

AGENDA

**DES MOINES CITY COUNCIL
MUNICIPAL FACILITIES COMMITTEE
North Conference Room
21630 11th Avenue S, Des Moines, Washington
Thursday, September 22, 2022 - 5:00 PM**

Municipal Facilities Committee:

Mayor Matt Mahoney; Councilmember Jeremy Nutting; Councilmember Harry Steinmetz

APPROVAL OF AUGUST 25, 2022 MINUTES

[08.25.22 Municipal Facilities Minutes](#)

QUARTERDECK LEASE ASSIGNMENT AND EXTENSION

- Staff will provide an update

[Quarterdeck Lease Assignment and Extension](#)

Draft Minutes Des Moines City Council Municipal Facilities Committee – 08/25/2022

Council Members

Jeremy Nutting, Chair
Harry Steinmetz, Vice Chair (absent)
Mayor Matt Mahoney

City Staff

Michael Matthias, City Manager
Dan Brewer, Chief Operations Officer
Scott Wilkins, Harbormaster
Tim George, Attorney
Katy Bevegni, Assistant Harbormaster
Nicole Nordholm, PRSS Director
Bonnie Wilkins, Chief Administrative Officer
Jeff Friend, Deputy Finance Director
Taria Keane, City Clerk
Jodi Grager, Admin Asst II

Guests: Councilmembers Gene Achziger and Vic Pennington

Meeting called to order: 5:00 pm on August 25, 2022 in the Council Chamber
Vote to excuse absence of Councilmember Harry Steinmetz

Agenda

1. Approval of 06.23.2022 Minutes
2. Sound View Park Update
3. Marina – Status Report of Projects

Meeting:

1. The 06.23.2022 Municipal Facilities Minutes were approved as submitted.
2. Parks and Recreation Senior Services Director Nicole Nordholm gave a brief summary of the recently completed Sound View Park. There has been great community feedback, some group activities and plenty of public usage. PRSS Director Nordholm stated there will be a Fall Grand Opening which will include an unveiling of the Muckleshoot carvers 12-foot Coast Salish Story Pole. The Committee thanked staff for the efforts to develop a partnership with the Muckleshoot Tribe. The City is working to respond to concerns such as late night activities, parking and traffic. CM Michael Matthias stated the success of this project is due to a combination of policy, the allocation of resources and the support of the City Council.
3. CM Matthias described the Fast Ferry Service ridership as tremendous. The fare revenue wasn't included in the pilot project and it has been significant (approximately \$20,000 over the first three months of the pilot). The enthusiastic response of local citizens, Pike Place Market businesses, and developers was discussed. Mayor Mahoney added that Des Moines restaurants have noticed an increase in revenue.

Harbormaster Scott Wilkins provided a Marina update. He thanked his staff for their outstanding efforts during the “busier than busy” summer months. He also recognized the success of the Fourth of July Celebration creates many extra hours of tasks which can lead to falling a bit behind on Capital Projects and Maintenance. The Marina Master Plan will be provided to the Full Council soon, the Draft Plan is on the City’s website. The dock replacement project is in the permitting phase, with the acquisition of construction materials likely to require about a year once permits are approved. Staff are working on a PowerPoint for Marina tenants in order to provide factual information. Harbormaster Wilkins recently reached out to a tenant that had been misinformed about the future of tenants at the Marina. The conversation was successful in correcting miscommunication. Assistant Harbormaster Katy Bevegni stated that a monthly Harbormaster report is emailed to all tenants and is also posted to the website.

The following items were discussed:

- The replacement of the sling launch
- DM Yacht Club offer to dry shed tenants for use of the boat ramp at the Yacht Club
- Tenant restroom
- Guest moorage electrical project

The Council praised the well run Marina operations and thanked staff for their commitment to providing the best experience for all.

The meeting was adjourned at 5:34 p.m.

Minutes submitted by: Jodi Grager, Public Works Admin Asst

Timothy A. George, City Attorney
21630 11th Avenue So., Suite C
Des Moines, WA 98198
206.870.6553
Fax: 206.870.6872

Memo

Date: September 22, 2022
To: Municipal Facilities Committee
From: Tim George, City Attorney
Re: Quarterdeck Lease Assignment and Extension

The Economic Development Committee was recently briefed on the potential transfer of ownership of the Quarterdeck. The Quarterdeck is located on City property and the City Council has the authority to approve or deny any transfer of ownership. In addition to seeking approval of a transfer of ownership, the potential new owner is seeking a lease extension (attachment 1). Both the Economic Development and Municipal Facilities Committees will be provided an updated briefing tonight, September 22, 2022.

City staff met with the potential new owner (Mackenzie Meyers dba Nourishmints LLC) and has begun preparing the necessary documentation. Rather than assigning the existing lease, staff is recommending terminating the existing lease and signing a new lease with the potential new owner. With the concurrence of the Committee, staff will bring forward to the Council a lease agreement with the following terms:

1. Term: The initial term is for 5 years, with tenant option to extend an additional 5 years subject to City confirmation all terms of the lease agreement have been satisfactorily met.
2. Rent: The proposed rent at this time is to remain consistent with the previous rent. The current rent is \$381 per month with an annual increase based on CPI. The rental amount is contingent on the lease area remaining the same.
3. Premises: Attachment 2 shows the existing footprint. As a part of final lease development, this area will be defined in the lease agreement.

