

OAR 141-082 Rulemaking Questions Received from the Public and Agency Responses



Comments and Questions from Stephen Harkins

First, I would like to make sure I understand the effects of the changes that you have suggested. Our (West Hayden Island Moorage) current lease will end in 2030. If we are renewed, we will get another 15-year lease. In its initial year (2031), our lease will cost 115% of the cost of the last year of our previous lease (\$14,313.07), which is \$16,460.73. Then for the next 14 years our lease cost will increase by 3% per year resulting in a charge of \$24,898.33 in 2045. If we receive a renewal (and I don't see a reason that we wouldn't), the lease cost in the first year (2046) will be \$28,633.08, and then for the next 14 years, the lease will increase by 3% a year, ending that lease period in 2060 with a lease cost of \$43,310. And so on... Do I correctly understand the proposal?

As you see, the \$150,000 cap through 2040 does not come into play for us. Our lease will be only \$21,477.52 in 2040. However, the \$175,000 cap will come into play for us in 2097. some 66 years after our first renewal using this new system. Is this supposed to be how this system works? That is, is the \$175,000 cap going to stay at that level for 66 years? If not, could you tell me what is envisioned for the \$175,000 cap as we go forward?

Also, it would be great if we could take a step back, and you could tell me why is there a \$175,000 cap at all? Given this cap (and whatever happens to it as we go forward), what role does the target lease amount play? That is, for us, the target lease amount was calculated to be \$218,656.24. Are we expected to get there some day? If so, how? For my neighboring floating home moorage, this question is even more pressing, given that their target lease amount was initially calculated to be over \$1.45 million.

My final question has to do with modifiers. In your proposal, you removed the modifier for location, which is great because it eliminates a source of "double counting" for moorages that are already paying for their urban locations with high per square foot charges. However, our floating home moorage apparently still has the 1% charge for commercial. Our moorage, and many other floating home moorages are run by HOAs; that is, they are run by the owners. We pay monthly HOA fees that are spent on the upkeep and maintenance of the moorage. The great majority of the work done here is done by us. I'm hard pressed to see why we should be charged as though we are a money-making business. Could you clarify this please?

Agency Response:

Regarding your first paragraph, I would make one correction. Depending on the adjacent value of the property, the change in renewal may be less than 115% of the amount of the last annual rent charged. The 15% increase mentioned in the proposed rule section is a cap, meaning annual rents may be less than 115% of the amount of the last annual rent charged. Regarding your other points,

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you are correct. Your lease would be renewed for 15 years, and the rent escalation is set at 3% per year.

The maximum allowed rent is intended to limit the exceptionally high land values or large areas from influencing any one lease's annual rent. Please note, the annual rent calculated using the proposed formula is not a "target". The Department, as with all of the administrative rules the Department oversees, periodically reviews whether the rules are meeting the Department's goals and document what if any, changes are required to address any Department or public concerns.

Regarding the use of a commercial modifier, the Department is determining if a "non-commercial" designation is more appropriate for the activities of an HOA. In addition, the modifiers are limited to no more than a .5% increase or a .75% decrease.

Written Comments and Questions from Ron Schmidt

Given my 30 plus years of commercial insurance and risk management plus my personal experience in helping DSL handle the massive insurance changes back in 2010-12, I ask for your help in clarifying exactly what the financial assurances document will do as compared to our current requirements.

The reason I ask is that, if the intent is to require either insurance or bonds to cover all aspects of the lease, it is not available. Will there be a schedule of required coverages as seen in "Schedule B" of the lease and will those requirement increase? If not, is the financial assurance document necessary?

Is there and will there be changes to any internal documents which will guide you on this such at the "Insurance Requirements Guidance" sent to Land Management Division from Jim Paul June 8, 2011?

I am volunteering my time and expertise to help all, I will seek advice from professionals in the insurance industry and feed the information back to you and members of the RAC.

While I have a copy of my own moorage lease, it renewed in 2017. Have there been any changes to the lease since then? Could you send me a copy of the current template being used?

