

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE WHARF, INC. )  
t/a THE WHARF, )  
 )  
BRW, INC. )  
t/a CAPTAIN WHITE SEAFOOD CITY, )  
 )  
and )  
 )  
SALT WATER SEAFOOD, INC. )  
t/a SALT WATER )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE DISTRICT OF COLUMBIA, )  
 )  
HOFFMAN-MADISON )  
WATERFRONT, LLC, )  
 )  
and )  
 )  
THE WHARF HORIZONTAL )  
REIT LEASEHOLDER, LLC, )  
 )  
Defendants. )

Case No: 1:15-cv-01198-CKK

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs The Wharf, Inc., BRW, Inc., and Salt Water Seafood, Inc. (collectively, "Plaintiffs"), through undersigned counsel, respectfully move this Court for entry of a preliminary injunction against Defendants Hoffman-Madison Waterfront, LLC and the Wharf Horizontal REIT Leaseholder, LLC (collectively, "Developer Defendants"). This motion is necessary in order to protect Plaintiffs' rights during the pendency of this litigation, and if this motion is not granted, then Developer Defendants' actions may force Plaintiffs out-of-business before this Court can adjudicate this case. Specifically, Developer Defendants have already taken actions that violate Plaintiffs' lease agreements and which have caused substantial harm to



Plaintiffs' business. Developer Defendants have also provided plans to take further actions that violate Plaintiffs' lease agreements which, if allowed to occur, will result in irreparable harm. As a result, Plaintiffs seek an injunction prohibiting Developer Defendants from any further violations of the lease agreements. Specifically, Plaintiffs should be enjoined from:

1. entering the Plaintiffs' leased property, including the Common Area, as defined by their leases, to locate any temporary or permanent structures or to conduct construction activities of any kind without the express, written consent of a majority of the Tenant Committee and in advance of completing the improvements required in the lease agreements;
2. further blocking, altering, or eliminating any entrances to or exits from Plaintiffs' leased property including the Common Area, as defined in the relevant leases;
3. creating or enforcing any regulations or exercising control over any portion of the Municipal Fish Market parking lot; and
4. any further action that interferes with Plaintiffs' rights to quiet enjoyment of the property under the lease agreements including
  - a. any attempt to move forward with evictions of Plaintiffs for any of the reasons stated in the two June 25, 2015 eviction letters sent to Plaintiffs by Developer Defendants; and
  - b. blocking, altering, eliminating, or making use of the parking spaces located at Municipal Fish Market parking lot for construction vehicles or construction employee parking.

In addition, further proceedings in the state court matters Wharf Horizontal REIT Leasehold, LLC c/o PN Hoffman v. W.D. Inc., 2015 LTB 018958 (filed Aug. 6, 2015) and Wharf



Horizontal REIT Leasehold, LLC c/o PN Hoffman v. The Wharf, Inc., 2015 LTB 018957 (filed Aug. 6, 2015) should be enjoined in aid of this Court's jurisdiction.

The facts and legal arguments in support of this Motion are set forth in the accompanying Memorandum and Points of Authorities. Pursuant to Local Rule 7(m) of the United States District Court for the District of Columbia, counsel for Plaintiffs conferred with counsel for Defendants and Defendants do not consent to the relief sought.

Dated: August 12, 2015

Respectfully submitted,

/s/Wendell Taylor

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**



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## INTRODUCTION

For over two hundred years, the District of Columbia's Municipal Fish Market (the "Municipal Fish Market") has operated in Southwest Washington, D.C.<sup>1</sup> For nearly 45 years, Plaintiffs have run businesses at the Municipal Fish Market. Recently, Defendants Hoffman-Madison Waterfront, LLC and Wharf Horizontal REIT Leaseholder, LLC (collectively the "Developer Defendants") came in with a plan to bulldoze the land adjacent to the Municipal Fish Market to build condominiums and retail establishments. But they were supposed to leave the Municipal Fish Market—a historic institution nearly as old as this country itself—alone.

They did not. Starting in 2014, the Developer Defendants began to run roughshod over the Municipal Fish Market. They embarked upon a pattern of harassment and illegal conduct in hopes of running Plaintiffs, who operate three businesses on the Municipal Fish Market, out of business so that they could "annex" the Municipal Fish Market into their development. This conduct involves repeated violations of Plaintiffs' lease agreements,<sup>2</sup> including building structures to impede customers' access to Plaintiffs' businesses, occupying large portions of the Municipal Fish Market parking lot for themselves, and having police ticket and tow Plaintiffs' vehicles from Plaintiffs' own parking lot. Further, the Developer Defendants sent wrongful eviction notices to Plaintiffs, including a notice of eviction to one of the Plaintiffs on the grounds that the Developer Defendants could not find the relevant lease. Because of the Developer

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<sup>1</sup> Tara Bahrapour, On D.C. Waterfront, a Feast for the Senses, Wash. Post (Aug. 30, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/29/AR2005082902005.html>. "[C]ountless D.C., Maryland, and Virginia residents . . . make regular pilgrimages to the Municipal Fish Market, a clutch of family-owned barges docked around a parking lot at the end of the Maine Avenue wharf in Southwest Washington." *Id.*

<sup>2</sup> These years-old lease agreements were originally between Plaintiffs and the District of Columbia. Subsequently, the Developer Defendants assumed from the District the lease agreements and the attendant obligations.



Defendants' actions, Plaintiffs' customers frequent the Municipal Fish Market less and Plaintiffs' vendors refuse to deliver necessary product.

The Developer Defendants have made clear that they are not done. If not enjoined, the Developer Defendants have public plans to build additional, large-scale structures on Plaintiffs' leased property. Worse, the Developer Defendants are going to great lengths to pursue the wrongful eviction of Plaintiffs, even perverting this Court's Local Rules in the process.<sup>3</sup> These brazen actions will result in the closure of Plaintiffs' longstanding businesses and, ultimately, the irreversible degradation of the Municipal Fish Market itself. As a result, Plaintiffs respectfully request that the Court enter a preliminary injunction ordering the Developer Defendants not to engage in any further violations of the lease agreements and to stop their wrongful eviction efforts while this matter is pending.

## STATEMENT OF FACTS

### I. The Parties<sup>4</sup>

Plaintiffs are three family-run businesses located at the Municipal Fish Market. P. White Decl., Ex. A at ¶¶ 3, 5, 6. They are owned by fish market operators who have been on-site for nearly 45 years. Id. ¶ 1. Plaintiffs employ dozens of employees at the Municipal Fish Market. Id. ¶ 6. Plaintiffs operate their businesses on leased premises under long-term leases that they entered into with the District of Columbia (the "District"). Id. ¶¶ 2, 3, 5.

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<sup>3</sup> On August 5, 2015, pursuant to Local Rule 7(m), Plaintiffs called the Developer Defendants to meet and confer regarding this motion and, at the Developer Defendants' request, provided the text of the proposed injunction for their consideration. The Developer Defendants asked for time to review the text and determine whether to consent. See Aug. 5 Email from J. Lasken to M. McNamara (transmitting text of proposed injunction pursuant to such request), Ex. Z. The next day, the Developer Defendants hastily filed state court eviction cases against Plaintiffs and a motion to dismiss in this Court. Later that same day, the Developer Defendants notified Plaintiffs that they did not consent to the requested injunction. Ex. AA.

<sup>4</sup> The District is also a party to this litigation, but Plaintiffs seek only just compensation from the District under the Fifth Amendment of the United States Constitution. Accordingly, Plaintiffs do not seek a preliminary injunction against the District.



Defendant Hoffman-Madison Waterfront was selected by the District in 2006 to be the primary developer of the \$2 billion Southwest Waterfront redevelopment project. Sept. 29, 2006 Hoffman-Struever Waterfront Press Release, Ex. B. The redevelopment plans call for construction of numerous retail shops, residential and office buildings, hotels, and parks along the 27 acres of land stretching between the Municipal Fish Market and Fort McNair (the “Redevelopment Project”). WharfDC.com “About the Wharf,” Ex. C. This project was supposed to occur on a property adjacent to Plaintiffs’ businesses. Id.

## **II. The Lease Agreements**

Each Plaintiff is a party to a nearly identical long-term lease agreement. The Wharf Lease, Ex. E; BRW, Inc. Lease, Ex. F; Pruitt’s Seafood, Inc. Lease and Assignment, Ex. G (“Lease Agreements”).<sup>5</sup> The Lease Agreements were originally entered into with the District. Id. On April 23, 2014, the District assigned Plaintiffs’ leases to the Developer Defendants. D.C. Ex. D (“Landlord Assignment”). The Landlord Assignment was signed by Lamont Hoffman, Id. at 4, “head of” Hoffman-Madison Waterfront LLC.<sup>6</sup> By signing this document, the Developer Defendants “accepte[d] the foregoing assignment” of six leases listed in Exhibit A and “assume[d] all obligations of the ‘landlord’ under the Leases.” Id. Each of the Plaintiffs’ leases is listed on Exhibit A to the Landlord Assignment. See Ex. D, at Ex. A (listing leases between the “District and BRW, Inc. t/a Capt. White Seafood City”; the “District and The Wharf, Inc. trading as The Wharf”; and the “District and W.D., Inc, [since renamed Salt Water Seafood, Inc.],”).

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<sup>5</sup> The key provisions in the Lease Agreement that were breached are highlighted for ease of reference.

<sup>6</sup> See Jonathan O’Connell, Q & A: Monty Hoffman, Developer of the Southwest Waterfront, Wash. Post (Mar. 7, 2014), <http://www.washingtonpost.com/news/capital-business/wp/2014/03/07/q-a-monty-hoffman-developer-of-the-southwest-waterfront/>.



The Lease Agreements grant Plaintiffs exclusive use of certain delineated water frontages at the Municipal Fish Market to run their businesses, as well as the right to access and use certain common areas designated for the general use, convenience, and benefit of the Municipal Fish Market's commercial tenants and their customers (the "Common Area"). Exs. E at §§ 2.A, 9.A; F at §§ 2.A, 9.A; G at §§ 2.A, 9.A. The Lease Agreements also contain a number of provisions that set specific limits on the landlord. Three such provisions are relevant here. First, the landlord may not enter onto or change any part of the Common Area unless it has (1) completed construction of certain improvements,<sup>7</sup> (2) obtained consent of the Tenant Committee,<sup>8</sup> and (3) ensured that the changes by the landlord do not materially interfere with Plaintiffs' access to their businesses. Exs. E at § 9.A, F at § 9.A, and G at § 9.A ("Lease Provision 9.A"). Second, the landlord must allow Plaintiffs to "peaceably and quietly enjoy the Premises for the Term without hindrance, ejection or molestation by Landlord or anyone claiming or acting by or through Landlord." Exs. E at § 29, F at § 29, and G at § 29 (hereinafter "Lease Provision 29"). Third, the authority to regulate parking for the Municipal Fish Market is vested solely in the Tenant Committee; the landlord may not regulate parking. Exs. E at § 9.B, F at § 9.B, and G at § 9.B (hereinafter "Lease Provision 9.B").

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<sup>7</sup> The landlord's work consists of approximately \$3 million in renovations to the Municipal Fish Market. The specifics of the landlord's work are outlined in Exhibit D of Plaintiffs' leases. See Exs. E § 3.A & Ex. D; F § 3.A & Ex. D; F at Ex. D; G at § 3.A & Ex. D.

<sup>8</sup> The Municipal Fish Market Tenant Committee ("Tenant Committee") consists of Plaintiffs, Jesse Taylor Seafood, and Virgo Fish House. Under the terms of the Municipal Fish Market Leases, each member of the Tenant Committee has voting power in proportion to the amount of linear waterfront footage it controls and decisions are made by a majority vote. Plaintiffs collectively hold 52.81% of the Tenant Committee voting power. Thus, the landlord cannot get approval from the Tenant Committee without support from at least one of Plaintiffs. See Exs. E at §§ 1.M, 1.N, F at §§ 1.M, 1.N, G at §§ 1.M, 1.N.



### III. The Conduct

The Developer Defendants have engaged in a systemic campaign of harassment to drive Plaintiffs from the Municipal Fish Market. It began in May 2014, when the Developer Defendants placed a fence onto the Common Area that blocked access to the Municipal Fish Market in violation of Lease Provisions 9.A and 29. See Ex. A at ¶ 7 & Ex. 4. The fence was removed, but the Developer Defendants put it back, see Ex. A. at ¶ 8, and requested a meeting with the Municipal Fish Market tenants to discuss accommodation of the Redevelopment Project, S. Seaman May 14, 2014 Meeting Request, Ex. H.

That meeting occurred on May 14, 2014. Id. At the meeting, the Developer Defendants revealed their redevelopment plans to the Municipal Fish Market tenants. May 14, 2014 Plans, Ex. I. The plans showed substantial encroachments onto the Common Area including the construction of several large buildings. Id. The plans were dated September 27, 2013—long before the Tenant Committee was consulted and long before the District had assigned the Municipal Fish Market tenants' leases to the Developer Defendants. Compare id. with Ex. D. Upon seeing the plans, the Tenant Committee unanimously objected. Ex. A at ¶¶ 13, 14. The Developer Defendants agreed to consider changing their plans to have less impact on the Municipal Fish Market. Ex. A at ¶ 17.

After a second meeting in early August,<sup>9</sup> a third meeting was planned for September 5, 2014. Sept. 5, 2014 Meeting Request, Ex. K. At that meeting, the Developer Defendants presented newly revised construction plans. See Sept. 5, 2014 Plans, Ex. L. Phase I required the removal of the roundabout from the end of Water Street while expanding customer parking for the Municipal Fish Market. See id. During Phase I, the Water Street roundabout was

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<sup>9</sup> At this meeting, the Developer Defendants presented revised plans that were again rejected because they continued to reflect large encroachments onto the Common Area. See Aug. 5, 2014 Plans, Ex. J; see also Ex. A at ¶ 26



removed—substantially impeding access to the Municipal Fish Market—but the expanded customer parking was never built. See id. Phase II, which was to run until November 2014, required the Developer Defendants to move Water Street south to provide access and even more parking for the Municipal Fish Market than in Phase I. See id. However, the Developer Defendants neither rebuilt Water Street nor added parking for the Municipal Fish Market. See Ex. A at ¶ 32. Phase III, which was to start in November 2014 (and last until construction was completed in 2017), required the Developer Defendants to create a greatly expanded parking lot for the Municipal Fish Market and to provide ample access to the Municipal Fish Market from Maine Avenue. Ex. L. At the same time, the Developer Defendants informed the Tenant Committee that it planned to dig a large hole in the Common Area. Ex. A at ¶ 30. The Tenant Committee did not agree to either the revised plans or their digging of a hole on the Common Area. Id.

Following their third failure to obtain the consent of the Tenant Committee, the Developer Defendants escalated their harassment of Plaintiffs. Ex. A at ¶¶ 31-43. The Developer Defendants repeatedly changed vehicular traffic patterns and blocked pedestrian foot traffic with fences. Ex. A at ¶ 31 & Ex. 7. On December 8, 2014, the Developer Defendants blocked large portions of the Municipal Fish Market's parking lot in violation of Lease Provisions 9.A, 9.B, and 29. Parking Lot Blockage Dec. 8, 2014, Ex. A at Ex. 7-4. In February 2015, the Developer Defendants extended a sidewalk onto the Common Area without the Tenant Committee's consent thereby violating of Lease Provisions 9.A and 29. Sidewalk Extension Picture, Ex. A at Ex. 7-9. In April 2015, the Developer Defendants dug the above-mentioned hole on the Common Area for which it lacked consent of the Tenant Committee, violating Lease Provisions 9.A and 29 once again. See Picture of Hole in Common Area, Ex. A at Ex. 8. The



hole restricted access to the Municipal Fish Market, resulting in extreme traffic congestion and significantly reducing the number of customers that frequented Plaintiffs' businesses. Ex. A at ¶ 33; B. Cole Decl., Ex. U at ¶ 4; A. Phillips Decl., Ex. V at ¶ 6. By May 2015, the Municipal Fish Market was listed as permanently closed on Google Maps. Ex. A at ¶ 36. This has resulted in further reduced business for Plaintiffs, who received, and continue to receive, numerous calls inquiring about the continued operation of the Municipal Fish Market. Id.

June 2015 brought more of the same. The Developer Defendants built permanent bollards on the Common Area in front of Plaintiffs' businesses over Plaintiffs' express objections and without Tenant Committee approval resulting in yet another violation of Lease Provisions 9.A and 29. S. White Decl., Ex. M at ¶¶ 8-10 & Exs. 1-2. By late June, construction workers for the Developer Defendants' project were occupying many of the already-reduced number of customer parking spaces in the Municipal Fish Market parking lot. Ex. A at ¶ 39 & Ex. 10. Then, near the end of that month, the Developer Defendants installed signs stating that Municipal Fish Market customers could park for only 60 minutes before being towed. Ex. A at ¶ 31 & Ex. 7-1. Because the Tenant Committee never established a rule that limited customer parking to 60 minutes, that action violated Lease Provision 9.B, which accords to the Tenant Committee the right to regulate parking. On July 7, 2015, the harassment escalated further. The Developer Defendants' project manager Bob Rubenkonig instructed police to ticket and tow Plaintiffs' commercial and private-use vehicles. Ex. A at Ex. 9. Mr. Rubenkonig represented to police that he was the "owner" of the Municipal Fish Market and that Plaintiffs' vehicles were parked on private property without permission. Ex. A at ¶ 38 & Ex. 9.

The Developer Defendants also began to manufacture reasons to evict two of the Plaintiffs, infringing upon their right to quiet enjoyment. First, the Developer Defendants sent a



notice to vacate to Plaintiff The Wharf. Schulwolf June 25, 2015 Wharf Letter, Ex. N. According to the Developer Defendants, they were evicting The Wharf because they could not find a copy of the lease agreement—a lease agreement that the Developer Defendants explicitly assumed only one year prior. Compare id. with Ex. D at Ex. A. (A signed copy of the lease is attached to this motion at Ex. E at 25.) Second, the Developer Defendants sent Salt Water a letter purporting to terminate Salt Water’s lease on the grounds that minor construction behind one of its barges breached the lease. Schulwolf June 25, 2015 Salt Water Letter, Ex. O. The Developer Defendants looked for reasons to label this construction a breach, despite the fact that it was permitted under Section 13 of Salt Water’s Lease as no permits were required for the construction. Ex. G at § 13. As one example, in the exchanges relating to this construction, the Developer Defendants wrongly claimed that the construction extended onto a space for which Salt Water needed permission to build, when, in fact, the construction was more than 28 feet from such space.<sup>10</sup> Dorigan March 25, 2015 Letter, Ex. P; Zeigler March 30, 2015 Letter, Ex. Q.

All of this conduct has inflicted a substantial injury upon Plaintiffs’ businesses. Plaintiffs’ customers frequent their businesses less as a result of the Developer Defendants’

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<sup>10</sup> The Developer Defendants also claimed that Salt Water violated the lease because it needed permits for the construction, but failed to specify what permits were missing. Ex. P at 1. Plaintiffs responded that “Tenant’s permitting consultants have indicated that no permits are required for the alterations being performed on the Barges.” Ex. Q at 1. Soon thereafter, the Developer Defendants’ counsel sent a Lease Default Notice to Salt Water for alleged violations of the lease for failure to obtain necessary construction permits and the Developer Defendants’ approval. McNamara April 20, 2015 Letter, Ex. R. The notice conceded that Salt Water could cure the breach by securing the necessary permits and Developer Defendants’ consent within a 30 day period. Id. On May 14, 2015, within the 30 day period, Plaintiffs’ counsel, out of an abundance of caution, responded by requesting approval for the construction and enclosing a construction permit application. Zeigler May 14, 2015 Letter, Ex. S. Rather than work to resolve the issue, the Developer Defendants ignored this letter, thus waiving any rights they had. On June 4, 2015, Plaintiffs emailed a copy of the approved permit to the Developer Defendants’ counsel. Zeigler June 4, 2015 Email and Approved Permit, Ex. T. Having received the approved permit, the Developer Defendants nonetheless responded with a notice of termination. See Ex. O.



actions. See Ex. U at ¶¶ 3-5; Ex. V ¶¶ 3-7. Some of Plaintiffs’ vendors refuse to deliver necessary product or can only do so in narrow time windows, Am. Seafood Letter, Ex. W; Sysco Emails, Ex. X, and others have expressed concern to Plaintiffs that Plaintiffs will soon be forced out of business and, as a result, are considering options to replace Plaintiffs as clients. See Ex. A at ¶¶ 44, 46. Moreover, if Plaintiffs are forcibly ejected from their business, then the businesses—which have been in operation for nearly 45 years—will never recover. Ex. A at ¶ 46. Likewise, if Plaintiffs are subjected to continued harassment, then these longstanding business will likely be forced to close their doors forever. Ex. A at ¶¶ 44-45.

With each passing day, the Developer Defendants become more brazen, and the threat of irreparable harm—the closure of Plaintiffs’ businesses—becomes more imminent. For example, the Developer Defendants have already submitted to the United States Commission on Fine Arts plans “for the redevelopment of the Fish Market at 1100 Maine avenue, SW” that call for “[n]ew retail buildings” as well as a “distillery, plaza, and restoration of the Fish Cleaning Building.” See Letter from United States Commission on Fine Arts to Shawn Seaman, No. 18/JUN/15-11, (June 26, 2015) available at <http://cfa.gov/records-research/project-search/cfa-18jun15-11>. The Developer Defendants also recently informed the media that they have “essentially . . . annexed” the Municipal Fish Market. Michael Neibauer, Wash. Bus. J., Here’s the Plan to Restore D.C.’s Historic Main Avenue Fish Market (July 6, 2015), available at [http://www.bizjournals.com/washington/breaking\\_ground/2015/07/here-s-the-plan-to-restore-d-c-s-historic-maine.html](http://www.bizjournals.com/washington/breaking_ground/2015/07/here-s-the-plan-to-restore-d-c-s-historic-maine.html). And now, one day after Plaintiffs’ counsel initiated a meet and confer with the Developer Defendants regarding this motion, the Developer Defendants filed state-court eviction proceedings.

#### **IV. Procedural History**

This lawsuit was filed on July 23, 2015. Dkt. 1. Shortly thereafter, Plaintiffs’ counsel telephoned counsel for the Developer Defendants. During that call, Plaintiffs requested that



Developer Defendants waive service and asked whether it would be necessary to seek a temporary restraining order against the Developer Defendants given that there were no state-court eviction proceedings pending at the time of filing. Counsel for the Developer Defendants agreed to accept service and promised that no self-help eviction would occur.

On July 30, 2015, waivers of service were sent to counsel for Developer Defendants. Soon thereafter, on August 5, 2015, Plaintiffs' counsel called Developer Defendants to meet and confer regarding this motion. Developer Defendants sought time to review the proposed injunction before deciding whether to consent to motion. See Aug. 5 Email from J. Lasken to M. McNamara (transmitting text of proposed injunction pursuant to call), Ex. Z. Plaintiffs agreed.

Defendants made dubious use of that time. The next day, prior to responding to the meet and confer on this motion, the Developer Defendants filed a cursory motion to dismiss.<sup>11</sup> Dkt. 12. That same day the Developer Defendants instituted actions in the Superior Court for the District of Columbia to evict Plaintiffs. Wharf Horizontal REIT Leasehold, LLC c/o PN Hoffman v. W.D. Inc., 2015 LTB 018958 (filed Aug. 6, 2015); Wharf Horizontal REIT Leasehold, LLC c/o PN Hoffman v. The Wharf. Inc., 2015 LTB 018957 (filed Aug. 6, 2015). On the afternoon of August 6, the Developer Defendants finally notified Plaintiffs that they did

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<sup>11</sup> The arguments in the motion were baseless, but were easier to address by amendment. Accordingly, Plaintiffs amended their complaint to add further factual material and to show that the Developer Defendants' pre-litigation behavior belies its current litigation position. For example, while the Developer Defendants argued to this Court that the relevant "leases terminated by their own terms more than ten years ago," Dkt. 12, the Developer Defendants contracted with the District less than one year ago to explicitly assume the very leases it now claims expired were expired for more than a decade, Dkt. 17 (Ex. E). And at all times prior to the filing of suit, the Developer Defendants treated the leases as valid, accepted the assignment of the leases, and even went so far as to write letters to Plaintiffs claiming that Plaintiffs breached the very lease that Defendants claim expired "on its own terms" more than ten years ago. Dkt. 17 ¶¶ 134, 143, 150.



not consent to the preliminary injunction and several days later they returned the waivers of service. Plaintiffs then filed this motion.

## **V. The Requested Injunction**

As a result of the Developer Defendants' conduct, Plaintiffs are requesting a preliminary injunction to protect their businesses during the pendency of this litigation. Proposed Order, Ex. BB. Plaintiffs request that this Court enjoin the Developer Defendants from engaging in further violations of the three above-noted provisions of the Lease Agreements. Specifically, the Developer Defendants should be ordered to cease further construction and encroachments onto the Common Area without meeting the conditions precedent in the Lease Agreements and to leave Plaintiffs to quietly enjoy their leased property by ending their wrongful efforts at eviction and harassment of Plaintiffs. In light of the actions of the Developer Defendants subsequent to the parties meet and confer, Plaintiffs also ask this Court to stay further proceedings in the now-pending state court eviction proceedings in Wharf Horizontal REIT Leasehold, LLC c/o PN Hoffman v. W.D. Inc., 2015 LTB 018958 (filed Aug. 6, 2015); Wharf Horizontal REIT Leasehold, LLC c/o PN Hoffman v. The Wharf. Inc., 2015 LTB 018957 (filed Aug. 6, 2015).<sup>12</sup>

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<sup>12</sup>The Developer Defendants have manipulated this Court's meet and confer process in an effort to file their eviction suit ahead of this motion by filing state court actions while they were allegedly "reviewing and considering" the text of Plaintiffs' proposed injunction. It is unclear why this was done. Developer Defendants may have taken this step because they plan to argue—incorrectly—that by filing their actions before this motion, they can invoke 28 U.S.C. § 2283, the Anti-Injunction Act, to bar this motion. But that gambit fails. The Anti-Injunction Act does not apply to state proceedings that are filed after the Court's injunctive powers are invoked, Lattimore v. Nw. Co-op. Homes Ass'n, 1990 WL 10521534, at \*4-\*5 (D.D.C. Mar. 26, 1990), and is best understood not apply to any state court action that is filed subsequent to the initiation of the federal action regardless of when this Court's injunctive powers are invoked, McQueen v. Druker, 317 F. Supp. 1122, 1133 (D. Mass. 1970) aff'd, 438 F.2d 781 (1st Cir. 1971) ("The provisions of 28 U.S.C. § 2283, prohibiting injunctions against proceedings in a state court, do not apply because this court was seized of jurisdiction before the state court was." citing Dombrowski v. Pfister, 380 U.S. 479, 484 n.2 (1965)). Under either rule, the Anti-Injunction Act would be inapplicable here. Plaintiffs plainly invoked the injunctive powers of this Court, at the latest, on August 5 when it called the Developer Defendants to meet and confer



## ANALYSIS

### I. Legal Standard

“A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” Aamer v. Obama, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (internal quotations omitted). “[I]n evaluating the preliminary injunction factors,” courts in this Circuit “appl[y] a ‘sliding-scale approach.’” Davis v. Billington, 2014 WL 7204782, at \*2 (D.D.C. Dec. 19, 2014) (quoting Sherley v. Sebelius, 644 F.3d 388, 392-93 (D.C. Cir. 2011)); see also Indian River Cnty. v. Rogoff, 2015 WL 3616109, at \*4 (D.D.C. June 10, 2015). As a result, “[i]f the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” Wrenn v. D.C., 2015 WL 3477748, at \*3 (D.D.C. May 18, 2015) (quoting Davis v. Pension Benefit Guar. Corp., 571 F.3d 1288, 1291-92 (D.C. Cir. 2009)); see also Abdullah v. Obama, 753 F.3d 193, 197 (D.C. Cir. 2014) (injunction should be granted if the “movant . . . show[s] that all four factors, taken together, weigh in favor of the injunction”); Lee v. Christian Coal. of Am., Inc., 160 F. Supp. 2d 14, 26 (D.D.C. 2001) (“A

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regarding this motion and then sent those Defendants the text of the proposed injunction. Any other holding would turn this Court’s meet and confer requirements into a mechanism for a Defendant to hold-up the filing of a motion for injunction to allow that defendant to file a state court suit “first” and then invoke the Anti-Injunction Act. Moreover, as this Court has correctly explained in the past, the rules of landlord-tenant court and the inability of that court to fully adjudicate claims in an action like this one render the order of filing immaterial and the injunction proper as an injunction in aid of this Court’s jurisdiction even if the Anti-Injunction Act does apply. Lattimore, 1990 WL 10521534, at \*4-\*5 (D.D.C. Mar. 26, 1990). Should the Developer Defendants contend otherwise, Plaintiffs will respond further in reply.



strong showing of likely success on the merits may warrant issuance of preliminary injunctive relief even if the plaintiff makes a less compelling showing on the other three factors.”<sup>13</sup>

Here, each factor weighs heavily in favor of the requested injunction. Plaintiffs are likely to succeed on the merits because the Developer Defendants have repeatedly and flagrantly breached the valid leases they assumed in early 2014. These breaches have created irreparable harm because they are “threaten[ing] the very existence of [Plaintiffs’] business[es],” Lee v. Christian Coal. of Am., Inc., 160 F. Supp. 2d 14, 31 (D.D.C. 2001) (citing Wisconsin Gas Co. v. F.E.R.C., 758 F.2d 669, 674 (D.C. Cir. 1985)), and “[c]ertainly being evicted into the street is irreparable damage,” Edwards v. Habib, 366 F.2d 628, 630 (D.C. Cir. 1965) (Skelly Wright, J., Concurring). The balance of harm tips in Plaintiffs’ favor: If the injunction is not granted, then Plaintiffs will lose their businesses; but if the injunction is granted, then Defendants suffer only a short delay to the development of a tiny portion of the 27 acres on which they are engaged in construction. Finally, as the law makes clear and more than 2,200 signatures on a petition to “Preserve the Southwest Waterfront Municipal Fish Wharf,” Ex. Y, attest, the injunction is in the public’s interest. Each factor is discussed in further detail below.