The remainder of the terms will remain substantially similar or identical to the previous lease with Ken Rogers (Attachment 3). These include requirements for high quality service, restrictions on uses, insurance requirements, and various other boilerplate language customary in lease agreements.

09.22.2022 Agenda Item #2

Additional items that need to be addressed simultaneously with the new lease include termination of existing lease with Ken Rogers and an assignment of the restroom agreement to the new owner/operator.

Hi I am Mackenzie Meyers, Manager at DM Harborside, LLC (DBA Quarterdeck) and I am working on purchasing Quarterdeck from Ken Rogers. I am writing to request a lease agreement between the City of Des Moines and Nourishmints, LLC (DBA Quarterdeck). For me to move forward with my loan process I will need a rough write up of the lease agreement from the city.

As you know due to the pandemic the past two years have been difficult. Having been through each step of the way with Ken Rogers we have been able to overcome each circumstance that created uncertainty. As I have learned through the worst, I am ready to take on whatever challenges come up moving forward and I would love to secure a base for the future of the Quarterdeck and its employees.

I have spoken with the Mayor and he has expressed support for the continued operation of the Quarterdeck. I am committed to maintaining the same focus on running the Quarterdeck as a family friendly, high-quality asset to the Marina and City. I am aware of the waterfront development efforts, I have a strong interest in how that development comes together, but I am also focused on stabilizing our existing operation and its future.

Factor in the terms between Nourishmints and the City of Des Moines for a minimum **5 year lease combined with an option for another 5-year extension**. This would provide the business and the employees solid foundation to plan for the future.

The Quarterdeck has been extremely lucky to have been so supported by the community since its opening and especially through the pandemic. I feel we have been reasonably successful under the circumstances by providing quality services and products that the public truly wants and hope you share the same view.

Without such remarkable community support we would have not survived as a business and for that I am exceedingly grateful. I feel blessed to have the opportunity to be part of this City in such an impactful way.

Please advise at your earliest opportunity.

Thank you.

Genuinely,

Mackenzie Meyers

Nourishmints, LLC

DBA Quarterdeck





**MARINA PROPERTY LEASE
BETWEEN THE CITY OF DES MOINES
AND DM HARBORSIDE, LLC**

This COMMERCIAL LEASE (the "Lease"), is made by and between the **CITY OF DES MOINES**, a municipal corporation of the State of Washington ("**Landlord**"), and **DM Harborside LLC**, a Washington corporation, located and doing business at the Des Moines Marina, ("**Tenant**").

1. PREMISES

Landlord leases to Tenant and Tenant leases from Landlord, upon the terms and conditions set forth in this Lease, the exclusive right to use and occupy certain real property located at the Des Moines Marina and as described on **Exhibit A**, attached hereto and incorporated herein by this reference. Such property shall be hereinafter referred to as "**Premises**".

2. TERM

2.1. Lease Term. The Initial Term of this Lease is 3 (three) years, commencing on June 1, 2018 (the "Commencement Date") and ending on the last day of the month 36 months following June 1, 2018, unless sooner terminated as provided elsewhere in this Lease. As used herein, "Term" refers to the Initial Term and any Option Periods then exercised.

2.2. Option to Extend. Tenant shall have 1 (one) option to extend the Initial Term for a period of 3 (three) years (the "Option Period") on the following terms and conditions: (i) Tenant shall provide Landlord with written notice of its intent to exercise the option not earlier than three hundred sixty (360) calendar days nor later than one hundred eighty (180) calendar days before the expiration of the Initial Term; and (ii) Tenant shall not be in default under the terms of this Lease either at the time Tenant exercises its option to extend or at the time the Option Period commences. All terms and conditions of the Lease shall apply during the Option Period except that Rent shall be adjusted in accordance with the terms of Section 5.2.

3. POSSESSION

Tenant will be entitled to possession of the Premises on the Commencement Date and shall yield possession to Lessor on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Lessee shall remove any facilities or structures on the Premises as well as goods and effects and peaceably yield up the Premises to Lessor in as good a condition as when delivered to Lessee, ordinary wear and tear excepted.

4. USE

4.1. Use. Tenant covenants that, at all times during the Lease Term and such further time as Tenant occupies the Premises, Tenant shall use the Premises for the following

enumerated permitted uses and for no other use without Landlord's express written consent, which consent will not be unreasonably withheld:

A. Retail sales of food and beverages (including sale of alcohol).

B. Rental of facilities in part or whole for events, meetings, and classes.

C. Retail sales of branded merchandise and items related to the sale of food and beverages.

4.2. Restriction on Hours of Tenant Operations. The Landlord shall have the right to restrict certain types of operations during the hours when the Marina parking lot is closed or to the extent such operations create a nuisance or have a detrimental effect upon adjacent residents and other Marina tenants.

4.3. Building Codes and Zoning. Tenant has investigated all applicable building and zoning codes, regulations and ordinances to determine whether Tenant's use of the Premises is permitted. Based upon this investigation and the Landlord's foregoing warranty of compliance, Tenant accepts the Premises "as is" and subject to future changes in all applicable statutes, ordinances, rules and regulations governing Tenant's use of the Premises. Any and all expenses required to comply with all future changes in applicable statutes, ordinances, rules, regulations and requirements in effect during the term or any part of the term of this Lease regulating Tenant's use of the Premises shall be borne exclusively by Tenant. Tenant further agrees to comply with all such statutes, ordinances, rules and regulations pertaining to the Premises or its operations thereon throughout the Term.