Agency Response:

In your email, you mention a financial assurance document separate from the "Schedule B" or what we term an Exhibit B. This is not a Department document, but rather a general term that includes insurance, surety bonds, and certificate of deposits, which are tools used by the Department as proof that the Department is properly indemnified from the lessees's authorized activity. The Department still intends to provide and Exhibit B with each lease, which provides the lessee with a list of required coverages and their limits.

The Department has been working with DAS RM for over a year on updating the insurance guidance document you referenced. As the guidance has not gone through final management approval, the Department can't speak about specific changes but would be happy to provide, after management approval, an early draft of the updates and listen to any comments or recommendations you may have.

There have been some minor updates to the Department's lease template since 2017, please see the attached template. Substantive changes to terms and conditions require review and approval from the Department of Justice.

Attachment: Please do not use for submission.

**STATE OF OREGON
DEPARTMENT OF STATE LANDS**

SUBMERGED AND SUBMERSIBLE LAND LEASE AGREEMENT

APP No-ML

THIS SUBMERGED AND SUBMERSIBLE LAND LEASE AGREEMENT (this “Agreement”) is made on {{date1_es_signer2:date:format(date,"m d, yyyy")}}, (the “Effective Date”), by and between the State of Oregon, by and through its Department of State Lands (“State”), and Lessee Name, a/an Individual/State Corporation (“Lessee”). State and Lessee(s) are each a “Party” and together the “Parties.”

**STATE OF OREGON
DEPARTMENT OF STATE LANDS**

**AMENDED AND RESTATED
SUBMERGED AND SUBMERSIBLE LAND LEASE AGREEMENT**

_____-ML

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This Agreement is an amendment to and restatement of that certain Submerged and Submersible Land Lease _____-ML, dated Month day, Year, by and between State and Lessee.

**STATE OF OREGON
DEPARTMENT OF STATE LANDS**

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1. PREMISES

On the terms and conditions set forth in this Agreement, State hereby leases to Lessee certain lands situated in County Name County (the “Premises”), more fully described as follows and as shown on Exhibit A:

[Insert legal description of Premises]

Total number of acres: 12 acres, more or less.

This description is used to establish the approximate location and extent of the area subject to this Department of State Lands authorized use and was not prepared by a licensed surveyor. All locations, bearings, and distances were developed in the Oregon Coordinate Reference System Standard; Oregon Statewide Lambert Conformal Conic, NAD 1983, International Feet, GRS 1980 Spheroid.

2. TERM

2.1 Term. The term of this Agreement is a period of 15 years (the “Initial Term”), commencing on Effective Date (the “Commencement Date”) and expiring on End Date, unless terminated earlier as provided in this Agreement. As used in this Agreement, “Term” means the Initial Term or any Renewal Term (as defined in Section 2.2 below).

2.2 Renewal Terms. Lessee may apply to renew this Agreement for consecutive fifteen (15) year terms (each a “Renewal Term”) by submitting a completed lease renewal application form to State at least one hundred eighty (180) days prior to the expiration of the then-current Term. Upon timely receipt of the application, State shall renew this Agreement unless:

2.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Agreement, the applicable statutes or Oregon Administrative Rules (“OARs”); or

2.2.2 State determines that the renewal of this Agreement for all or any portion of the Premises would be contrary to federal, state, or local law, or would be inconsistent with the policies set forth in OAR 141-082-0260.

2.3 Notice of Intent Not to Renew. Except as otherwise provided in this Agreement, State shall provide written notice to Lessee at least twenty-four (24) months in advance if State intends not to renew this Agreement for all or any portion of the Premises. If State determines not to renew this Agreement, but less than twenty-four (24) months remain in the Term of this Agreement, State shall, at Lessee’s request, extend the Term of this Agreement to complete the twenty-four (24) month notice period, within which time Lessee shall vacate that portion of the Premises for which this Agreement is not being renewed, and relocate any sublessees (as may be allowed pursuant to Section 7 below) in an orderly fashion.

