after execution of this Agreement and prior to the date of Closing related to any violation or alleged violation of any federal, state or municipal laws, ordinances, orders, regulations, codes or other requirements affecting the Property, or any pending or threatened action, proceedings or claims affecting the Property, and, at its sole cost and expense, shall cure any such violations prior to Closing.
- 8.8. No Marketing of Property. From the date of this Agreement until the Closing or termination of this Agreement, Seller shall not solicit, negotiate or accept, nor permit to be solicited or negotiated, other offers for purchase, financing or joint venture involving the Property from or with any third party.

8.10 Permits. Promptly following the date on which the 45-Day Notice (defined in Section 10.1 below) is given, Seller shall submit to the State of Washington Department of Ecology, the US Army Corp of Engineers, and the City of Seattle a request for consent to assignment of the DOE Permit, the ACE Permit and the City Permit, which request shall have been submitted to and approved by Purchaser prior to their submission.[OKAY]

9. Conditions to Closing.

- 9.1. Additional Conditions to Purchaser's Obligations. Purchaser's obligation to close the transaction contemplated under this Agreement is also subject to the satisfaction at or prior to Closing of the following conditions (the "Purchaser Closing Conditions"):
- (a) Seller's Deliveries. Seller shall have delivered to Purchaser or deposited with Title Company, in its capacity as escrow agent for the transaction contemplated by this Agreement (the "Escrow Agent"), all of the Closing Documents and other items set forth in Section 10.2(a).
 - (b) Representations and Warranties. Each of Seller's representations and warranties made in this Agreement shall be true and correct in all material respects as of the Closing Date (except statements made on the Rent Roll attached hereto as Exhibit H, which statements are made as of the date of such Rent Roll and remade as of the date of the updated Rent Roll that Seller covenants to deliver to Purchaser not earlier than seven (7) days prior to the Closing Date.)
 - (c) Covenants and Obligations. Seller shall have performed in all material respects all of its covenants and obligations under this Agreement.
 - (d) Title Policy. The Title Company shall have unconditionally and irrevocably committed to issue an owner's standard coverage title insurance policy, ALTA standard coverage 2006 form showing Approved Title. (the "Title Policy"). [SIGNIFICANTLY DIFFERENT?]

- (e) Consent to Assignment of DNR Lease. Seller shall have received a consent to assign the DNR Lease to Purchaser from the State of Washington Department of Natural Resources.
- (f) Port of Seattle Commissioners' Approval. Purchaser shall have received the approval of the Port of Seattle Commissioners to proceed with the transaction contemplated by this Agreement, which approval shall have been obtained after all requirements of an open public meeting to discuss this Agreement shall have been met.
- (g) Condition of Property; Pre-Closing Inspection of Property. Prior to Closing, Seller shall (i) remove all personal property from the uplands area of the Real Property and from the Improvements located on the Real Property, with the exception of the kayaks located in the Improvements to the extent the storage thereof is pursuant to an existing Kayak Storage Agreement, and (ii) cause to be removed from the Real Property and/or the Marina all vessels that are not in seaworthy condition, such that other than (x) seaworthy vessels located in a slip of the Marina pursuant to an existing Moorage Agreement, and (y) kayaks being stored pursuant to an existing Kayak Storage Agreement, the Real Property is delivered to Purchaser broom-clean and vacant.

To confirm that Seller has put the Real Property into the required condition, at least two (2) business days before the scheduled Closing Date, but not more than five (5) business days before the scheduled Closing Date, Seller and Purchaser shall arrange to meet at the Marina for a pre-closing inspection of the Real Property. The inspection shall include the following:

- (1) a tour of the Marina, evidencing that the Improvements have been maintained in the condition required hereunder and that all vessels then moored at the Marina are moored pursuant to valid Moorage Agreements and are seaworthy;
- (2) a tour of the upland areas of the Real Property, evidencing that all personal property (other than kayaks that are to remain pursuant to existing Kayak Storage Agreements) located in the Improvements or on the Land has been removed, and that the Improvements and the Land are in broom-clean and presentable condition; and
- (3) a review of Seller's records relating to the Moorage Agreements and the Kayak Storage Agreements, evidencing that all Security Deposits previously made by the tenants thereunder have been returned to such tenants.

The Purchaser Closing Conditions are for the benefit of Purchaser, and Purchaser shall have the right, except as expressly provided in Section 9.3, to waive any of the Purchaser Closing Conditions at or prior to Closing; provided, however, that any such waiver must be in writing.

9.2. Additional Conditions to Seller's Obligations. Seller's obligations to close the transaction contemplated under this Agreement is subject to the satisfaction at or prior to Closing of the following conditions (the "Seller Closing Conditions"):

- (a) Receipt of the Purchase Price. Purchaser shall have deposited the Purchase Price (as adjusted by the prorations and credits set forth herein) with Escrow Agent.
- (b) Purchaser's Deliveries. Purchaser shall have delivered to Seller or deposited with Escrow Agent all of the Closing Documents and other items set forth in Section 10.2(b).
- (c) Representations and Warranties. Each of the representations and warranties of Purchaser made in this Agreement shall be true and correct in all material respects as of the Closing Date.
- (d) Covenants and Obligations. Purchaser shall have performed in all material respects all of its covenants and obligations under this Agreement.

The Seller Closing Conditions are for the benefit of Seller, and Seller shall have the right, except as expressly provided in Section 9.3, to waive any of the Seller Closing Conditions at or prior to Closing; provided, however, that any such waiver must be in writing.

9.3. Frustration of Closing Conditions. Seller and Purchaser may not rely on the failure of the Seller Closing Conditions or the Purchaser Closing Conditions, respectively, if such failure was caused by such Party's failure to act in good faith or to use its commercially reasonable efforts to cause the Closing to occur.

10. Closing.

10.1. Closing Date. The closing of the transaction contemplated under this Agreement (the "Closing") shall occur (a) no earlier than forty-five (45) days after the Effective Date and receipt by Purchaser of Seller's 45-day notice to close the transaction contemplated by this Agreement (the "45-Day Notice"), but (B) no later than one hundred eighty (180) days after the Effective Date (the date on which the Closing occurs is referred to herein as the "Closing Date").

10.2. Closing Escrow. The Closing shall take place via escrow in accordance with the terms and conditions set forth herein.