4.4 Use of City Restrooms. Tenant and Tenant's customers shall be entitled to the use of the City-owned restroom adjacent to the lease area during the period of time that the Marina is open. A separate Restroom Use Agreement will be negotiated by the parties detailing the terms of use.

5. RENT

5.1. Initial Term Rent. Beginning on the Commencement Date and continuing throughout the first year of this agreement, Tenant agrees to pay Landlord rent at the rate of \$300 (three hundred) dollars per month.

All amounts due under this paragraph shall be paid by Tenant to Landlord in advance, on a monthly basis, on or before the first day of each month of this lease.

On January first 2019 and each succeeding year of the lease (including the option period) the rent shall be established by application of the Consumer Price Index, All Urban Consumers, Seattle – Tacoma – Bremerton, Washington Area, for the 12 – month period ending in June of the preceding year, published by the U.S. Department of Labor, Bureau of Labor Statistics, (hereinafter, "CPI"). The rental rate for the succeeding year will be established by multiplying the baseline rate in this

paragraph by the CPI and then adding that amount to the baseline rate. The result shall be the rental rate for the succeeding year and the baseline rate for calculating the rental rate for the year after the succeeding year.

5.2 Payment. Rent for a partial month shall be prorated. All Rents and Additional Expense shall be paid in advance on the first day of each calendar month without set-off or demand, and without any abatement or deduction to Landlord at the address specified in this Lease, unless and until Tenant is otherwise notified in writing. Time is of the essence in the payment of all sums due under this Lease. All rent is exclusive of any sales, franchise, business and occupation or other tax based on rents, and should any such taxes apply during the Term of this Lease, the monthly payment shall be increased by such amount. All other sums due from Tenant under this Lease are hereafter referred to collectively as "Additional Expenses" and shall be paid in the manner and at the time set forth in this Lease. Nothing herein shall prejudice Tenant's right to make payment of Rent under protest and to make claim for return of Rent, or a portion thereof.

6. DEPOSIT.

Tenant has paid this day to Landlord the sum of \$1,000 (one thousand dollars) as a security deposit (the "Deposit") for Tenant's performance of all of the terms and conditions of this Lease. If Tenant is in default, Landlord may use all or any portion of the Deposit to cure the default or to compensate Landlord for damages sustained by Landlord resulting from Tenant's default, including but not limited to the payment of Rent and the cost of cleaning and/or repairing the Premises. Any payment to Landlord from the Deposit shall not be considered a payment of liquidated damages. Within ten (10) days after Landlord's written demand, Tenant shall deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount stated above, and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Deposit separate from its general accounts. If Tenant is not in default at the expiration of the term of this Lease and after Tenant has vacated the Premises, the Deposit will be refunded. No trust relationship is created between Landlord and Tenant with respect to the Deposit.

7. TENANT EXPENSES.

7.1. Net Lease. The purposes of this Section 7 is to insure and Tenant hereby agrees that, in addition to Rent, Tenant shall pay Tenant's Share of all expenses relating to the use, maintenance, ownership, repair and insurance of the Premises, as specifically provided for in Section 5.1, above, and of all utilities, insurance and personal property taxes and Leasehold Excise Taxes, as identified in Sections 7.2 through 7.5 below (see Exhibit B).

7.2. Utilities. Tenant agrees to compensate the Landlord for utilities as detailed in Exhibit B. Landlord shall not be liable for the failure of any of these services for any reason whatsoever.

7.3. Personal Property Taxes. Tenant shall pay, before delinquency, any and all taxes levied or assessed and payable during the Term upon all Tenant's equipment, furniture, fixtures and any other personal property located on the Premises.

7.4. Leasehold Excise Tax. Tenant shall also pay the Leasehold Excise Tax imposed on Tenant under RCW §82.29A.030. Said amount will be paid by Tenant to Landlord and Landlord will pay the same to the State of Washington. Landlord hereby indemnifies and agrees to defend and hold Tenant harmless from and against any costs, including legal fees, that proximately result from Landlord's breach of the covenant to pay the Leasehold Excise Tax once received from Tenant.

7.5. Initial Installation and Permit Costs. Tenant shall pay all costs related to the construction of the facility on the leased area, permits associated with construction and operation, and installation of all required utilities as described in Exhibit C.

8. MAINTENANCE, REPAIRS, ALTERATIONS, AND RELOCATION.

8.1. "As-Is" Condition of Premises. Tenant completely and unconditionally accepts the premises in the AS-IS condition. Tenant waives any right that it may have under any current or future law or ordinance to make repairs at Landlord's expense.

8.2. Tenant's Obligations. Tenant, at its sole cost and expense, shall install a Tenant-owned container structure subject to City and state permitting requirements; keep in good condition and repair all portions of the Premises. Upon the expiration or sooner termination of this Lease, Tenant shall remove Tenant's structures and surrender the Premises to Landlord. Site restoration shall not be required upon removal of Tenant's structure at the end of the Lease. Any damage to adjacent Premises caused by Tenant's use of the Premises shall be repaired at Tenant's sole cost and expense. If Tenant fails to perform the maintenance, repair or replacement required by this Section 8.2 or to surrender the Premises in the condition required by this section, Landlord shall have the right to perform the necessary work at Tenant's sole cost and expense, and Tenant agrees to reimburse costs incurred by Landlord to satisfy the terms of Section 22.20, Redelivery.