2.4 Holdover. If Lessee does not vacate the Premises at the expiration or earlier termination of this Agreement, State may treat Lessee as a tenant from month to month,

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subject to all of the provisions of this Agreement except the provisions for term, renewal, and Rent. State may unilaterally establish a new Rent amount for the month-to-month tenancy, payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this Section 2.4, the tenancy will be terminable at the end of any monthly rental period upon notice from State given at least thirty (30) days prior to the termination date specified in the notice.

3. RENT; OTHER ASSESSMENTS

3.1 Initial Rent. The annual rental payment to be paid by Lessee to State (the "Rent") for the first year of this Agreement is \$Dollar Amount, based on the following rate: Flat Rate. State hereby acknowledges receipt of the first year's Rent.

	Use Class	Area (square ft.)	Rate Choice	Annual Rent
(a)	Commercial Marina/Moorage	square feet	Flat Rate, Minimum Applies	\$
(b)	Commercial Marina/Moorage	square feet	Flat Rate, Minimum Applies	\$
			TOTAL	\$

3.2 Rent Adjustment. After the first year of the Initial Term, the Rent will be adjusted annually in accordance with the provisions of OAR 141-082-0305 in effect at the time. Each Rent payment is due on the anniversary of the Commencement Date.

3.3 Address for Rent Payments. Unless State provides notice of a change in address pursuant to the notice requirements of Section 10.2 below, Lessee shall deliver all Rent and other payments due hereunder to State at the address set forth beneath State's signature on this Agreement.

3.4 Assessments. Lessee shall pay all taxes and assessments that are levied against the Premises, whether such taxes or assessments have been levied in the past against the Premises or State by the assessing agency.

3.5 Late Charges and Interest. If Lessee has not made full payment of amounts due within twenty (20) days of the date payment is due, Lessee shall pay an additional charge equal to five percent (5%) of the amount of the late Rent or other charge. In addition, all amounts due and owing under this Agreement, including late charges, shall bear interest at the lower of: (1) the highest interest rate allowable by law; or (2) 12% per year.

4. USE

4.1 Authorized Use. This Agreement grants to Lessee the right to use the Premises for the specific purpose(s) described below in accordance with the terms and conditions of this Agreement, applicable federal, state, and local laws (including local land use planning and zoning ordinances) and the OARs.

Fully Describe & list uses authorized

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4.1A OSMB Annual Boat Report. Check if applicable:

(applicable only when use type under the Agreement is designated as *commercial marina/moorage* and Section 4.1A is selected)

4.1A.1 On or before February 1 of every year during the Term of this Agreement, Lessee shall deliver to the Oregon State Marine Board (“OSMB”) a completed “OSMB Annual Boat Report” in the form shown on Exhibit D (or in a document that includes all of the information required in such form). The completed OSMB Annual Boat Report shall provide the required information for each and every boat that, during December of the previous calendar year, was:

moored or used on the Premises; or

related to the use of the Premises for commercial marina/moorage (including any boat owned, used, leased, or operated by Lessee).

4.1A.2 A failure to timely deliver a completed OSMB Annual Boat Report to OSMB as required by this Section 4.1A may constitute a Lessee default under this Agreement, as set forth in Section 9.1.2 below.

4.2 Superfund Site. Check if applicable:

4.2.1 Lessee understands and acknowledges that the Premises are located within the _____ Superfund Site (the “Superfund Site”). The authorized use of the Premises as allowed under Section 4.1 above does not include any activities or operations that unreasonably interfere with the performance of Remedial Work on the Superfund Site, including the area of the Superfund Site within the Premises, pursuant to an order issued by the United States Environmental Protection Agency (EPA) or the Oregon Department of Environmental Quality (“DEQ”), whether issued to Lessee or another party. As used in this Section 4.2, “Remedial Work” includes work related to investigation, removal, and remedial action for the Superfund Site.