(a) Seller's Deliveries. In time sufficient to facilitate Closing on the Closing Date, Seller shall deliver to or cause to be deposited with Escrow Agent for the benefit of Purchaser all of the items set forth in this Section 10.2(a) (collectively, the "Closing Documents"), as follows:

- (1) A Quitclaim Deed (the "Deed") in the form attached hereto as Exhibit J, duly executed and acknowledged by Seller, conveying to Purchaser all of Seller's interest in the Land and Improvements ;[**DISCUSS/NOT LIKELY**]
- (2) A real estate excise tax affidavit, duly completed, executed and acknowledged by Seller;
- (3) An Assignment and Assumption of the DNR Lease, together with evidence that the State of Washington Department of Natural Resources has provided its consent to such assignment (the "DNR Lease Assignment");
- (4) An Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), in the form attached hereto as Exhibit K, duly executed and acknowledged by Seller, conveying to Purchaser all of Seller's interest in the Moorage Agreements and the Kayak Storage Agreements;
- (5) An Assignment of Intangible Property, in the form attached hereto as Exhibit L, duly executed and acknowledged by Seller, conveying to Purchaser all of Seller's interest in the certain tangible and intangible property more particularly described therein, together with all of Seller's rights with respect to the Insurance Policies and Third Party Claims;
- (6) A Transferor's Certificate of Non-Foreign Status substantially in the form attached to this Agreement as Exhibit M ("FIRPTA Certificate") properly executed by Seller;
- (7) Such agreements, affidavits or other documents as may be reasonably required by the Title Company from Seller to issue the Title Policy; and
- (8) Such other documents and instruments as may be reasonably requested by Purchaser or the Title Company to consummate the transaction contemplated in this Agreement.

(b) Purchaser's Deliveries. In time sufficient to facilitate Closing on the Closing Date, Purchaser shall deliver to or cause to be deposited with Escrow Agent for the benefit of Seller all of the items set forth in this Section 10.2(b), as follows:

- (1) The Purchase Price as adjusted for prorations, credits and costs as set forth in Sections 11.1 and 11.2 below;

- (2) An executed counterpart of each of the Closing Documents and instruments to be delivered by Seller under Section 10.2(a) which requires execution by Purchaser; and
- (3) Such other documents and instruments as may be reasonably requested by Seller or the Title Company to consummate the transaction contemplated in this Agreement.

10.3. Holdback for Completion of Certain Seller Obligations. Because Seller operates an ongoing business on the Real Property, the parties acknowledge that it may be difficult to determine, as of the Closing Date and prior to Purchaser commencing to operate such business, whether all of Seller's obligations that are conditions to Closing have been completed as of the Closing Date, including but not limited to whether (a) there are any outstanding claims for any work done at the Real Property prior to the Closing Date and (b) all payments with respect to utilities for the period prior to the Closing Date have been paid in full. Additionally, Purchaser may elect, notwithstanding Seller's failure to complete (w) the removal of personal property (as required by Section 8.5(d) and Section 9.1(g) above) and (x) the removal of any vessels from the Marina or the uplands portion of the Real Property that are not seaworthy (as required by Section 9.1(g) above), , to proceed with Closing and to account for such items for which Seller is responsible following Closing (all of such foregoing items (a) through (c) and (w) through (z), the "Seller Closing Obligations"). **[HOUSEBOATS REMOVAL HAS TO BE RE-INSERTED/DISCUSS DEPOSITS PROCESS]**

Seller agrees to indemnify Purchaser for all costs in connection with the completion of the Seller Closing Obligations and to defend and hold Purchaser harmless for any and all losses, damages, costs, claims and expenses incurred by Purchaser (including without limitation, reasonable attorneys' fees and costs) based on Seller's failure to complete the Seller Closing Obligations by the Closing Date, or any claims made by Seller's contractors and/or agents regarding injuries sustained on the Real Property during performance of said work, or Seller's failure to pay said contractor and/or agents for such work resulting in the recording of a mechanics' lien against the Real Property. To provide additional security to Purchaser that funds for the completion of the Seller Closing Obligations will be available, Seller agrees to set aside, from the proceeds of the sale of the Property in an account to be maintained at First American Title Insurance Company, a holdback equal to [3% OF SALE PRICE] Dollars (\$_____), or such lesser amount as is agreed upon by the parties based on the extent to which the Seller Closing Obligations have been completed or remain incomplete as of the Closing Date (the "Holdback Amount"). To determine the Holdback Amount, Purchaser agrees to obtain, following the inspection performed pursuant to Section 9.1(g) above, an estimate for the cost to complete the Seller Closing Obligations and to provide such estimate to Seller for its review (which amount shall be in addition to a reserve for items not susceptible of any such estimate, including future claims by third parties). Seller may elect to obtain its own estimate for the Seller Closing Obligations, and if it does so, the parties will work together in good faith to agree on the estimated cost for the Holdback Amount. By the date that is six (6) months following the Closing Date, Purchaser shall present to Seller an accounting of costs incurred to complete the Seller Closing Obligations, with reasonable back-up for all amounts included therein (the "Final Accounting"). The amount due pursuant to the Final Accounting shall be payable to

Purchaser from the Holdback Amount within seven (7) days following submission of the invoice for the Final Accounting by Purchaser to Seller and First American Title Insurance Company; any deficiency will be payable by Seller to Purchaser within thirty (30) days following such submission of the Final Accounting.

- 10.4. **Possession.** Immediately upon Closing, Seller shall deliver possession of the Property to Purchaser, subject to those items constituting Permitted Exceptions, the rights of tenants or lessees under the Moorage Agreements and the Kayak Storage Agreements, and to the extent not previously delivered to Purchaser, Seller shall deliver the following:
- (a) Originals of all Property Documents, Moorage Agreements, Kayak Storage Agreements and all other documents in Seller's possession or control relating to the ownership, maintenance and operation of the Property, or copies if the originals are not available.
 - (b) Keys and combinations to all entrance doors in the Improvements and other areas where required for access, reasonably identified, and all operating manuals relating to operation of the equipment and systems which are part of the Property.
 - (c) A notice duly executed by Seller, addressed to the tenants of the Marina, notifying them of Purchaser's purchase of the Property and setting forth the name and address of the party to receive payments of rent due under the Moorage Agreements and the Kayak Storage Agreements or notices required thereunder.

Seller acknowledges that except for the Moorage Agreements and the Kayak Storage Agreements and the watercraft that are the subject of each, which agreements will remain in effect from and after the Closing Date, all other agreements for occupancy of any portion of the Improvements or storage of any personal property within the Improvements or on any part of the Real Property are to be terminated, and possession of the Improvements located on the Real Property (other than the watercraft that are the subject of either a Moorage Agreement or a Kayak Storage Agreement) is to be delivered to Purchaser vacant and free of personal property belonging to either Seller or third parties.