A. There Exists a Substantial Likelihood that Plaintiffs Will Succeed on the Merits

The actions Plaintiffs seek to enjoin stem from breaches of their Lease Agreements by the Developer Defendants. Accordingly, Plaintiffs need to demonstrate that they will likely succeed

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<sup>13</sup> Plaintiffs note that currently the “sliding scale” appears to currently be the prevailing rule in this Circuit. However, there is some question whether, if a case turned specifically on the sliding scale method, the United States Court of Appeals for the District of Columbia would revise its approach to hold that “a likelihood of success on the merits is an independent, free-standing requirement for a preliminary injunction.” Sherley v. Sebelius, 644 F.3d 388, 393 (D.C. Cir. 2011) (noting but not resolving the issue) (internal citations omitted). Regardless, Plaintiffs’ showing that they will succeed on the merits of their claim is overwhelming, so that issue need not be resolved here.



on their breach of contract claims in order to be entitled to a preliminary injunction.<sup>14</sup> To do so, Plaintiffs must establish “(1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach.” Tsintolas Realty Co. v. Mendez, 984 A.2d 181, 187 (D.C. 2009). In order to be entitled to their equitable remedy, Plaintiffs must also show that “the legal remedy, usually money damages, is . . . either inadequate or impracticable.” Stanford Hotels Corp. v. Potomac Creek Assocs., L.P., 18 A.3d 725, 739 (D.C. 2011) (quoting Independence Mgmt. Co. v. Anderson & Summers, LLC, 874 A.2d 862, 870 (D.C. 2005)).

i. Plaintiffs’ Leases are Valid

The Developer Defendants cannot seriously contest the validity of the leases, especially given that they expressly assumed the Lease Agreements from the District in 2014. For a contract to be valid, the parties must (1) agree as to all material terms, (2) intend to be bound by the terms of the contract, and (3) provide a mutuality of obligations. Eastbanc, Inc. v. Georgetown Park Assocs. II, L.P., 940 A.2d 996 (D.C. 2008). For the reasons that follow, Plaintiffs will be able to establish that each element is met here.

With respect to the first requirement, under District of Columbia law, “agreement as to all material terms” simply means that “[t]he respective obligations of the parties [are] clear enough that each [can] be reasonably certain how it was to perform.” Eastbanc, Inc., 940 A.2d at 1002-03. An agreement has material terms if it “include[s]” terms such as, “subject matter, payment terms, . . . and duration.” Duffy v. Duffy, 881 A.2d 630, 634 (D.C. 2005); see also Stansel v. Am. Sec. Bank, 547 A.2d 990, 993 (D.C. 1988) (for loan agreement material terms include “amount of the loans, the interest rates, terms of payment, [and] manner of performance”). Here,

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<sup>14</sup> Plaintiffs have brought a variety of other claims. See generally Compl. However, those claims are not relevant to this motion as, even if proven, those claims would not entitle Plaintiffs to injunctive relief.



each lease clearly states its material terms. For example, the leases provide a price—a specific dollar amount of “minimum rent” and a manner to calculate rent increases using “CPI adjustments.” Exs. E §§ 1.E, 7; F §§ 1.E, 7; G §§ 1.E, 7. The Lease Agreements also include payment terms such as a provision setting forth “Late Charges.” Exs. E § 6, F § 6, and G § 6. Further, they explicitly state their subject matter—the property to be leased, Exs. E § 1.J; F § 1.J; G § 1.J, and duration, Exs. E § 1.; F § 1.O; G § 1.O. Moreover, the original parties to the Lease Agreements operated under them for many years, demonstrating that each party knew how to perform. As a result, Plaintiffs will be able to establish that each lease embodies an agreement on all necessary material terms.

With respect to the second requirement, parties demonstrate their intent to be bound to a contract by signing it. See Davis v. Winfield, 664 A.2d 836, 838 (D.C. 1995) (“[m]utual assent to a contract . . . is most clearly evidenced by the terms of a signed written agreement . . . .”); Dixon v. Wilson, 192 A.2d 289, 290 (D.C. 1963) (“This letter was signed by the parties and their counsel, presumably indicating an assent to the terms stated therein.”); see also Eastbanc, 940 A.2d at 1002. Indeed, “[t]he purpose of a signature is simply to demonstrate mutual assent to a contract . . . .” Winfield, 664 A.2d at 838. Here, each lease was signed by the relevant tenant-Plaintiff and the then-landlord, the District of Columbia. Exs. E at 25; F at 22-23; G at Assignment 4-5, Lease 23. The leases were later assigned to the Developer Defendants who signed an agreement, Ex. D at 3-4, with the District to “assume[ ] all obligations of the ‘Landlord’ under the [Municipal Fish Market] Leases.” Id. at § 2. Accordingly, all parties have demonstrated an intent to be bound by signing the relevant documents. Winfield, 664 A.2d at 838.



With respect to the third and final requirement, there is a “mutuality of obligation” if the contract requires each party “to ‘do something [the] party otherwise is under no legal obligation to do, or to refrain from doing something [the] party has a legal right to do.’” Eastbanc, 940 A.2d at 1003 (quoting Order of AHEPA v. Travel Consultants, Inc., 367 A.2d 119, 125 (D.C. 1977)). Lease agreements often contain a number of “mutual rights and obligations,” see, e.g., Watergate South, Inc. v. Duty, 464 A.2d 141, 142 (D.C. 1983), and the Lease Agreements here are no exception. For example, in the leases, the landlord gives to the tenant the right to occupy certain premises, the right to “quiet enjoyment” of the occupied premises, and the right to regulate parking through the Tenants Committee. Lease Provision 9.B, 29; Exs. E at § 1.J; F at § 1.J; G at § 1.J. In return, the tenant promises to the landlord that it will pay rent and maintain certain levels of insurance. Exs. E §§ 5.A, 17.B; F §§ 5.A, 17.B; G at §§ 5.A, 17.B. The exchange of such promises demonstrates that the Lease Agreements are supported by sufficient mutuality of obligation.

ii. The Developer Defendants Have Three Relevant Obligations Under the Leases

The leases obligate the Developer Defendants in many ways. Three specific obligations under the lease agreement are pertinent here. First, each lease provides that Plaintiffs “may peaceably and quietly enjoy the Premises for the Term without hindrance, ejection or molestation by Landlord or anyone claiming or acting by or through Landlord.” Lease Provision 29 (emphasis added). In short, the Developer Defendants may not harass or wrongfully eject the Plaintiffs while the leases are in effect. Second, Plaintiffs’ respective leases restrain the Developer Defendants from engaging in any construction on the Common Area unless certain conditions precedent are met. Lease Provision 9.A. Those conditions are that (1) the Landlord has completed certain improvements, (2) the Tenant Committee “approv[es]” the proposed



construction, and (3) the structure to be built will not “materially interfere with access to the Premises across the Common Areas and to and from Maine Avenue.” Id. Third, Plaintiffs’ respective leases reserve to the Tenant Committee the exclusive right to “regulate[ ]” “[p]arking, including, without limitation, employee parking, within the [Municipal Fish Market].” Lease Provision 9.B. There can be no dispute as to the scope of these obligations—they appear on the face of each lease agreement. Lease Provisions 9.A, 9.B, and 29.

iii. The Developer Defendants Have Breached Their Obligations Under the Leases

Just as the existence of the above-stated obligations is not in doubt, there can be no serious dispute regarding the fact that these obligations were breached by the Developer Defendants. The breaches of each lease provision are discussed in turn.

The Developer Defendants have repeatedly and flagrantly breached Lease Provision § 9.A by engaging in construction on the Common Area without meeting the conditions precedent. Specifically, because the Developer Defendants have not completed the required “Landlord’s Work,” they cannot “change the size, location, or nature of the Common Areas” or “locate on the Common Areas structures of any type.” Lease Provision § 9.A. Despite this, and in direct violation of the lease, the Developer Defendants have built fences on the Common Area, Ex. A at ¶ 31 & Ex. 4, dug a hole in the Common Area, Id. at ¶ 33 & Ex. 8, built permanent bollards, Ex. M at ¶ 10 & Ex. 2, and extended a sidewalk on the Common Area, Ex. A at ¶ 31 & Ex. 7-9. They have also announced plans to engage in further large-scale construction, which will further encroach on the Common Areas. Exs. I, J, L; Michael Neibauer, Wash. Bus. J., Here’s the Plan to Restore D.C.’s Historic Main Avenue Fish Market (July 6, 2015), available at [http://www.bizjournals.com/washington/breaking\\_ground/2015/07/here-s-the-plan-to-restore-d-c-s-historic-maine.html](http://www.bizjournals.com/washington/breaking_ground/2015/07/here-s-the-plan-to-restore-d-c-s-historic-maine.html). Each of these actions and planned actions is



actually a double-violation of lease because, in addition to failing to complete the requisite “Landlord’s Work,” the Developer Defendants have also failed to secure the approval of the Tenant Committee for such construction. Lease Provision § 9.A; Ex. A at ¶ 30, 31, 33; Ex. M at ¶ 9 & Ex. 1. As a result, Plaintiffs can show both past and future construction that violates (or will violate) the Lease Agreements.

The breaches of Lease Provision 9.B by infringing upon the Tenant Committee’s right to regulate parking are equally plain. Lease Provision 9.B mandates that “[p]arking, including, without limitation, employee parking . . . shall be regulated by the Tenant Committee.” Despite the fact that the Tenant Committee never determined that customer parking for the Municipal Fish Market should be limited to 60 minutes, the Developer Defendants installed signs to that effect. Ex. A at ¶ 31 & Ex. 7-1. Here again, Plaintiffs will have no trouble showing a breach of the lease.

But perhaps the most outrageous breaches of the lease agreement are the violations of Plaintiffs’ right to “peaceably and quietly enjoy” the premises free from harassment or wrongful “ejection.” Lease Provision § 29. The Developer Defendants have breached this provision in two ways. First, two of the Plaintiffs are currently being threatened with wrongful evictions. In one instance, the Developer Defendants sent a notice to vacate to Plaintiff The Wharf because the Developer Defendants could not find a signed copy of The Wharf’s lease, Ex. N at 1, which the Developer Defendants had assumed a year earlier, Ex. D, at Ex. A. A signed copy of the lease is attached to this motion at Exhibit E at 25. In the other instance, the Developer Defendants attempted to manufacture a breach by pointing to minor construction behind one of Salt Water’s barges. Ex. O at 2. In the exchanges that followed, as the Developer Defendants searched for a reason to terminate the lease, they incorrectly claimed that the construction



extended onto a space for which Salt Water needed permission (in fact, the construction was more than 28 feet from such space). Ex. Q at 1. The Developer Defendants attempted to manufacture other breaches as well—for example, the purported lack of a necessary permit<sup>15</sup>—but that incident was not a breach at all, let alone a material breach permitting termination. See Tsintolas Realty Co. v. Mendez, 984 A.2d 181, 186-87 (D.C. 2009) (explaining that if breach is not “material” courts apply a “no harm no foul” rule).

Second, the Developer Defendants have engaged in a pattern of harassment by impeding access to the Municipal Fish Market through the repeated—and ultimately permanent—closing of Water Street; blocking the flow of customers to the Municipal Fish Market by building fences, altering the footpaths and vehicular traffic patterns required to reach the Municipal Fish Market, and building permanent bollards in front of the Plaintiffs’ businesses; occupying the parking in the Municipal Fish Market, which is supposed to be used by customers; limiting the time with which customers may park at the Municipal Fish Market in violation of the lease agreements; and having police ticket and tow Plaintiffs’ private and commercial vehicles. These actions violate Plaintiffs’ right to quietly enjoy the leased property by operating their businesses upon it. Thus, Plaintiffs will also be able to show a breach of Lease Provision 29 of each of their respective leases.

iv. The Developer Defendants’ Breaches Have Damaged Plaintiffs

Plaintiffs’ businesses have been damaged. Customers have specifically stated that they patronize Plaintiffs’ businesses less frequently as a result of the above-described actions by the Developer Defendants. See Ex. U at ¶¶ 3-5; Ex. V at ¶¶ 3-7; Ex. A at ¶ 22. Vendors have

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<sup>15</sup> Out of an abundance of caution, Salt Water went to great pains to cure any perceived immaterial breach related to a lack of permits. See Ex. G at § 21; supra n. 5. Within 30 days, Salt Water had applied for relevant permits, and the permits were soon thereafter received. See supra n. 5 (describing this process and citing documentation). Despite the approved permit, the Developer Defendants attempted to terminate the lease. See Ex. O.



specifically stated that their ability to deliver product to Plaintiffs is either cut-off entirely or heavily restricted. Exs. W, X. Of course, when selling perishable foods, such as seafood, frequent deliveries of new product are critical, and without such deliveries the customer relationships that Plaintiffs have spent nearly 45 years building will falter and die. This is because Plaintiffs’ customers come to them to purchase a wide selection of high-quality seafood—not to find that the seafood they formerly bought is now either entirely unavailable or many days-old. Cf. Versacold USA, Inc. v. Inland Am. Brooklyn Park Atlas, LLC, 2009 WL 3617544, at \*3 (D. Minn. Oct. 29, 2009) (“Loss of its cold-storage spaces would jeopardize Versacold’s ability to store perishable goods, thus threatening its business and relationships with its customers.”).

v. Specific Performance Is Appropriate

“Specific performance is appropriate where ‘the legal remedy, usually money damages, is deemed to be either inadequate or impracticable.’” Independence Mgmt. Co. v. Anderson & Summers, LLC, 874 A.2d 862, 870 (D.C. 2005) (quoting Flack v. Laster, 417 A.2d 393, 400 (D.C. 1980)). In this case, that standard will be easily met because “[w]hen land is the subject matter of the agreement, the legal remedy is assumed to be inadequate, since each parcel of land is unique.” Id. (emphasis added); Stanford Hotels Corp. v. Potomac Creek Assocs., L.P., 18 A.3d 725, 739-40 (D.C. 2011) (“[S]pecific performance is deemed particularly apt in the context of contracts involving real property, especially where the property has unique features . . .”).

The Developer Defendants will not be able to overcome this presumption. Plainly, the Municipal Fish Market is a unique piece of land that is integral to Plaintiffs’ businesses. The Municipal Fish Market is the oldest open-air fish market in the country and the only one of its kind in Washington, D.C. At the Municipal Fish Market, Plaintiffs sell seafood on specially-outfitted floating barges. See Ex. Q at 1. And Plaintiffs have sold their seafood in this manner



and in this location for nearly 45 years. Ex. A at ¶ 1. Plaintiffs cannot simply take damages from the Developer Defendants for past harm and relocate their business elsewhere both because there is nowhere else to go and because, for nearly 45 years, Plaintiffs' customers have purchased seafood from them at this specific location. See Ex. A at ¶¶ 45-46 (explaining that if Plaintiffs lose their location, they will not be able to reopen). Especially given the fact that District of Columbia law assumes that specific performance is appropriate with respect to contracts that involve land, Plaintiffs are likely to succeed on this element of their claim.

vi. The Arguments in Developer Defendants' Motion to Dismiss Lack Merit and, In Any Event, Are Superseded by the Amended Complaint

The Developer Defendants have thus far made only three narrow, technical arguments claiming that "Plaintiffs' own allegations . . . plead themselves out of court." Dkt. 12 at 1. Because the Developer Defendants' arguments were based on a misleading reading of the complaint, Plaintiffs clarified the complaint, Dkt. 17, superseding these arguments. Each argument is briefly addressed in turn.<sup>16</sup>

First, by mashing together cherry-picked allegations from the complaint and the lease agreements, the Developer Defendants claimed that the lease agreements "terminated on [their] own terms more than ten years ago." Dkt. 12 at 2. This claim is dispelled by the contract assigning the current Salt Water lease to Salt Water (then-named W.D., Inc.), which unambiguously states that "[t]he Landlord and Assignee acknowledge and confirm that the expiration date of the Lease is March 15, 2044," Ex. G ¶ 10, not "2003" or "2004" as the Developer Defendants' claim, Dkt. 12 at 2.<sup>17</sup> Moreover, the Developer Defendants own conduct belies their litigation position; the Developer Defendants have had numerous business dealings in

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<sup>16</sup> To the extent that the Developer Defendants attempt to assert these arguments as a factual matter in defense of this motion, Plaintiffs will meet those defenses in reply.

<sup>17</sup> This document was attached to the complaint, but Developer Defendants ignored this provision when making their argument.



which they treated the leases as valid and in-force. For example, on April 23, 2014—at a time when the leases had supposedly been invalid for more than a decade—the Developer Defendants contracted with the District to “assume all obligations of the landlord” under the “lease agreement . . . [with] The Wharf, Inc.,” the “lease agreement . . . [with] W.D., Inc.” (since renamed Saltwater Seafood, Inc.), and the “lease agreement . . . [with] BRW, Inc.” Ex. D. Query why the District and Developer Defendants would waste their time contracting to assign these specific leases if they expired “more than ten years ago.” Dkt. 12 at 2.

Second, the Developer Defendants’ motion wrongly argues for dismissal on the basis that Salt Water Seafood, Inc. is a “stranger[]” to the relevant lease assignment because the parties to that assignment were “DNM Seafood, Inc. and W.D., Inc.” Dkt. 12 at 8. This argument fails because W.D., Inc. is Saltwater Seafood, Inc.; W.D., Inc. simply changed its name to Saltwater Seafood, Inc. after the lease assignment was executed. Dkt. 17 ¶ 19.

Lastly, based on a mistaken reading of the original complaint, the Developer Defendants wrongly contended that WHRL should be dismissed because “plaintiffs assert eight causes of action against HMW but none against WHRL.” Dkt. 12 at 8. Plaintiffs originally referred to HMW and WHRL collectively as HMW because HMW has represented that HMW and WHRL are the same company,<sup>18</sup> not because Plaintiffs are asserting claims only against HMW. Dkt. 1 n. 1. Plaintiffs have since clarified the complaint by explicitly referring to HMW and WHRL separately for the purpose of asserting causes of action. E.g., Dkt. 17. As a result, this argument has been wholly superseded by the amended complaint.<sup>19</sup>

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<sup>18</sup>The actions of the companies confirm this representation. The companies have the same employees, offices, and phone numbers, and send correspondence on the same letterhead. Dkt 17 ¶ 22.

<sup>19</sup>Not realizing that each count was asserted separately against WHRL, the Developer Defendants went on to assert that WHRL must be dismissed the complaint did not assert “a cause



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For the foregoing reasons, Plaintiffs are likely to prevail on their claims. Each lease is a valid contract. Those valid contracts obligate the Developer Defendants to (1) not build on Common Area unless certain conditions precedent are met, (2) permit the Tenant Committee to regulate parking, and (3) allow Plaintiffs to quietly enjoy their property. Each of these obligations was breached repeatedly, and the Developer Defendants have public plans to continue their breaches in the future. The breaches have given rise to damage in the form of lost customer sales and an inability to secure product necessary to run Plaintiffs' businesses, which will result in additional lost customer sales. And Plaintiffs will be entitled to equitable relief because damages are insufficient to remedy these violations. As a result, this element strongly favors the issuance of a preliminary injunction.

**B. Plaintiffs Will Suffer Irreparable Harm in the Absence of an Injunction**

"To establish irreparable harm, a plaintiff must show that its injury is 'great, actual, and imminent.'" Jack's Canoes & Kayaks, LLC v. Nat'l Park Serv., 933 F. Supp. 2d 58, 80 (D.D.C. 2013). To meet this greatness prong of this standard, an injury "must be beyond remediation"—that is, it must be more than a "mere injur[y] . . . in terms of money, time and energy necessarily expended in the absence of a stay . . . ." Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006); see also Bonnette v. D.C. Court of Appeals, 796 F. Supp. 2d 164, 186 (D.D.C. 2011). To meet the actual and imminent requirements, the injury must not be

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of action for alter ego." Dkt. 12 at 3. But that argument is foreclosed by settled law. Plaintiffs cannot and need not plead "a cause of action for alter ego," Dkt. 12 at 3, because alter ego, which is also known as "[p]iercing the corporate veil," is not a cause of action." Meta Engineers, P.C. v. Wilmot, Bower & Assoc., Inc., 1987 WL 9523, at \*2 (D.D.C. Mar. 31, 1987); see also TAC-Critical Sys., Inc. v. Integrated Facility Sys., Inc., 808 F. Supp. 2d 60, 66 (D.D.C. 2011); 1 Fletcher Cyc. Corp. § 41.10 ("A claim based on the alter ego theory is not in itself a claim for substantive relief, but rather is procedural. A finding of fact of alter ego, standing alone, creates no cause of action." (emphasis added)).



“something merely feared as liable to occur at some indefinite time.” Wisconsin Gas Co., 758 F.2d at 674 (D.C. Cir. 1985) (quoting Connecticut v. Massachusetts, 282 U.S. 660, 674 (1931)). Plaintiffs meet this standard in two separate ways.

First, two of the Plaintiffs are facing eviction proceedings and, “[w]rongful eviction, as a matter of law, constitutes irreparable injury.” Brown v. Artery Org., Inc., 691 F. Supp. 1459, 1461 (D.D.C. 1987) (citing Johnson v. USDA, 734 F.2d 774, 789 (11th Cir. 1984)) (emphasis added); see also Edwards v. Habib, 366 F.2d 628, 630 (D.C. Cir. 1965) (Skelly Wright, J., Concurring) (“Certainly being evicted into the street is irreparable damage.”); Peterson v. D.C. Lottery & Charitable Games Control Bd., 1994 WL 413357, at \*4 (D.D.C. July 28, 1994); Versacold USA, Inc. v. Inland Am. Brooklyn Park Atlas, LLC, 2009 WL 3617544, at \*3 (D. Minn. Oct. 29, 2009). At present, the Developer Defendants have begun two separate wrongful evictions. Wharf Horizontal REIT Leasehold, LLC c/o PN Hoffman v. W.D. Inc., 2015 LTB 018958 (filed Aug. 6, 2015); Wharf Horizontal REIT Leasehold, LLC c/o PN Hoffman v. The Wharf, Inc., 2015 LTB 018957 (filed Aug. 6, 2015). As discussed above, the Developer Defendants are wrongfully attempting to evict The Wharf because they cannot find a signed copy of the lease and Salt Walter by manufacturing a breach. See supra p. 7-8, 16-17. This alone establishes irreparable harm.

Second, the Developer Defendants have revealed plans to engage in further construction on the Common Area, including plans to build large retail structures. Exs. I, J, L. These plans will deliver to Plaintiffs an irreparable injury by resulting in a “substantial business loss,” Doran v. Salem Inn, Inc., 422 U.S. 922, 923 (1975), and “threaten[ing] the very existence of [Plaintiffs’] business . . . .” Lee, 160 F. Supp. 2d at 31. Indeed, the Developer Defendants’ impermissible construction activities have already caused substantial harm to Plaintiffs’



businesses: Previously regular customers are now frequenting the Municipal Fish Market less or not at all, Exs. U, V; vendors are refusing to deliver necessary product, Exs. W, X; and the goodwill Plaintiffs have built over the last several decades with their customers and vendors has been tarnished. Moreover, the planned construction is imminent and involves building at least three large buildings on the Common Area, a far greater encroachment than any previous activity by the Developer Defendants. Exs. I, J, L. Once built, of course, the structures will remain in place absent a demolition and so, as a practical matter, the harm from placing these structures on the Common Area will be irreversible. As a result, permitting the Developer Defendants to move forward with their construction plans will “threaten the very existence of [Plaintiffs’] business[es],” giving rise to a second and independent “irreparable harm.” Lee, 160 F. Supp. 2d at 31.

#### C. The Balance of the Equities Tips in Plaintiffs’ Favor

The balance of the equities favors Plaintiffs. Courts generally balance the equities by comparing the harm that would inure to a plaintiff absent an injunction to the harm that would befall a defendant if an injunction were issued. See, e.g., Sherley, 644 F.3d at 398-99; Bonnette, 796 F. Supp. 2d at 187-88. In this case, the harm to Plaintiffs is severe: If an injunction does not issue, then Plaintiffs will likely be forced out of business before this litigation concludes. As was explained above, the Developer Defendants’ misconduct has deterred customers from shopping at Plaintiffs’ businesses, impeded vendors from delivering necessary product to Plaintiffs’ businesses, and, as a final coup de grâce, the Developer Defendants are now working to manufacture ways to forcibly evict Plaintiffs from their leased property. See supra p. 8, 18-19. On the other hand, the Developer Defendants will suffer no harm from the proposed injunction. As an initial matter, the proposed injunction simply asks that Developer Defendants abide by the leases that it voluntarily assumed. See Ex. BB; Ex. D. But even if the Developer Defendants



had a right to build on the Common Area without the approval the Tenant Committee, which they do not, or had an arguable basis to evict Plaintiffs, which they also do not, the only harm that the Developer Defendants would suffer is a short delay to a small portion of their multi-year, 27-acre Redevelopment Project.

Moreover, when an eviction is threatened, “[t]he balance of equities tips sharply in Plaintiff’s favor,” Na’im v. Sophie’s Arms Fine Residences, LLC, 2013 WL 8609251, at \*2 (S.D. Cal. Nov. 18, 2013), because “the landlord’s interest in timely [eviction] pales in comparison to the tenant’s potential loss of his home before his rights could be adjudicated.” Akassy v. William Penn Apartments Ltd. P’ship, 891 A.2d 291, 310 (D.C. 2006). This principle is no different for a person or a business. See Kelly v. Public Utility Dist. No. 2, 2012 WL 1068079, at \*4 (E.D. Wash. Mar. 29, 2012); Versacold USA, 2009 WL 3617544, at \*3. Accordingly, the balance of the equities strongly favors Plaintiffs and this factor supports the issuance of an injunction.