4.2.2 Lessee shall conduct all operations on the Premises in a manner that does not interfere with the performance of the Remedial Work, and shall comply with any obligations of a party in control of the Remedial Work Area, including, without limitation, those related to the provision of access for the Remedial Work.

4.3 Restrictions on Use. Lessee shall:

4.3.1 comply with all applicable federal, state, and local laws and regulations affecting the Premises and its use, including local comprehensive land use planning and zoning ordinances, and correct at Lessee’s own expense any failure of compliance created through Lessee’s fault or by reason of Lessee’s use;

4.3.2 dispose of all waste in a proper manner and not allow debris, garbage, or other refuse to accumulate within the Premises, and, if Lessee allows debris,

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garbage, or other refuse to accumulate within the Premises, allow State to remove the debris, garbage, and other refuse, and collect the cost of such removal from Lessee;

4.3.3 not cut, destroy, or remove, or permit to be cut, destroyed, or removed, any vegetation that may be upon the Premises except with written permission of State, and promptly report to State the cutting or removal of vegetation by other persons;

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

4.3.5 maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements (each an "Improvement") in a good state of repair; and

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

4.4 Condition of Premises and Improvements. Lessee represents that it has inspected the Premises and Improvements, if any, and accepts the Premises and all Improvements in their present condition, AS IS, as of the Effective Date. State has made no oral or written representations concerning the condition of the Premises or its Improvements, if any, nor their fitness or suitability for any purpose.,

4.5 Improvements by Lessee. Lessee may not construct or place upon the Premises any Improvement that exceeds \$15,000 in cost or value unless Lessee has first obtained the prior written authorization of State, or the Improvement is exempt under OAR 141-082-0265. All Improvements shall be consistent with the authorized use(s) of this Agreement stated in Section 4.1 above and in compliance with all applicable laws, regulations, and ordinances as stated in Section 4.3.1 above. State shall not unreasonably withhold or delay its approval for Improvements.

4.6 Removal of Unauthorized Improvements. Lessee shall remove all unauthorized Improvements from the Premises upon receiving notice from State, unless State elects to remove the Improvements at Lessee's cost and expense.

4.7 Removal of Authorized Improvements. Lessee shall remove all authorized Improvements within ninety (90) days after the expiration or earlier termination of this Agreement or modification of this Agreement under Section 5.2 below, unless otherwise agreed by the Parties or the Improvement is exempt under OAR 141-082-0265. Lessee is responsible for any damage done to the Premises as a result of the removal of any Improvement. Any Improvement remaining on the Premises after the ninety (90) days shall, at the option of State, become the property of State, unless otherwise agreed by the Parties.

4.8 Liens. With the exception of mortgages or other security interests allowed by State under Section 7 below, Lessee shall immediately cause to be discharged any lien or other charge placed on the Premises or its Improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Agreement if Lessee fails to

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discharge any lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten (10) days' notice to do so by State. Lessee shall pay and indemnify State for all costs, damages, or charges of whatsoever nature, including attorneys' fees, necessary to discharge such liens or charges whether the costs, damages, or charges are incurred prior or subsequent to any termination of this Agreement.

4.9 Indemnification. Lessee shall defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses, including expert witness fees and costs and attorneys' fees in an administrative proceeding, at trial, or on appeal ("Claims") arising from or attributable, in whole or in part, to this Agreement or any operations conducted or allowed by Lessee on the Premises. As used in this Section 4.9 only, "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents. Lessee shall have control of the defense and settlement of any Claim; however, neither Lessee nor any attorney engaged by Lessee shall defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of State, without the approval of the Attorney General, nor shall Lessee settle any Claim on behalf of State without the approval of the Attorney General. State may, at its election and expense, assume its own defense and settlement in the event that State determines that Lessee is prohibited from defending State, that Lessee is not adequately defending State's interests, or that an important governmental principle is at issue and State desires to assume its own defense.