11. Closing Costs and Prorations. At the Closing, closing costs shall be paid and prorations made as follows:

- 11.1. **Closing Costs.** Purchaser and Seller shall each pay their own attorneys' fees and one-half (1/2) of any escrow fees imposed by Escrow Agent. Seller shall pay the real estate excise tax, the premium for an ALTA standard coverage policy of title insurance and the commission due to Broker in connection with the completion of this transaction (in accordance with the terms of a separate agreement). Purchaser shall pay the additional premium required for the issuance of an ALTA extended coverage policy of title insurance and any endorsements required by Purchaser, and all recording costs. Any other closing costs shall be paid by Seller.

- 11.2. Prorations Generally. Seller shall prepare and submit to Purchaser for Purchaser's review, at least five (5) business days prior to the Closing Date, a draft proration statement setting forth the prorations and adjustments contemplated by this Agreement. Once Seller and Purchaser have agreed on such proration statement, and at least three (3) business days prior to the Closing Date, Seller and Purchaser shall submit the same to the Escrow Agent and the Escrow Agent shall prepare the Settlement Statement and submit the same to Seller and Purchaser for their approval at least two (2) business days prior to the Closing Date. Taxes, DNR Lease Rent and Rents (each as defined below) shall be prorated between Seller and Purchaser; Operating Expenses shall be paid as described in part (b) below. All prorations shall be made as of 12:01 a.m. on the Closing Date, so that for purposes of prorations, Purchaser shall be deemed in ownership of the Property throughout such day. All income and expenses for the Property attributable to the period prior to the Closing Date shall be allocated to Seller and all income and expenses for the Property attributable to the period after the Closing Date shall be allocated to Purchaser.
- (a) As used herein, "Taxes" include all real property taxes and similar charges of any kind. All delinquent Taxes (including penalties thereon) shall be paid at Closing out of funds due Seller. Any non-delinquent Taxes shall be prorated based on the current tax bill. If any additional or supplemental Taxes are assessed against the Property for back assessments, corrections to previous tax bills or other events occurring before the Closing Date, Seller shall pay the same and the parties shall make necessary adjustments after Closing. All assessments levied against the Real Property for improvements which are payable in installments shall be prorated as to the current installment, and Purchaser shall acquire the Real Property subject to the lien of future installments as they become due. Any delinquent assessments, together with any penalties and interest thereon, shall be paid by Seller on or before the Closing Date.
- (b) As used herein "Operating Expenses" include all costs incurred in operating the Property in the normal course of business in a manner similar to the operation of similar properties in the area, including, without limitation, utility charges.. Purchaser will not be assuming any of Seller's obligations under any contract with respect to the Real Property, except the DNR Lease, Moorage Agreements and Kayak Agreements. Seller shall arrange for readings of utility meters to occur as of the day before the Closing Date, and Seller shall be responsible for all charges in connection with utility accounts in Seller's name. Purchaser shall open new utility accounts with the utility service providers serving the Property.
- (c) As used herein, "DNR Lease Rent" means the Annual Fee payable for the current term under the DNR Lease, plus all Leasehold Excise Tax payable in connection therewith.
- (d) As used herein, "Rents" include all income from any source generated by the Property, including, without limitation, all [there are no fixed rents, escalation- the Moorage and Kayak Agreements are month to month] payments payable under the Moorage Agreements and the Kayak Storage Agreements. All non-delinquent Rents shall be prorated on an accrual basis. Any Rents due but unpaid as of the Closing shall be considered delinquent. All delinquent Rents shall be prorated by the parties as of the Closing, but not until they are actually

collected, and Seller shall not receive a credit for delinquent Rents at Closing. Purchaser shall use commercially reasonable efforts to collect any delinquent Rents after the Closing, but shall not be obligated to institute suit or terminate a tenant's right of occupancy. After the Closing, Seller shall not take any action against a tenant owing delinquent Rents that would affect such tenant's right to occupy its leased slip or storage space at the Marina. Seller shall not be entitled to any Rents received from tenants after the Closing unless such tenants are current in their Rents for periods occurring from and after the Closing, and in the event Seller receives any payments of Rents from any tenants subsequent to the Closing, such payments shall be endorsed in favor of Purchaser and immediately delivered to Purchaser. All delinquent Rents collected by Purchaser, net of costs of collection, shall be applied first against any amounts then currently due and then to amounts most recently overdue. Any tenant deposits or prepaid Rents shall be transferred by Seller to Purchaser at Closing. [DISCUSS DEPOSITS]

12. Default and Failure of Closing Conditions.

- 12.1. Purchaser's Default. If Purchaser fails, without legal excuse, to complete the purchase of the Property in accordance with this Agreement, Seller may pursue any legal remedies available under Washington law.
- 12.2. Seller's Default. If, other than as a result of a failure of a condition to Closing described in Section 9 above that does not also constitute a default (e.g., a breach of a representation and warranty or the failure by a party to perform its covenants in any material respect that constitutes both a default and a failure of a condition), Seller fails to complete the sale of the Property in accordance with this Agreement, then Purchaser may elect one of the following remedies: (i) terminate this Agreement, in which case Seller and Purchaser shall have no further rights or obligations under this Agreement, except those which expressly survive such termination; provided, however, that Seller shall reimburse all actual out of pocket costs and expenses incurred by Purchaser in connection with this Agreement and the transactions contemplated hereby up to Five Hundred Thousand Dollars (\$500,000.00) (payable following a reasonable time after the date on which, and then only to the extent, Purchaser has provided to Seller documentation evidencing such costs); or (ii) proceed to Closing without any reduction in or setoff against the Purchase Price; or (iii) pursue any other legal remedies available under Washington law, including, but not limited to, injunction for specific performance. In the event that Purchaser elects to proceed under clause (i) above and Seller fails to make the required payment on the terms set forth above, or in the event that Purchaser elects to proceed under clause (iii) above, then it is acknowledged and agreed that the fees, costs and expenses that may become payable pursuant to Section 16.6 are in addition to the remedies set forth in this Section 12.2 (but in each case, only to the extent incurred in such enforcement action). In the event that Purchaser elects to proceed under clause (i) above and Seller pays the amount due within a reasonable time following receipt of documentation for expenses incurred, or in the event that Purchaser elects to proceed under clause (ii) above and Seller, promptly after Purchaser files such action, transfers the Property to Purchaser pursuant to the terms of this Agreement, then Section 16.6 shall not be applicable.