In addition, Tenant shall:

- A. Comply with all city, state, and federal regulations related to environmental protection, and any special provisions described in this lease.
- B. Keep the leased Premises as clean and sanitary as the conditions of the Premises permit;
- C. Properly dispose all solid waste, liquids, and hazardous waste in a clean and lawful manner at reasonable and regular intervals;
- D. Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances;
- E. Not intentionally nor negligently destroy, deface, damage, impair, or remove any part of the Premises;
- F. Not permit a nuisance or common law waste;
- G. Not allow junk or debris to accumulate on the Premises;

H. Conduct all business within the Premises described in this lease.

I. At the expiration of the lease term, or any extension thereof, surrender the Premises in as good condition as they were at the beginning of the term, reasonable wear and tear excepted.

8.3. Municipal Obligations to the Public. The parties acknowledge that the Landlord, being a municipal corporation, is obligated to see that businesses operated on land leased from the Landlord are operated in a manner that benefits the Des Moines Marina, its other tenants and the public in general. To this end, Tenant agrees and covenants to abide by the Landlord's reasonable operational requirements as set forth herein, or as may be specified in writing in the future, which are intended solely to fulfill the Landlord's municipal duties to its citizenry.

8.4. Alterations and Additions. Tenant shall not make or permit any alteration, addition or improvement to the Premises without obtaining and complying with appropriate building permits and without Landlord's written consent, which consent will not be unreasonably withheld. Any alteration, addition or improvement shall be made in a good and workmanlike manner by a contractor at Tenant's sole cost and expense and shall comply with all applicable laws, codes, ordinances, rules and regulations and in a manner (a) consistent with the plans and specifications submitted to and approved by Landlord and any conditions imposed by Landlord, (b) which includes acceptable insurance/bond coverage for Landlord's benefit and (c) which does not disrupt the business or operations of other Marina tenants. Prior to expiration or sooner termination of the Lease, Tenant shall, at Tenant's sole cost and expense and with all due diligence, remove any alterations, additions or improvements made by Tenant and designated by Landlord to be removed at the time it gave its consent thereto. At its sole cost and expense, Tenant shall repair any damage to the Premises caused by such removal.

8.5. Relocation. The parties are aware of the mobile nature of Tenant's structure and the necessity based on Marina redevelopment that the structure be relocated to a different site in the Marina. The City will have the sole discretion to require Tenant to relocate the structure subject to the following conditions.

A. The City will provide 180 day notice prior to relocation.

B. After receiving the relocation notice, Tenant has the option to terminate this Agreement with no penalty.

C. If the City requires the structure to be relocated to another site in the Marina during the first three (3) years of this Agreement, the City will pay one hundred percent (100%) of the relocation costs associated with the relocation. Relocation in years four through five (4-5) will be paid equally by the parties. Any relocation costs after year five (5) of this Agreement will be paid entirely by Tenant.

9. LIENS

Tenant shall keep the Premises Real Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or at the direction of Tenant.

Landlord may require, at Landlord's sole option, that Tenant provide at Tenant's sole cost and expense a materialmen's labor and performance bond acceptable to Landlord in an amount equal to one and one-half (1½) times the estimated cost of any improvements, additions or alterations to the Premises which Tenant desires to make, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work.

The Tenant-owned container structure(s) may be encumbered as a normal course of business as collateral for the purpose of securing financing as required from time to time.

10. INDEMNIFICATION / HOLD HARMLESS

Tenant shall defend, indemnify, and hold harmless Landlord (the City), its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Tenant's use of Premises, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the Landlord. Tenant further agrees to indemnify, defend and hold Landlord and its employees, contractors, lenders and agents harmless from all costs (including but not limited to attorneys' fees) incurred by Landlord in connection with its defense against any claim made against Landlord as to which Tenant must indemnify Landlord pursuant to this section. Tenant shall give prompt notice to Landlord of any casualty or accident in the Premises. Tenant further assumes all risk of, waives and releases all claims against Landlord for and agrees to indemnify and hold Landlord and its agents harmless from and against any damages or injury to person or property sustained by Tenant or any person claiming through Tenant, which damage results from any accident or occurrence in or on the Premises from any cause whatsoever, except and then only to the extent caused by the sole negligence of Landlord, its representatives and/or agents. Tenant agrees that the foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 10 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

11. INSURANCE

Tenant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the Tenant's operation and use of the leased Premises.

No Limitation. Tenant's maintenance of insurance as required by this Lease shall not be construed to limit the liability of Tenant to the coverage provided by its insurance, or otherwise limit Landlord's recourse to any remedy available at law or equity.

11.1. Tenant shall obtain insurance of the types described below:

A. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and

contractual liability. Landlord shall be named as an insured on Tenant's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.