4.10 Waste-Water Disposal. In addition to any other applicable laws and regulations, Lessee shall obtain any permits required by state or local authorities and shall comply with DEQ and OSMB requirements for sewage collection and waste-water disposal for boats and floating structures.

4.11 Hazardous Substances.

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

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

4.11.3 If any Hazardous Substance is released, and the release arises from or is attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Premises, Lessee shall promptly and fully remediate the release in accordance with state and federal regulations and requirements. If Lessee fails

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to so remediate, State may remove and remediate any release of a Hazardous Substance on or from the Premises or attributable to operations or activities conducted or allowed by Lessee on the Premises and collect the cost of removal or remediation from Lessee either as additional Rent or as damages.

4.11.4 In addition to any duty to indemnify specified elsewhere in this Agreement, Lessee shall indemnify State to the fullest extent allowed by Oregon law against any claim or costs arising from or related to a release of a Hazardous Substance arising from or attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Premises.

4.12 Weed Control. Lessee shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the Premises as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests, or diseases, or as may be authorized or directed by State.

4.13 Nondiscrimination. The Premises shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.

5. MODIFICATION OF PREMISES SIZE OR USE

5.1 Change of Size or Use of Premises. Lessee may, using a form provided by State, request that State amend this Agreement to expand or reduce the size, or change the authorized use, of the Premises. No such amendment will be effective unless authorized in writing by State. State shall process and review requests to amend this Agreement in the same manner as a new lease application.

5.2 Special Conditions Applicable to Reductions in Premises Size. This Agreement may be amended to reduce the Premises size only if the portion of the Premises to be removed from this Agreement does not contain any Improvement. If the amendment results in a reduction of Rent due under this Agreement, the reduction will be effective commencing on the anniversary of the Commencement Date that falls at least twelve (12) months after the later of: (1) the date of the reduction in the Premises size; or (2) the date on which the amendment is fully executed.

5.3 Lessee Liable for Violations. Notwithstanding any reduction in the Premises size under this Section 5, Lessee shall remain liable for any violation of Section 4.9 or 4.10 above occurring on lands removed from the Premises prior to the amendment removing such lands.

6. RESERVATIONS BY STATE

6.1 Entry; Lessee Records. State may enter the Premises at all reasonable times in order to inspect and manage State's interest in the Premises, and to evaluate and ensure Lessee's compliance with the terms and conditions of this Agreement. Additionally, State may examine pertinent records of Lessee for the purpose of ensuring compliance with this Agreement.

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

6.3 Easements. State reserves the right at any time to grant easements across the Premises for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, along with the right of ingress and egress for these purposes, subject to the inclusion in any such grant of easement of a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in this Agreement.

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

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

6.5 Other. State reserves all other rights not expressly granted to Lessee under this Agreement.

7. ASSIGNMENTS AND SUBLETTING

7.1 Assignments and Subleases.

7.1.1 Except as provided in Section 7.2 below, Lessee may not assign this Agreement, sublease the Premises or any portion of the Premises, or enter into any third-party agreement respecting this Agreement or the Premises, without first obtaining the prior written consent of State pursuant to the requirements of the applicable OARs. Requests shall be in writing using an application form prescribed by State, and delivered to State at least thirty (30) days prior to the proposed effective date of the sublease or assignment. State shall make a good faith effort to complete its review of Lessee's application within thirty (30) days following receipt. If the application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications may be extended and the proposed sublease or assignment may be delayed pending the completion of such review.

7.1.2 State reserves the right to condition its consent to an assignment or sublease as State deems reasonably prudent, including the right to require

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changes to the terms of this Agreement. Each assignee, sublessee, and third-party interest will be required to comply with all of Lessee's obligations under this Agreement, and the applicable OARs. Lessee shall remain liable for the performance of all obligations under this Agreement unless State's written consent expressly releases Lessee from further liability.

7.1.3 For the purposes of this Section 7.1.3, if Lessee is a corporation, partnership, or limited liability company, the transfer of any corporate stock or partnership or membership interest (including by operation of law) will be deemed an assignment subject to the provisions of this Section 7.3.1 if the result of the transfer is a change of management control or controlling interest in Lessee.