#### D. The Injunction Is in the Public’s Interest

This injunction is manifestly in the public’s interest. As an initial matter, more than 2,200 members of the public have signed onto a petition to “Preserve the Southwest Waterfront Municipal Fish Wharf,” Ex. Y, proving that “the public interest is served by keeping people in their homes and keeping businesses in operation.” Kelly, 2012 WL 1068079, at \*4; Versacold USA, 2009 WL 3617544, at \*5. Indeed, when a person or business is threatened with wrongful eviction, the public’s interest is in allowing that person or business to stay in place until a court can resolve the issue. See id. Here, Plaintiffs are threatened with evictions by the Developer Defendants that will force their businesses out of operation. Exs. O, P. For this reason alone, the requested injunction serves the public’s interest.



A second well-established tenet further demonstrates that the requested injunction is in the public's interest. "[T]he public interest is served by . . . enforcing valid contractual provisions, to which parties have voluntarily entered." Merrill Lynch, Pierce, Fenner & Smith Inc. v. Wertz, 298 F. Supp. 2d 27, 34 (D.D.C. 2002). See also Akiachak Native Cmty. v. Jewell, 995 F. Supp. 2d 7, 18 (D.D.C. 2014) ("The public interest is best served when established contract . . . rights are enforced.") (quoting Entek GRB, LLC v. Stull Ranches, LLC, 885 F. Supp. 2d 1082, 1096 (D. Colo. 2012)); Gov't of Jamaica v. 1201 29th St., N.W. Tenants Ass'n, Inc., 1992 WL 84908, at \*4 (D.D.C. Apr. 7, 1992) ("[T]he public interest favors . . . the enforcement of binding contracts."). Here, there are two parties to a valid contract. The injunction asks only that the Developer Defendants honor their contractual commitments, which furthers the public's interest in the enforcement of valid contracts.

### CONCLUSION

For nearly 45 years, Plaintiffs have proudly nurtured and grown their businesses in DC's beloved Municipal Fish Market. Once these historic businesses are destroyed, they can never be rebuilt. This Court should intervene. The preliminary injunction should be granted.

DATED: August 12, 2015

Respectfully submitted,

/s/Wendell L. Taylor

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*Counsel for Plaintiffs*



# EXHIBIT A



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE WHARF, INC. )  
t/a THE WHARF, )  
 )  
BRW, INC. )  
t/a CAPTAIN WHITE SEAFOOD CITY, )  
 )  
and )  
 )  
SALT WATER SEAFOOD, INC. )  
t/a SALT WATER )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE DISTRICT OF COLUMBIA, )  
 )  
HOFFMAN-MADISON )  
WATERFRONT, LLC, )  
 )  
and )  
 )  
THE WHARF HORIZONTAL )  
REIT LEASEHOLDER, LLC, )  
 )  
Defendants. )

Case No: 1:15-cv-01198-CKK

**DECLARATION OF PENNY R. WHITE**

I, Penny R. White, hereby state the following:

1. My husband Billy White and I, together with my brother-in-law Sunny White, operate businesses at the Municipal Fish Market. Billy and Sunny have worked at the Municipal Fish Market for nearly 45 years, and I have worked there for over 30 years.
2. After several disputes with the District of Columbia in the 1980s and 1990s, Congress ordered the District to grant us 30-year leases.
3. We entered into 30-year leases with the District on July 12, 2000 to operate The Wharf, Inc., t/a The Wharf, ("The Wharf") and BRW, Inc., t/a Captain White Seafood City ("Captain White")—a seafood deli and an open air fish market, respectively. A true and correct copy of the lease agreement with The Wharf is attached as Exhibit 1 and of the lease agreement with BRW, Inc. is attached as Exhibit 2.



4. We have timely paid our rent in accordance with the leases.

5. On March 20, 2014, we bought out a third business at the Municipal Fish Market, Pruitt's Seafood, assumed its lease with the consent and agreement of the District, and changed the name from Pruitt's to W.D., Inc. (and later Salt Water Seafood, Inc.), t/a Salt Water ("Salt Water"). A true and correct copy of the Salt Water assignment and lease is attached at Exhibit 3.

6. We are a family run business with several dozen employees across our three businesses. Our customers range from individuals to local D.C. restaurants.

7. In May 2014, a developer of a neighboring property, who we later found out was Hoffman-Madison Waterfront, LLC and Wharf Horizontal REIT Holder, LLC (together the "Developer") fenced off a portion of the property we lease, including one of the two main entrances/exits to our businesses. The picture attached as Exhibit 4 accurately reflects this fence. This caused a disruption of our businesses and hindered both foot and vehicular customer traffic from our businesses.

8. Someone moved the fence so that it no longer blocked access to and from our businesses. The Developer moved the fence back.

9. Later that month, we had a meeting with the Developer and the District, which took place on one of our barges.

10. At that meeting, the District informed us that it had transferred our leases to the Developer and that Water Street—the primary street access to our businesses—had been closed and that our businesses had no right to the access that Water Street provided to our businesses.

11. Water Street has always been the primary way that customers and vendors accessed our businesses. We told the Developer and the District that we would not be able to stay in business without Water Street.

12. The Developer agreed that they would leave Water Street open unless they notified us, and that they would coordinate any necessary closures of Water Street with us so that we could try to minimize the impact on our businesses.

13. At that meeting, the Developer also showed us plans indicating that they intended to build several large buildings in front of our businesses and on our leased property in areas designated under our leases as "Common Area." A true and correct copy of the plans shown at that meeting are attached at Exhibit 5.

14. At the same meeting, we told them that the leases did not allow them to build the buildings on the Common Area of our leased property without the consent of the Tenant Committee. We informed them that the Tenant Committee consisted of the owners of the businesses at the Municipal Fish Market including Penny White, Sunny White, Billy White, Clayton Evans (of Jessie Taylor Seafood), Shelton Evans (of Jessie Taylor Seafood) and Darryl V. Jones (of Virgo Fish Market). The Tenant Committee was unanimously in opposition of the Developer's plans.



15. Because we make up half of the members of the Tenant Committee and control 52.81% of the linear footage at the Municipal Fish Market, the Tenant Committee cannot take action, including approving the Developer's proposed construction in our Common Area, without at least one of our companies voting in favor of such action.

16. We stressed to the Developer at that meeting that we needed to have access to our businesses and parking for customers in order to stay in business.

17. The Developer agreed to work with us to minimize disruptions to our access and parking, and to notify us before taking any action that would hinder access or parking. The Developer also said that it would take our concerns into consideration in revising the plans.

18. Shortly after the meeting, the Developer began to periodically close Water Street without notifying us, often during our busiest days, including weekends and holidays. We asked the Developer to respect the commitments they made at the meeting, and they again agreed to consult with us before blocking off Water Street. The Developer never consulted with us prior to any further closures of Water Street.

19. The closure of Water Street severely hindered our businesses. Further hindering our businesses, the Developer periodically conducted construction activities on the Common Area set aside in the leases for our benefit.

20. Because of the closure of Water Street and the Developer's construction activities in the Common Area, several of our vendors have refused to deliver necessary inventory and supplies to us. Because of the perishable nature of seafood, consistent deliveries are extremely important to the survival of our businesses.

21. We've also had issues with the delivery of mail and packages because the delivery people said it was too difficult to get to our property.

22. Many of our customers have told us that difficulty in getting to our business has caused them to visit less frequently or avoid coming altogether.

23. Because of the construction by the Developer on our leased property, many customers have told us that they believe we are closed.

24. The closure of Water Street and Developer's construction has devastated our customer traffic and our revenues.

25. We asked our counsel to meet with the Developer and its counsel to try to resolve the situation.

26. After that meeting, the Developer presented revised plans that still proposed buildings in the Common Area. A true and correct copy of these revised plans is attached at Exhibit 6. We strongly opposed any buildings on our Common Area and did not provide consent for these buildings to the Developer.



27. The Developer continued to block off Water Street without notice to us, which disrupted our businesses.

28. Because the Developer shut down Water Street on numerous occasions in the past, we requested another meeting.

29. At our next meeting with the Developer, we expressed our concern about the ongoing disruptions to our businesses. The Developer again agreed to work with us, and proposed plans that showed continued access to our businesses throughout the course of the Developer's proposed construction, and included increased parking.

30. The Developer's plans still showed that the Developer planned to build buildings on the Common Area, and the Developer told us they planned to dig a hole in the Common Area at some point. We told them that the Tenant Committee did not agree to either.

31. Following the meeting, the disruptions got worse. The Developer performed construction on our leased property on multiple occasions, installed parking signs on our leased property, and moved the sidewalk taking away parking spaces and parts of the Common Area. The pictures attached at Exhibit 7 accurately reflect these actions. In each case the Developer's actions were without our consent or the consent of the Tenant Committee.

32. Moreover, the Developer neither provided the continuous access discussed nor provided the additional parking.

33. In April 2015, without notifying us or requesting approval from the Tenant Committee, the Developer dug the large hole on our Common Area that we had specifically instructed the Developer that it did not have the right to do. The picture attached at Exhibit 8 accurately reflects this hole. This caused major traffic issues for our customers, and we received lots of customer complaints.

34. After we objected to construction by the Developer that interfered with our businesses, the Developer began to harass us on a regular basis.

35. Also in April 2015, the Developer claimed we were in default under one of our leases for replacing two sunken barges that we agreed to replace when we took over Pruitt's lease with similar barges. These were properly permitted barges and equipment needed to be able to operate our businesses as provided in our lease.

36. In May 2015, our businesses were listed as "permanently closed" on Google Maps—an action we believe was taken by the Developer. This listing coupled with the construction on and around our leased property has resulted in numerous calls from customers asking if we are open and has hurt our businesses by deterring customers from coming to the Municipal Fish Market.

37. The Developer began threatening to tow our seafood transportation trucks from the premises.

38. The Developer's project manager, Bob Rubenkönig, sent police officers to ticket and tow our commercial trucks and our personal vehicles from our parking lot telling the ticketing



officers that it was the Developer's private property. A true and correct copy of the notices from the Developer that our vehicles were being towed is attached at Exhibit 9.

39. On June 25 and July 7, 2015, the Developer's construction workers used our customer parking spaces to park while they worked at the Developer's property. The picture attached at Exhibit 10 accurately reflects this incident.

40. On June 25, 2015, the Developer sent us notices that we had to vacate The Wharf and the Salt Water premises, both of which notices included false and baseless claims. True and correct copies of the notices to vacate are attached at Exhibit 11.

41. The Wharf and Salt Water are the two businesses that most directly interfere with the Developer's proposed location of buildings in the Common Area.

42. Terminating either of those leases would also reduce our vote on the Tenant Committee so that the Developer could potentially obtain Tenant Committee approval of its proposed construction without at least one of my husband, my brother or me needing to vote for such approval.

43. On July 8, 2015, one of our employees emailed us to let us know that one of the other tenants had told him that we were being evicted by the Developer.

44. The actions of the Developer, and its communication about us to others are damaging our businesses and our reputation in the community and with vendors, and the actions have tarnished the goodwill we have built with our customers and vendors over the last several decades.

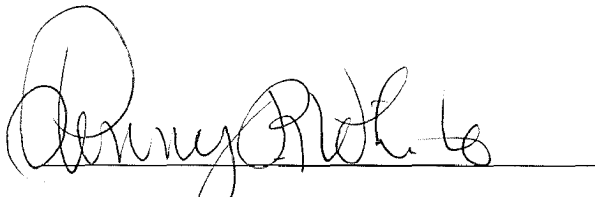
45. The continuing losses caused by the Developer have caused a large decrease in sales, and our historic businesses may have to close.

46. If we are evicted, we will have to close our businesses. An eviction would also result in difficulty paying vendors and employees.

47. Attached at Exhibit 12 is a copy of the Developer's constructions plans on which I have marked the areas where the Developer engaged in construction on the Common Area without the consent of the Tenant Committee.



I declare under penalty of perjury that the foregoing is true and correct. Executed on the 1<sup>st</sup> day of August, 2015.



Penny R. White



# EXHIBIT 1



## LEASE AGREEMENT

THE DISTRICT OF COLUMBIA,  
acting on behalf of THE UNITED STATES OF AMERICA,

LANDLORD

and

THE WHARF, INC.  
T/A THE WHARF

TENANT

for

Premises Nos. 16, 17, 18, and 19  
Municipal Fish Wharf



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Exhibit A - Outline of the Premises  
Exhibit B - Site Plan of the Project  
Exhibit C - Certificate of Acceptance  
Exhibit D - Work Orders 4 & 5  
Exhibit E - Rules and Regulations



## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made this 12<sup>th</sup> day of July, 2000, by and between THE DISTRICT OF COLUMBIA, acting on behalf of THE UNITED STATES OF AMERICA, whose notice address is Director, District of Columbia Department of Housing and Community Development, 801 North Capitol Street, N.E., 8<sup>th</sup> Floor, Washington, D.C. 20002 ("Landlord"), and THE WHARF, INC., a District of Columbia corporation, t/a The Wharf, whose notice address is 1100 Maine Avenue, S.W., Washington, D.C. 20024 ("Tenant").

In consideration of the promises in the Lease, Landlord and Tenant agree as follows:

### 1. *Definitions.*

Certain terms in this Lease are defined below:

A. **Barges:** The barges owned by Tenant on which Tenant operates its business. The Barges are, or will be, located on the Premises.

B. **Commencement Date:** The date of this Lease.

C. **Common Areas:** "Common Areas" mean all areas within the Project that Landlord makes available to tenants and their customers for their general use, convenience and benefit, including restrooms, parking areas, driveways, walkways, landscaped or planted areas, lighting facilities, service areas and loading and unloading areas, as depicted on Exhibit B hereto.

D. **Lease Year:** The first "Lease Year" shall begin on the New Rent Commencement Date and shall end on December 31 of the year following the year in which the New Rent Commencement Date shall occur, in order that each subsequent Lease Year hereunder shall coincide with the calendar year. Each subsequent Lease Year shall commence on the day immediately following the last day of the preceding Lease Year, and shall continue for a period of twelve (12) full calendar months.

E. **Minimum Rent:** The annual minimum rent payable during the Term, which shall be as follows:

Before New Rent Commencement Date		
Time Period	Annual	Monthly
Commencing on earlier of (1) date on which Tenant opens for business on any portion of the Premises; or (2) availability of utilities to the Premises, and continuing until the New Rent Commencement Date	\$3,636.36 [or \$303.03 per month during long first Lease Year]	\$303.03



After New Rent Commencement Date		
Lease Years	Annual	Monthly
1 – 5	\$16,400.00 [OR \$1,366.66 PER MONTH IN LONG FIRST LEASE YEAR, SUBJECT TO CPI ADJUSTMENT UNDER SEC. 7 BELOW IN YEARS 2 THROUGH 5]	\$1,366.66 [FOR LEASE YEAR ONE ONLY]
6 – 10	[MINIMUM RENT FOR LEASE YEAR 5, AS DETERMINED BY CPI ADJUSTMENTS UNDER SEC. 7 BELOW, PLUS 3%]	[N.B. – MINIMUM RENT FOR ALL YEARS AFTER YEAR 5 TO BE PRO-RATED IN ACCORDANCE WITH RELATIVE FRONTAGE IF TENANT EXERCISES 5 <sup>TH</sup> YEAR PARTIAL TERMINATION RIGHT]
11 – 15	[MINIMUM RENT FOR LEASE YEAR 10 PLUS 3%]	
16 – 20	[MINIMUM RENT FOR LEASE YEAR 15 PLUS 3%]	
21 – 25	[MINIMUM RENT FOR LEASE YEAR 20 PLUS 3%]	
26 – 30	[MINIMUM RENT FOR LEASE YEAR 25 PLUS 3%]	

F. **New Rent Commencement Date:** The date upon which “Landlord’s Work” (as defined in Section 3) is substantially completed; i.e., upon receipt of a Certificate of Substantial Completion from the Corps of Engineers, and provided that all utilities to be delivered to the Premises are then in working order.

G. **Percentage Rent:** For each Lease Year commencing with the Sixth (6<sup>th</sup>) Lease Year:

- (i) with respect to all “Gross Non-Taxable Sales” (as defined in Section 7), an amount equal to 1/2 of one percent (0.5%) of the excess of (A) Tenant’s Gross Non-Taxable Sales for the Premises during the Lease Year, over (B) the “Non-Taxable Base Amount,” which means the amount of actual Gross Non-Taxable Sales for the Premises for the Fifth (5<sup>th</sup>) Lease Year; and
- (ii) with respect to all “Gross Taxable Sales” (as defined in Section 7), the following percentages, depending on the ratio for such Lease Year of “Gross Taxable Sales” to “Gross Sales”:
  - (A) zero, provided Gross Taxable Sales for such Lease Year total less than fifteen percent (15%) of Gross Sales for such Lease Year;



(B) with respect to those Gross Taxable Sales that constitute greater than fifteen percent (15%) and less than fifty percent (50%) of total Gross Sales for such Lease Year, one-half of one percent (0.5%) of the excess of (A) such Gross Taxable Sales for the Premises during the Lease Year, over (B) the "Taxable Base Amount," which means the amount of actual Gross Taxable Sales for the Premises for the Fifth (5<sup>th</sup>) Lease Year; and

(C) with respect to those Gross Taxable Sales that constitute greater than fifty percent (50%) of total Gross Sales for such Lease Year, one and one-half percent (1.5%) of the excess of (A) such Gross Taxable Sales for the Premises during the Lease Year, over (B) the Taxable Base Amount.

H. **Consumer Price Index:** The "Consumer Price Index" means the index for the Washington - Baltimore, DC - MD - VA - WV area, now known as the United States Bureau of Labor Statistics, consumer Price Index, for All Urban Consumers, all items (1996=100).

I. **Permitted Uses:** The retail sale of seafood (fresh and prepared) and of fresh produce, including accessory items such as cole slaw, french fries, and the like, or any other use consistent with and permitted by the 1913 Federal legislation creating the Project and appointing the District of Columbia as manager of the Project. Notwithstanding the foregoing, (i) prepared food shall be sold only on a "takeout" basis; and (iii) there shall be no serviced tables situated within the Premises or in the Common Area unless plans for same shall have been approved by Landlord and unless Landlord and Tenant shall have executed an amendment hereto providing for a change to restaurant use and, among other things, revising the Percentage Rent payable hereunder in respect of the portion of the Premises to be devoted to such restaurant use. As to clauses (i) and (ii) above, Landlord shall enforce parallel restrictions on all other tenants within the Project.

J. **Premises:** The spaces in the Project identified on Exhibit A as Nos. 16, 17, 18, and 19. The Premises consist of an area on the surface of the water sufficient to moor three Barges to the concrete pier [one in No. 16 ("Barge 16"), one in No. 17 ("Barge 17"), and one in Nos. 18 and 19 ("Barge 18")]. Barge 16 shall have no more than 27 linear feet, Barge 17 shall have no more than 48 linear feet, and Barge 18 shall have no more than 48 linear feet. None of the Barges shall have a depth from the pier greater than the barge currently occupying Space No. 8. Tenant shall have the right to connect the Barges that comprise the Premises under this Lease as well as the Barges that comprise the "Premises" under the Lease between Landlord and BRW, Inc., t/a Capt. White Seafood City by a floating walkway that shall not exceed six feet (6') width, as shown on Exhibit B-1 hereto.

K. **Project:** The Municipal Fish Wharf located between 11<sup>th</sup> and 12<sup>th</sup> Streets, south of Maine Avenue, S.W., Washington, D.C. The Project includes the portion of the Potomac River in which the tenants' barges are moored. A site plan of the Project is attached as Exhibit B. A certified survey of the Project, to include references to all Lots and Squares, or portions thereof, included within the Project, has been commissioned and will be delivered to the parties upon



completion, at which time a legal description of the Project shall be initialed and attached hereto as a substitute and replacement for the existing Exhibit B.

L. **Security Deposit:** \$1,366.66, which shall be due and payable within thirty (30) days after the effective date of this Lease.

M. **Tenant Committee:** A committee representing the tenants of the Project and composed of one representative to be named by each such tenant. The Tenant Committee shall cooperate with the Management Agent to be retained for the Project, as provided herein, to carry out the operation, maintenance, and repair of the Common Areas of the Project. The Tenant Committee may, at its option, elect to operate by means of a limited liability company or other legal entity. All matters requiring decisions by the Tenant Committee shall be decided on the basis of a simple majority. Voting on all such matters by Tenant and the other tenants of the Project shall be based upon the "Proportionate Share" (hereinafter defined) of each.

N. **Tenant's Proportionate Share:** 14.81%, which equals the percentage that the number of linear feet of frontage in the Premises bears to the number of linear feet of frontage in the Project. If the number of linear feet of frontage in the Project changes, Tenant's Proportionate Share will be adjusted accordingly.

O. **Term:** The period that begins on the Commencement Date and ends thirty (30) Lease Years after the New Rent Commencement Date, unless sooner terminated pursuant to this Lease. Tenant acknowledges that it has no right hereunder to renew or extend the Term hereof, or to negotiate for a renewal of the Term hereof. However, Landlord acknowledges that nothing contained herein shall prevent Tenant hereafter from seeking to obtain any such rights.

P. **Prohibited Use:** Anything herein to the contrary notwithstanding, Tenant covenants that during the term of this Lease, (1) it shall not engage in the business of fish cutting or oyster shucking, nor shall it offer non-alcoholic beverages from vending machines; provided, that the provisions of this Section 1.P shall be enforceable only during such times as Virgo Fish House, its successors or permitted assigns, shall engage in the activities described herein at other premises within the Project; and (2) it shall not engage in the sale of liquor for consumption off the Premises. It is understood and agreed that the foregoing prohibition on oyster shucking is intended to apply only to the shucking of oysters conducted as an independent business, and shall not apply to the shucking by Tenant of oysters sold by Tenant.

Q. **Restrictions on Sales.** The following restrictions shall appear in all Leases of Barge Spaces within the Project. In the particular Lease or Leases to which any such restriction pertains, such provision shall act as a restriction imposed and enforceable by Landlord for its benefit, and imposed and enforceable by the other tenants of the Project for their benefit, and accepted by the tenant or tenants occupying the area to which such restriction directly pertains.

(i) For a period of ten (10) years, expiring on the tenth (10) anniversary of this Lease, the sale of seafood of any type shall be prohibited throughout the rectangular area comprising the southernmost twenty-four feet (24') of Barge 6.



(ii) For the entire Term of this Lease, the sale of crabs anywhere on Barge 6 or 16 shall be prohibited.

## **2. *Lease of the Premises; Tenant's Acceptance of Premises; Termination Right.***

A. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. At the commencement of the Term hereunder, Tenant shall occupy the Premises in their "as is" condition, subject to Section 3, and subject to the removal by Landlord of the barge in Lease Space No. 17 and the boat in Lease Space No. 16, which shall be accomplished as quickly as practicable, given legal constraints. Effective as of the Commencement Date, Tenant does hereby release, remise, discharge, and forever waive any and all claims, actions, or causes of action, whether known or unknown, arising from or relating to the Prior Lease that Tenant has or may have against landlord, or its affiliated entities, predecessors, successors, assigns, legal representatives, agents, employees, servants, attorneys, officers, or other representatives.

B. Anything herein to the contrary notwithstanding, Tenant shall have the right, exercisable by written notice given to Landlord not later than ninety (90) days before the end of the 5<sup>th</sup> Lease Year, to terminate this Lease altogether, or to terminate it in part as to any one or more of the Barge spaces leased hereunder (collectively, the "Terminated Premises") effective upon the expiration of the 5<sup>th</sup> Lease Year. Upon surrender of the Terminated Premises in the manner required hereby, the parties shall be released and relieved of any obligations accruing after the effective date of such termination with respect to the Terminated Premises.

C. Anything herein to the contrary notwithstanding, Tenant shall have the right, exercisable by written notice given to Landlord not later than ninety (90) days after submission of the Annual Statement (as defined in Section 7 below), to terminate this Lease if the total of the Minimum Rent and the Percentage Rent (as defined in Sections 1.E, 1.G and 1.I above, as the case may be) for the Lease Year to which such Annual Statement pertains exceeds ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$125,000.00). This termination right is specifically limited to the first Lease Year in which Minimum Rent and Percentage Rent hereunder exceed such sum. Such termination shall be effective for all purposes one (1) calendar year following the date of such notice. Upon the expiration of such one (1) year period, and upon the surrender of the Premises in the manner required hereby upon the expiration or termination of this Lease, the parties shall be released and relieved of any obligations accruing in respect of the Premises after the expiration of such one (1) year period.

## **3. *Landlord's Work.***

A. Landlord has been allocated \$3,000,000 from the federal government (the "Federal Appropriation") to make improvements to the Project and to the marina located next to the Project at 1300 Maine Avenue. Landlord and Tenant have heretofore agreed upon the nature of the improvements to be made to the Project with the Federal Appropriation and such other source of funding as may be available to landlord, all as embodied in the Work Orders issued by the Corps of



Engineers and reviewed and approved by Landlord and Tenant, and attached hereto as Exhibit D. (The improvements to be made to the Project with the Federal Appropriation and such other sources of funding as may be available to Landlord are referred to hereafter as "Landlord's Work.") Landlord shall have no obligation to spend any funds to complete Landlord's Work in excess of the Federal Appropriation and such other sources of funding as may be available to Landlord.

B. After Landlord's Work has been determined in accordance with subsection A above, Landlord will complete construction of Landlord's Work in a good and workmanlike manner and in accordance with requirements of governmental authorities. Tenant shall be consulted with regard to materials and structural details of Landlord's Work, but the final choice thereof shall be in Landlord's sole discretion. Except for Landlord's Work and except as provided in Section 9, Landlord shall not be required to make any repairs or improvements to the Project.

C. Landlord shall use reasonable commercial efforts to complete Landlord's Work by June 30, 2001, but shall have no liability to Tenant if it is unable to complete Landlord's Work by that date or by any other date. Within five (5) days after the New Rent Commencement Date, Tenant shall execute and deliver to Landlord a Certificate of Acceptance, in the form attached hereto as Exhibit C.

D. Landlord's Work shall comply with ADA requirements, as well as all other applicable Federal and local governmental requirements.

#### **4. *Tenant's Work.***

A. Landlord hereby conveys to Tenant all of its right, title and interest in and to the portion of the Premises, and any rights of Landlord to items located in such portion of the Premises, occupied by Barge 18. (Landlord claims no right to any Barge or other thing floating in the water.) Landlord is conveying such portion of the Premises to Tenant in its existing "as is" condition, without warranty of any kind whatsoever, except that Landlord agrees to supply all utilities necessary to make the Barges operational as part of Landlord's Work.

B. As soon as practicable after the Commencement Date, Tenant shall make all repairs and improvements to Premises Nos. 18 and 19 necessary for Tenant to operate its business thereon (collectively, "Tenant's Work"). Specifications for Tenant's Work shall be submitted to Landlord prior to commencement of Tenant's Work, and shall be subject to Landlord's approval, which shall not be unreasonably withheld. Tenant's Work shall be performed in a good and workmanlike manner in accordance with requirements of governmental authorities and all reasonable rules made by Landlord and its agents and without interference with or damage to work performed by Landlord or its agents as part of Landlord's Work. If Tenant causes any such interference or damage, Tenant shall be liable therefor.

C. Tenant shall not permit any materialmen's or mechanic's lien to be filed against the Project in connection with any item of construction or repair performed by Tenant, including Tenant's Work. If any such lien is filed, Tenant shall, within thirty (30) days after notice, discharge the lien of record or, if Tenant elects to contest the lien by appropriate proceedings, bond off the lien and prosecute the proceedings. If Tenant fails to discharge or bond off the lien,



Landlord may do so, and any monies expended by Landlord in doing so, including attorneys' fees, shall be reimbursed by Tenant promptly.

D. Within fifteen (15) days after the Commencement Date, if the District of Columbia shall then issue occupancy permits for improvements of the type subject to this Lease, Tenant shall apply for a permit from the District of Columbia to occupy and use the Premises (the "Occupancy Permit"). Tenant shall use its best efforts to obtain final approval of its application and issuance of the Occupancy Permit as soon as possible. Tenant shall send Landlord a copy of its Occupancy Permit within ten (10) days after Tenant receives it.

## 5. *Minimum Rent.*

A. During the Term, Tenant shall pay all rent, without demand and without setoff, counterclaim, recoupment or other reduction, to the "Management Agent" (defined below) for the Project, including Minimum Rent in monthly installments as set forth in Section 1.E. All monthly installments of Minimum Rent shall be payable in advance on the first day of each month, except that the first payment shall be due on the New Rent Commencement Date. If the Commencement Date or the New Rent Commencement Date is not the first day of a month, the rent for the months in which those dates fall shall be prorated.