- 13. Casualty and Condemnation.** If the Property or any part thereof (1) is materially damaged by casualty, or (2) is materially affected by a taking or is the subject of a notice of a material taking by eminent domain prior to the Closing Date, Seller shall promptly notify Purchaser. Within ten (10) days after such notice, Purchaser shall give notice that it elects to (a) terminate this Agreement, in which event the parties shall have no further obligations hereunder, or (b) proceed to Closing, in which event Seller shall assign to Purchaser all insurance proceeds attributable to the Property arising from the casualty, together with a credit against the Purchase Price equal to the deductible amount under the applicable insurance policy, or pay over and assign to Purchaser all awards recovered or recoverable on account of such taking, as the case may be. If Purchaser elects to proceed under clause (b) above, Seller shall not compromise, settle, or adjust any claims to such proceeds or awards without Purchaser's prior written consent (which consent shall not be unreasonably withheld). If Seller's notice is given within ten (10) days prior to the Closing Date, the Closing Date shall be extended to a date three (3) days after the expiration of Purchaser's ten-day period. For purposes of this Agreement, a casualty or a taking shall be deemed to be "material" if such casualty or condemnation would have an estimated economic effect upon the Property in excess of \$500,000, would cause the Property to be in violation of Applicable Laws, including, without limitation, parking requirements.
- 14. Hazardous Substances.** Purchaser acknowledges that it has been given the opportunity to perform, and has as part of its due diligence retained its own consultant(s) to perform and prepare, inspections and reports with respect to the environmental condition of the Property. Accordingly, other than as expressly set forth in Section 5.1(m), Purchaser confirms that it is not relying on any information provided by Seller regarding the environmental condition of the Property, including but not limited to the Environmental Documents. Except as expressly set forth in Section 5.1(m), Seller makes no representation or warranty of any kind, express or implied, that there is or has been no presence on, disposal on, in or at, or release or threatened release onto the Property at any time during or prior to Seller's ownership of the Property, of any Hazardous Substances. As used in this Agreement, "Hazardous Substances" shall mean: any petroleum product and any chemical, substance or material defined, classified, or designated as hazardous, dangerous, toxic, corrosive, explosive, radioactive, or other similar term, or as a hazardous substance, hazardous waste, pollutant, contaminate, or other similar term, by any federal, state or local statute, regulation, or ordinance presently in effect or that may be promulgated in the future, as they may be amended from time to time, including but not limited to the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Federal Hazardous Materials Transportation Control Act, 49 U.S.C. Section 1801 et seq.; the Federal Clean Air Act, 42 U.S.C. Sections 7401 et seq.; the Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. Section 1251 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978 7 U.S.C. Section 136 et seq.; the Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Federal Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.; and the Model Toxics Control Act, RCW 70.105D et seq.

15. Release.

15.1 For the purposes of this section 15, the terms “Purchaser,” “Seller” and “Parties” includes all of their respective employees, agents, partners, associates, representatives, attorneys, directors, officers, members, managers, owners, shareholders, parent companies, subsidiary companies, affiliated entities, servants, trustees, administrators, executors, licensors, licensees, subrogees, predecessors, successors and assigns.

15.2 Purchaser hereby fully and finally releases, waives, abandons, acquits, agrees not to assert or bring, and forever discharges Seller from, any and all Claims, including any cost recovery actions, under any Environmental Law, or for any Environmental Costs, based upon or relating to any Release of Hazardous Substances. As used in this Section (C), the following terms have the following meanings:

“Environmental Law” means any Law, regulation, Governmental Authorization or Governmental Order relating to pollution, contamination, Hazardous Materials or protection of the environment including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, also known as “Superfund” or “CERCLA,” 42 U.S.C. §§ 9601, et seq., as amended, or under the Washington State Model Toxics Control Act, RCW ch. 70.105D (“MTCA”), as amended, and any similar or equivalent law now existing or hereinafter enacted

“Environmental Costs” means any and all fees, costs, expenses, fines, penalties or charges, including any fees, costs and expenses of attorneys, experts, consultants and engineers, incurred in connection with investigating, defending, remediating or otherwise responding to any Release of Hazardous Materials, any violation or alleged violation of any Environmental Law, any Governmental requirement, or any other actions necessary to comply with any Environmental Law.

“Release of Hazardous Substances” means the spilling, leaking, disposing, discharging, emitting, depositing, dumping, ejecting, leaching, migrating, escaping, or any other release or threatened release however defined, whether intentional, unintentional or accidental, of any Hazardous Material at, on, into, from or under the Property at any time, whether before or after the Closing.

15.3 . Purchaser understands and agrees that this Section 15 extinguishes all claims, whether known or unknown, foreseen or unforeseen. The Purchaser acknowledges and understand that it or its agents or attorneys may hereafter discover claims or facts that are different from, or in addition to, the claims or facts the Purchaser presently knows or believes to exist. The Purchaser expressly accepts and assumes the risk of any such different or additional claims or facts, and agrees that this Agreement, and the compromises, releases and other provisions hereof shall remain effective notwithstanding the discovery of any such different or additional claims or facts.

15.4 Purchaser agrees to this section 15 voluntarily, and not based upon any assurances, representations or statements by anyone regarding the merits or value of any of the released claims or regarding the alleged liability of the Seller.

15.5 Purchaser agrees to this section 15 freely, knowingly, and voluntarily, and that no representations, threats, promises or inducements of any kind have been made to induce Purchaser to sign this Agreement with this section 15 other than the terms expressly set forth herein.

[ELIZABETH BLACK TO REVIEW AND COMMENT ON THIS SECTION]

16. Miscellaneous Provisions.

16.1. Notices.

- (a) Method of Delivery. All notices, requests, demands and other communications (each, a “Notice”) required to be provided to the other Party pursuant to this Agreement shall be in writing and shall be delivered (i) in person, (ii) by certified U.S. mail, with postage prepaid and return receipt requested, (iii) by overnight courier service, or (iv) by facsimile or email transmittal, with a verification copy sent on the same day by any of the methods set forth in clauses (i), (ii) and (iii), to the other Party to this Agreement at the following address (including email address) or facsimile number (or to such other address or facsimile number as Seller or Purchaser may designate from time to time pursuant to Section 16.1(c)):

If to Seller:

Draper Machine Works, Inc.
2100 West Commodore Way
Seattle, Washington 98199
Attn: Charles Draper Jr.
Email: _____

If to Purchaser:

Port of Seattle
2711 Alaskan Way
Seattle, Washington 98121
Attn: Jeffrey Utterback
Email: utterback.j@portseattle.org

With copies to:

Miller Nash Graham & Dunn LLP
2801 Alaskan Way, Suite 300
Seattle, Washington 98121
Attn: Maren K. Gaylor
Facsimile No.: (206) 340-9599
Email: mgaylor@millernash.com