7.1.4 Lessee may not grant a mortgage or security interest in this Agreement without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the mortgagee or security interest holder shall require the prior written approval of State.

7.2 Permitted Assignments and Subleases. Notwithstanding the provisions of Section 7.1 above, the following assignments, mortgages, and security interests, and subleases of Lessee's interest in the Premises are permitted and written notice to State is not required:

7.2.1 subleases of portions of Lessee's interest in the Premises in the ordinary course of Lessee's business for the authorized use pursuant to Section 4.1 above;

7.2.2 the sublease of the entire Premises for a term that is less than twelve (12) months, for the authorized use pursuant to Section 4.1 above; or

7.2.3 the transfer of Lessee's interest in this Agreement to a surviving spouse or immediate family member following the death of Lessee; except that, any other transfer of ownership following the death of Lessee is considered an assignment requiring State's approval.

8. INSURANCE; BONDS

8.1 Insurance. During the Term of this Agreement, Lessee shall maintain the insurance coverage required by Exhibit B.

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

8.2 Bond. Lessee shall furnish to State a surety bond, in the amount and on the terms set forth on Exhibit C.

9. DEFAULT

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9.1 Default. The following are events of default under this Agreement:

9.1.1 Failure of Lessee to pay any Rent, tax, reimbursement or other charge or payment due under this Agreement within twenty (20) days after the date payment is due. For the purposes of this Section 9.1.1, if the due date for payment is not otherwise stated in this Agreement or otherwise defined in statute or the OARs, payment is due on the date set forth in the notice from State to Lessee informing Lessee of its obligation to make such payment.

9.1.2 Failure to comply with non-payment-related term of condition of this Agreement within thirty (30) days after notice by State specifying the nature of the deficiency, or, in the event of an emergency, within the time specified by State to resolve the emergency. Upon timely request from Lessee, State may, in its reasonable discretion, permit the deadline for curing noncompliance to be extended if it finds that: (a) the noncompliance cannot reasonably be cured within the 30-day period; (b) the interests of State will not be harmed by an extension; (c) the noncompliance was not due to the willful act or gross negligence of Lessee; and (d) State and Lessee agree upon a written plan and timeline for curing the noncompliance.

9.1.3 Any of the following:

- (a) insolvency of Lessee;
- (b) the filing by Lessee of a voluntary petition in bankruptcy;
- (c) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee;
- (d) the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; or
- (e) attachment of or the levying of execution on the Premises interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days.

If Lessee consists of two or more individuals or business entities, the events of default specified in this Section 9.1 apply to each individual or entity unless within ten (10) days after an event of default occurs, the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If this Agreement has been assigned under Section 7 above, the events of default specified in this Section 9.1 apply only with respect to the one then exercising the rights of Lessee under this Agreement.

9.1.4 Notwithstanding the foregoing, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or the discharge of its Constitutional obligations with respect to the land, State may declare an immediate default without any right of Lessee to cure the deficiency.

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9.2 Termination of Occupancy Upon Default. State may terminate Lessee's right to occupy the Premises for any default by Lessee that remains uncured past the time provided in Section 9.1 above. State shall exercise its right to terminate Lessee's occupancy under this Section 9.2 by providing notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under this Agreement upon the date provided in the notice. State may recover from Lessee all costs arising out of State's re-entry and re-letting the Premises. If State and Lessee agree to terminate this Agreement, State may recover the amount of unpaid rent that otherwise would have been required to be paid under this Agreement from the date of default until a new lease has been secured or, if State and Lessee do not agree to terminate this Agreement and State is unable to secure another lessee for the Premises, until such time as this Agreement expires. Lessee shall dispose of all Improvements as specified in Section 4.6 or 4.7 above. If Lessee owns a floating home and has placed the home on the Premises as an authorized use pursuant to Section 4.1 above, the lease termination provisions of ORS Chapter 90 shall apply to the extent the provisions of this Agreement are inconsistent therewith.