B. On or before the New Rent Commencement Date, the Tenant Committee shall select, following consultation with, and with the approval of, the Landlord, a "Management Agent" that shall be charged with responsibility for the operation, maintenance, repair, and replacement of all elements of the Common Areas and the orderly operation of the Project. The Management Agent, throughout the term of its employment as such with respect to the Project: (1) shall maintain insurance that includes employee dishonesty or fidelity coverage in an amount at least as great as the amount of funds the Management Agent has access to at any time; and (2) shall covenant not to, and shall not, discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Landlord, subject to the review and approval, not to be unreasonably conditioned, delayed, or withheld, of the Tenant Committee, shall negotiate and enter into a Management Agreement with the Management Agent. The Management Agreement shall provide that, before payment to Landlord of any amounts due Landlord hereunder: (i) twenty-five percent (25%) of the Minimum Rent and all other Rent from this Lease and all other leases of premises within the Project shall be placed in an interest-bearing escrow account with the Management Agent as a reserve for future capital expenditures in respect of the Common Areas, of which as much as one-fifth (1/5) (or five percent (5%) of the Minimum Rent) may be used for advertising the Fish Wharf in local media and signage in Common Areas, although it is acknowledged by the parties that establishing reasonable reserves for capital needs shall have priority; (ii) all "Common Area Operating Costs" shall be paid to, and applied by, Management Agent, as provided in Section 10 below; and (iii) Management Agent shall deduct the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) (the "Accounting Reserve") from the Rent payable hereunder and shall deposit the same in a reserve account to remain available for purposes paying any accounting or auditing charges incurred by Landlord under Section 7.D below from time to time. As and when funds in the Accounting Reserve are expended, Management Agent shall again deduct sufficient monies



from the Rent payable hereunder to replenish the Accounting Reserve to the level established above..

C. No payment by Tenant of a lesser amount than the monthly installment of rent or other charges herein stipulated shall be deemed to be other than on account of the earliest stipulated rent or other charges, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord and satisfaction. Landlord may accept any check for payment without prejudice to Landlord's right to recover the balance of the rent due or to pursue any other remedy available to Landlord.

## **6. *Late Charges.***

Any rental or other payment due from Tenant hereunder which is not received when due shall be payable by Tenant to Landlord, without demand, with interest from the due date until paid at the rate of fifteen percent (15%) per annum (1-1/4% per month), but no less than One Hundred Dollars (\$100.00), and Tenant shall reimburse Landlord for reasonable attorneys' fees, if any, incurred by Landlord by reason of Tenant's failure to make timely payment. In addition, Tenant shall pay Landlord a \$100.00 fee for each check received by Landlord which is returned by Tenant's bank unpaid.

## **7. *Additional Rent: CPI Adjustment; Percentage Rent.***

A. Upon the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) Lease Year, and upon each anniversary thereof through the first day of the sixth (6<sup>th</sup>) Lease Year (each, an "Adjustment Date"), the Minimum Rent herein provided shall be adjusted to reflect increases in the Consumer Price Index (as defined in Section 1.H above). Such adjustment shall be accomplished by multiplying the Minimum Rent by a fraction, the numerator of which shall be the Consumer Price Index as of the most recent date prior to such Adjustment Date, and the denominator of which shall be the Consumer Price Index as of the most recent date prior to the New Rent Commencement Date; provided, however, that in no event shall the Minimum Rent be reduced as a result of such adjustment below the Minimum Rent for the immediately preceding year; and provided further that the increase in Minimum Rent as a result of any such annual adjustment shall be limited by the provisions of the immediately succeeding sentence. For purposes of the annual adjustment in Minimum Rent provided for herein, the Minimum Rent shall be divided into two parts, as follows: (i) an amount equal to seventy-five percent (75%) of the Minimum Rent for the immediately preceding year (the "Capped Portion"); and (ii) an amount equal to twenty-five percent (25%) of the Minimum Rent for the immediately preceding year (the "Uncapped Portion"). Anything herein to the contrary notwithstanding, the adjustment of the Capped Portion of the Minimum Rent on any individual Adjustment Date shall not result in an increase in the Capped Portion in excess of three percent (3%) over the amount of the Capped Portion for the immediately preceding year. The Uncapped Portion of the Minimum Rent shall be subject to no such limitation and shall be adjusted in accordance with the formula set forth in the second sentence of this Section 7. [As an example, to calculate the adjustment in Minimum Rent on the first day of the second (2<sup>nd</sup>) Lease Year, assuming that (x) the annual Minimum Rent is \$16,400.00; (y) the CPI Index is at 175 at the time of the New Rent Commencement Date; and (z) the CPI Index is at 185 at the time of the first day of



the second (2<sup>nd</sup>) Lease Year, then the adjustment to Minimum Rent would be calculated as follows: (1) the Minimum Rent to be adjusted is \$16,400, divided for this purpose into the Capped Portion of \$12,300 and an Uncapped Portion of \$4,100; (2) the Capped Portion is increased by 3% from \$12,300 to \$12,669, and the Uncapped Portion is increased by 5.7% from \$4,100 to \$4,333.70, producing a total increase in Minimum Rent of \$602.70 (or a blended increase of 3.68%) from \$16,400 to \$17,002.70.] The increased Minimum Rent established pursuant to this Section 7 shall continue in effect as, and for all purposes of this Lease be defined as, the Minimum Rent until again increased as herein provided.

B. Within seventy-five (75) days after the end of each Lease Year beginning with the Sixth (6<sup>th</sup>) Lease Year, Tenant shall pay to Landlord, as additional rent, Percentage Rent calculated in accordance with Section 1.G. Tenant's annual payment of Percentage Rent shall be accompanied by a financial statement (the "Annual Statement"), signed by Tenant and reviewed by an independent certified public accountant, showing "Gross Sales" and "Gross Non-Taxable Sales" (as such terms are defined below) and the Percentage Rent for the Lease Year.

C. "Gross Sales" means the gross amount charged for all sales or services made upon or from the Premises, including any rent or other sum received by Tenant from licensees or concessionaires. "Gross Non-Taxable Sales" means the amount of Gross Sales, minus the amount of all sales and services that shall be subject to, and with respect to which Tenant shall pay, District of Columbia Sales and Use Tax. "Gross Taxable Sales" means the amount of Gross Sales minus the amount of Gross Non-Taxable Sales. Each sale shall be valued at the actual sales price charged the customer, even if the sale is a credit or installment sale, and reported in full in the month in which the sale occurs, even if full payment is not received at the time of the sale.

D. Tenant shall furnish to Management Agent, simultaneously with the filing thereof with the District of Columbia, copies of the Sales and Use Tax Returns currently required to be filed by Tenant in respect of prepared foods and other taxable goods sold by Tenant within the Premises. In addition, Tenant shall prepare, file with the District of Columbia, and make simultaneously available to Landlord informational returns in respect of all raw foods and other non-taxable goods sold by Tenant within the Premises. Such records shall be open to inspection and audit by Landlord or its accountants. If any audit discloses a deficiency in payment of Percentage Rent, Tenant shall immediately pay Landlord the deficient amount, together with interest thereon at the rate of fifteen percent (15%) per annum from the date such Percentage Rent should have been paid. If a discrepancy of three percent (3%) or more in the reported amount of Gross Non-Taxable Sales is uncovered as a result of any audit, Tenant shall reimburse Landlord for the cost of the audit (including the cost of Landlord's accountant). Landlord shall bear the cost of any audit in which no discrepancy or a discrepancy of less than three percent (3%) shall be found (including the cost of Tenant's accountant). Except to the extent required by law or required to exercise its rights hereunder, Landlord shall maintain the confidentiality of all information furnished by Tenant pursuant to this Section 7.D or otherwise made available to Landlord in connection with the exercise of its rights under Section 7.B above.

## 8. *Utilities.*



During the Term, Tenant shall pay directly to the supplier all charges for water, sewer, gas, electricity, telephone and other utilities used upon the Premises. Expenses for maintenance of utility meters shall be borne by Tenant, and if Landlord pays any such expenses, Tenant shall reimburse Landlord promptly upon demand. Landlord shall not be liable for any failure to furnish or for any interruption of utility services, unless caused by the gross negligence of Landlord or Landlord's agents. Upon Tenant's request, Landlord shall furnish a copy of the surety bond or indemnity agreement from any contractor performing work in the Project.

## **9. Common Areas; Employee Parking.**

A. Landlord grants to Tenant the right, in common with other tenants in the Project, to use the Common Areas during the Term. Such right of use shall be deemed a license coupled with an interest, and shall subsist until the expiration or the earlier termination of the Term. After the completion of Landlord's Work, and with the approval of the Tenant Committee, Landlord may change the size, location or nature of the Common Areas, and may locate on the Common Areas structures of any type; provided no such structures would materially interfere with access to the Premises across the Common Areas and to and from Maine Avenue. Subject to the terms of the Management Agreement, Landlord shall have exclusive control and management of the Common Areas and Landlord may establish and enforce rules therefor.

B. Parking, including, without limitation, employee parking, within the Project shall be regulated by the Tenant Committee, which shall promulgate parking regulations to be enforced by the Management Agent; provided, that no area within the Project shall be dedicated to parking for employees of Tenant or any other tenant of the Project; and provided, further, that no parking shall be permitted in any area designated for table space in the plans for Landlord's Work.

## **10. Common Area Operating Costs.**

A. Commencing with the New Rent Commencement Date, Tenant shall pay to Management Agent (as agent for Landlord), as additional rent, Tenant's Proportionate Share of all "Common Area Operating Costs" (as hereafter defined). Common Area Operating Costs means the sum of the following costs and charges incurred by Landlord for each calendar year or part thereof during the Term: (i) "Common Area Costs" (as hereafter defined); (ii) repair and maintenance costs for the structure and exterior of the buildings in the Project, exclusive of improvements located on barges within the Project and exclusive of expenditures that under "generally accepted accounting principles," as that term is defined by the financial Accounting Standards Board, would be capitalized ("Capital Expenditures"); (iii) "Insurance Costs" (as hereafter defined); and (iv) the monthly fee due Management Agent under the Management Agreement. Common Area Costs mean all costs incurred by Landlord, excluding Capital Expenditures, to operate, maintain, replace and repair the Common Areas, including costs for the following: security services; gardening and landscaping; repairs; painting; striping and sweeping; lighting (including the cost of electricity and maintenance and replacement of exterior fixtures and bulbs); and other utility costs for the public restrooms and other facilities located within the Common Area; refuse removal, including dumpsters; ice and snow removal; equipment and supplies related to Common Area maintenance; water and maintenance charges for sprinklers and hydrants; any dues, fees or assessments paid by Landlord with respect to storm water management facilities that benefit the Project; and personnel



of Management Agent to operate, maintain and repair the Common Areas (including salaries, employment taxes and workmen's compensation insurance for such personnel). "Insurance Costs" mean all insurance premiums and other costs incurred by Landlord in connection with fire and extended coverage, public liability, business interruption, sign, and any other insurance maintained by Landlord relating to the Project.

B. Landlord shall annually notify Tenant of Tenant's Proportionate Share of Common Area Operating Costs for each calendar year, and Tenant shall pay to Management Agent (as agent for Landlord) such amount in equal monthly installments in advance on the first day of each of the twelve (12) months after the date of such notice, the first such monthly installment to be due on the New Rent Commencement Date. If the New Rent Commencement Date is a date other than the first day of a month, Tenant's Proportionate Share of Common Area Operating Costs for that month shall be prorated. Landlord shall annually submit to Tenant a statement showing the actual Tenant's Proportionate Share of Common Area Operating Costs for the prior calendar year, the amount paid by Tenant, and the balance due or overpayment. The balance due shall be paid by Tenant to Management Agent (as agent for Landlord), or the overpayment shall be paid by Landlord to Tenant, without interest, within thirty (30) days after the date of the statement. Tenant may, upon reasonable notice, examine Project records at the office of Management Agent during ordinary business hours to verify the statement for the immediately preceding year, but such examination shall not excuse the timely payment of Tenant's Proportionate Share of Common Area Operating Costs.

C. The Tenant Committee, in conjunction with the Management Agent, shall prepare an annual budget for operation of, and any contemplated repairs and replacements of, the Common Areas, which shall be made available for the review and reasonable approval of Landlord. As and when capital expenditures are required, the Tenant Committee, in conjunction with the Management Agent, shall prepare a scope of work and budget therefor, and shall submit same to Landlord for approval, which shall not be unreasonably withheld. Until the New Rent Commencement Date, Tenant, in conjunction with the other tenants of the Project, shall continue to be responsible for and pay operating costs of the Project in the same manner as has been the case before the date of this Lease, subject to adjustment for any changes being implemented currently in tenants' respective Proportionate Shares.

## ***11. Use of Premises.***

A. Tenant shall use the Premises exclusively for conduct of the business set forth in Section 1.I.

B. Tenant shall keep the Premises open for business at least forty-five (45) hours per week, excluding any closures caused by fire, natural disasters, or other casualties, required by the Landlord's Work or by repair or renovation work by Tenant, or by dredging activity required by the terms of this Lease.

C. Tenant shall comply with all laws, ordinances, rules and regulations pertaining to the use and occupancy of the Premises, including the Americans with Disabilities Act



and other laws relating to the use of the public areas of the Premises by individuals with disabilities. Tenant shall not permit any act upon the Premises which (i) disturbs tenants of the Project or injures the reputation of the Project, (ii) subjects Landlord to liability for injury or damage to persons or property, or (iii) invalidates, or increases the cost of, any insurance policy pertaining to the Project. Tenant shall pay to Landlord the amount of any increase in Landlord's insurance costs caused by Tenant's activities.

## ***12. Signs.***

A. Tenant, at its expense, shall install exterior signage on the Premises ("Tenant's Signage"), which shall be subject to Landlord's approval and shall comply with all applicable codes, regulations and laws. Any changes to Tenant's Signage shall be subject to Landlord's approval, which shall not be unreasonably withheld.

B. Tenant shall maintain Tenant's Signage in good repair, and shall replace it when needed so that Tenant's Signage is in good condition at all times. If Tenant fails promptly to perform its obligations under this Section, Landlord may perform the repairs, replacements or removal, at Tenant's expense, and Tenant shall reimburse Landlord for the cost thereof promptly upon demand.

## ***13. Alterations.***

Tenant may alter the Barges provided such alterations shall not harm the Project and must comply with all applicable Federal and local building codes, regulations and laws, and provided that any alteration that includes an expansion of the horizontal space covered by such Barges, or the amount or location of the frontage currently occupied by such Barges for purposes of effecting sales to the public, shall require the written consent of Landlord. Provisions identical to the foregoing provisions of this Section 13 shall appear in all Leases of Barge Space within the Project.

## ***14. Fixtures and Equipment.***

All of Tenant's equipment, furniture, and moveable trade fixtures shall remain Tenant's property, and Tenant shall have sole responsibility therefor. Tenant may remove them at any time prior to expiration of the Term, provided that Tenant is not then in default under this Lease and provided further that Tenant repairs any damage to the Premises occasioned by removal.

## ***15. Tenant's Maintenance; Condition of the Premises.***



A. Tenant shall, at all times throughout the Term, at its cost, put, keep and maintain the Barges and Premises and every improvement located thereon in good order, condition and repair, except for reasonable wear and tear, condemnation and casualty loss. As used herein, "repairs" shall include replacements, restorations and/or renewals, when necessary or appropriate to keep the Barges and Premises in good order, condition and repair at all times throughout the Term. All repairs shall be made in a first class workmanlike manner. In addition, Tenant shall keep and maintain the Barges and Premises in a clean and orderly condition, free of dirt, rubbish, snow and ice. The necessity for and adequacy of repairs to the Barges and Premises shall be measured by the standard that is appropriate for a first class wharf and fish market.

B. Tenant shall deposit its refuse in the compactor, dumpster or other trash receptacle supplied by Landlord for Tenant's use as of the Commencement Date. Throughout the Term, the Tenant Committee shall provide compactors or dumpsters and/or trash collection service, the cost of which shall be included among the Common Area Costs. Tenant shall not use the compactors, dumpsters or trash collection service for discarding "Hazardous Materials" (as such term is defined below). Tenant, at its expense, shall dispose of its Hazardous Materials in accordance with applicable federal, state and local laws and regulations. "Hazardous Materials" means all substances declared to be hazardous, toxic or infectious under any applicable law or regulation.

C. Tenant shall cooperate with the other tenants of the Project, if given reasonable notice, in arranging for movement of the Barges as necessary to accommodate the maintenance, repair, and replacement of Barges and dredging of submerged areas within the Project. All dredging activities shall be carried out and concluded as quickly as is commercially reasonable in the circumstances. Provisions identical to the foregoing provisions of this Section 15.C shall appear in all leases of Barge Space within the Project. It is the intent of the parties that all tenants of the Project shall have the rights of third-party beneficiaries with respect to the provisions of this Section 15.C.

#### **16. Landlord's Right of Entry.**

Landlord and its agents may enter the Premises at reasonable hours to inspect or exhibit them; to place and maintain a "FOR RENT" sign thereon at any time within six (6) months prior to termination of the Term; or to enter them after Tenant defaults hereunder, and alter, repair or otherwise prepare the Premises for reoccupancy.

#### **17. Tenant's Indemnity; Insurance.**

A. Landlord shall not be liable for, and Tenant shall protect, defend, indemnify and hold Landlord harmless from and against, any liability or claim (including attorneys' fees) in connection with any injury or loss to any person or property (i) arising within the Premises, unless caused by the gross negligence or willful misconduct of Landlord, or (ii) arising out of any act or omission of Tenant or its agents or contractors.

B. Throughout the Term, Tenant shall maintain, with a company licensed to sell insurance in the District of Columbia, (i) commercial general liability insurance (the "Liability



Policy”) with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate combined for all locations in which Tenant operates its business (Nos. 7, 8, 9, 16, 17, 18, and 19), in a form providing occurrence basis coverage; and (ii) an all-risk policy of insurance covering the Barges and all trade fixtures, equipment and personal property kept at the Premises, in an amount not less than the full replacement value of said items. All such insurance policies shall (i) be written as primary coverage and not contributing with or in excess of any coverage that Landlord may carry; (ii) contain an express waiver of any right of subrogation by the insurer against Landlord; and (iii) provide that the insurance policy may not be cancelled unless Landlord has been given thirty (30) days’ prior written notice. Notwithstanding the foregoing, the Liability Policy shall be increased at the end of each period of five (5) Lease Years during the Term by an amount equal to the increase in the Consumer Price Index during such period. In addition, Tenant’s Liability Policy shall (i) list as additional insured Landlord and any other parties with an insurable interest in the Premises designated by Landlord, and (ii) be endorsed to require the insurance carrier to notify Landlord in writing of any losses charged against the policy. Before the Term commences, and before any such insurance policy expires, Tenant shall deliver to Landlord a certificate of insurance for each policy or renewal thereof that Tenant is required to maintain under this Section. If Tenant fails to maintain any insurance required by this Section, Landlord may obtain such insurance, and any premium paid by Landlord shall be immediately payable by Tenant to Landlord as additional rent.

C. Neither party shall be liable to the other or to any insurer (by way of subrogation or otherwise) for any loss or damage, even though such loss or damage may have been occasioned by the negligence of such party, if such loss was covered by an insurance policy containing an endorsement to the effect that any such release by the insured shall not adversely affect the insured’s right to recover for such loss, and that the insurer waives its right of subrogation.

## **18. *[Intentionally Omitted].***

## **19. *Assignment and Subletting.***

A. Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or otherwise permit others to use all or any part of the Premises, whether voluntarily, by operation of law or otherwise (collectively, an “Assignment”), without the prior written consent of Landlord, which Landlord may withhold in its absolute discretion. However, Landlord shall not withhold its consent if such assignee, transferee, subtenant or occupant (collectively, the “Assignee”) is financially capable of satisfying its obligations under this Lease, and shall have previously and successfully sold seafood at retail. Any attempted Assignment shall be void and confer no rights upon any third party. If an Assignment is effected in violation of the terms of this Lease, Landlord may collect rent from the Assignee and apply the net amount collected to the rent herein reserved, but no such Assignment or collection shall be deemed a waiver of this covenant, acceptance of the Assignee as tenant, or release of Tenant hereunder. In addition, if Landlord consents to an Assignment, Tenant shall pay Landlord One Thousand and No/100 Dollars (\$1,000.00) (the “Assignment Fee”) as payment for legal fees and costs incurred in connection with the preparation of the documents to effectuate the Assignment. The Assignment Fee shall be paid to Landlord prior to the preparation of the Assignment documents. The following events shall also



constitute an Assignment: (a) if Tenant is a corporation, the transfer of more than fifty percent (50%) of the voting stock of Tenant, or (b) if Tenant is a partnership, the transfer of more than fifty percent (50%) of the partnership interests of Tenant or the transfer of any general partnership interest of Tenant. This clause shall not be interpreted to preclude an Assignment to siblings and direct descendants of individuals owning, as of the Commencement Date, a majority of the voting stock of Tenant, or a transfer to a new entity as a result of a reorganization that does not result in a change in beneficial ownership.

B. If Landlord approves an assignment or subletting, Tenant shall pay to Landlord, as and when received by Tenant, an amount equal to 50% of the difference between (i) all sums paid to Tenant by or on behalf of such assignee or subtenant under the assignment or sublease, and (ii) the Rent paid by Tenant under this Lease and attributable to the portion of the Premises assigned or sublet.

C. In addition to the foregoing, if Tenant notifies Landlord that Tenant desires to assign a portion of this Lease or sublet a portion of the Premises (the "Proposed Sublet Space"), Landlord shall have the option to regain possession of the Proposed Sublet Space and amend this Lease to exclude the Proposed Sublet Space and effect a proportionate reduction in Minimum Rent and Tenant's Proportionate Share based upon the relative size of the Premises as so reduced. All other terms and conditions of this Lease shall remain in effect and applicable to the Premises as reduced, and Tenant shall execute documents to effect such amendment at Landlord's request. If Landlord does not exercise its right to regain possession of the Proposed Sublet Space, Tenant may seek an acceptable assignee or subtenant for a sublease term no longer than that set forth in Tenant's notice. If Tenant does not find an assignee or subtenant acceptable to Landlord within 120 days from the date of Tenant's most recent notice, Tenant may not enter into any assignment or sublease without first submitting a new notice to Landlord and affording Landlord an opportunity to amend or terminate this Lease as set forth above.

## **20. *[Intentionally Omitted]*.**

## **21. *Tenant's Defaults.***

Tenant shall be in default under this Lease if Tenant (a) fails to pay any rent or other sum required hereunder within twelve (12) days after its due date; or (b) fails to maintain any insurance required hereunder; or (c) abandons the Premises or fails to conduct business therein for a period of fifteen (15) or more consecutive days, absent a casualty and then only after allowing a period of as much as six (6) months in which to replace the affected Barge, or (d) assigns this Lease or sublets all or any portion of the Premises in violation of Section 19; or (e) fails to open for business in the Premises within one (1) year after the New Rent Commencement Date; or (f) files for relief under the United States Bankruptcy Code (the "Bankruptcy Code") or under any other state or federal bankruptcy or insolvency law, or Tenant files an assignment for the benefit of creditors, or if an involuntary proceeding under the Bankruptcy Code or under any other federal or state bankruptcy or insolvency law is commenced against Tenant; or (g) defaults in any other obligation herein and such default is not remedied within thirty (30) days after written notice of the default from Landlord; provided, however, that Tenant's failure to perform any non-monetary obligation set forth in this Lease on its part to be performed three (3) or more times in any twelve



(12) month period shall effect an immediate default, and Landlord thereupon may exercise any remedy set forth in Section 22 below without affording Tenant any opportunity to cure such default.

## **22. *Landlord's Remedies in Case of Tenant's Default.***

A. At any time after Tenant's default under this Lease, Landlord may (i) terminate this Lease upon notice to Tenant or by any available judicial process; and/or (ii) re-enter the Premises (with or without terminating the Lease), remove all property, which may include towing the Barge or Barges and storing same, at Tenant's expense without being deemed guilty of trespass and without liability for any loss or damage, and/or relet or otherwise deal with the Premises in any manner which Landlord determines in its sole discretion.

B. Should Landlord terminate this Lease after Tenant's default, Landlord may recover from Tenant all costs (including attorneys' fees) and other damages incurred by Landlord as a result of such default, and, without limiting the generality of the foregoing, (i) all rent to the time of such termination shall be paid by Tenant immediately, together with all expenses (including attorneys' fees) of retaking possession of the Premises, as shall the cost of preparing the Premises for reletting and the costs (including brokerage fees and advertising) of actually reletting same; (ii) Landlord may take all steps, including repair or alteration of the Premises, to prepare the Premises for reletting; (iii) Landlord may relet all or any part of the Premises for such term, at such rental, and upon such conditions as Landlord deems advisable; and (iv) Tenant shall pay to Landlord, as liquidated damages, for each month during the balance of the Term (but for termination of the Lease by Landlord), any deficiency between (a) all rent and additional rent herein reserved for each such month, and (b) the net rent for each such month collected upon any reletting. Alternatively, if Landlord terminates this Lease at any time after Tenant's default, Landlord may elect, in addition to the damages described in clauses (i) - (iii) of the preceding sentence, and the damages due under clause (iv) up to the time of said election, to recover from Tenant the value at the time of said election of the excess, if any, of all rent and additional rent due under this Lease for the remainder of the Term (but for termination of the Lease by Landlord) over the then reasonable rental value of the Premises for that period.

C. If Landlord elects not to terminate this Lease after Tenant's default, Tenant shall continue to be liable for all rent and additional rent due hereunder, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.

D. If Tenant abandons the Premises, Landlord may re-enter the Premises without judicial process and relet them, and such re-entry or reletting shall not terminate this Lease, and Tenant shall continue to be liable for all rent and additional rent due under the Lease, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.



**23. *Landlord's Right to Cure Tenant's Default.***

A. If Tenant shall default in the keeping, observance or performance of any provision or obligation of this Lease, Landlord, without thereby waiving such default, may perform the same for the account and at the expense of Tenant, without notice in a case of emergency and in any other case if such default continues after thirty (30) days from the date of the giving by Landlord to Tenant a notice of intention so to do. Bills for any reasonable expense incurred by Landlord in connection with any such performance by Landlord for the account of Tenant, and bills for all reasonable costs, expenses and disbursements of every kind and nature whatsoever, including attorneys' fees, involved in collecting or endeavoring to collect any sums due hereunder or enforcing or endeavoring to enforce any rights against Tenant, under or in connection with this Lease, or pursuant to law, including any such reasonable cost, expense and disbursement involved in instituting and prosecuting any action or proceeding (including any summary dispossession proceeding), may be sent by Landlord to be due and payable in accordance with the terms of said bills, and if not paid when due, the amounts thereof shall immediately become due and payable as Additional Rent under this Lease.

B. No entry in accordance with this Lease by Landlord or its employees, agents or representatives, or by any other party at the direction of Landlord, shall ever be construed or interpreted as an ouster of Tenant from possession or as a constructive eviction or to alter, diminish or abate Landlord's rights under this Lease.

**24. *[Intentionally Omitted].***

**25. *Holding Over.***

If Tenant lawfully remains in possession of the Premises after the expiration of the Term, Tenant shall be a tenant from month to month, upon all the terms hereof which are not inconsistent with such tenancy; provided, however, that Tenant covenants to pay to Landlord as Minimum Rent during such tenancy one hundred fifty percent (150%) of the Minimum Rent in effect immediately before expiration of the Term, in addition to all other rent and other charges due hereunder. Such tenancy may be terminated by Landlord or Tenant upon thirty (30) days notice.

**26. *Surrender of Premises.***

Upon termination of the Term for any reason, Tenant shall remove the Barges and any other property of Tenant, and surrender the Premises to Landlord in the same condition as they were in on the Commencement Date. If Tenant fails to remove the Barges or other property, it shall become Landlord's property or, at Landlord's option, shall be removed and stored at Tenant's expense, without Landlord being liable for trespass, conversion or negligence in respect of such property. If Tenant fails to surrender the Premises in the condition required by this Section, Landlord may restore the Premises to their condition as of the Commencement Date and Tenant shall reimburse Landlord for the cost of the restoration.