Dorsey & Whitney LLP
701 Fifth Avenue, Suite 6100
Seattle, Washington 98104
Attn: Michael L. Cohen/Jay Riffkin
Facsimile No.: (213) 623-1673
Email: cohen.mike@dorsey.com
riffkin.jay@dorsey.com

- (b) Receipt of Notices. All Notices sent by Seller or Purchaser (or their respective counsel pursuant to Section 16.1(d)) under this Agreement shall be deemed to have been received by the Party to whom such Notice is sent upon (i) delivery to the address, email address or facsimile number of the recipient Party, provided that such delivery is made prior to 5:00 p.m. (local time for the recipient Party) on a business day, otherwise the following business day, or (ii) the attempted delivery of such Notice if (A) such recipient Party refuses delivery of such Notice, or (B) such recipient Party is no longer at such address, email address or facsimile number, and such recipient Party failed to provide the sending Party with its current address, email address or facsimile number pursuant to Section 16.1(c).
- (c) Change of Address. Seller and Purchaser and their respective counsel shall have the right to change their respective address, email address and/or facsimile number for the purposes of this Section 16.1 by providing a Notice of such

change in address, email address and/or facsimile number in the manner required under Section 16.1(a).

- (d) Delivery by Party's Counsel. Seller and Purchaser agree that the attorney for such Party shall have the authority to deliver Notices on such Party's behalf to the other Party hereto.
- 16.2. Time is of the Essence. Time is of the essence of this Agreement; provided, however, that notwithstanding anything to the contrary in this Agreement, if the time period for the performance of any covenant or obligation, satisfaction of any condition or delivery of any notice or item required under this Agreement shall expire on a day other than a business day, such time period shall be extended automatically to the next business day.
- 16.3. Survival. Except as otherwise expressly set forth herein, all agreements, representations and warranties by the respective parties contained herein are intended to and shall remain true and correct as of the Closing Date, shall be deemed to be material, and shall for a period of twelve (12) months survive the delivery of the Deed and transfer of title. After the expiration of twelve (12) months from the delivery of the Deed, except as otherwise expressly set forth herein, the representations and warranties made by the parties to this Agreement shall be deemed to have expired and shall be of no further force or effect, and notices of breach given within such twelve (12) month period.
- 16.4. Assignment. Purchaser may not assign or transfer this Agreement without the prior written consent of Seller.
- 16.5. Successors and Assigns; Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective successors and permitted assigns. This Agreement shall not confer any rights or remedies upon any third party.
- 16.6. Prevailing Party. If any litigation or other court action, arbitration or similar adjudicatory proceeding is sought, taken, instituted or brought by Seller or Purchaser to enforce its rights under this Agreement, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, of the prevailing Party in such action, suit or proceeding shall be borne by the Party against whose interest the judgment or decision is rendered. This Section 16.6 shall survive the termination of this Agreement and the Closing.
- 16.7. No Recordation. Except following a breach by Seller of its obligations under this Agreement and Purchaser's commencement, within thirty (30) days following the date that Purchaser first discovers such breach, of an action against Seller under clause (iii) of Section 12.2 above, neither this Agreement, nor any memorandum or other notice of this Agreement, shall be recorded without Seller's prior written consent, which consent may be withheld in Seller's sole discretion.
- 16.8. Section 1031 Exchange. Seller may elect to qualify this transaction under Section 1031 of the Internal Revenue Code (the "1031 Exchange"). Purchaser agrees to cooperate with Seller to the extent necessary to qualify for the 1031 Exchange. Seller may, without Purchaser's consent and in furtherance of the 1031 Exchange, assign this Agreement and

convey the Property to a person or entity (the “Exchange Intermediary”) at or prior to Closing on the following conditions: (i) Seller shall not be released from its obligations under this Agreement; (ii) Purchaser shall not bear any cost, expense or liability in connection with the conveyance or assignment nor be obligated to take title to any other property; and (iii) Seller shall indemnify and save Purchaser harmless from same and shall reimburse Purchaser at Closing for any additional expenses incurred due solely to such exchange. The Closing of this transaction shall not be delayed due to efforts to close this transaction as a tax-deferred exchange.

- 16.9. Rules of Construction. The headings contained herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.
- 16.10. Governing Law; Severability. This Agreement shall be governed by the laws of the State of Washington. If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected terms or provisions at any other time or in any other jurisdiction. Unless otherwise agreed by the Parties, venue for any litigation shall be King County, Washington.
- 16.11. Recitals and Exhibits. The recitals and Exhibits to this Agreement are incorporated herein by such reference and made a part of this Agreement.
- 16.12. Entire Agreement; Amendments to Agreement. This Agreement sets forth the entire understandings and agreements of the Parties hereto, and shall supersede any other letters of intent, agreements and understandings (written or oral) between Seller and Purchaser on or prior to the date of this Agreement with respect to the transaction contemplated in this Agreement. No amendment or modification to any terms of this Agreement, or cancellation of this Agreement, shall be valid unless in writing and executed and delivered by Seller and Purchaser.
- 16.13. Facsimile and Electronic Transmission; Counterparts. Seller and Purchaser may deliver executed signature pages to this Agreement by facsimile or electronic transmission to the other Party, which facsimile or electronic copy shall be deemed to be an original executed signature page; provided, however, that such Party shall deliver an original signature page to the other Party promptly thereafter if requested to do so. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the Parties had signed the same signature page.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed in their names or by their respective duly authorized officers or representatives.

SELLER:

DRAPER MACHINE WORKS, INC.,
a Washington corporation

By: _____
Its: _____

PURCHASER:

PORT OF SEATTLE,
a Washington municipal corporation

By: _____
Its: _____

**EXHIBIT A
TO
PURCHASE AND SALE AGREEMENT**

Legal Description of Land

That portion of Block 5, Seattle Tidelands, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington and unplatted Reserve A, Gilman's Addition to the City of Seattle;

Beginning at the northwest corner of Lot 1, Block 5, Seattle Tidelands, according to the official plat on file in the office of the Commissioner of Public Lands; thence south 58°19'58" east along the northeasterly line of said block 5 a distance of 316.189 feet to an angle point on said northeasterly line of said block 5; thence south 29°29'02" east along said northeasterly line of said block 5, a distance of 570.285 feet to a point thereon that is 61.251 feet northwesterly from the most easterly corner of lot 8 in said block 5, measured along said northeasterly line; thence south 60°30'58" west a distance of 233.809 feet to the intersection of the northerly line of Commodore Way with the easterly line of 21st Avenue West;

thence north 60°33'27" west along said northerly line of Commodore Way a distance of 703.409 feet to an intersection with the northerly line of lot 1 of said block 5 produced southwesterly;

thence north 31°40'02" east along the northwesterly line of said lot 1, block 5, and aid line produced a distance of 507.261 feet to the point of beginning.