B. Property insurance shall be written on an all risk basis.

11.2. Minimum Amounts of Insurance. Tenant shall maintain the following insurance limits:

A. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, which policy shall include product liability and blanket contractual liability coverage insuring performance of Tenant's indemnity obligations under this Lease, excluding insurance for the payment of rent. Landlord may increase the required limit as it deems necessary after thirty (30) days written notice based upon periodic insurance reviews. The insurance required by this section shall be on an occurrence basis only. This insurance shall be written as a primary policy not contributing with and not in excess of coverage that Landlord may carry.

B. Property Insurance shall be written covering the full value of Tenant's property and improvements with no coinsurance provisions

C. Business Interruption. Business interruption insurance in an amount sufficient to protect Tenant against any additional costs and lost income associated with a move to temporary space due to a business interruption for at least twelve (12) months (which coverage is not intended to, and will not, cover loss of income due to business interruption associated with interruption of Tennant's business due to relocation of Tenant's business by the Landlord for reasons other than accidental loss or damage to the Premises).

11.3. General Requirements. All insurance required to be provided by Tenant under this Lease: (a) shall be issued by insurance companies authorized to do business in the State of Washington and with a current A.M. Best rating of not less than A:VII; (b) shall be issued as a primary policy and contain cross-liability endorsements; (c) contain deductibles of no more than \$10,000 per occurrence; and (d) shall contain an endorsement requiring at least thirty (30) days' prior written notice of cancellation to Landlord and Landlord's lender before cancellation or change in coverage, scope or amount of any policy. Tenant shall deliver a certificate or copy of such policy evidenced to reflect Landlord's additional insured status, together with evidence of payment of all current premiums, to Landlord within three (3) days of execution of this Lease. Tenant's failure to provide evidence of such coverage to Landlord may, in Landlord's sole discretion, constitute a material default under this Lease, giving Landlord the right to immediately procure such coverage, the cost of which shall be reimbursable by Tenant upon demand.

11.4. Waiver of Subrogation.

Tenant and Landlord hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. The release shall apply only to the extent that such claim, loss or liability is covered by insurance.

12. RECONSTRUCTION

12.1 . Either party shall have the option either to repair the Premises or to terminate this Lease if the Premises: (a) damage results from any cause not covered by either party's insurance; or (b) insurance proceeds are insufficient to fully pay for repair and restoration; or (c) the cost to repair exceeds twenty-five percent (25%) of the then complete replacement cost of the Premises; or (d) the repair or restoration, in either party's opinion, cannot be completed within six (6) months of the damage; or (e) the damage occurs during the last twelve (12) months of the Lease Term. Either party shall exercise its option to terminate this Lease by giving notice to the other party, at any time within sixty (60) days after the damage, written notice of its election to terminate this Lease as of the date specified in the notice. The termination date shall not be less than thirty (30) nor more than sixty (60) days after the date of the notice.

12.2. Rent Abatement. This Lease shall remain in full force and effect if either party elects to repair the damage or until the termination date specified in the notice of termination, as applicable, except that Rent shall be proportionately abated from the date of damage until the repairs are completed or until the specified termination date. Such proportionate abatement shall be based upon the extent to which the damage materially interferes with the business carried on by Tenant in the Premises.

12.3. Tenant's Repair Obligations. Landlord shall have no liability to Tenant for, and not be required to repair or replace any Leasehold improvements, fixtures or other personal property of Tenant, all of which shall be repaired or replaced promptly by Tenant at Tenant's sole cost and expense.

13. EMINENT DOMAIN

Intentionally omitted.

14. ASSIGNMENT AND SUBLETTING

14.1. Restriction. Tenant shall not sublet the whole or any part of the Premises, nor shall Tenant assign, transfer or encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord. Each assignment to which there has been consent shall be by an instrument in writing in form satisfactory to Landlord, an executed copy of which shall be delivered to Landlord. As a material inducement to Landlord to execute and deliver this Lease, Tenant agrees it shall be reasonable under this Lease and under applicable law for Landlord to withhold consent to any proposed assignment, encumbrance or sublease if Landlord determines that any one or more of the following applies (without limitation as to other reasonable grounds for withholding consent): (a) Landlord is not reasonably assured that the proposed transferee will fully, completely and promptly perform all obligations of Tenant under this Lease, (b) either the net current assets or the tangible net worth of the proposed transferee, determined in accordance with general accepted accounting principles, consistently applied by Tenant's and the proposed transferee's respective independent certified public accountants, is less than the net current assets or tangible net worth of Tenant and any guarantor as of the date of this Lease or the date of the proposed transfer, whichever is greater, (c) the transferee proposes to use the Premises for any purpose other than the permitted uses under this Lease, (d) the proposed transfer would cause

Landlord to be in violation of any other lease or agreement to which Landlord is a party, (e) the proposed transferee fails to deliver to Landlord its written assumption of all of the obligations to be performed by Tenant under the Lease in connection with the portion of the Premises which is the subject of the proposed transferee, (f) if Tenant will not continue to remain liable on this lease or (g) the proposed transferee's operating experience or reputation are less than Tenant's on the date of this Lease. No assignment or sublease shall release Tenant from primary liability on this Lease. In lieu of consenting to an assignment or sublease, Landlord may elect to terminate this Lease. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's option, be void.

14.2. Costs. Tenant shall reimburse Landlord for all reasonable attorneys' fees and other costs incurred by Landlord in connection with the review and preparation of documents incident to any request by Tenant for Landlord's consent. Each request for Landlord's consent shall be accompanied by payment of a fee in the amount of \$750 to be applied to such fee. Landlord shall return to Tenant any unused balance of such fee.