## **27. *Limitation on Landlord's Liability.***

A. Notwithstanding anything to the contrary in this Lease, (i) Landlord shall not be liable to Tenant for any loss or damage to property which is either covered by insurance or which Tenant is required to insure under this Lease, and (ii) any liability of Landlord to Tenant under this Lease shall be limited to direct damages and shall not include indirect, consequential, incidental, or punitive damages, including any liability to Tenant for lost profits or interruption of business. Tenant shall look to its property damage or business interruption insurance policies, and not to Landlord, its agents or employees for any loss incurred as a result of damage to its property or interruption of its business.

B. Except for damages resulting from the gross negligence or willful misconduct of Landlord, Landlord shall not be liable to Tenant, its employees, agents or other invitees for any damage, compensation, claim or expense arising from (i) damage or loss to the property of Tenant or others located anywhere in the Project), or (ii) death, accident or injury to persons occurring anywhere in the Project). Landlord shall have no liability to Tenant for any delay in completing Landlord's Work.

## **28. *Notices.***

All notices and other communications hereunder shall be in writing, and shall be hand delivered, delivered by a recognized overnight delivery service (e.g., Federal Express), or sent by certified or registered U.S. mail, postage prepaid, to Landlord or Tenant, as the case may be, at the address set forth below. All notices hereunder shall also be delivered to counsel for the party to receive such notice, at the address set forth below, in order to effectuate good and valid notice hereunder.

If to Landlord:

Director, District of Columbia Department of Housing  
and Community Development  
801 North Capitol Street, N.E.  
8<sup>th</sup> Floor  
Washington, D.C. 20002

With a required copy to:

Andrew Ridley, Esquire  
Assistant Corporation Counsel  
801 North Capitol Street, N.E.  
Room 734  
Washington, D.C. 20002



If to Tenant:

THE WHARF, INC.  
t/a The Wharf  
1100 Maine Avenue, S.W.  
Washington, D.C. 20024  
Attn: Billy White

With a required copy to:

Richard L. Aguglia, Esquire  
Hunton & Williams  
1900 K Street, N.W., Suite 1200  
Washington, D.C. 20006

Either party may designate in writing a change in its notice address, which shall be effective ten (10) days following receipt of such writing by the other party. Notices which are delivered in person shall be deemed given when received. Notices which are mailed shall be deemed given on the date they are mailed. Notices which are sent by overnight delivery service shall be deemed given on the date they are deposited with the delivery service.

**29. *Quiet Enjoyment.***

As long as it is not in default under this Lease, Tenant may peaceably and quietly enjoy the Premises for the Term without hindrance, ejection or molestation by Landlord or anyone claiming or acting by or through Landlord.

**30. *Security Deposit.***

Tenant has deposited with Landlord the sum set forth in Section 1.L (the "Security Deposit") as security for performance of Tenant's obligations hereunder. The Security Deposit shall be returned to Tenant, with interest, within forty-five (45) days after the expiration of the Term, provided that Tenant has discharged all such obligations. Landlord may apply the Security Deposit to cure any default of Tenant, and Tenant shall deposit with Landlord the amount applied within thirty (30) days after written demand.

**31. *[Intentionally Omitted].***



### **32. Rules and Regulations.**

Tenant will comply with the Rules and Regulations set forth on Exhibit E, and with any other reasonable rules and regulations as Landlord adopts for the Premises. Such rules and regulations shall not unreasonably interfere with the conduct of Tenant's business. In particular instances, where in Landlord's reasonable judgment such rules and regulations may be infeasible, Landlord shall have the right to modify or waive such rules and regulations as they apply to particular other tenants. Any failure by Tenant to comply with any rule or regulation established pursuant to this Lease shall be a default under this Lease subject to Section 21. Landlord shall exercise its rights in respect of the promulgation, revision, and enforcement of Rules and Regulations in a non-discriminatory manner.

### **33. Waiver of Jury Trial.**

Landlord and Tenant hereby waive all right to trial by jury in any claim, action, proceeding or counterclaim by either Landlord or Tenant against the other pertaining to any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use of the Premises.

### **34. Covenant Against Contingent Fees**

Tenant warrants that it has not employed any person to solicit or secure this Lease upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give Landlord the right to terminate this Lease, or, in its discretion, to add to the rental or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by Tenant upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by Tenant for the purposes of securing business, or to Tenant's attorneys' fees. Landlord shall pay any and all commissions and other compensation due to any broker, finder or other person with whom Landlord has dealt with regard to this Lease.

### **35. Facilities Nondiscrimination.**

A. As used in this section, the term "facility" means the entire Premises.

B. Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, sexual orientation, physical disability, marital status or national origin, in furnishing, or by refusing to furnish, to any person or persons the use of any facility, including any and all service, privileges, accommodations and activities provided thereby.

C. It is agreed that Tenant's noncompliance with the provisions of this Article, as determined by a final, unappealable judgment by a court of competent jurisdiction, shall constitute material breach of this lease Agreement. In the event of such a determination of noncompliance, and Tenant's failure to cure such non-compliance within ten (10) days after such



determination becomes final, Landlord may take appropriate action to enforce compliance, and may pursue remedies as may be provided by law or in equity.

D. Tenant agrees to include, or to require the inclusion of, the foregoing provisions of this section (with terms "The District" and "Tenant" appropriately modified) in every agreement or concession pursuant to which any person other than Tenant operates or has the right to operate the facility. Tenant also agrees that it will also comply with any final, unappealable court order directing Tenant to take any action with respect to any such agreement in order to enforce the provisions of this section, including but not limited to termination of the agreement or concession in question; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a person as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **36. *Nondiscrimination in Employment.***

A. In connection with the conduct of business on the Premises, Tenant agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Tenant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex orientation, physical disability, marital status or national origin. Such action shall include, but not limited to the following: employment, upgrading demotion or transfer, recruitment or recruitment advertising, layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, as required by applicable law. Tenant agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by Landlord setting forth the provisions of this nondiscrimination clause.

B. Tenant will, in all solicitations for advertisements for employees placed by or on behalf of the Tenant, state that qualified applicants will receive consideration for employment without regard to race, creed, color, sexual orientation, physical disability, marital status or national origin.

C. Tenant will send to each union or representative of workers with which it has collective bargaining agreement(s) or other contracts of understandings a notice to be provided by Landlord in advising the said labor union or worker's representative of Tenant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. Tenant will permit Landlord access to their books, records, and accounts, or their agents, for purposes of investigation to ascertain compliance with such rules, regulations and orders, as provided by applicable law.

E. In the event of any final, unappealable determination by any court or administrative body, of noncompliance of Tenant with the nondiscrimination clauses of this Lease Agreement, and Tenant's failure to cure such discrimination within ten (10) days after such determination becomes final, this Lease Agreement may be canceled in whole or in part and



Tenant may be declared ineligible for further leases with the District of Columbia.

F. Tenant further agrees to insert the foregoing provisions of nondiscrimination in employment in all subcontracts hereunder, unless exempted by rules and regulations or orders of Landlord so that such provisions will be binding and regulations or orders of Landlord so that such provisions will be binding upon each subcontractor or vendor. Tenant will take such action with respect to any subcontract as required by any final, unappealable order of a court or governmental agency of competent jurisdiction in order to enforce such provisions, including sanctions for noncompliance; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a subcontractor or vendor as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **37. *Environment Protection.***

A. Tenant shall not pollute the air, ground or water in, on or under the premises. Tenant shall comply promptly with any laws, regulations, conditions or instructions applicable to the Tenant's business(es) at the Premises, if and when issued by the Environmental Protection Agency, or any Federal, state, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous material within the Premises in violation of applicable laws or codes is specifically prohibited. Tenant shall require the owners/operators of boats moored at the Premises, including rental boats, to seal all sanitation facilities or such boats against any discharge into the Washington Channel. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Tenant as reasonably appropriate. Tenant shall not discharge waste or effluent from the Premises, including Barges, in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

B. If damage to the environment or natural resources is proximately caused by Tenant's activities at the premises, Tenant shall be liable to restore the damaged resources.

### **38. *Miscellaneous.***

A. **Entire Agreement; Joint and Several Liability; Successors and Assigns.** This Lease constitutes the entire agreement between the parties concerning the matters set forth herein. If Tenant shall include more than one person, the obligations hereunder of all such persons shall be joint and several. This Lease shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs and legal representatives.

B. **Interpretation.** The named Exhibits are part of this Lease. Section and subsection headings are for convenience only, and not for use in interpreting this Lease. If a court finds any provision of this Lease unenforceable, all other provisions remain enforceable.

C. **Costs; Include; Shall; May.** Except as expressly provided otherwise in this Lease, the party obligated or permitted to perform an obligation is also obligated, as between Landlord and Tenant, to pay the cost of performance. "Include," "includes," and "including" mean



considered as part of a larger group, and not limited to the items recited. "Shall" means is obligated to. "May" means "is permitted to."

D. **Waiver.** No provision of this Lease is waived by Landlord or Tenant unless waived by them in writing. Landlord's acceptance of rent is not a waiver of any default of Tenant, regardless of Landlord's knowledge of a default when it accepts the rent. No waiver by Landlord or Tenant of any default is a waiver of any other default of the same or any other provision of this Lease.

E. **Rule Against Perpetuities.** Notwithstanding any provision in this Lease to the contrary, if the Lease Term has not commenced within three (3) years after the date of this Lease, this Lease shall automatically terminate on the third (3rd) anniversary of the date hereof. The sole purpose of this provision is to avoid any possible interpretation that this Lease violates the Rule Against Perpetuities or other rule of law against restraints on alienation.

F. **Remedies.** The rights and remedies mentioned in this Lease are in addition to, and do not deprive a party of any other rights at law or in equity.

G. **No Option.** The submission of this Lease for examination does not constitute a reservation of or option for the Premises, and this Lease becomes effective only upon execution and delivery of it by Landlord.

H. **Additional Rent.** All sums owed by Tenant to Landlord in connection with this Lease which are not otherwise designated as rent shall be deemed to be additional rent.

I. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the District of Columbia.

A handwritten signature in black ink, appearing to be "B. White", is located in the bottom right corner of the page.



**J. Waiver and Release of Claims.** In consideration of the execution and delivery of this Lease by the parties hereto, each of such parties hereto (each, a "Releasing Party") hereby unconditionally releases, remises, acquits, and forever discharges the other party hereto (at such time as such other party shall have executed and delivered this Lease), as well as each of the other tenants of the Project (at such time as each such tenant shall have executed and delivered a Lease containing waiver and release provisions identical to the provisions of this Section 38.J, and provided such tenant shall not have instituted litigation against such Releasing Party after the date hereof and before the date of such Lease) (collectively, the "Released Parties"), from any and all claims, demands, liabilities, damages, losses, costs, expenses, causes of action, covenants, contracts, torts, controversies, agreements, promises, representations, breaches of contract or of obligations to perform, and any other type of conduct or misconduct, whether negligent, intentional or otherwise, whether at law or in equity, whether matured or unmatured, and whether known or unknown, that the Releasing Party, or any person or entity claiming by, through or under the Releasing Party, ever had, now has, or hereafter may have, against any of the Released Parties at any time from the beginning of the world to the date hereof related to, arising out of, or in any manner connected with: (1) the Project, the operations of the businesses within the Project, or the conduct of any of the Released Parties that relates in any manner to the Project; or (2) this Lease or other lease agreements entered into at any time before the date hereof or simultaneously herewith relating to the Project (collectively, the "Project Leases"), the procurement or negotiation of any of the Project Leases or the terms thereof, or the performance or non-performance by any party under any of such Project Leases.

[Signatures commence on following page]





IN WITNESS WHEREOF, the District of Columbia has caused this Lease to be executed in its corporate name by Anthony Williams, its Mayor, and attested by Beverly Rivers, its Secretary of D.C., and its seal to be hereunto affixed and does hereby constitute and appoint Anthony Williams its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

LANDLORD:

WITNESS:

THE DISTRICT OF COLUMBIA, as agent for  
THE UNITED STATES OF AMERICA

Beverly A. Rivers

By Anthony A. Williams  
Name: Anthony A. Williams  
Title: Mayor of the District of Columbia

Approved for Legal Sufficiency:

Andrew Paul Ridley  
Name: Andrew Paul Ridley  
Title: Assistant Corporation Counsel

Date: 2-21-01

IN WITNESS WHEREOF, THE WHARF, INC., has caused this Lease to be executed in its corporate name by Billy R. White, its President, and attested by Penny R. White, its Secretary, and its seal to be hereunto affixed and does hereby constitute and appoint Billy R. White its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

TENANT:

ATTEST:

THE WHARF, INC., a District of Columbia  
corporation

Penny R. White

By Billy R. White  
Name: Billy RAY WHITE  
Title: President

(Seal)



DISTRICT OF COLUMBIA, SS.

I, R. Gladys Herring, a Notary Public in and for the District of Columbia, do hereby certify that Anthony Williams who is personally well known (or satisfactorily proven) to me to be the person named as Mayor of the District of Columbia, a municipal corporation, in the foregoing Lease, bearing date as of July 12, 2000, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of the District of Columbia, for the purposes therein contained.

WITNESS my hand and seal this 21<sup>st</sup> day of February, 2001.

Gladys W. Herring  
Notary Public

My commission expires: June 30, 2004

DISTRICT OF COLUMBIA, SS.

I, REGINA HOLMES, a Notary Public in and for the District of Columbia, do hereby certify that Billy Ray WHITE, who is personally well known (or satisfactorily proven) to me to be the person named as PRESIDENT of THE WHARF, INC., a District of Columbia corporation, in the foregoing Lease, bearing date as of July 12, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of THE WHARF, INC., for the purposes therein contained.

WITNESS my hand and seal this 2<sup>th</sup> day of July, 2000.

Regina Holmes  
Notary Public

MY COMMISSION EXPIRES  
**SEPTEMBER 14, 2000**

My commission expires: \_\_\_\_\_

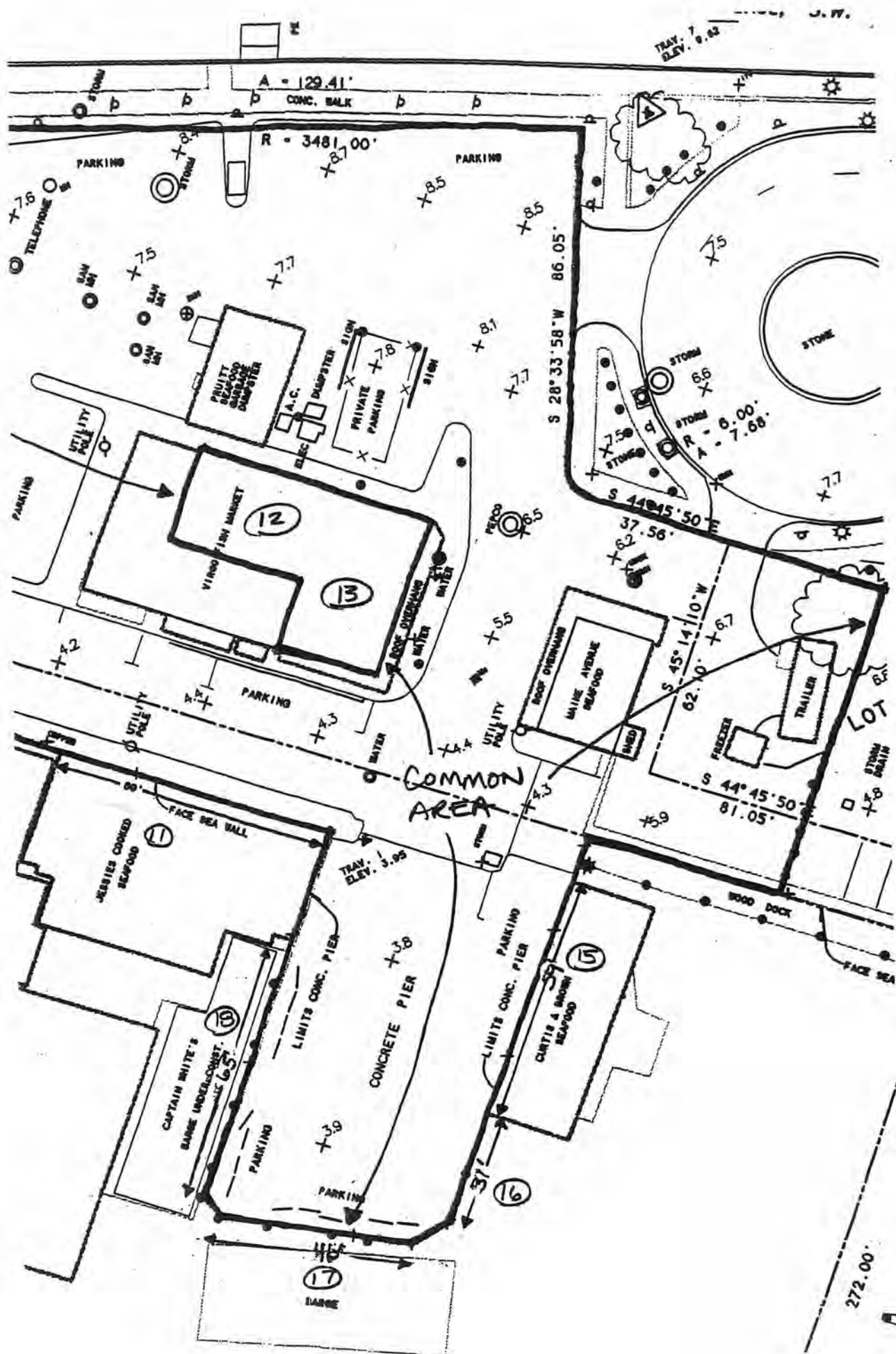
Billy Ray White



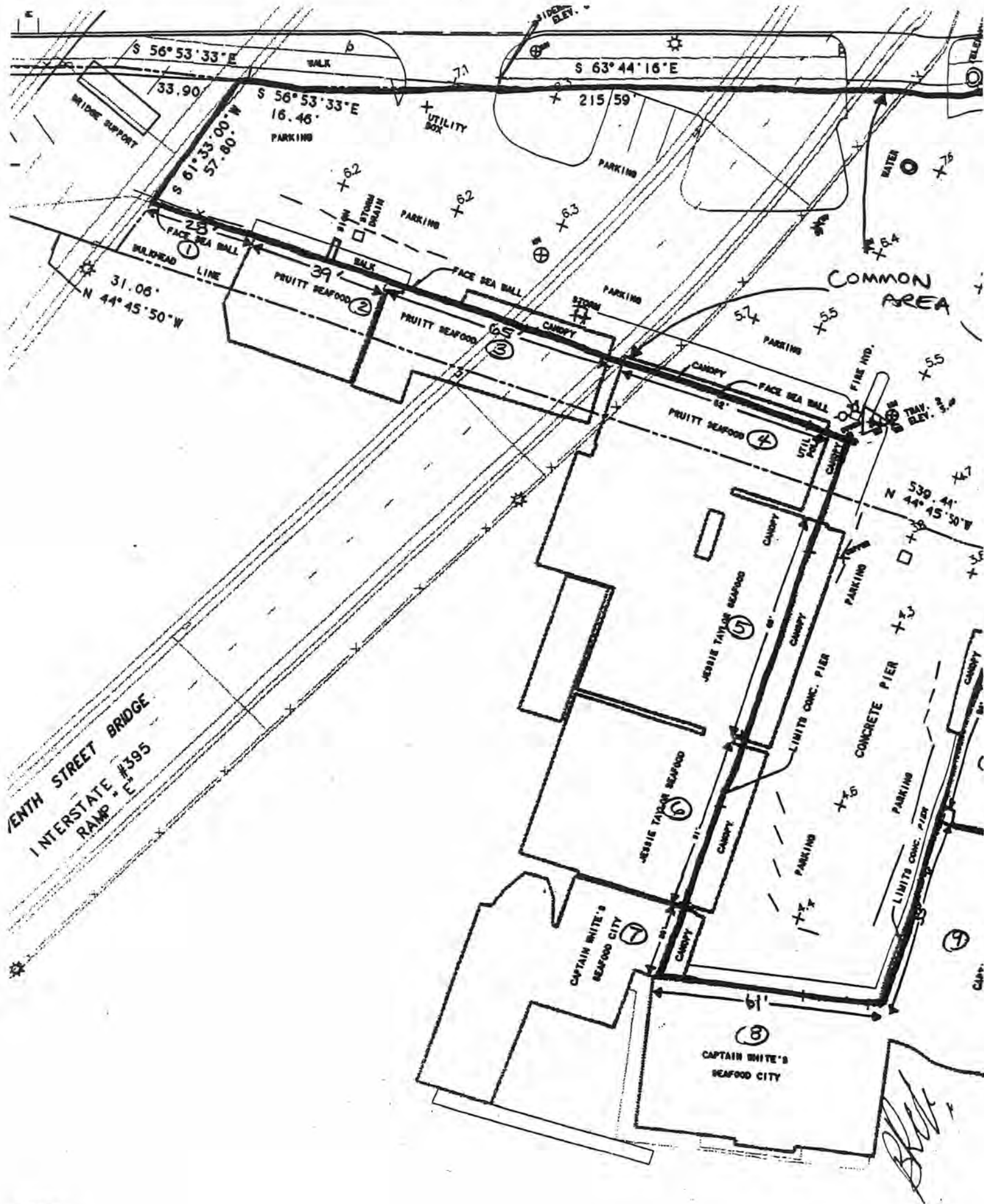
**EXHIBIT A**

[Outline of Premises -- to be initialed by the parties and attached upon completion of design and engineering for Landlord's Work.]