Except the northwesterly 200 feet as measured at right angles to the northwesterly line of the above described tract of land thereof.

**EXHIBIT B
TO
PURCHASE AND SALE AGREEMENT**

Legal Description of Aquatic Lands

That portion of Salmon Bay in Government Lot 1, Section 14, Township 25 North, Range 3 East, W.M. in King County, Washington lying northeasterly of and adjacent to Lots 4, 5, 6, 7 and 8, Block 5, Seattle Tide Lands Plat, more particularly described as follows:

Beginning at the northwest corner of said Lot 1;
thence S 58°19'58" E along the northeasterly line of same Block 5 a distance of 316.189 feet to an angle point in said northeasterly line of Block 5 and the true point of beginning;
thence S 29°29'02" E a distance of 570.285 feet to a point thereon that is 61.251 feet northwesterly from the most easterly corner of said Lot 8, measured along said northeasterly line;
thence N 23°36'53" E a distance of 17.00 feet;
thence S 66°23'07" E a distance of 14.77 feet;
thence N 22°17'03" E a distance of 325.51 feet to the pierhead line;
thence N 66°23'07" W along said pierhead line a distance of 463.24 feet to the true point of beginning.

Containing 81,652 square feet or 1.874 acres.

**EXHIBIT C
TO
PURCHASE AND SALE AGREEMENT**

Description of Insurance Policies

**EXHIBIT D
TO
PURCHASE AND SALE AGREEMENT**

Moorage Agreements/Kayak Storage Agreements

**EXHIBIT E
TO
PURCHASE AND SALE AGREEMENT**

Property Condition Reports

**EXHIBIT F
TO
PURCHASE AND SALE AGREEMENT**

Not Used.

**EXHIBIT G
TO
PURCHASE AND SALE AGREEMENT**

Environmental Documents

**EXHIBIT H
TO
PURCHASE AND SALE AGREEMENT**

Rent Roll

**EXHIBIT I
TO
PURCHASE AND SALE AGREEMENT**

[DOES THIS PAGE NEED TO BE RE-INSERTED AGAIN?]

[RE-INSERTED?]

[RE-INSERTED?]

**EXHIBIT J
TO
PURCHASE AND SALE AGREEMENT**

Form of Deed

**RECORDED AT THE REQUEST OF AND
AFTER RECORDING RETURN TO:**

Port of Seattle
2711 Alaskan Way
Seattle, Washington 98121
Attn: Jeffrey Utterback

STATUTORY QUITCLAIM DEED [PREFER WARRANTY]

Grantor: **DRAPER MACHINE WORKS, INC.,
a Washington corporation**

Grantee: **PORT OF SEATTLE,
a Washington municipal corporation**

Legal Description:

Abbreviated: **Ptn of Block 5 of Seattle Tidelands, and unplatted Reserve A,
Gilman's Addition to the City of Seattle**

Full: **See Exhibit A attached hereto**

Tax Parcel Numbers: **2771605345**

GRANTOR, DRAPER MACHINE WORKS, INC., a Washington corporation, for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, in hand paid, hereby conveys and quitclaims to PORT OF SEATTLE, a Washington municipal corporation (“Grantee”), the real property situated in the County of King, State of Washington and legally described on Exhibit A attached hereto.

EXHIBIT A
TO
STATUTORY WARRANTY DEED

Legal Description

That portion of Block 5, Seattle Tidelands, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington and unplatted Reserve A, Gilman's Addition to the City of Seattle;

Beginning at the northwest corner of Lot 1, Block 5, Seattle Tidelands, according to the official plat on file in the office of the Commissioner of Public Lands; thence south 58°19'58" east along the northeasterly line of said block 5 a distance of 316.189 feet to an angle point on said northeasterly line of said block 5; thence south 29°29'02" east along said northeasterly line of said block 5, a distance of 570.285 feet to a point thereon that is 61.251 feet northwesterly from the most easterly corner of lot 8 in said block 5, measured along said northeasterly line; thence south 60°30'58" west a distance of 233.809 feet to the intersection of the northerly line of Commodore Way with the easterly line of 21st Avenue West;

thence north 60°33'27" west along said northerly line of Commodore Way a distance of 703.409 feet to an intersection with the northerly line of lot 1 of said block 5 produced southwesterly;

thence north 31°40'02" east along the northwesterly line of said lot 1, block 5, and aid line produced a distance of 507.261 feet to the point of beginning.

Except the northwesterly 200 feet as measured at right angles to the northwesterly line of the above described tract of land thereof.

Tax Parcel Number: 2771605345

**EXHIBIT K
TO
PURCHASE AND SALE AGREEMENT**

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“Assignment”) is made as of _____, 2017, by and between DRAPER MACHINE WORKS, INC., a Washington corporation (“Assignor”), and PORT OF SEATTLE, a Washington municipal corporation (“Assignee”).

RECITALS

A. Concurrently with the delivery of this Assignment, Assignor has conveyed to Assignee and Assignee has acquired from Assignor (i) a fee simple estate in and to certain real property located in King County, Washington, more particularly described in Exhibit A attached hereto (the “Fee Property”); (ii) a leasehold interest in the adjacent aquatic lands that are the subject of that certain Waterway Use Authorization No. 20-009207 between Assignor and the State of Washington Department of Natural Resources (the “DNR Lease”), as more particularly described on Exhibit B attached hereto (the “Aquatic Lands”), the Grantee’s interest in which has been assigned to Assignee; and (iii) the improvements located on the Fee Property and the Aquatic Lands (the “Improvements”); all pursuant to that certain Purchase and Sale Agreement by and between Assignor and Assignee dated as of _____, 2017, together with any and all amendments and modifications thereof (collectively, the “Purchase and Sale Agreement”).

B. Pursuant to the Purchase and Sale Agreement, Assignor is to assign to Assignee and Assignee is to assume certain rights and obligations under those certain Moorage Agreements and Kayak Storage Agreements affecting the Real Property as amended or modified (collectively, the “Moorage and Kayak Agreements”), which Moorage and Kayak Agreements are more particularly described in the rent roll attached hereto as Exhibit B and incorporated herein by this reference.