15. DEFAULT

15.1. Defaults. Time is of the essence of this Lease. Tenant shall be deemed in material default hereunder if Tenant fails to comply with any covenant, term or condition of this Lease, or if Tenant vacates or abandons the Premises or if Tenant files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, and if such failure continues for or is not remedied within three (3) days (or, if no default in the payment of rent is involved, within twenty (20) days) after notice in writing thereof given by Landlord to Tenant specifying the failure; provided, however, if a non-monetary default is not reasonably capable of being cured, then the twenty (20) day period shall be extended, but not for more than twenty (20) days, if Tenant immediately commences such cure and diligently and continuously prosecute such cure throughout the period.

15.2. Landlord's Remedies. If Tenant is in default hereunder, then Landlord may:

A. Declare the term hereof ended and reenter the Premises and, with the exception of the structure, take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or

B. Without declaring this Lease terminated, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable; or

C. Even though it may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

If Landlord elects to terminate this Lease pursuant to the provisions of options a. or c. above, Landlord may recover from Tenant as damages, the following:

(i) The worth at the time of award of any unpaid rental which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited, any costs or expenses incurred by Landlord in (a) retaking possession of the Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Premises after such default, (c) preparing the Premises for reletting to a new tenant, including reasonable repairs or alterations to the Premises for such reletting, (d) leasing commissions, and (e) any other costs necessary or appropriate to relet the Premises; plus

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington.

Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon at the rate stated in Section 15.2 from date incurred until paid. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel or forfeit this Lease, or estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

15.3. Late Charges. Tenant acknowledges that the late payment to Landlord of rent and any other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. These costs include but are not limited to processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage, deed of trust or other security agreement covering the Premises. Accordingly, if any installment of rent or other sums due from Tenant shall not be received by Landlord or Landlord's agent within five (5) days after the amount shall be due, then, without any requirement of notice to Tenant, Tenant shall pay to Landlord a late charge equal to one percent (1%) of the amount past due for each month until the default is cured. The parties agree that this late charge plus interest represents a fair and reasonable estimate of the costs Landlord will incur because of Tenant's late payment. Landlord's acceptance of such late charge in no event shall constitute a waiver of Tenant's default with respect to the overdue amount nor prevent Landlord from exercising any of the other rights or remedies granted to Landlord under this Lease.

15.4. Landlord's Default. Landlord shall be in default under this Lease only if Tenant serves upon Landlord a written notice specifying the alleged default and Landlord does not remedy the failure within twenty (20) days following receipt of such notice or, in the case of a failure which takes more than twenty (20) days to cure, if Landlord has not commenced to remedy the same within such twenty (20) day period. Tenant shall not exercise any remedies available to it until the grace period provided for in this Section has elapsed, or during any period that a secured party is proceeding to cure Landlord's default or is diligently taking steps to obtain the right to enter the Premises and cure the default. In no event shall Tenant have the right to terminate this Lease because of Landlord's default; Tenant's remedies shall be limited to any other remedy available at law or in equity. Nothing in this Lease shall be interpreted to excuse Tenant from paying rent due under this Lease because of any default by Landlord.

16. RULES AND REGULATIONS. Tenant agrees to comply with the City of Des Moines Marina Rules & Regulations, as published from time to time by Landlord.

17. HOLDING OVER

If Tenant remains in possession of all or any part of the Premises after the expiration of the Lease Term with the express written consent of Landlord (which consent may be granted, withheld or conditioned in Landlord's sole discretion), such occupancy shall be a tenancy from month to month at Rent equal to one and one-half (1½) times the last monthly Rent, plus all Additional Rent and other charges payable under this Lease, and upon all the terms of this Lease applicable to a month-to-month tenancy. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord at three (3) times the last monthly Rent, and Tenant shall liable all damages suffered by Landlord as a consequence of such holding over.

18. ENTRY BY LANDLORD

In the event Landlord determines that an emergency exists and entry is necessary, Landlord may forcibly enter the Premises without any liability to Tenant. No entry by Landlord as provided in this Section 18 shall be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an eviction of Tenant from all or any portion of the Premises.

19. ESTOPPEL CERTIFICATE

Intentionally omitted.

20. SIGNS

Tenant shall not erect, place or maintain, or permit to be erected or placed, any signs on the exterior walls or windows or elsewhere on the Premises, except as permitted by the City of Des Moines Municipal Code. Tenant, at its sole cost and expense, shall maintain all of its signs in good condition and repair and shall remove the same upon termination of the Lease Term and repair all damage caused by the removal. If Tenant fails to remove any sign and/or repair any damage caused by its removal, Landlord may have the same removed and/or repaired at Tenant's sole cost and expense.

21. PARKING.

Tenant will be provided two (2) Marina parking access passes free of charge to be used for employee parking while at work. Additional passes can be purchased at the annual parking pass rate. Parking in the Marina is first come, first serve. No reserved employee or patron parking will be provided.

22. GENERAL PROVISIONS

22.1. Exhibits and Addenda. Any exhibits attached to this Lease are a part of and are fully incorporated in this Lease by this reference.