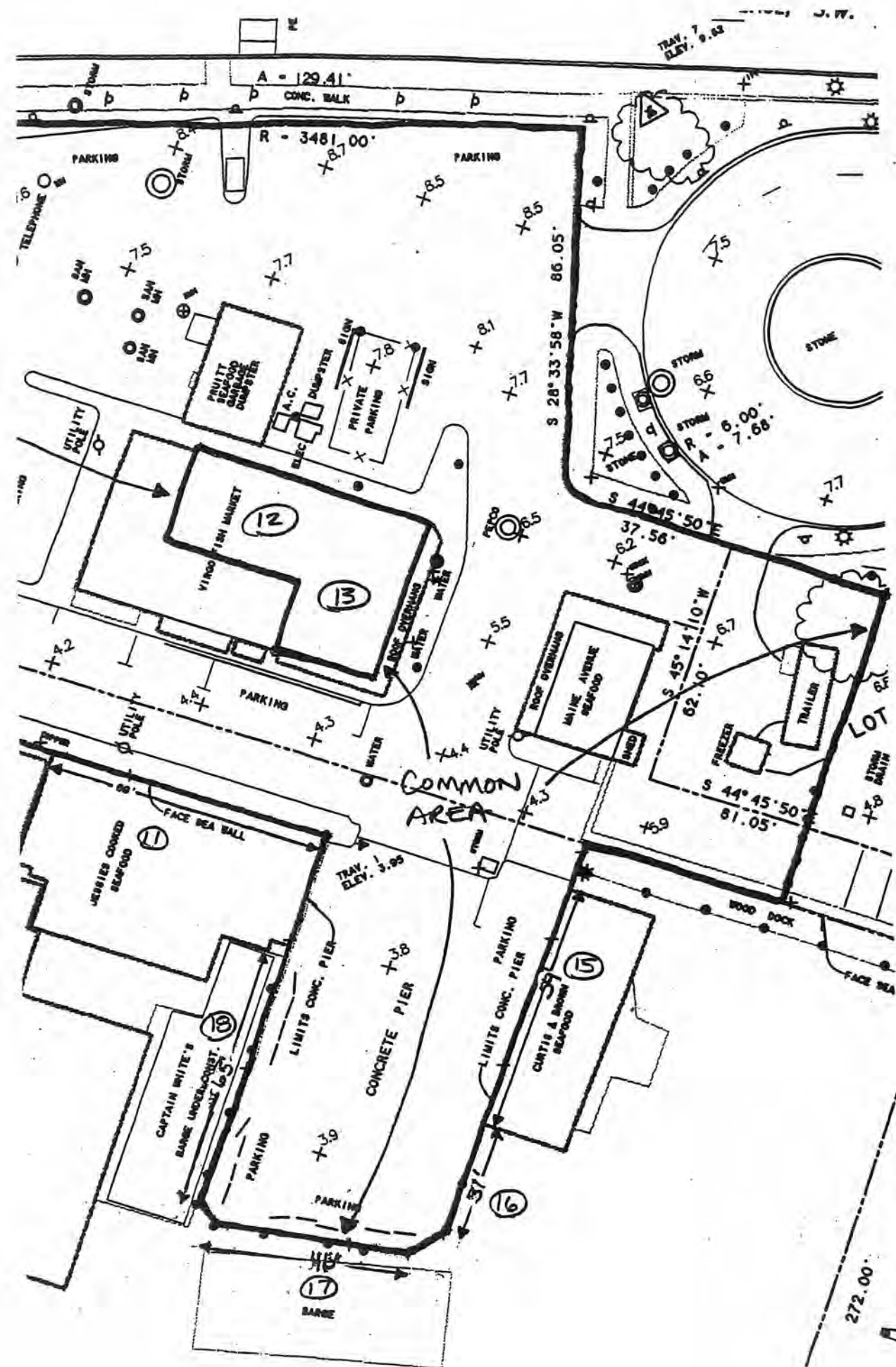




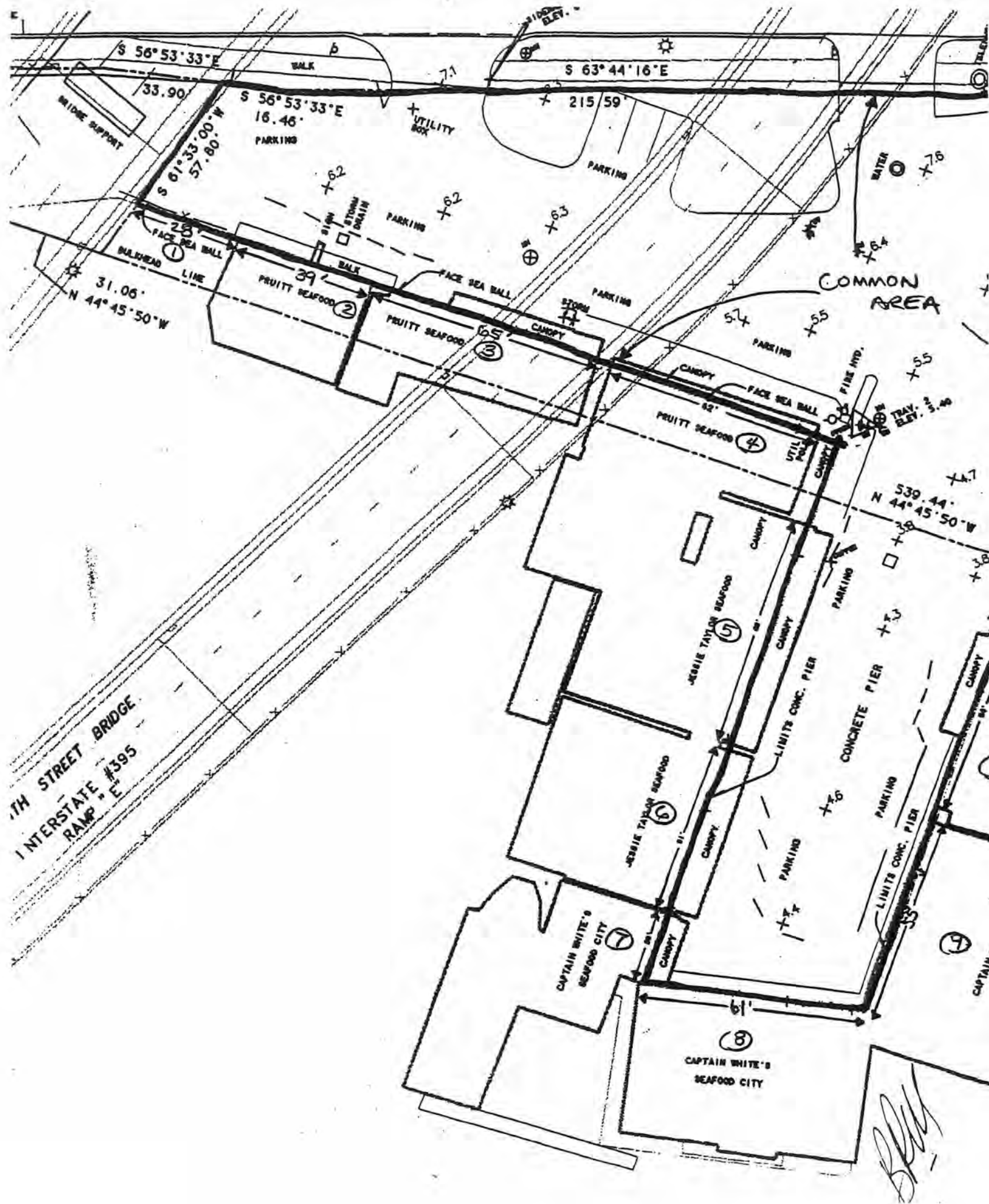










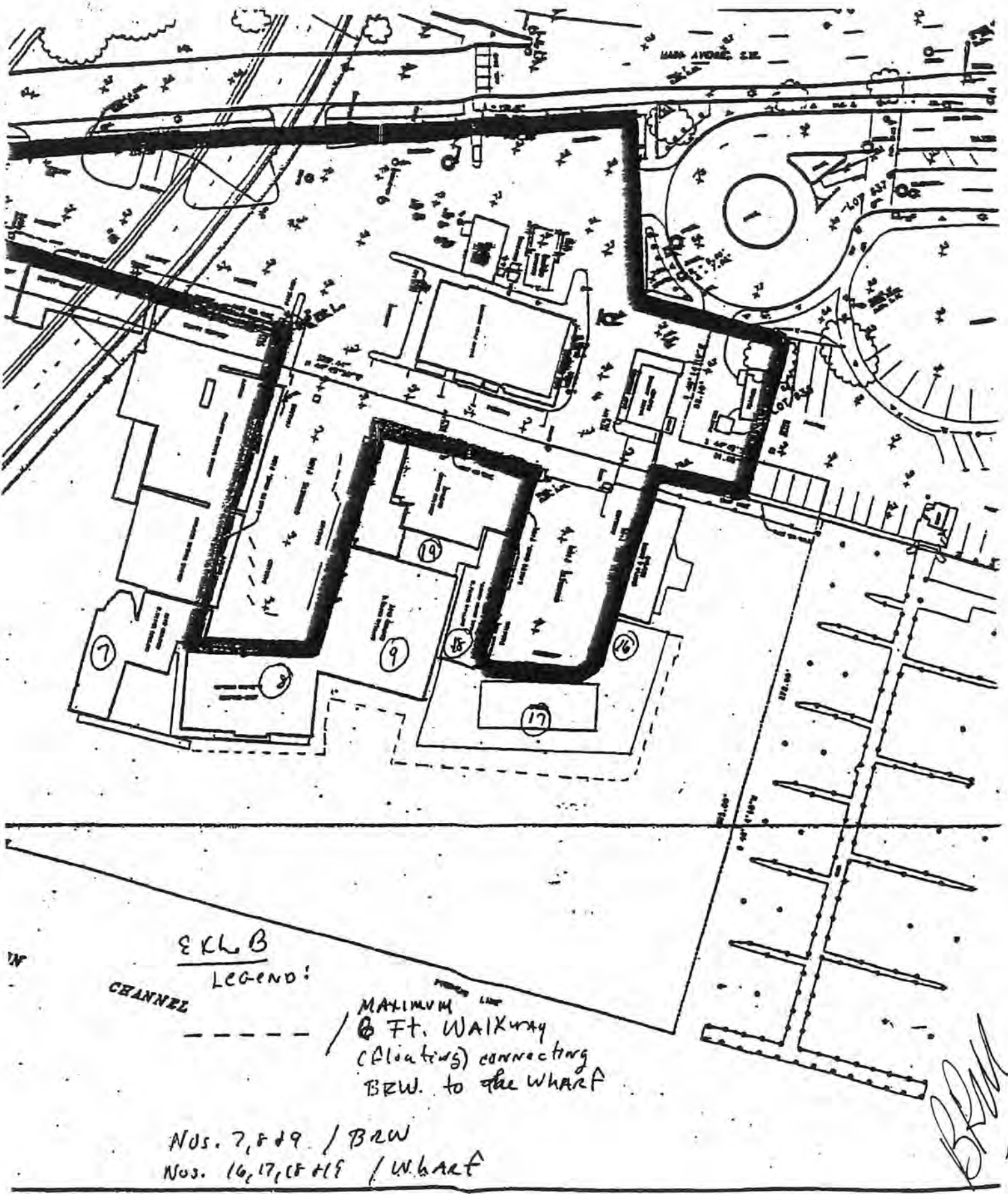




**EXHIBIT B**

[Site Plan of the Project]







Lease Space No. LS-16  
Frontage Linear Distance: 28.30  
Lessor: Washington, DC  
Page 1 of 1 pages

Fishwharf Lease Spaces  
Southwest Waterfront, Northside Washington Channel  
Washington, District of Columbia  
15 June 2000 / ghb

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**LEASE FRONTAGE DESCRIPTION**

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A certain waterfront linear frontage strip situate in Washington, District of Columbia, in square 473 and being located along the top and easterly face of the east concrete pier within of the area commonly known as the Washington Municipal Fish Wharf located on the Washington, District of Columbia southwest waterfront between Maine Avenue, S.W and the Washington Channel, said frontage space designated as LS-16 as shown on a property location plat attached as Exhibit B and made a part hereof, and more particularly bounded and described as follows:

Commencing at a copper in the division line between Lot 846 in Square 473 and Lot 850 in Square 473, said copper in the top of the curb; thence from said copper running,

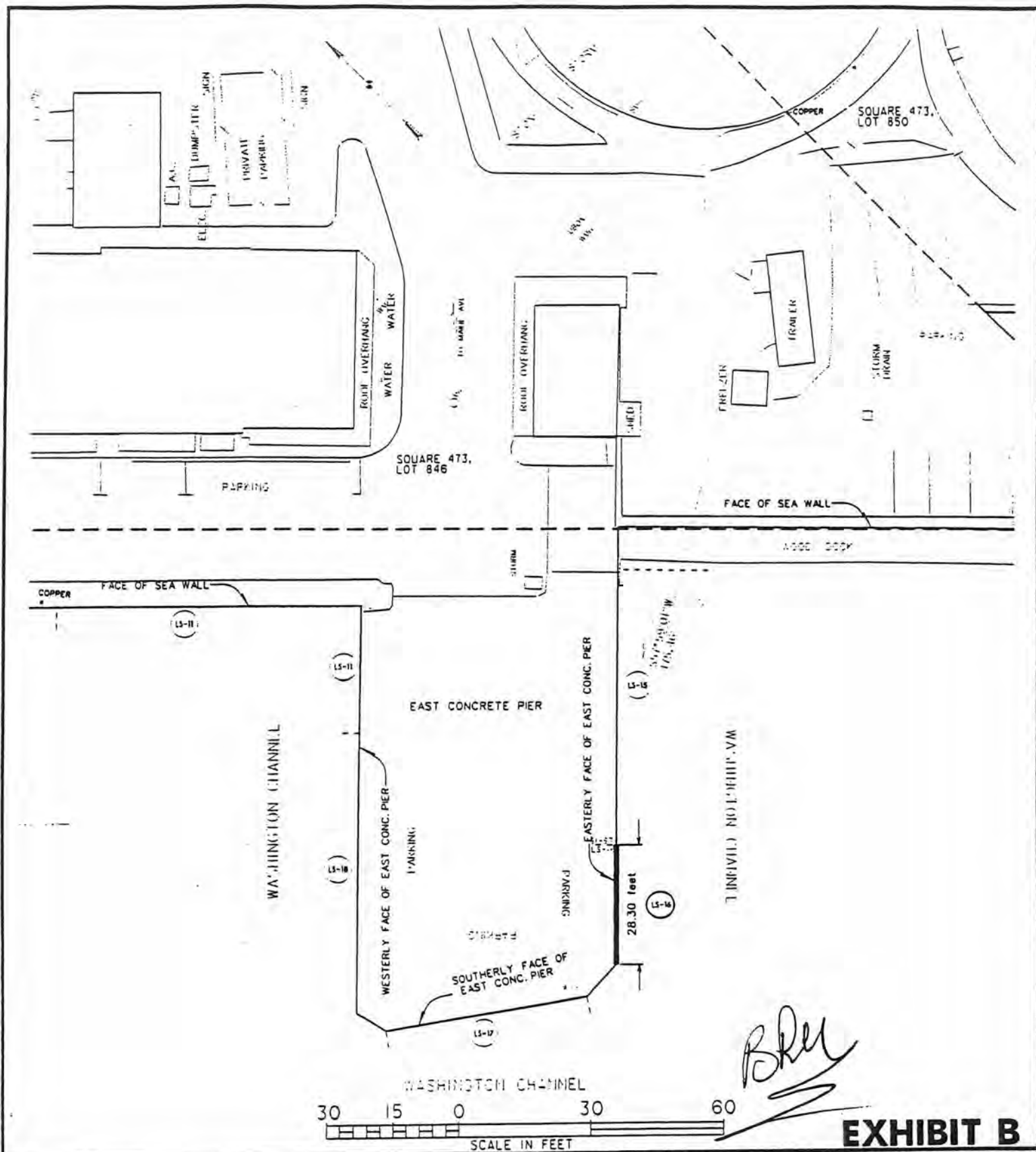
South 57°59'01" West 175.46 feet to a point on the top and easterly face of said east concrete pier and the True Point of Beginning of the herein described frontage strip; thence running along said top and westerly face of said concrete pier,

South 45°46'12" East 28.30 feet to the terminus point.

The bearings used herein are referenced to a plat of survey dated 26 August 1988 by the District of Columbia Government, Office of the Surveyor.

A handwritten signature in black ink, appearing to be 'BPL' or similar, with a long horizontal flourish extending to the right.



**EXHIBIT B****LEGEND**

- FRONTAGE SPACE
- TAX LOT BOUNDARY
- (LS-1) LEASE SPACE NUMBER

SQUARE / LOT NO. : 473 / NOT ACCESSED	PROPERTY LOCATION PLAT	DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT	
ESTATE TYPE: FRONTAGE LEASE		FISHWHARF SOUTHWEST WATERFRONT NORTHSIDE WASHINGTON CHANNEL WASHINGTON, D.C.	
LESSOR: WASHINGTON, D.C.			
LINEAR FRONTAGE FEET: 28.30	ACRES: 0.000		
JURISDICTION: WASHINGTON, DISTRICT OF COLUMBIA		SCALE: AS SHOWN	TRACT NO. : LS-16
		DATE: 14 JUNE 2000	
DRAWN BY: GHB	CHECKED BY: SLM	CAD FILE: X	

US Army Corps  
of Engineers



Lease Space No. LS-17  
Frontage Linear Distance: 46.56  
Lessor: Washington, DC  
Page 1 of 1 pages

Fishwharf Lease Spaces  
Southwest Waterfront, Northside Washington Channel  
Washington, District of Columbia  
15 June 2000 / ghb

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**LEASE FRONTAGE DESCRIPTION**

---

A certain waterfront linear frontage strip situate in Washington, District of Columbia, in square 473 and being located along the top and southerly face of the east concrete pier within of the area commonly known as the Washington Municipal Fish Wharf located on the Washington, District of Columbia southwest waterfront between Maine Avenue, S.W and the Washington Channel, said frontage space designated as LS-17 as shown on a property location plat attached as Exhibit B and made a part hereof, and more particularly bounded and described as follows:

Commencing at a copper in the division line between Lot 846 in Square 473 and Lot 850 in Square 473, said copper in the top of the curb; thence from said copper running,

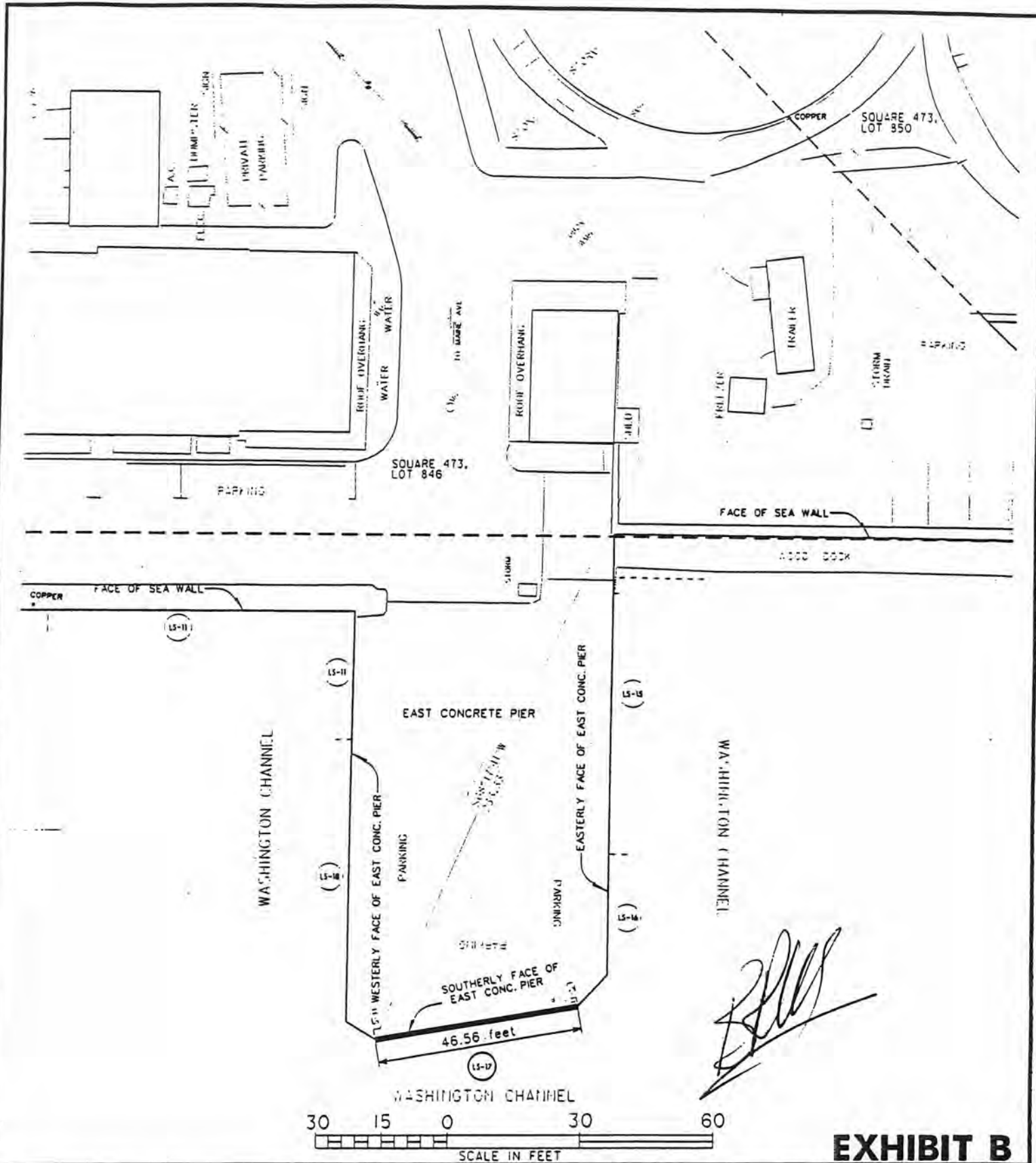
South 68°17'41" West 233.33 feet to a point on the top and southerly face of said east concrete pier and the True Point of Beginning of the herein described frontage strip: thence running along said top and westerly face of said concrete pier,

South 54°31'50" East 46.56 feet to the terminus point.

The bearings used herein are referenced to a plat of survey dated 26 August 1988 by the District of Columbia Government, Office of the Surveyor.

A handwritten signature in black ink, appearing to be "B. P. M.", with a long, sweeping underline.



**EXHIBIT B****LEGEND**

- FRONTAGE SPACE  
 - - - TAX LOT BOUNDARY  
 (LS-1) LEASE SPACE NUMBER

SQUARE / LOT NO. : 473 / NOT ACCESSED	PROPERTY LOCATION PLAT	DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT
ESTATE TYPE: FRONTAGE LEASE	FISHWHARF SOUTHWEST WATERFRONT NORTHSIDE WASHINGTON CHANNEL WASHINGTON, D.C.	
LESSOR: WASHINGTON, D.C.		
LINEAR FRONTAGE FEET: 46.56	ACRES: 0.000	
JURISDICTION: WASHINGTON, DISTRICT OF COLUMBIA	SCALE: AS SHOWN DATE: 14 JUNE 2011	TRACT NO. : LS-17
DRAWN BY: GHB	CHECKED BY: SLM	EAS FILE: X



City of  
Engineers



Lease Space No. LS-18  
Frontage Linear Distance: 65.82  
Lessor: Washington, DC  
Page 1 of 1 pages

Fishwharf Lease Spaces  
Southwest Waterfront, Northside Washington Channel  
Washington, District of Columbia  
15 June 2000 / ghb

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**LEASE FRONTAGE DESCRIPTION**

---

A certain waterfront linear frontage strip situate in Washington, District of Columbia, in square 473 and being located along the top and westerly face of the east concrete pier within of the area commonly known as the Washington Municipal Fish Wharf located on the Washington, District of Columbia southwest waterfront between Maine Avenue, S.W and the Washington Channel, said frontage space designated as LS-18 as shown on a property location plat attached as Exhibit B and made a part hereof, and more particularly bounded and described as follows:

Commencing at a copper in the division line between Lot 846 in Square 473 and Lot 850 in Square 473, said copper in the top of the curb; thence from said copper running,

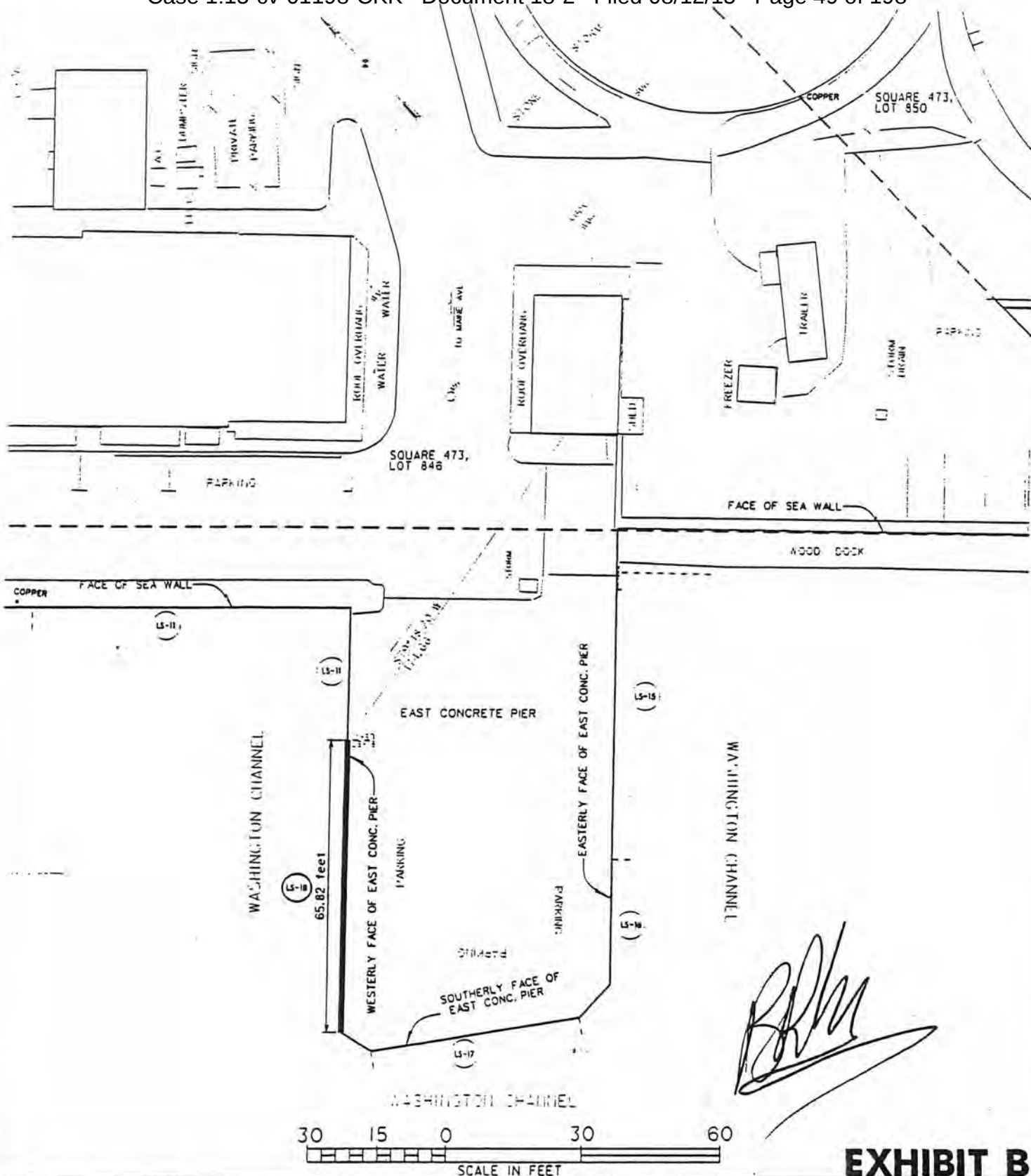
South 79°18'20" West 174.66 feet to a point on the top and westerly face of said east concrete pier and the True Point of Beginning of the herein described frontage strip: thence running along said top and westerly face of said concrete pier,

South 45°23'42" West 65.82 feet to the terminus point.

The bearings used herein are referenced to a plat of survey dated 26 August 1988 by the District of Columbia Government, Office of the Surveyor.

A handwritten signature in black ink, appearing to be "B. H. H.", is located in the lower right quadrant of the page.



**EXHIBIT B****LEGEND**

- FRONTAGE SPACE  
 TAX LOT BOUNDARY  
 LEASE SPACE NUMBER



US Army Corps  
of Engineers

SQUARE / LOT NO. : 473 / NOT ACCESSED	PROPERTY LOCATION PLAT	DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT
ESTATE TYPE: FRONTAGE LEASE	FISHWHARF SOUTHWEST WATERFRONT NORTHSIDE WASHINGTON CHANNEL WASHINGTON, D.C.	
LESSOR: WASHINGTON, D.C.		
LINEAR FRONTAGE FEET: 65.82    ACRES: 0.000		
JURISDICTION: WASHINGTON, DISTRICT OF COLUMBIA	SCALE: AS SHOWN DATE: 14 JUNE 2000	TRACT NO. : LS-18
DRAWN BY: CHB	CHECKED BY: SLM	CAD FILE: X



**EXHIBIT C**

[Certificate of Acceptance – establishing New Rent Commencement Date]

A handwritten signature in black ink, appearing to be "B. White", is located in the bottom right corner of the page.



**EXHIBIT C**

**CERTIFICATE OF ACCEPTANCE**

The undersigned, having entered into a certain Lease Agreement dated \_\_\_\_\_, 2000, by and between the undersigned, as Tenant, and THE DISTRICT OF COLUMBIA, acting on behalf of THE UNITED STATES OF AMERICA, as Landlord, DOES HEREBY CERTIFY to Landlord that:

- (1) The Lease is in full force and effect without offset or defense;
- (2) Tenant has taken possession of the Premises described in said Lease, namely, \_\_\_\_\_, 1100 Maine Avenue, S. W., Washington, D.C. 20024;
- (3) The Commencement Date is \_\_\_\_\_, 2000;
- (4) The New Rent Commencement Date is \_\_\_\_\_, \_\_\_\_; and
- (5) The condition of the Premises is satisfactory to Tenant.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_(Seal)





**EXHIBIT D**

[Work Letter – U.S. Army Corps of Engineers Work Order]

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be written in a cursive or script font.



Exhibit D

Page 1 of 9

<b>US ARMY CORPS OF ENGINEERS</b> <b>INTERAGENCY AGREEMENT</b> <b>(ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 3 <b>2. <input type="checkbox"/> INITIAL AGREEMENT</b> <b><input type="checkbox"/> AMENDMENT NUMBER</b>
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 25 October 1999 <b>5. COMPLETION DATE</b> 21 April 2000
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8th Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed) <p>In accordance with the FY 1999 Omnibus Appropriations Bill, the Corps of Engineers will prepare all necessary environmental and cultural/ Section 106 compliance documentation needed to implement the improvements identified in the Southwest Waterfront Development Needs Assessment dated July 1999. The specific tasks and budgets are as follows:</p> <ol style="list-style-type: none"> <li>1. Management - The Corps of Engineers will provide a project manager to provide overall management of the effort. \$5,000 budget, \$24,000 project contingency.</li> <li>2. Environmental Compliance - All necessary environmental compliance documentation will be prepared. \$55,000 budget.</li> <li>3. Cultural/ Section 106 Compliance - All necessary coordination with the D.C. Historical Preservation Officer will be accomplished and all necessary compliance documentation will be prepared. \$14,000 budget.</li> </ol>		
<b>9. CUSTOMER EXPECTATIONS.</b> (Additional pages may be used as needed) <p>The Corps will make every effort to complete the environmental and cultural compliance work within 5 months and to limit project expenditures to \$74,000. The five months timeframe begins when CENAB receives a letter from DCDHCD acknowledging deviations from the 1991 Master Plan. DCDHCD will forward CENAB all existing NEPA (if any), NCPC comments on the proposed improvements, and documents that address the ownership of the land.</p>		
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410) 962-3377 FAX: (410) 962-9312		<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-7255 FAX: (202) 442-8391



Exhibit D

Page 2 of 9

**12. REPORTS**

A copy of all compliance documentation will be provided.

**13. FUNDS** (Page(s) with cost breakdown may be attached as necessary):

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$80,000 <i>gn</i>	\$98,000	\$178,000 <i>98,000 gn</i>
c. TOTAL PROJECT COST	\$80,000 <i>gn</i>	\$98,000	\$178,000 <i>98,000 gn</i>

**14. FUNDING** Funds will be provided by:

- a. ☐ Transfer Appropriation (SF 1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)

b. Appropriations:  
 LINE AGY YR INDEX PCA AOBJ  
 001 DB 98 84040 04012 1506

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)  
 b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)  
 c. Request for payment will cite the following accounting information (describe necessary documentation):  
 d. Submit to: D.C. Dept. of Housing & Community Development  
 Office of the Comptroller  
 801 North Capitol Street, N.E., 7<sup>th</sup> Floor  
 Washington, DC 20002

**16. AUTHORITY**

FY 1999 Omnibus Appropriations Bill, 31 USC 1535 - Economy Act, and Interagency Agreement.