NOW, THEREFORE, Assignor and Assignee agree as follows:

ARTICLE I
ASSIGNMENT OF MOORAGE AND KAYAK AGREEMENTS

- 1.1 Assignment. Assignor hereby assigns to Assignee all of Assignor’s right, title and interest in and to the Moorage and Kayak Agreements, including, but not limited to, all security and other deposits and prepaid rents paid thereunder.
- 1.2 Assumption. Assignee hereby accepts the foregoing assignment and assumes those obligations of landlord under the Moorage and Kayak Agreements accruing and arising from and after the Effective Date; provided, however, that with respect to any of the Moorage and Kayak Agreements that have been replaced, prior to Effective Date, with agreements between Assignee and the tenants thereunder that are to take effect, in accordance with their terms, as of the

Effective Date, then Assignee shall not be deemed to have assumed the obligations thereunder but instead, the Moorage and Kayak Agreements that were replaced shall be deemed to have terminated as of the Effective Date.

- 1.3 Effective Date. The “Effective Date” of this Assignment shall be the date that Assignee acquires the Real Property.
- 1.4 Consistency with Purchase and Sale Agreement. Nothing in this Assignment shall be construed to modify or limit any provisions of the Purchase and Sale Agreement and in the event of any inconsistency between this Assignment and the Purchase and Sale Agreement, the Purchase and Sale Agreement shall control.

ARTICLE II
MISCELLANEOUS

- 2.1 Attorneys’ Fees. In the event of any action between Assignor and Assignee seeking enforcement of any of the terms and conditions to this Assignment, the prevailing party in such action, whether by fixed judgment or settlement, shall be entitled to recover, in addition to damages, injunctive or other relief, its actual costs and expenses, including, but not limited to, actual attorneys’ fees, court costs and expert witness fees. Such costs shall include reasonable attorneys’ fees, costs and expenses incurred in (a) post-judgment motions, (b) contempt proceedings, (c) garnishment, levy and debtor and third-party examination, (d) discovery, and (e) bankruptcy litigation.
- 2.2 Inurement. This Assignment shall inure to the benefit of Assignor and Assignee, and their respective heirs, assigns and successors in interest.
- 2.3 Counterparts. This Assignment may be signed by the parties in different counterparts and the signature pages combined to create a document binding on all parties.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

ASSIGNOR:

ASSIGNEE:

DRAPER MACHINE WORKS, INC.,
a Washington corporation

PORT OF SEATTLE,
a Washington municipal corporation

By: _____
Its: _____

By: _____
Its: _____

EXHIBIT A
TO
ASSIGNMENT AND ASSUMPTION AGREEMENT

Legal Description

Land

That portion of Block 5, Seattle Tidelands, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington and unplatted Reserve A, Gilman's Addition to the City of Seattle;

Beginning at the northwest corner of Lot 1, Block 5, Seattle Tidelands, according to the official plat on file in the office of the Commissioner of Public Lands; thence south 58°19'58" east along the northeasterly line of said block 5 a distance of 316.189 feet to an angle point on said northeasterly line of said block 5; thence south 29°29'02" east along said northeasterly line of said block 5, a distance of 570.285 feet to a point thereon that is 61.251 feet northwesterly from the most easterly corner of lot 8 in said block 5, measured along said northeasterly line; thence south 60°30'58" west a distance of 233.809 feet to the intersection of the northerly line of Commodore Way with the easterly line of 21st Avenue West;

thence north 60°33'27" west along said northerly line of Commodore Way a distance of 703.409 feet to an intersection with the northerly line of lot 1 of said block 5 produced southwesterly;

thence north 31°40'02" east along the northwesterly line of said lot 1, block 5, and aid line produced a distance of 507.261 feet to the point of beginning.

Except the northwesterly 200 feet as measured at right angles to the northwesterly line of the above described tract of land thereof.

Aquatic Lands

That portion of Salmon Bay in Government Lot 1, Section 14, Township 25 North, Range 3 East, W.M. in King County, Washington lying northeasterly of and adjacent to Lots 4, 5, 6, 7 and 8, Block 5, Seattle Tide Lands Plat, more particularly described as follows:

Beginning at the northwest corner of said Lot 1;
thence S 58°19'58" E along the northeasterly line of same Block 5 a distance of 316.189 feet to an angle point in said northeasterly line of Block 5 and the true point of beginning;
thence S 29°29'02" E a distance of 570.285 feet to a point thereon that is 61.251 feet northwesterly from the most easterly corner of said Lot 8, measured along said northeasterly line;
thence N 23°36'53" E a distance of 17.00 feet;
thence S 66°23'07" E a distance of 14.77 feet;
thence N 22°17'03" E a distance of 325.51 feet to the pierhead line;
thence N 66°23'07" W along said pierhead line a distance of 463.24 feet to the true point of beginning.

Containing 81,652 square feet or 1.874 acres.

EXHIBIT B
TO
ASSIGNMENT AND ASSUMPTION AGREEMENT

Rent Roll - Moorage and Kayak Agreements

[To be provided.]

**EXHIBIT L
TO
PURCHASE AND SALE AGREEMENT**

Form of Assignment of Intangible Property

ASSIGNMENT OF INTANGIBLE PROPERTY

THIS ASSIGNMENT OF INTANGIBLE PROPERTY is made and given this ____ day of _____, 2017, by DRAPER MACHINE WORKS, INC., a Washington corporation (“Assignor”), for the benefit of PORT OF SEATTLE, a Washington municipal corporation (“Assignee”).

RECITALS

A. Assignee has this day acquired all of Assignor’s right, title, interest and estate in and to the real property described on Exhibit A (the “Land”) attached hereto and made a part hereof, as well as a leasehold interest in the aquatic lands that are the subject of that certain Waterway Use Authorization No. 20-009207 between Assignor and the State of Washington Department of Natural Resources (the “DNR Lease”), as more particularly described on Exhibit B attached hereto (the “Aquatic Lands”), together with the improvements located thereon (the “Improvements”), pursuant to that certain Purchase and Sale Agreement, by and between Assignor and Assignee, dated as of _____, 2017, together with any and all addendums and amendments thereof (collectively, the “Purchase and Sale Agreement”).

B. Assignor, in connection with its ownership of the Land and the Improvements, and a leasehold interest in the Aquatic Lands, may have an interest in certain licenses, permits, approvals, certificates of occupancy, dedications, entitlements, development rights, telephone listings and numbers, manuals, lists of prospective tenants, advertising materials, plans and specifications relating to the improvements and fixtures located on the Land and the Aquatic Lands, surveys, reports and studies and other tangible and intangible property relating to the Land, the Improvements and the Aquatic Lands and similar items included within, related to or otherwise pertaining thereto (collectively, “Intangible Property”), if any.