9.3 State's Right to Cure Defaults.

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

9.3.2 Notwithstanding Section 9.3.1 above, but subject to ORS Chapter 90 if applicable, if any violation of a term or condition of this Agreement, including, without limitation, use of the Premises in a manner not permitted under this Agreement, is causing or threatens to cause personal injury or damage to the Premises or other property, or if damage to the Premises arises from some other cause, State may immediately enter upon the Premises and take such action as it deems necessary to stop the use or mitigate the injury or damage. If the injury or damage is due to a violation of the terms or conditions of this Agreement, Lessee will be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate the injury or damage. State, at its option, may send notice to Lessee of the violation and, upon receipt of the notice, Lessee shall immediately cease the violation and repair the injury or correct all damage caused by the violation. State's failure to provide notice of a violation may not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

9.4 Right to Sue More Than Once. State may sue periodically to recover damages accrued to date, and no action for damages shall bar later actions for damages subsequently accruing.

9.5 Remedies Cumulative. The remedies contained in this Agreement are in addition to, and do not exclude, any other remedy available at law or in equity, and the exercise by either Party of any one or more of its remedies does not preclude the exercise by it at the same or different times of any other remedies for the same default or breach by the other Party.

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10. **NOTICES**

10.1 **Addresses.** A Party's address means the address set forth below that Party's signature on this Agreement. State may notify Lessee of a different address for payments of any Rent or other amounts due to State under this Agreement. Any notices, demands, deliveries, or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 10.2 below to a Party's address, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 10.2 below.

10.2 **Delivery.**

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Fax	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or fax shall be deemed sent the following business day)
US Mail (postage prepaid, registered, or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday, or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

11. **MISCELLANEOUS**

11.1 **Time is of the Essence.** Time is of the essence in relation to the Parties' performance of any and all of their obligations under this Agreement.

11.2 **Calculation of Days.** Any reference in this Agreement to "days" shall mean calendar days, unless specified as "business days." A business day is any day that is not a Saturday, Sunday, or a federal or State of Oregon holiday.

11.3 **Consent.** Unless otherwise specifically stated herein, any consent by a Party shall not be unreasonably withheld, conditioned or delayed.

11.4 **Integration.** This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. The Parties have no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified herein.

11.5 **Amendments.** This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.6 **No Waiver of Performance.** No waiver by a Party of performance of any

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provision of this Agreement by the other Party shall be deemed a waiver of nor prejudice the other Party's right to otherwise require performance of the same provision, or any other provision.

11.7 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

11.8 Counterparts. This Agreement and any amendments hereto may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

11.9 Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim or action between State (or any other agency or department of the State of Oregon) and Lessee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. In no event shall this Section 11.9 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

11.10 Force Majeure. A Party shall not be liable for any delay in performance under this Agreement, other than payment of any money to the other Party, if such delay is caused by strikes, lockouts, riots, floods, explosions, earthquakes, tornados, storms, wars, acts of public enemies, insurrections, acts of God, shortages of labor or materials, or any other such causes not within the control of the first Party.

11.11 No Partnership. State is not a partner nor in a joint venture with Lessee in connection with any activities relating to this Agreement or the Premises, and State has no obligation for Lessee's debts or other liabilities.

11.12 Binding on Successors. This Agreement is binding on and shall inure to the benefit of the successors and assigns of the Parties, but nothing in this Section 11.12 may be construed as a consent by State to any disposition or transfer of this Agreement or any interest in it by Lessee except as otherwise expressly provided in this Agreement.

11.13 Exhibits. The Exhibits listed below are incorporated as part of this Agreement: If applicable

- Exhibit A: Premises
- Exhibit B: Insurance Requirements
- Exhibit C: Bond Requirements

Attachment: Please do not use for submission.