**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE	SIGNATURE	DATE
James R. Jones Chief, Programs and Project Management Division	<i>[Signature]</i>	10-18-99
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER	SIGNATURE	DATE
Othello Mahone, Interim Director Department of Housing and Community Development	<i>[Signature]</i>	10-15-99



<b>US ARMY CORPS OF ENGINEERS INTERAGENCY AGREEMENT (ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 4
		<b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT <input type="checkbox"/> AMENDMENT NUMBER</b>
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 13 March 2000
		<b>5. COMPLETION DATE</b> 30 September 2000
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 7th Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed)  In accordance with the FY 1999 Omnibus and the FY 2000 DC Appropriations Bills, the Corps of Engineers will provide the following:  1. Management – The Corps of Engineers will provide a project manager to provide overall management of the wooden pile investigation and preparation of contract documents for selected improvements to the Washington Marina, Municipal Fish Wharf, and adjacent DC Government Properties. \$20,000 budget, \$10,000 contingency for investigation and preparation of contract documents. 2. Property Description – Using existing survey information and lease exhibits, a property description will be provided for the Washington Marina and Municipal Fish Wharf. The description will precisely identify the property being leased, to include the common area and pier frontage at the Municipal Fish Wharf. \$8,000 budget. 3. Wooden Pile Investigation and Report – A contract for a wooden pile investigation will be issued. Wooden foundation piles under the fish wharf and marina piers and under the seawall/ bulkhead will be inspected by underwater divers and a civil/ structural engineer will characterize the condition of the piles, make a determination as to whether the piles need to be repaired or replaced, and estimate the remaining useful life of the piles. \$25,000 budget. 4. Design Plans – The Corps of Engineers will prepare a site plan identifying the improvements to be made to the Washington Marina, Municipal Fish Wharf, and Redevelopment Land Agency premises. The site plan will be coordinated with the Washington Marina, Municipal Fish Wharf, and Capital Yacht Club tenants and DHCD. After an investigation of the wooden piles is conducted, and after NEPA/Sect 106 compliance documentation is completed, design and construction contract documents for the repair or replacement of the wooden piles and/or for the work listed on the attached sheet will be prepared as the budget will allow. Design-build and task-order contracts will be used to implement the improvements. The contractors will be responsible for securing all necessary permits. \$110,000 budget.		
<b>9. CUSTOMER EXPECTATIONS</b> (Additional pages may be used as needed)  The Corps of Engineers will make every effort to minimize project costs and complete the scope of work within 7 months of signing this work order by both parties. Priorities will be to complete the survey in April 2000 and the underwater investigation by June 2000. After the Corps of Engineers has completed the underwater investigation, the Corps of Engineers and the Department of Housing and Community Development will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project costs do not exceed funds available.		
<b>10. USACE PROJECT OFFICER</b>  Name: Mary Y. Dan Voice: (410) 962-3377 FAX: (410) 962-9312  ADDRESS Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>11. CUSTOMER PROJECT OFFICER</b>  Name: Joseph J. Wolfe Voice: (202) 442-6977 FAX: (202) 442-6967  ADDRESS D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 7th Floor Washington, DC 20002	



**12. REPORTS**

A copy of the property descriptions, underwater investigation report, site plan, development concept, and contract documents will be provided.

**13. FUNDS** [Page(s) with cost breakdown may be attached as necessary]

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$0	<del>\$140,000</del> \$173,000 <i>900</i>	<del>\$140,000</del> \$173,000 <i>900</i>
c. TOTAL PROJECT COST	\$0	<del>\$140,000</del> \$173,000 <i>900</i>	<del>\$140,000</del> \$173,000 <i>900</i>

**14. FUNDING** Funds will be provided by:

☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)

☒ Reimbursable Order (31 USC 1535 - Economy Act)

☐ Other (describe)

b. Appropriation:

**15. BILLING**

a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)

b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)

c. Request for payment will cite the following accounting information (describe necessary documentation):

d. Submit to: D.C. Dept of Housing & Community Development  
ATTN: Mr. Joseph Wolfe  
801 North Capitol Street, N.E., 7th Floor  
Washington, DC 20002

**16. AUTHORITY**

FY 1999 Omnibus Appropriations Bill, FY 2000 District of Columbia Appropriations Bill, 31 USC 1535 - Economy Act, and Memorandum of Agreement Between the District of Columbia and the U.S. Army Corps of Engineers regarding Improvements to the Southwest Waterfront.

**17. APPROVALS**

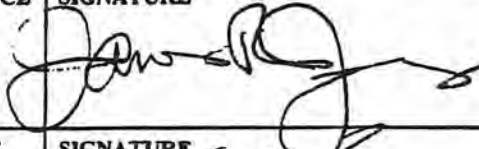

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE	SIGNATURE	DATE
James R. Jones Chief, Programs and Project Management Division		3/13/00
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER	SIGNATURE	DATE
Othello Mahone, Interim Director Department of Housing and Community Development		4-3-00



Exhibit D

Page 5 of 9

**Improvements to the Southwest Waterfront Fish Market and Washington Marina****Attachment to Interagency Agreement WO-4**

The following will be removed/ constructed:

- **Underground Storage Tanks** – Four underground storage tanks (one 4,000 gallon, two 2,000 gallon, and one 30,000 gallon) will be closed and the tanks, associated piping, ancillary equipment, and contaminated soil will be removed and disposed of in accordance with D.C. regulations. (task order contract)
- **Fish Market Building** – The facility will be demolished and disposed of. (task order contract)
- **Concrete Bulkhead** – The area of the bulkhead to be repaired is beneath the I-395 bridge. The top 6" of concrete will be removed. The bulkhead will be drilled to tie in new reinforcing steel. A concrete section approximately 50' long, 2' wide, and 2.5' deep will be added to the top of the bulkhead, and the area behind the bulkhead will be backfilled. The existing railing between the marina and Pruitt Seafood will be removed and a new railing will be installed.
- **Electrical Utilities** – The Contractor will prepare an electrical plan that provides sufficient power for projected activities and operation and will coordinate the electrical plan with PEPCO to define/delineate responsibilities for relocating utilities and implementing/constructing the plan. Utility trenches will be excavated and approximately 5,100 lf of electrical ductbanks will be constructed and overhead electrical distribution lines will be relocated underground.
- **Remove Fence** – 60 lf of chain link fence between the fish wharf and the Capitol Yacht Club parking areas will be removed.
- **Equipment on Site** – The existing equipment on Lot 846 that is not being used will be removed.
- **Fish Cleaning Building** – The central historic portion of the structure will be renovated for the fish cleaning service and vending machines. The remainder of the building will be demolished. A new facility for the public restrooms and dumpsters will be constructed at the eastern edge of Lot 846. The new facility will be a masonry structure similar to the existing.
- **Concrete Piers** – The existing wooden piles under the marina and fish wharf piers will be repaired and replaced as needed. The fish wharf piers, approximately 16,868 sf, will be repaved with a new concrete surface and made ADA compliant. 1.5" of the existing surface will be removed to level the piers. A new concrete surface will be poured with 6 x 6 inch wire reinforcing. A patterned surface will be provided and color dye will be included. Utilities serving the fish wharf barges will be upgraded to meet current codes.
- **Safety Railings and Fences** – Existing safety railings along the bulkhead will be removed. Guardrails will be installed for parking areas along the waterfront and bulkhead west of the marina and along the bulkhead between the marina and fish wharf. As much as 2,000 lf of 2 rail, 2" dia, steel pipe, safety railing will be installed along the concrete piers and bulkhead, as needed for pedestrians.
- **Piers and Boat Slips** – Remove, as necessary, existing piles and piers and install fully-functional floating pier/dock replacements with such accessories (water, electric, etc.) as specified by the Tenant in a configuration shown in the attached site plan. The number of floating piers and docks to be installed by the government government will be the maximum number which can be installed within a \$1,150,000 budget. The remaining floating piers will be provided by others. (design-build contract)
- **Site Lighting** – Site lighting will be upgraded throughout the site in order to comply with current code requirements. Approximately 5,100 lf of utility trenches will be excavated. 41 lighting fixtures and associated conduit and wiring will be installed.
- **Paving** – Approximately 50,000 sf of paving, trees and stumps throughout the site, and chainlink fences around the parking lot west of the marina and to the east of the Maine Avenue Seafood building will be removed. The entire site, approximately 100,000 sf, will be cut, filled, and graded to provide larger, more level, parking areas and to improve stormwater management. A concrete walkway along the waterfront between the marina building and the east edge of the fish wharf will be provided.
- **Sidewalks** – Approximately 7,100 sf of sidewalks will be provided.
- **Marina Building** – A new membrane roof will be installed, and the electrical service will be upgraded. The electrical upgrades will include demolition and removal of the existing 400 A service and the installation of 1 – 1200 A 208/120V 3 phase electrical service, 3 – 400 A distribution panels, feeders from the new 1200 A service to each (3) 400 A panel, and reconnection of the existing store circuits to a new 400 A panel.
- **Landscaping** – Landscaping improvements will be provided along Main Avenue and around parking lots in areas that will not reduce parking capacity.



Exhibit D, Page 6 of 9

<b>US ARMY CORPS OF ENGINEERS</b> <b>INTERAGENCY AGREEMENT</b> <b>(ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> <b>WO 5</b> <b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT</b> <b><input type="checkbox"/> AMENDMENT NUMBER</b>
<b>3. PROJECT TITLE</b> <b>Improvements to the Southwest Waterfront Fish Market and Washington Marina</b>		<b>4. EFFECTIVE DATE</b> <b>1 July 2000</b> <b>5. COMPLETION DATE</b> <b>30 June 2001</b>
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> <i>(Additional pages may be used as needed)</i> In accordance with Public Law 106-113, the Corps of Engineers agrees to prepare, procure, and oversee contracts for improvements to the Southwest Waterfront in the District of Columbia as follows:		
<ol style="list-style-type: none"> <li>1. Management – The Corps of Engineers will provide a project manager to provide overall management of contract procurement and construction of the improvements noted in item 3. \$11,140 budget, \$ 41,210 contingency for entire project.</li> <li>2. Construction Supervision &amp; Inspection – A project engineer will oversee the construction contractor and verify that improvements are being provided in accordance with the construction contract. \$29,700 budget.</li> <li>3. The following will be removed/ constructed:           <ul style="list-style-type: none"> <li>• Underground Storage Tanks – Four underground storage tanks (one 4,000 gallon, two 2,000 gallon, and one 30,000 gallon) will be closed and the tanks, associated piping, ancillary equipment, and contaminated soil will be removed and disposed of in accordance with D.C. regulations. \$100,000 budget.</li> <li>• Electrical Utilities – Utility trenches will be excavated and approximately 3,000 lf of overhead electrical distribution lines will be relocated underground. \$107,590 budget.</li> <li>• Fish Market Building – The facility will be demolished and disposed of. \$8,470 budget.</li> <li>• Site Lighting - Site lighting will be upgraded throughout the site in order to comply with current code requirements. Approximately 5,100 lf of utility trenches will be excavated. 41 lighting fixtures and associated conduit and wiring will be installed. \$66,890 budget.</li> <li>• Concrete Bulkhead – The area of the bulkhead to be repaired is beneath the I-395 bridge. The top 6" of concrete will be removed. The bulkhead will be drilled to tie in new reinforcing steel. A concrete section approximately 50' long, 2' wide, and 2.5' deep will be added to the top of the bulkhead, and the area behind the bulkhead will be backfilled. The existing railing between the marina and Pruitt Seafood will be removed and a new walkway railing will be installed. \$24,080 budget.</li> <li>• Safety Railings and Fences – Existing safety railings along the bulkhead will be removed. Guardrails will be installed for parking areas along the waterfront and bulkhead west of the marina and along the bulkhead between the marina and fish wharf. As much as 2,000 lf of 2 rail, 2" dia, steel pipe, safety railing will be installed along the concrete piers and bulkhead, as needed for pedestrians. \$38,260 budget.</li> <li>• Remove Fence – 60 lf of chain link fence between the fish wharf and the Capitol Yacht Club parking areas will be removed. \$330 budget.</li> <li>• Equipment on Site – The existing equipment on Lot 846 that is not being used will be removed. \$1,530 budget.</li> <li>• Sidewalks – Provide 7,100 sf of sidewalk. \$24,070 budget.</li> </ul> </li> </ol>		
<b>9. CUSTOMER EXPECTATIONS</b> <i>(Additional pages may be used as needed)</i> The Corps of Engineers will make every effort to minimize project costs and complete the project within 15 months. After the Corps of Engineers has completed the design work, the Corps of Engineers and the Department of Housing and Community Development will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project budget amount does not exceed \$453,260. The Corps of Engineers will make reasonable efforts to accommodate the tenant's priorities for work preformed. However, the final decisions shall remain with DHCD. The priority of the items in the scope of work will generally be in the order listed. The Corps of Engineers will make reasonable efforts to minimize the disruption to Tenant's business. The majority of construction on the fish wharf property will be scheduled to occur during the winter months. If multiple design-build contracts are awarded, the contracts will require close coordination with the Corps project manager to avoid construction scheduling conflicts.		
<b>10. USACE PROJECT OFFICER</b> <b>Name:</b> Mary Y. Dan <b>Voice:</b> (410)962-3377 <b>FAX:</b> (410)962-9312	<b>11. CUSTOMER PROJECT OFFICER</b> <b>Name:</b> Joseph J. Wolfe <b>Voice:</b> (202) 442-6977 <b>FAX:</b> (202) 442-6967	
<b>ADDRESS</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>ADDRESS</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	



**12. REPORTS**

A complete set of as-built drawings shall be provided.

**13. FUNDS** [Page(s) with cost breakdown may be attached as necessary]

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$	\$453,260	\$453,260
c. TOTAL PROJECT COST	\$	\$453,260	\$453,260

**14. FUNDING** Funds will be provided by:

- a. ☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)

b. Appropriation:

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)  
b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)  
c. Request for payment will cite the following accounting information (describe necessary documentation):  
d. Submit to: D.C. Dept of Housing & Community Development  
Office of the Comptroller  
801 North Capitol Street, N.E., 7<sup>th</sup> Floor  
Washington, DC 20002

**16. AUTHORITY**

Public Law 106-113, District of Columbia FY 2000 Appropriations, 31 USC 1535 - Economy Act, and Memorandum of Agreement Between the District of Columbia and the U.S. Army Corps of Engineers regarding Improvements to the Southwest Waterfront.

**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE James R. Jones Chief, Programs and Project Management Division	SIGNATURE	DATE
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER Othello Mahone, Interim Director Department of Housing and Community Development	SIGNATURE	DATE



Exhibit D, Page 8 of 9

<b>US ARMY CORPS OF ENGINEERS INTERAGENCY AGREEMENT (ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 6 <b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT</b> <input type="checkbox"/> AMENDMENT NUMBER	
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 1 July 2000 <b>5. COMPLETION DATE</b> 30 June 2001	
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002		
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed) In accordance with Public Law 106-113, the Corps of Engineers agrees to prepare, procure, and oversee contracts for improvements to the Southwest Waterfront in the District of Columbia as follows: <ol style="list-style-type: none"> <li>Management – The Corps of Engineers will provide a project manager to provide overall management of contract procurement and construction of the improvements. \$73,710 budget, \$272,730 contingency for entire project.</li> <li>Construction Supervision &amp; Inspection – A project engineer will oversee the construction contractor and verify that improvements are being provided in accordance with the construction contract. \$196,560 budget.</li> <li>The following will be removed/ constructed:             <ul style="list-style-type: none"> <li>Marina Building – A new membrane roof will be installed, and the electrical service will be upgraded. The electrical upgrades will include demolition and removal of the existing 400 A service and the installation of 1 – 1200 A 208/120V 3 phase electrical service, 3 – 400 A distribution panels, feeders from the new 1200 A service to each (3) 400 A panel, and reconnection of the existing store circuits to a new 400 A panel. \$255,000 budget.</li> <li>Piers and Boat Slips – Remove, as necessary, existing piles and piers and install fully-functional floating pier/dock replacements with such accessories (water, electric, etc.) as specified by the Tenant in a configuration shown in the attached site plan. The number of floating piers and docks to be installed by the government will be the maximum number which can be installed within a \$1,150,000 budget.</li> <li>Fish Cleaning Building – The central historic portion of the structure will be renovated for the fish cleaning service and vending machines. The remainder of the building will be demolished. A new facility for the public restrooms and dumpsters will be constructed at the eastern edge of Lot 846. The new facility will be a masonry structure similar to the existing. \$365,390 budget.</li> <li>Concrete Piers – The existing wooden piles under the marina and fish wharf piers will be repaired and replaced as needed. The fish wharf piers, approximately 16,868 sf, will be repaved with a new concrete surface and made ADA compliant. 1.5" of the existing surface will be removed to level the piers. A new concrete surface will be poured with 6 x 6 inch wire reinforcing. A patterned surface will be provided and color dye will be included. Utilities serving the fish wharf barges will be upgraded to meet current codes. \$225,000 budget excluding pile repairs or replacement.</li> <li>Paving – Approximately 50,000 sf of paving, trees and stumps throughout the site, and chainlink fences around the parking lot west of the marina and to the east of the Maine Avenue Seafood building will be removed. The entire site, approximately 100,000 sf, will be cut, filled, and graded to provide larger, more level, parking areas and to improve stormwater management. 6" subbase, 6" base, and 3" wearing courses and striping will be provided. A concrete walkway along the waterfront between the marina building and the east edge of the fish wharf will be provided. \$414,370 budget.</li> <li>Landscaping – Landscaping improvements will be provided along Main Avenue and around parking lots in areas that will not reduce parking capacity. \$47,240 budget.</li> </ul> </li> </ol>			
<b>9. CUSTOMER EXPECTATIONS</b> (Additional pages may be used as needed) The Corps of Engineers will make every effort to minimize project costs and complete the project within 15 months. After the Corps of Engineers has completed the design work, the Corps of Engineers and the Department of Housing and Community Development (DHCD) will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project budget amount does not exceed \$3,000,000. The Corps of Engineers will make reasonable efforts to accommodate the tenant's priorities for work performed. However, the final decisions shall remain with DHCD. The marina building roof and the marina piers and boat slips will be first and second priority respectively. The priority of the remaining items in the scope of work will generally be in the order listed. The Corps of Engineers will make reasonable efforts to minimize the disruption to Tenant's business. The majority of construction on the fish wharf property will be scheduled to occur during the winter months. If multiple design-build contracts are awarded, the contracts will require close coordination with the Corps project manager to avoid construction scheduling conflicts.			
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410)962-3377 FAX: (410)962-9312		<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-6977 FAX: (202) 442-6967	
<b>ADDRESS</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715		<b>ADDRESS</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	



**12. REPORTS**

A complete set of as-built drawings shall be provided.

**13. FUNDS** [Page(s) with cost breakdown may be attached as necessary]

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$	\$3,000,000	\$3,000,000
c. TOTAL PROJECT COST	\$	\$3,000,000	\$3,000,000

**14. FUNDING** Funds will be provided by:

- a. ☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)

b. Appropriation:

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)
- b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)
- c. Request for payment will cite the following accounting information (describe necessary documentation):
- d. Submit to: D.C. Dept of Housing & Community Development  
Office of the Comptroller  
801 North Capitol Street, N.E., 7<sup>th</sup> Floor  
Washington, DC 20002

**16. AUTHORITY**

Public Law 106-113 - District of Columbia FY 2000 Appropriation, 31 USC 1535 - Economy Act, and Memorandum of Agreement Between the District of Columbia and the U.S. Army Corps of Engineers regarding Improvements to the Southwest Waterfront.

**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE James R. Jones Chief, Programs and Project Management Division	SIGNATURE	DATE
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER Othello Mahone, Interim Director Department of Housing and Community Development	SIGNATURE	DATE



**EXHIBIT E**

[Rules and Regulations]

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## **EXHIBIT E**

### **RULES AND REGULATIONS**

#### **Purpose**

The purpose of these Rules and Regulations is to summarize Tenant's responsibilities with respect to the day-to-day operation and maintenance of the Project.

#### **Common Area Use**

To ensure a pleasing and safe environment in the common areas (parking lots and sidewalks) of the Project, each Tenant shall:

1. Keep the sidewalk in front of its Premises clear and free from ice and snow. (Use only sodium based ice melters that do not damage the pavement.)
2. Not place any objects in the common areas of the Project, except in areas, if any, designated for tables by the Tenant Committee.
3. Not solicit business in the common areas; i.e., no signs or displays, except as approved by the Tenant Committee.
4. Not use the common areas for the sale of merchandise without the prior written consent of Landlord.

#### **Storefronts and Signs**

To ensure a consistent appearance throughout the Project:

1. Tenant shall keep the storefront of its Premises in good repair and clean condition.
2. Any temporary sign used by Tenant in its door or window must be professionally made and must comply with District of Columbia sign regulations.





### **Tenant Advertising**

1. Tenant shall not utilize any advertising medium within the Project that can be seen, heard, or experienced outside of the Premises, including, but not limited to, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions, except as may be approved by the Tenant Committee, as, for example, seasonal displays of lighting and music.
2. Tenant shall not display, paint, place or cause to be displayed, painted, or placed, any handbills, bumper stickers, sandwich boards or other advertising devices in any portion Common Area.
3. Tenant shall not distribute, or cause to be distributed, in the Project, any handbills or other advertising devices; and will not conduct or permit any activities that might constitute a nuisance.

### **Loading and Unloading**

All shipping, receiving, loading or unloading of Tenant's merchandise, supplies or other property shall take place only in the areas, and at times, designated therefor by the Tenant Committee. Tenant shall not permit any trucks, trailers, or other vehicles or equipment engaged in such activities to interfere with the use of any Common Area or any pedestrian or vehicular use.

### **Noise**


Tenant shall not permit any noise to be made inside of its Premises which can be heard outside of the Premises. Tenant shall not use any loudspeaker or other communications equipment that may be heard or seen outside of its Premises.

### **Odors**

Tenant shall prevent the emission of odors from its Premises that are objectionable to its neighbors.

### **Refuse**

To ensure a clean and equitable refuse handling system:

1. The Management Agent for the Project shall provide refuse containers and disposal service and will allocate the costs thereof to each tenant as provided in its lease.
  2. Tenant shall keep its refuse in proper containers in its Premises and shall place it in the refuse container when taken outside the Premises.
- 



**Pest Exterminator Services**

Tenant shall contract with a professional exterminator for monthly inspections and treatments as necessary, to ensure that infestations by insects and rodents do not occur on the Premises.

**Store Plans and Permits**

The plans and contractors for doing any work in the Premises that requires a permit must be submitted to the Landlord for approval. This includes but is not limited to work that requires a building, mechanical, electrical, or plumbing permit.

**Parking**

To ensure that adequate and convenient parking is available to customers of the Project, no part of the Common Area may be used for parking by employees of Tenant or other Tenants of the Project.

**Emergencies**

Tenant must notify the Landlord, as soon as possible, of any emergency situation, injury, fire or disorder that occurs in the Tenant's Premises or any common area of the Project.

**Outside Promotional Activities**

To avoid undesired disturbances of Tenants and customers of the Project, outside promotional activities will only be permitted with approval of the Tenant Committee.

**Video Games**

Tenant shall not permit the installation or use in any portion of its Premises of a pinball, video or other amusement or game machine of any kind.



# EXHIBIT 2



## LEASE AGREEMENT

THE DISTRICT OF COLUMBIA,  
acting on behalf of THE UNITED STATES OF AMERICA,

LANDLORD

and

BRW, INC.,  
T/A CAPT. WHITE SEAFOOD CITY,

TENANT

for

Premises Nos. 7, 8, and 9  
Municipal Fish Wharf

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Exhibit A - Outline of the Premises  
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## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made this 12<sup>th</sup> day of July, 2000, by and between THE DISTRICT OF COLUMBIA, acting on behalf of THE UNITED STATES OF AMERICA, whose notice address is Director, District of Columbia Department of Housing and Community Development, 801 North Capitol Street, N.E., 8<sup>th</sup> Floor, Washington, D.C. 20002 ("Landlord"), and BRW, INC., a District of Columbia corporation, t/a Capt. White Seafood City, whose notice address is 1100 Maine Avenue, S.W., Washington, D.C. 20024 ("Tenant").

In consideration of the promises in the Lease, Landlord and Tenant agree as follows:

### 1. **Definitions.**

Certain terms in this Lease are defined below:

A. **Barges:** The barges owned by Tenant on which Tenant operates its business. The Barges are located on the Premises.

B. **Commencement Date:** The date of this Lease.

C. **Common Areas:** "Common Areas" mean all areas within the Project that Landlord makes available to tenants and their customers for their general use, convenience and benefit, including restrooms, parking areas, driveways, walkways, landscaped or planted areas, lighting facilities, service areas and loading and unloading areas, as depicted on Exhibit B hereto.

D. **Consumer Price Index:** The "Consumer Price Index" means the index for the Washington - Baltimore, DC - MD - VA - WV area, now known as the United States Bureau of Labor Statistics, consumer Price Index, for All Urban Consumers, all items (1996=100).

E. **Lease Year:** The first "Lease Year" shall begin on the New Rent Commencement Date and shall end on December 31 of the year following the year in which the New Rent Commencement Date shall occur, in order that each subsequent Lease Year hereunder shall coincide with the calendar year. Each subsequent Lease Year shall commence on the day immediately following the last day of the preceding Lease Year, and shall continue for a period of twelve (12) full calendar months.

F. **Minimum Rent:** The minimum rent payable during the Term, as follows: from the Commencement Date to the New Rent Commencement Date, equal monthly installments in the amount of THREE HUNDRED THREE AND 03/100 DOLLARS (\$303.03), as provided herein. Commencing on the New Rent Commencement Date and for the first Lease Year, equal monthly installments in the amount of TWO THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$2,250.00). Thereafter, on the first day of the second (2<sup>nd</sup>) and each succeeding Lease Year, the Minimum Rent shall be adjusted for the following Lease Year by the CPI adjustment described in Section 7 below until the date on which the "Base Amount," as defined in Section 1.H below, shall have been reached, at which point the Minimum Rent then prevailing shall be fixed as the Minimum Rent applicable for the succeeding five (5) Lease Years,



and thereafter, upon the expiration of such five (5) Lease Year period, and for each succeeding five (5) Lease Year period during the Term, the Minimum Rent shall be increased by three percent (3.0%) over the Minimum Rent applicable during the preceding five (5) Lease Year period. [As an example, see the following chart, which assumes CPI increases during 2001 and 2002 of 3% each year, and a "Base Amount" of \$15,000,000.]

LEASE YEAR	MINIMUM RENT	GROSS NON-TAXABLE SALES	PERCENTAGE RENT	TOTAL RENT
2001	27,000	\$10mm	0	\$27,000
2002	27,810	\$11mm	0	\$27,810
2003	28,644	\$16mm	\$5,000	\$33,644
2004	28,644	\$17mm	\$10,000	\$38,644
2005	28,644	\$14mm	0	\$28,644
2006	28,644	\$18mm	\$15,000	\$43,644
2007	28,644	\$19mm	\$20,000	\$48,644

G. **New Rent Commencement Date:** The date upon which "Landlord's Work" (as defined in Section 3) is substantially completed; i.e., upon receipt of a Certificate of Substantial Completion from the Corps of Engineers, and provided that all utilities to be delivered to the Premises are then in working order.

H. **Percentage Rent:** For each Lease Year, an amount equal to 1/2 of one percent (0.5%) of the excess of (A) Tenant's "Gross Non-Taxable Sales" (as defined in Section 7) made during the Lease Year, over (B) the "Base Amount" (defined below). The term "Base Amount," for purposes of this definition, means one hundred fifty-five and one-half percent (155.5%) of the amount of actual Gross Non-Taxable Sales for the Premises for calendar year 1999.

I. **Permitted Uses:** The retail sale of seafood (fresh and prepared) and of fresh produce, including accessory items such as cole slaw, french fries, and the like, or any other use consistent with and permitted by the 1913 Federal legislation creating the Project and appointing the District of Columbia as manager of the Project. Notwithstanding the foregoing, (i) the proportion of the total area leased by Tenant and any person or entity related to Tenant (a "Tenant Affiliate") within the Project, exclusive of any area leased by THE WHARF, INC., a District of Columbia corporation t/a The Wharf, that is devoted to the preparation and sale of prepared food by Tenant or such Affiliate shall not be increased significantly above the proportion devoted to such use as of the date hereof; (ii) prepared food shall be sold only on a "takeout" basis; and (iii) there shall be no serviced tables situated within the Premises or in the Common Area unless plans for same shall



have been approved by Landlord and unless Landlord and Tenant shall have executed an amendment hereto providing for a change to restaurant use and, among other things, revising the Percentage Rent payable hereunder in respect of the portion of the Premises to be devoted to such restaurant use. As to clauses (i), (ii), and (iii) above, Landlord shall enforce parallel restrictions on all other tenants within the Project.