22.2. Non-Waiver of Default. Landlord's waiver of any term, covenant or condition of this Lease shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent default under the same or any other term, covenant or condition. Landlord's acceptance of any sum shall not be deemed to be a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular sum so accepted, regardless of Landlord's knowledge of such preceding default at the time it accepts the sum.

22.3. Joint and Several Obligations

Intentionally omitted.

22.4. Section Titles. The section titles of this Lease are not a part of this Lease and shall have no effect upon its construction or interpretation.

22.5. Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor, including but not limited to Tenant's execution of estoppel certificates and subordination agreements and Tenant's reimbursements to Landlord.

22.6. Successors and Assigns. Subject to the provisions of Section 14 above, the covenants and conditions of this Lease shall apply to and bind the heirs, successors, executors, administrators and assigns of both parties to this Lease.

22.7. Recordation. Neither Landlord nor Tenant shall record this Lease, but a short-form Memorandum of Lease may be recorded at the request of either party.

22.8. Quiet Possession. Provided Tenant pays all sums due under this Lease and observes and performs all of the other covenants, conditions and provisions to be observed and performed by Tenant, Tenant shall have quiet possession of the Premises for the entire Lease Term against any adverse claim of Landlord or any party claiming under Landlord, subject to all the provisions of this Lease.

22.9. Prior Agreements. This Lease contains the full agreement of the parties with respect to any matter covered or mentioned in this Lease. No prior agreements or understandings pertaining to any such matters shall be effective for any purpose. This Lease may be amended or supplemented only by an agreement in writing signed by the parties or their respective successors in interest.

22.10. Inability to Perform. Except as provided in Section 12, this Lease and the parties' obligations under this Lease, including Tenant's obligation to make any payments, shall not be affected or impaired because a party is unable to fulfill any of its obligations, or is delayed in doing so, if such inability or delay is caused by reason of weather, strike, labor troubles, acts of God or any other cause beyond that party's reasonable control.

22.11. Severability. Any provision of this Lease, which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision, and all other provisions shall remain in full force and effect.

22.12. Cumulative Remedies. No remedy or election under this Lease shall be deemed to be exclusive but shall, whenever possible, be cumulative with all other remedies available at law or in equity.

22.13. Choice of Law. This Lease shall be governed by the laws of the State of Washington.

22.14. Attorneys' Fees. In the event any action or proceeding is brought by either party against the other arising out of or in connection with this Lease, each party will be responsible for their own attorney fees, including any appeal.

22.15. Notices. All notices or demands which are required or permitted to be given by either party to the other under this Lease shall be in writing. All notices and demands shall be either personally delivered, sent by courier or fax or sent by United States Mail, registered or certified, postage prepaid, addressed to the address set forth below, or to such other place as a party from time to time may designate by written notice. Any notice sent by United States Mail as provided above shall be deemed to have been received three (3) business days after deposit into the mail, unless sooner received or rejected:

TO LANDLORD AT: c/o City Manager
City of Des Moines
21630 – 11th Ave S., Suite A
Des Moines, WA 98198-6398
Fax No. (206) 870-6540

TO TENANT AT: Ken C. Rogers
DM Harborside, LLC
22516 10th Ave S
Des Moines, WA 98198

22.16. Subordination. Intentionally omitted.

22.17. Attornment. Intentionally omitted.

22.18. Compliance with Environmental Laws. The parties acknowledge that there are certain federal, state and local laws, regulations and guidelines now in effect and that additional laws, regulations and guidelines may hereafter be enacted relating to or affecting the Premises,

concerning the impact on the environment of activities related to construction, land use, the maintenance and operation of structures and the conduct of business. Tenant shall obtain all necessary local, state, and federal approvals prior to any actions that would require a permit. Such permits shall become part of the Lease by reference and all duties and responsibilities incurred by the Tenant under the permits shall be included by reference in Paragraph 8.3, "Tenant's Obligations", of this Lease. Tenant shall also be required to obtain and maintain any other permits that may be required by additional laws, regulations and guidelines that may hereafter be enacted. Tenant shall not cause or permit to be caused any act or practice, by negligence, omission or otherwise, that would adversely affect the environment or do anything or permit anything to be done that would violate any of such laws, regulations or guidelines. Any violation of this covenant shall be an event of material default under this Lease. Tenant shall indemnify and hold Landlord harmless from any and all costs, expenses, claims, losses, damages, fines and penalties, including reasonable attorneys' fees that may in any manner arise out of or be imposed because of Tenant's failure to comply with this covenant. The foregoing shall cover all requirements whether or not foreseeable at the present time and regardless of expense.

22.19. Intentionally omitted.

22.20. Redelivery. Tenant shall redeliver the Premises to Landlord at the end of the Term or upon the earlier termination of this Lease in the same condition in which received or, if altered, then the Premises shall be returned in such altered condition (unless otherwise directed by Landlord under terms of Section 8.4), reasonable wear and tear and damage by casualty excepted. Tenant shall remove all structures, trade fixtures and appliances and equipment which do not become a part of the Premises. Upon Landlord's request, the terms of redelivery shall be satisfied by removing Tenant's structure, capping utility supply lines, drain lines and conduits. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease. Landlord may place and maintain signs in conspicuous places on the Premises for one hundred twenty (120) days prior to the expiration or earlier termination of this Lease advertising the Premises' availability.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day set forth below.