C. Assignor, in connection with its ownership of the Land and the Improvements, and a leasehold interest in the Aquatic Lands, may have an interest in certain warranties and guaranties now in effect with respect to the Improvements consisting of guaranties, warranties or agreements made by any contractors, subcontractors, vendors, suppliers or any other person or entity regarding their performance and the quality of their workmanship, and the quality of materials provided, in connection with the installation and operation of any and all of the Improvements located on the Land, including buildings, fixtures and equipment located in such Improvements (collectively, “Warranties and Guaranties”), if any.

D. Assignor, in connection with its ownership of the Land and the Improvements, and a leasehold interest in the Aquatic Lands, has an interest in insurance policies, including but not limited to those certain insurance policies described on Exhibit C attached hereto (collectively, the “Insurance Policies”).

E. Assignor, in connection with its ownership of the Land and the Improvements, and a leasehold interest in the Aquatic Lands, may have an interest in claims, whether for recovery,

contribution, indemnification or otherwise, against third parties for any condition of environmental contamination on or emanating from the Land and the Improvements, or the existence of Hazardous Substances in any state on or emanating from the Land and the Improvements (including but not limited to rights Assignor has against MARCO) (collectively, “Third Party Claims”).

F. Pursuant to the terms of the Purchase and Sale Agreement, Assignor has agreed to assign to Assignee all of its right, title and interest in and to the Intangible Property, the Warranties and Guaranties, the Insurance Policies, and the Third Party Claims.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties agree as follows:

ARTICLE I
ASSIGNMENT OF INTANGIBLE PROPERTY,
INSURANCE POLICIES AND WARRANTIES AND GUARANTIES

- 1.1 Assignment of Intangible Property, Warranties and Guaranties. Assignor hereby assigns to Assignee all of Assignor’s right, title and interest, if any, in and to all Intangible Property and Warranties and Guaranties relating to the Land, the Aquatic Lands and the Improvements. Assignee hereby accepts the foregoing assignment of any and all Intangible Property and Warranties and Guaranties now in effect with respect to the Land, the Aquatic Lands and the Improvements.
- 1.2 Assignment of Insurance Policies and Third Party Claims. Assignor hereby assigns to Assignee all of Assignor’s right, title and interest, if any, in and to all Insurance Policies. Assignor hereby assigns to Assignee all of Assignor’s right, title and interest, if any, in and to all Third Party Claims. Assignee hereby accepts the foregoing assignment of any and all Insurance Policies and any and all Third Party Claims.
- 1.3 Effective Date. The “Effective Date” of this Assignment shall be the date that Assignee acquires the Land described on Exhibit A, the leasehold interest in the Aquatic Lands described on Exhibit B, and the Improvements located thereon.
- 1.4 Consistency with Purchase and Sale Agreement. Nothing in this Assignment shall be construed to modify or limit any provisions in the Purchase and Sale Agreement and in the event of any inconsistency between this Assignment and the Purchase and Sale Agreement, the latter shall govern and control.

ARTICLE II
MISCELLANEOUS

- 2.1 Governing Law; Binding Nature. This Assignment shall be governed by the laws of the State of Washington, and shall inure to the benefit of Assignor and Assignee, and their respective heirs, assigns and successors in interest.
- 2.2 Counterparts. This Assignment may be signed by the parties in different counterparts and the signature pages combined to create a document binding on all parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

ASSIGNOR:

DRAPER MACHINE WORKS, INC.,
a Washington corporation

By: _____
Its: _____

ASSIGNEE:

PORT OF SEATTLE,
a Washington municipal corporation

By: _____
Its: _____

EXHIBIT A
TO
ASSIGNMENT OF INTANGIBLE PROPERTY

Legal Description

Land

That portion of Block 5, Seattle Tidelands, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington and unplatted Reserve A, Gilman's Addition to the City of Seattle;

Beginning at the northwest corner of Lot 1, Block 5, Seattle Tidelands, according to the official plat on file in the office of the Commissioner of Public Lands; thence south $58^{\circ}19'58''$ east along the northeasterly line of said block 5 a distance of 316.189 feet to an angle point on said northeasterly line of said block 5; thence south $29^{\circ}29'02''$ east along said northeasterly line of said block 5, a distance of 570.285 feet to a point thereon that is 61.251 feet northwesterly from the most easterly corner of lot 8 in said block 5, measured along said northeasterly line; thence south $60^{\circ}30'58''$ west a distance of 233.809 feet to the intersection of the northerly line of Commodore Way with the easterly line of 21st Avenue West;

thence north $60^{\circ}33'27''$ west along said northerly line of Commodore Way a distance of 703.409 feet to an intersection with the northerly line of lot 1 of said block 5 produced southwestwardly;

thence north $31^{\circ}40'02''$ east along the northwesterly line of said lot 1, block 5, and aid line produced a distance of 507.261 feet to the point of beginning.

Except the northwesterly 200 feet as measured at right angles to the northwesterly line of the above described tract of land thereof.

EXHIBIT B
TO
ASSIGNMENT OF INTANGIBLE PROPERTY

Legal Description

Aquatic Lands

That portion of Salmon Bay in Government Lot 1, Section 14, Township 25 North, Range 3 East, W.M. in King County, Washington lying northeasterly of and adjacent to Lots 4, 5, 6, 7 and 8, Block 5, Seattle Tide Lands Plat, more particularly described as follows:

Beginning at the northwest corner of said Lot 1;
thence S 58°19'58" E along the northeasterly line of same Block 5 a distance of 316.189 feet to an angle point in said northeasterly line of Block 5 and the true point of beginning;
thence S 29°29'02" E a distance of 570.285 feet to a point thereon that is 61.251 feet northwesterly from the most easterly corner of said Lot 8, measured along said northeasterly line;
thence N 23°36'53" E a distance of 17.00 feet;
thence S 66°23'07" E a distance of 14.77 feet;
thence N 22°17'03" E a distance of 325.51 feet to the pierhead line;
thence N 66°23'07" W along said pierhead line a distance of 463.24 feet to the true point of beginning.

Containing 81,652 square feet or 1.874 acres.

EXHIBIT C
TO
ASSIGNMENT OF INTANGIBLE PROPERTY

Description of Insurance Policies

**EXHIBIT M
TO
PURCHASE AND SALE AGREEMENT**

Form of FIRPTA Certificate

CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by DRAPER MACHINE WORKS, INC., a Washington corporation (“**Transferor**”), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust and foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor’s U.S. employer identification number is [_____]; and
3. Transferor’s office address is _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign the document on behalf of the Transferor.

DRAPER MACHINE WORKS, INC.,
a Washington corporation

By: _____
Its: _____