Exhibit D: OSMB Annual Boat Report

Template Approved by DOJ on October 14, 2021

[remainder of page intentionally left blank]

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Each person signing this Agreement below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

STATE:

The State of Oregon, by and through its Department of State Lands

Signature: {{sig_es :signer2:signature}}

Operations Manager
Department of State Lands

Address:

Street: 775 Summer St NE Ste 100
City/State/Zip: Salem OR 97301-1279
Phone: (503) 986-5200
ATTN: Proprietary Coordinator
Email: support.services@dsl.oregon.gov

Attachment: Please do not use for submission.

LESSEE: Lessee Name, a/an Individual/State Corporation

Signature: {{Sign es :signer1:signature}}

Full Name: {{*Name es :signer1:fullname}}

Title (if applicable): {{OTtl es :signer1:optional}}

Address:

Street: {{*LesseeAddress es :signer1}}

City/State/Zip: {{*CityStateZip es :signer1}}

Email: {{Em es :signer1:email}}

Attachment: Please do not use for submission.

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

By signature on this Agreement for Lessee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Lessee and that Lessee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

Lessee:

Signature: {{Sign es :signer1:signature}}

Full Name: {{*Name es :signer1:fullname}}

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EXHIBIT A

Premises

Attachment: Please do not use for submission.

EXHIBIT B

Insurance Requirements

(Any capitalized terms used but not defined in this Exhibit shall have the same meaning as in the Agreement to which this Exhibit is attached.)

During the Term of the Agreement, Lessee shall maintain in force, at its own cost and expense and in accordance with Section 5 below, each insurance item noted below,

1. Workers' Compensation

(Required if Lessee has one or more workers, as defined by ORS 656.027)

All employers, including Lessee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Lessee shall require and ensure that each of its sublessees (if permitted) complies with these requirements.

2. Commercial/General Liability Coverage

- Required by State**
- Not required by State**

Commercial/General Liability coverage, insuring against claims for bodily injury, death, and property damage. Coverage shall include contractual liability coverage for the indemnity provided under the Agreement. The commercial/general liability insurance coverages required under the Agreement shall include the State of Oregon and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds (See Section 5 below).

Lessee shall provide proof of liability or commercial general liability insurance in not less than the following amounts:

Bodily Injury/Death:

\$1,000,000/\$2,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

\$2,000,000/\$4,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

\$ _____

3. Marine Protection and Indemnity Coverage

Attachment: Please do not use for submission.

- Required by State**
 Not required by State

Lessee shall obtain, at Lessee's expense, and keep in effect during the Term of the Agreement, marine protection and indemnity coverage. Shall not be less than \$_____.

4. Pollution Liability

- Required by State**
 Not required by State

Lessee shall obtain at Lessee's expense, and shall keep in effect during the Term of the Agreement, pollution liability insurance covering Lessee's liability for bodily injury, property damage, and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Premises. Shall not be less than \$_____

5. General Requirements

(a) "Tail" Coverage. If any of the required liability insurance is on a "claims made" basis, Lessee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Agreement, for a minimum of twenty-four (24) months following the termination or expiration of the Agreement.

(b) Certificates of Insurance. As evidence of the insurance coverages required by the Agreement, Lessee shall furnish acceptable insurance certificates to State prior to commencing any work to be performed under the Agreement. The certificate shall specify all of the parties who are additional insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to State. Lessee shall pay for all deductibles, self-insured retention, and self-insurance.

(c) Additional Insureds. Any coverage required by this Exhibit, except for Workers' Compensation, shall include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds, but only with respect to Lessee's activities to be performed under the Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

(d) Change in coverage or cancellation. Lessee shall notify Lessor when a change in coverage or cancellation occurs. Lessee shall provide Lessor copies of new coverage upon effect of change. Lessee shall maintain the required insurance coverage over the Term of the Agreement.

Attachment: Please do not use for submission.

EXHIBIT C

**Bond Requirements
(if applicable)**

Attachment: Please do not use for submission.

EXHIBIT D

(if applicable)