LANDLORD

CITY OF DES MOINES, a Municipal Corporation

APPROVED AS TO FORM:


Des Moines City Attorney

By  _____

Michael Matthias, City Manager

Date: 5-1-18

By Direction of the Des Moines City Council In
Open Public Meeting on March 23, 2017

TENANT

DM Harborside, LLC, a Washington Corporation


By: 
Kenneth C. Rogers, Owner
Date: MAY 1, 2018

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 1st day of MAY, 2018, before the undersigned, a Notary Public in and for the State of Washington personally appeared before me **Michael Matthias**, to me known to be the **City Manager** of the **City of Des Moines**, 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 he was authorized to execute said instrument.

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




Printed name: Vicki C Sheckler
Notary Public in and for the State
of Washington, residing at Des Moines
County: King
My Commission expires: 04/29/2020

STATE OF WASHINGTON

COUNTY OF KING

)
) ss.

On this 1st day of MAY, 2018, before the undersigned, a Notary Public in and for the State of Washington personally appeared before me **Kenneth C. Rogers**, to me known to be the **Owner of DM Harborside, LLC**, a Washington 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 he was authorized to execute said instrument.

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



Vicki C. Sheckler
Printed name: Vicki C. Sheckler
Notary Public in and for the State
of Washington, residing at Des Moines
County: King
My Commission expires: 04/29/2020

EXHIBIT A

The subject property as depicted on drawing:

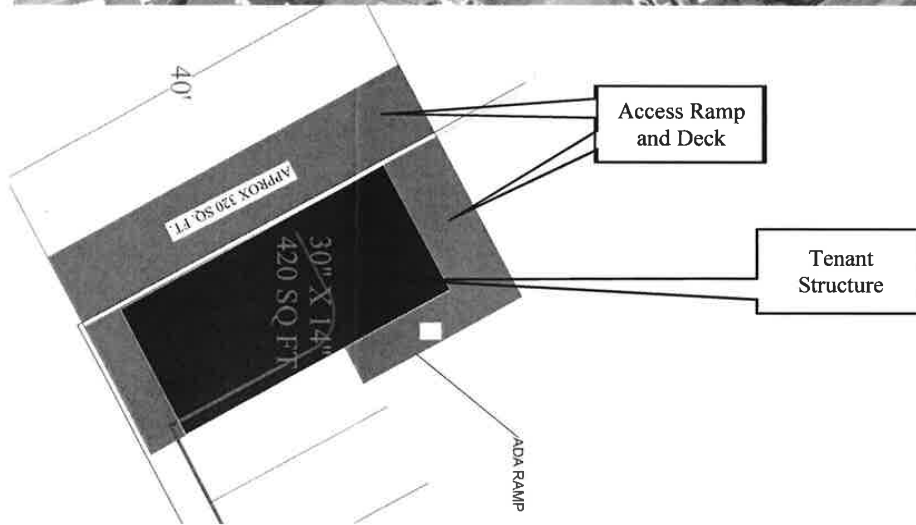
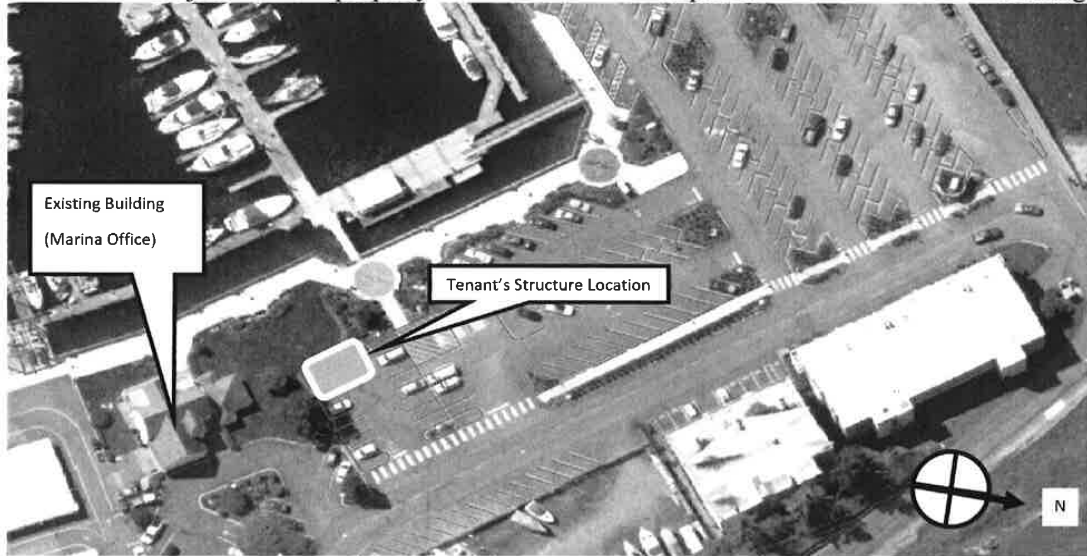


EXHIBIT B

Tenant agrees to pay in amounts as follows:

1. Initial base rent of \$300 per month subject to annual increase as provided in Section 5.
This rent includes costs of electricity and garbage; plus
2. Leasehold tax each month as required by Washington State law; plus
3. Separate monthly/bi-monthly bill for water/sewer utilities.