

THIRD AMENDMENT TO GROUND LEASE AGREEMENT  
BETWEEN  
PORT OF SEATTLE  
AND  
DUKE'S SHILSHOLE BAY CHOWDER HOUSE, LLC  
AT  
SHILSHOLE BAY MARINA

THIS THIRD AMENDMENT TO GROUND LEASE AGREEMENT is made as of \_\_\_\_\_, 20\_\_\_\_, by and between the PORT OF SEATTLE, a Washington municipal corporation, hereinafter called "the Port," and DUKE'S SHILSHOLE BAY CHOWDER HOUSE, LLC, a limited liability company, hereinafter called "Tenant,"

**W I T N E S S E T H :**

WHEREAS, the parties entered into a ground lease agreement dated May 11, 2017, hereinafter called "Ground Lease," covering certain premises and activities by Tenant at Shilshole Bay Marina, Seattle, Washington, which was subsequently amended by the First Amendment dated January 10, 2018, further amended by the Second Amendment dated November 12, 2019, and supplemented by the Deferral Agreement dated May 12, 2020; and

WHEREAS, Tenant confirms and represents that the COVID-19 pandemic has had a direct and significant negative financial impact on its business. Tenant also acknowledges that this First Amendment is intended to assist Tenant in managing short term operating expenses during this extremely difficult time for the restaurant industry and the overall global economy and to maximize, to the extent possible given current circumstances, the ability of Tenant to continue construction and provide services during and after the period of impacts from the COVID-19 pandemic.

WHEREAS, the parties now wish to further revise the Ground Lease as previously amended, by decreasing the size of the Premises, Project and Property, effective April 1, 2020, as well as a corresponding reduction in both Construction Phase Monthly Rent, and Post-Construction Monthly Rent; and

WHEREAS, the parties now wish to defer rent during Construction Phase status effective April 1, 2020 through March 31, 2023; and commence payback of deferred fees effective April 1, 2023 through March 31, 2033.

WHEREAS, the parties now wish to extend the Construction Phase for three additional years, effective April 1, 2020 until March 31, 2023.

NOW THEREFORE, in consideration of their mutual promises, the parties hereby agree as follows:

1. The Premises, as defined in Section 1.22 of the Ground Lease, and the Property, as defined in Section 1.24 of the Ground Lease, both previously depicted in Exhibits B-2, C-1, and F are amended and reduced from 9,200 square feet to approximately 4,500 square feet, effective April 1, 2020.
2. The Project, as defined in Section 1.23 of the Ground Lease, is hereby deleted in its entirety and replaced with the following:

"Project" shall mean and refer to the Property leased hereunder to Tenant approximately 4,500 square feet of perimeter area ("Perimeter Area"), effective April 1, 2020, to be depicted in exhibits B-3.

3. Base Rent as defined in section 4.1 of the Ground Lease is amended as follows;

Construction Phase Rent: Beginning April 1, 2020 the total monthly rental payable by

Tenant is decreased to \$2,048 per month.

Post-Construction Phase Rent: Beginning April 1, 2023 the total monthly rental payable by Tenant will decrease to \$7,216 per month.

4. Commencement Date as defined in Section 1.7 of the Ground Lease, is amended to include, Commencement of the Deferred Fees of \$614 per month, effective April 1, 2023 to be paid in full no later than March 31, 2033.

Deferred Fees 4/1/2023-3/31/2033: \$2,048 x 12 months = \$24,576/year x 3 years = \$73,728 total "Deferred Fees".

\$73,728 / 12 months = \$6,144/ 10 years = \$614 per month.

Tenant's payment of Deferred Fees shall include, as applicable, payment of leasehold excise tax ("LET") on the Deferred Fees pursuant to the Agreement and Chapter 82.29A RCW. Tenant agrees that in the event the Washington Department of Revenue ("DOR") determines that payment of LET may not be so deferred, Tenant agrees that all such LET shall become immediately due from and payable by Tenant. Moreover, in the event that DOR determines, based on Chapter 82.29A RCW or any revision or amendment thereto, that LET is due in an amount greater than the amount invoiced or remitted by the Port, Tenant agrees that payment of same shall be the sole responsibility of Tenant and Tenant shall indemnify and hold the Port harmless from and against any such LET assessed, including any penalties or interest. The obligations set forth in this Section shall survive any termination of the Agreement.

5. Exhibits B-2, C-1, and F will be replaced with the Exhibits B-3 to update the legal description, property description, and revised square footage. Such exhibits and final square footage shall be provided by Tenant to the Port by written notice in accordance with Section 28.1, and subject to the Port's review and written approval.

6. Nothing in this Third Amendment shall be deemed a waiver or relinquishment of any obligations of a surety or other obligor ("Surety") under a letter of credit, bond, guaranty, or other financial instrument (each, a "Surety Agreement") provided to the Port to secure Tenant's obligations under the Ground Lease, and future compliance therewith, and said terms, conditions and provisions shall remain in full force and effect. The Port expressly reserves any and all rights against and with respect to the Surety and Surety Agreement.

7. Except as expressly amended herein, all provisions of the Ground Lease (as previously amended) shall remain in full force and effect.

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

LESSOR  
PORT OF SEATTLE

TENANT  
Duke's Shilshole Bay Chowder House, LLC

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

Notary to Third Amendment to Lease  
with Duke's Shilshole Bay Chowder House, LLC  
at Shilshole Bay Marina.

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF KING         )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the PORT OF SEATTLE, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)  
Notary Public, in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF KING         )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the \_\_\_\_\_, the individual/entity that executed the within and foregoing instrument as Tenant, and acknowledged said instrument to be the free and voluntary act and deed of said individual/entity, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)  
Notary Public, in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_