J. **Premises:** The spaces in the Project identified on Exhibit A as Nos. 7, 8, and 9. The Premises consist of an area on the surface of the water sufficient to moor three Barges to the concrete pier [one in No. 7 ("Barge 7"), one in No. 8 ("Barge 8"), and one in No. 9 ("Barge 9")]. Barge 7 shall have no more than 20 linear feet, Barge 8 shall have no more than 65 linear feet, and Barge 9 shall have no more than 56 linear feet. Tenant shall have the right to connect the Barges that comprise the Premises under this Lease as well as the Barges that comprise the "Premises" under the Lease between Landlord and The Wharf, Inc. t/a The Wharf by a floating walkway that shall not exceed six feet (6') in width, as shown on Exhibit B-1 hereto.

T

K. **Project:** The Municipal Fish Wharf located between 11<sup>th</sup> and 12<sup>th</sup> Streets, south of Maine Avenue, S.W., Washington, D.C. The Project includes the portion of the Potomac River in which the tenants' barges are moored. A site plan of the Project is attached as Exhibit B. A certified survey of the Project, to include references to all Lots and Squares, or portions thereof, included within the Project, has been commissioned and will be delivered to the parties upon completion, at which time a legal description of the Project shall be initialed and attached hereto as a substitute and replacement for the existing Exhibit B.

L. **Security Deposit:** \$2,250.00, which shall be due and payable within thirty (30) days after the effective date of this Lease.

M. **Tenant Committee:** A committee representing the tenants of the Project and composed of one representative to be named by each such tenant. The Tenant Committee shall cooperate with the Management Agent to be retained for the Project, as provided herein, to carry out the operation, maintenance, and repair of the Common Areas of the Project. The Tenant Committee may, at its option, elect to operate by means of a limited liability company or other legal entity. All matters requiring decisions by the Tenant Committee shall be decided on the basis of a simple majority. Voting on all such matters by Tenant and the other tenants of the Project shall be based upon the "Proportionate Share" (hereinafter defined) of each.

N. **Tenant's Proportionate Share:** 16.97%, which equals the percentage that the number of linear feet of frontage in the Premises bears to the number of linear feet of frontage in the Project. If the number of linear feet of frontage in the Project changes, Tenant's Proportionate Share will be adjusted accordingly.

O. **Term:** The period that begins on the Commencement Date and ends thirty (30) Lease Years after the New Rent Commencement Date, unless sooner terminated pursuant to this Lease. Tenant acknowledges that it has no right hereunder to renew or extend the Term hereof,



or to negotiate for a renewal of the Term hereof. However, Landlord acknowledges that nothing contained herein shall prevent Tenant hereafter from seeking to obtain any such rights.

P. **Prohibited Use:** Anything herein to the contrary notwithstanding, Tenant covenants that during the term of this Lease, (1) it shall not engage in the business of fish cutting or oyster shucking, nor shall it offer non-alcoholic beverages from vending machines; provided, that the provisions of this Section 1.P shall be enforceable only during such times as Virgo Fish House, its successors or permitted assigns, shall engage in the activities described herein at other premises within the Project; and (2) it shall not engage in the sale of liquor for consumption off the Premises. It is understood and agreed that the foregoing prohibition on oyster shucking is intended to apply only to the shucking of oysters conducted as an independent business, and shall not apply to the shucking by Tenant of oysters sold by Tenant.

Q. **Restrictions on Sales.** The following restrictions shall appear in all Leases of Barge Spaces within the Project. In the particular Lease or Leases to which any such restriction pertains, such provision shall act as a restriction imposed and enforceable by Landlord for its benefit, and imposed and enforceable by the other tenants of the Project for their benefit, and accepted by the tenant or tenants occupying the area to which such restriction directly pertains.

(i) For a period of ten (10) years, expiring on the tenth (10) anniversary of this Lease, the sale of seafood of any type shall be prohibited throughout the rectangular area comprising the southernmost twenty-four feet (24') of Barge 6.

(ii) For the entire Term of this Lease, the sale of crabs anywhere on Barge 6 or 16 shall be prohibited.

## 2. *Lease of the Premises; Termination of Prior Lease; Tenant's Acceptance of Premises; Termination Right.*

A. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term.

B. Landlord is presently leasing the Premises to Tenant pursuant to an existing lease agreement dated February 20, 1986 (the "Prior Lease"). Effective as of the Commencement Date, the Prior Lease shall terminate, and Tenant's use and occupancy of the Premises will be governed by this Lease.

C. Tenant has accepted delivery of the Premises under the Prior Lease, and at the commencement of the Term hereunder, Tenant shall continue to occupy the Premises in their "as is" condition, subject to Section 3. Effective as of the Commencement Date, Tenant does hereby release, remise, discharge, and forever waive any and all claims, actions, or causes of action, whether known or unknown, arising from or relating to the Prior Lease that Tenant has or may have against landlord, or its affiliated entities, predecessors, successors, assigns, legal representatives, agents, employees, servants, attorneys, officers, or other representatives.



D. Anything herein to the contrary notwithstanding, Tenant shall have the right, exercisable by written notice given to Landlord not later than ninety (90) days after submission of the Annual Statement (as defined in Section 7 below), to terminate this Lease if the total of the Minimum Rent and the Percentage Rent (as defined in Sections 1.F and 1.H above) for the Lease Year to which such Annual Statement pertains exceeds ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$125,000.00). This termination right is specifically limited to the first Lease Year in which Minimum Rent and Percentage Rent hereunder exceed such sum. Such termination shall be effective for all purposes one (1) calendar year following the date of such notice. Upon the expiration of such one (1) year period, and upon the surrender of the Premises in the manner required hereby upon the expiration or termination of this Lease, the parties shall be released and relieved of any obligations accruing in respect of the Premises after the expiration of such one (1) year period.

### 3. *Landlord's Work.*

A. Landlord has been allocated \$3,000,000 from the federal government (the "Federal Appropriation") to make improvements to the Project and to the marina located next to the Project at 1300 Maine Avenue. Landlord and Tenant have heretofore agreed upon the nature of the improvements to be made to the Project with the Federal Appropriation and such other sources of funding as may be available to landlord, all as embodied in the Work Orders issued by the Corps of Engineers and reviewed and approved by Landlord and Tenant, and attached hereto as Exhibit D. (The improvements to be made to the Project with the Federal Appropriation and such other sources of funding as may be available to Landlord are referred to hereafter as "Landlord's Work.") Landlord shall have no obligation to spend any funds to complete Landlord's Work in excess of the Federal Appropriation and such other sources of funding as may be available to Landlord.

B. After Landlord's Work has been determined in accordance with subsection A above, Landlord will complete construction of Landlord's Work in a good and workmanlike manner and in accordance with requirements of governmental authorities. Tenant shall be consulted with regard to materials and structural details of Landlord's Work, but the final choice thereof shall be in Landlord's sole discretion. Except for Landlord's Work and except as provided in Section 9, Landlord shall not be required to make any repairs or improvements to the Project.

C. Landlord shall use reasonable commercial efforts to complete Landlord's Work by June 30, 2001, but shall have no liability to Tenant if it is unable to complete Landlord's Work by that date or by any other date. Within five (5) days after the New Rent Commencement Date, Tenant shall execute and deliver to Landlord a Certificate of Acceptance, in the form attached hereto as Exhibit C.

D. Landlord's Work shall comply with ADA requirements, as well as all other applicable Federal and local governmental requirements.

### 4. *[Intentionally Omitted]*



## 5. *Minimum Rent.*

A. During the Term, Tenant shall pay all rent, without demand and without setoff, counterclaim, recoupment or other reduction, to the "Management Agent" (defined below) for the Project, including Minimum Rent in monthly installments as set forth in Section 1.F. All monthly installments of Minimum Rent shall be payable in advance on the first day of each month, except that the first payment shall be due on the New Rent Commencement Date. If the Commencement Date or the New Rent Commencement Date is not the first day of a month, the rent for the months in which those dates fall shall be prorated.

B. On or before the New Rent Commencement Date, the Tenant Committee shall select, following consultation with, and with the approval of, the Landlord, a "Management Agent" that shall be charged with responsibility for the operation, maintenance, repair, and replacement of all elements of the Common Areas and the orderly operation of the Project. The Management Agent, throughout the term of its employment as such with respect to the Project: (1) shall maintain insurance that includes employee dishonesty or fidelity coverage in an amount at least as great as the amount of funds the Management Agent has access to at any time; and (2) shall covenant not to, and shall not, discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Landlord, subject to the review and approval, not to be unreasonably conditioned, delayed, or withheld, of the Tenant Committee, shall negotiate and enter into a Management Agreement with the Management Agent. The Management Agreement shall provide that, before payment to Landlord of any amounts due Landlord hereunder: (i) twenty-five percent (25%) of the Minimum Rent and all other Rent from this Lease and all other leases of premises within the Project shall be placed in an interest-bearing escrow account with the Management Agent as a reserve for future capital expenditures in respect of the Common Areas, of which as much as one-fifth (1/5) (or five percent (5%) of the Minimum Rent) may be used for advertising the Fish Wharf in local media and signage in Common Areas, although it is acknowledged by the parties that establishing reasonable reserves for capital needs shall have priority; (ii) all "Common Area Operating Costs" shall be paid to, and applied by, Management Agent, as provided in Section 10 below; and (iii) Management Agent shall deduct the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) (the "Accounting Reserve") from the Rent payable hereunder and shall deposit the same in a reserve account to remain available for purposes paying any accounting or auditing charges incurred by Landlord under Section 7.D below from time to time. As and when funds in the Accounting Reserve are expended, Management Agent shall again deduct sufficient monies from the Rent payable hereunder to replenish the Accounting Reserve to the level established above..

C. No payment by Tenant of a lesser amount than the monthly installment of rent or other charges herein stipulated shall be deemed to be other than on account of the earliest stipulated rent or other charges, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord and satisfaction. Landlord may accept any check for payment without prejudice to Landlord's right to recover the balance of the rent due or to pursue any other remedy available to Landlord.



## 6. *Late Charges.*

Any rental or other payment due from Tenant hereunder which is not received when due shall be payable by Tenant to Landlord, without demand, with interest from the due date until paid at the rate of fifteen percent (15%) per annum (1-1/4% per month), but no less than One Hundred Dollars (\$100.00), and Tenant shall reimburse Landlord for reasonable attorneys' fees, if any, incurred by Landlord by reason of Tenant's failure to make timely payment. In addition, Tenant shall pay Landlord a \$100.00 fee for each check received by Landlord which is returned by Tenant's bank unpaid.

## 7. *Additional Rent: CPI Adjustment; Percentage Rent.*

A. Upon the first (1st) day of the second (2<sup>nd</sup>) Lease Year, and upon each anniversary thereof occurring during the term of this Lease until such time as Tenant shall have reached the Base Amount (as defined in Section 1.H above) (each, an "Adjustment Date"), the Minimum Rent herein provided shall be adjusted to reflect increases in the Consumer Price Index (as defined in Section 1.D above). Such adjustment shall be accomplished by multiplying the Minimum Rent by a fraction, the numerator of which shall be the Consumer Price Index as of the most recent date prior to such Adjustment Date, and the denominator of which shall be the Consumer Price Index as of the most recent date prior to the New Rent Commencement Date; provided, however, that in no event shall the Minimum Rent be reduced as a result of such adjustment below the Minimum Rent for the immediately preceding year. The increased Minimum Rent established pursuant to this Section 7 shall continue in effect as, and for all purposes of this Lease be defined as, the Minimum Rent until again increased as herein provided.

B. From and after such time as Tenant shall reach the Base Amount (as defined in Section 1.H above), Tenant shall pay to Landlord, as additional rent, within seventy-five (75) days after the end of each Lease Year, Percentage Rent calculated in accordance with Section 1.H. Tenant's annual payment of Percentage Rent shall be accompanied by a financial statement (the "Annual Statement"), signed by Tenant and reviewed by an independent certified public accountant, showing "Gross Sales" and "Gross Non-Taxable Sales" (as such terms are defined below) and the Percentage Rent for the Lease Year.

C. "Gross Sales" means the gross amount charged for all sales or services made upon or from the Premises, including any rent or other sum received by Tenant from licensees or concessionaires. "Gross Non-Taxable Sales" means the amount of Gross Sales, minus the amount of all sales and services that shall be subject to, and with respect to which Tenant shall pay, District of Columbia Sales and Use Tax. Each sale shall be valued at the actual sales price charged the customer, even if the sale is a credit or installment sale, and reported in full in the month in which the sale occurs, even if full payment is not received at the time of the sale.

D. Tenant shall furnish to Management Agent, simultaneously with the filing thereof with the District of Columbia, copies of the Sales and Use Tax Returns currently required to be filed by Tenant in respect of prepared foods and other taxable goods sold by Tenant within the Premises. In addition, Tenant shall prepare, file with the District of Columbia, and make simultaneously available to Landlord informational returns in respect of all raw foods and other



non-taxable goods sold by Tenant within the Premises. Such records shall be open to inspection and audit by Landlord or its accountants. If any audit discloses a deficiency in payment of Percentage Rent, Tenant shall immediately pay Landlord the deficient amount, together with interest thereon at the rate of fifteen percent (15%) per annum from the date such Percentage Rent should have been paid. If a discrepancy of three percent (3%) or more in the reported amount of Gross Non-Taxable Sales is uncovered as a result of any audit, Tenant shall reimburse Landlord for the cost of the audit (including the cost of Landlord's accountant). Landlord shall bear the cost of any audit in which no discrepancy or a discrepancy of less than three percent (3%) shall be found (including the cost of Tenant's accountant). Except to the extent required by law or required to exercise its rights hereunder, Landlord shall maintain the confidentiality of all information furnished by Tenant pursuant to this Section 7.D or otherwise made available to Landlord in connection with the exercise of its rights under Section 7.B above.

## **8. *Utilities.***

During the Term, Tenant shall pay directly to the supplier all charges for water, sewer, gas, electricity, telephone and other utilities used upon the Premises. Expenses for maintenance of utility meters shall be borne by Tenant, and if Landlord pays any such expenses, Tenant shall reimburse Landlord promptly upon demand. Landlord shall not be liable for any failure to furnish or for any interruption of utility services, unless caused by the gross negligence of Landlord or Landlord's agents. Upon Tenant's request, Landlord shall furnish a copy of the surety bond or indemnity agreement from any contractor performing work in the Project.

## **9. *Common Areas; Employee Parking.***

A. Landlord grants to Tenant the right, in common with other tenants in the Project, to use the Common Areas during the Term. Such right of use shall be deemed a license coupled with an interest, and shall subsist until the expiration or the earlier termination of the Term. After completion of Landlord's Work, and with the approval of the Tenant Committee, Landlord may change the size, location or nature of the Common Areas, and may locate on the Common Areas structures of any type; provided no such structures would materially interfere with access to the Premises across the Common Areas and to and from Maine Avenue.. Subject to the terms of the Management Agreement, Landlord shall have exclusive control and management of the Common Areas and Landlord may establish and enforce rules therefor.

B. Parking, including, without limitation, employee parking, within the Project shall be regulated by the Tenant Committee, which shall promulgate parking regulations to be enforced by the Management Agent; provided, that no area within the Project shall be dedicated to parking for employees of Tenant or any other tenant of the Project; and provided, further, that no parking shall be permitted in any area designated for table space in the plans for Landlord's Work.

## **10. *Common Area Operating Costs.***

A. Commencing with the New Rent Commencement Date, Tenant shall pay to Management Agent (as agent for Landlord), as additional rent, Tenant's Proportionate Share of all "Common Area Operating Costs" (as hereafter defined). Common Area Operating Costs means the



sum of the following costs and charges incurred by Landlord for each calendar year or part thereof during the Term: (i) "Common Area Costs" (as hereafter defined); (ii) repair and maintenance costs for the structure and exterior of the buildings in the Project, exclusive of improvements located on barges within the Project and exclusive of expenditures that under "generally accepted accounting principles," as that term is defined by the financial Accounting Standards Board, would be capitalized ("Capital Expenditures"); (iii) "Insurance Costs" (as hereafter defined); and (iv) the monthly fee due Management Agent under the Management Agreement. Common Area Costs mean all costs incurred by Landlord, excluding Capital Expenditures, to operate, maintain, replace and repair the Common Areas, including costs for the following: security services; gardening and landscaping; repairs; painting; striping and sweeping; lighting (including the cost of electricity and maintenance and replacement of exterior fixtures and bulbs); and other utility costs for the public restrooms and other facilities located within the Common Area; refuse removal, including dumpsters; ice and snow removal; equipment and supplies related to Common Area maintenance; water and maintenance charges for sprinklers and hydrants; any dues, fees or assessments paid by Landlord with respect to storm water management facilities that benefit the Project; and personnel of Management Agent to operate, maintain and repair the Common Areas (including salaries, employment taxes and workmen's compensation insurance for such personnel). "Insurance Costs" mean all insurance premiums and other costs incurred by Landlord in connection with fire and extended coverage, public liability, business interruption, sign, and any other insurance maintained by Landlord relating to the Project.

B. Landlord shall annually notify Tenant of Tenant's Proportionate Share of Common Area Operating Costs for each calendar year, and Tenant shall pay to Management Agent (as agent for Landlord) such amount in equal monthly installments in advance on the first day of each of the twelve (12) months after the date of such notice, the first such monthly installment to be due on the New Rent Commencement Date. If the New Rent Commencement Date is a date other than the first day of a month, Tenant's Proportionate Share of Common Area Operating Costs for that month shall be prorated. Landlord shall annually submit to Tenant a statement showing the actual Tenant's Proportionate Share of Common Area Operating Costs for the prior calendar year, the amount paid by Tenant, and the balance due or overpayment. The balance due shall be paid by Tenant to Management Agent (as agent for Landlord), or the overpayment shall be paid by Landlord to Tenant, without interest, within thirty (30) days after the date of the statement. Tenant may, upon reasonable notice, examine Project records at the office of the Management Agent during ordinary business hours to verify the statement for the immediately preceding year, but such examination shall not excuse the timely payment of Tenant's Proportionate Share of Common Area Operating Costs.

C. The Tenant Committee, in conjunction with the Management Agent, shall prepare an annual budget for operation of, and any contemplated repairs and replacements of, the Common Areas, which shall be made available for the review and reasonable approval of Landlord. As and when capital expenditures are required, the Tenant Committee, in conjunction with the Management Agent, shall prepare a scope of work and budget therefor, and shall submit same to Landlord for approval, which shall not be unreasonably withheld. Until the New Rent Commencement Date, Tenant, in conjunction with the other tenants of the Project, shall continue to be responsible for and pay operating costs of the Project in the same manner as has been the case



before the date of this Lease, subject to adjustment for any changes being implemented currently in tenants' respective Proportionate Shares.

### ***11. Use of Premises.***

A. Tenant shall use the Premises exclusively for conduct of the business set forth in Section 1.1.

B. Tenant shall keep the Premises open for business at least forty-five (45) hours per week, excluding any closures caused by fire, natural disasters, or other casualties, required by the Landlord's Work or by repair or renovation work by Tenant, or by dredging activity required by the terms of this Lease.

C. Tenant shall comply with all laws, ordinances, rules and regulations pertaining to the use and occupancy of the Premises, including the Americans with Disabilities Act and other laws relating to the use of the public areas of the Premises by individuals with disabilities. Tenant shall not permit any act upon the Premises which (i) disturbs tenants of the Project or injures the reputation of the Project, (ii) subjects Landlord to liability for injury or damage to persons or property, or (iii) invalidates any insurance policy pertaining to the Project.

### ***12. Signs.***

A. Landlord consents to Tenant's existing exterior signage ("Tenant's Signage") which is in place on the date hereof on Barges 7, 8 and 9. Any changes to Tenant's Signage shall be subject to Landlord's approval, which shall not be unreasonably withheld.

B. Tenant shall maintain Tenant's Signage in good repair, and shall replace it when needed so that Tenant's Signage is in good condition at all times. If Tenant fails promptly to perform its obligations under this Section, Landlord may perform the repairs, replacements or removal, at Tenant's expense, and Tenant shall reimburse Landlord for the cost thereof promptly upon demand.

### ***13. Alterations.***

Tenant may alter the Barges provided such alterations shall not harm the Project and must comply with all applicable Federal and local building codes, regulations and laws, and provided that any alteration that includes an expansion of the horizontal space covered by such Barges, or the amount or location of the frontage currently occupied by such Barges for purposes of effecting sales to the public, shall require the written consent of Landlord. Provisions identical to the foregoing provisions of this Section 13 shall appear in all Leases of Barge Space within the Project.

### ***14. Fixtures and Equipment.***

All of Tenant's equipment, furniture, and moveable trade fixtures shall remain Tenant's property, and Tenant shall have sole responsibility therefor. Tenant may remove them at



any time prior to expiration of the Term, provided that Tenant is not then in default under this Lease and provided further that Tenant repairs any damage to the Premises occasioned by removal.

### ***15. Tenant's Maintenance; Condition of the Premises.***

A. Tenant shall, at all times throughout the Term, at its cost, put, keep and maintain the Barges and Premises and every improvement located thereon in good order, condition and repair, except for reasonable wear and tear, condemnation and casualty loss. As used herein, "repairs" shall include replacements, restorations and/or renewals, when necessary or appropriate to keep the Barges and Premises in good order, condition and repair at all times throughout the Term. All repairs shall be made in a first class workmanlike manner. In addition, Tenant shall keep and maintain the Barges and Premises in a clean and orderly condition, free of dirt, rubbish, snow and ice. The necessity for and adequacy of repairs to the Barges and Premises shall be measured by the standard that is appropriate for a first class wharf and fish market.

B. Tenant shall deposit its refuse in the compactor, dumpster or other trash receptacle supplied by Landlord for Tenant's use as of the Commencement Date. Throughout the Term, the Tenant Committee shall provide compactors or dumpsters and/or trash collection service, the cost of which shall be included among the Common Area Costs. Tenant shall not use the compactors, dumpsters or trash collection service for discarding "Hazardous Materials" (as such term is defined below). Tenant, at its expense, shall dispose of its Hazardous Materials in accordance with applicable federal, state and local laws and regulations. "Hazardous Materials" means all substances declared to be hazardous, toxic or infectious under any applicable law or regulation.

C. Tenant shall cooperate with the other tenants of the Project, if given reasonable notice, in arranging for movement of the Barges as necessary to accommodate maintenance, repair, and replacement of Barges and dredging of submerged areas within the Project. All dredging activities shall be carried out and concluded as quickly as is commercially reasonable in the circumstances. Provisions identical to the foregoing provisions of this Section 15.C shall appear in all leases of Barge Space within the Project. It is the intent of the parties that all tenants of the Project shall have the rights of third-party beneficiaries with respect to the provisions of this Section 15.C.

### ***16. Landlord's Right of Entry.***

Landlord and its agents may enter the Premises at reasonable hours to inspect or exhibit them; to place and maintain a "FOR RENT" sign thereon at any time within six (6) months prior to termination of the Term; or to enter them after Tenant defaults hereunder, and alter, repair or otherwise prepare the Premises for reoccupancy.

### ***17. Tenant's Indemnity; Insurance.***

A. Landlord shall not be liable for, and Tenant shall protect, defend, indemnify and hold Landlord harmless from and against, any liability or claim (including attorneys' fees) in connection with any injury or loss to any person or property (i) arising within the Premises, unless



caused by the gross negligence or willful misconduct of Landlord, or (ii) arising out of any act or omission of Tenant or its agents or contractors.

B. Throughout the Term, Tenant shall maintain, with a company licensed to sell insurance in the District of Columbia, (i) commercial general liability insurance (the "Liability Policy") with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate combined for all locations in which Tenant operates its business (Nos. 7, 8, 9, 16, 17, 18, and 19), in a form providing occurrence basis coverage; and (ii) an all-risk policy of insurance covering the Barges and all trade fixtures, equipment and personal property kept at the Premises, in an amount not less than the full replacement value of said items. All such insurance policies shall (i) be written as primary coverage and not contributing with or in excess of any coverage that Landlord may carry; (ii) contain an express waiver of any right of subrogation by the insurer against Landlord; and (iii) provide that the insurance policy may not be cancelled unless Landlord has been given thirty (30) days' prior written notice. Notwithstanding the foregoing, the Liability Policy shall be increased at the end of each period of five (5) Lease Years during the Term by an amount equal to the increase in the Consumer Price Index during such period. In addition, Tenant's Liability Policy shall (i) list as additional insured Landlord and any other parties with an insurable interest in the Premises designated by Landlord, and (ii) be endorsed to require the insurance carrier to notify Landlord in writing of any losses charged against the policy. Before the Term commences, and before any such insurance policy expires, Tenant shall deliver to Landlord a certificate of insurance for each policy or renewal thereof that Tenant is required to maintain under this Section. If Tenant fails to maintain any insurance required by this Section, Landlord may obtain such insurance, and any premium paid by Landlord shall be immediately payable by Tenant to Landlord as additional rent.

C. Neither party shall be liable to the other or to any insurer (by way of subrogation or otherwise) for any loss or damage, even though such loss or damage may have been occasioned by the negligence of such party, if such loss was covered by an insurance policy containing an endorsement to the effect that any such release by the insured shall not adversely affect the insured's right to recover for such loss, and that the insurer waives its right of subrogation.

## **18. *[Intentionally Omitted].***

## **19. *Assignment and Subletting.***

A. Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or otherwise permit others to use all or any part of the Premises, whether voluntarily, by operation of law or otherwise (collectively, an "Assignment"), without the prior written consent of Landlord, which Landlord may withhold in its absolute discretion. However, Landlord shall not withhold its consent if such assignee, transferee, subtenant or occupant (collectively, the "Assignee") is financially capable of satisfying its obligations under this Lease, and shall have previously and successfully sold seafood at retail. Any attempted Assignment shall be void and confer no rights upon any third party. If an Assignment is effected in violation of the terms of this Lease, Landlord may collect rent from the Assignee and apply the net amount collected to the rent herein reserved, but no such Assignment or collection shall be deemed a waiver of this covenant, acceptance of the Assignee as tenant, or release of Tenant hereunder. In addition, if Landlord



consents to an Assignment, Tenant shall pay Landlord One Thousand and No/100 Dollars (\$1,000.00) (the "Assignment Fee") as payment for legal fees and costs incurred in connection with the preparation of the documents to effectuate the Assignment. The Assignment Fee shall be paid to Landlord prior to the preparation of the Assignment documents. The following events shall also constitute an Assignment: (a) if Tenant is a corporation, the transfer of more than fifty percent (50%) of the voting stock of Tenant, or (b) if Tenant is a partnership, the transfer of more than fifty percent (50%) of the partnership interests of Tenant or the transfer of any general partnership interest of Tenant. This clause shall not be interpreted to preclude an Assignment to siblings and direct descendants of individuals owning, as of the Commencement Date, a majority of the voting stock of Tenant, or a transfer to a new entity as a result of a reorganization that does not result in a change in beneficial ownership.

B. If Landlord approves an assignment or subletting, Tenant shall pay to Landlord, as and when received by Tenant, an amount equal to 50% of the difference between (i) all sums paid to Tenant by or on behalf of such assignee or subtenant under the assignment or sublease, and (ii) the Rent paid by Tenant under this Lease and attributable to the portion of the Premises assigned or sublet.

C. In addition to the foregoing, if Tenant notifies Landlord that Tenant desires to assign a portion of this Lease or sublet a portion of the Premises (the "Proposed Sublet Space"), Landlord shall have the option to regain possession of the Proposed Sublet Space and amend this Lease to exclude the Proposed Sublet Space and effect a proportionate reduction in Minimum Rent and Tenant's Proportionate Share based upon the relative size of the Premises as so reduced. All other terms and conditions of this Lease shall remain in effect and applicable to the Premises as reduced, and Tenant shall execute documents to effect such amendment at Landlord's request. If Landlord does not exercise its right to regain possession of the Proposed Sublet Space, Tenant may seek an acceptable assignee or subtenant for a sublease term no longer than that set forth in Tenant's notice. If Tenant does not find an assignee or subtenant acceptable to Landlord within 120 days from the date of Tenant's most recent notice, Tenant may not enter into any assignment or sublease without first submitting a new notice to Landlord and affording Landlord an opportunity to amend or terminate this Lease as set forth above.

## 20. *[Intentionally Omitted]*.

## 21. *Tenant's Defaults.*

Tenant shall be in default under this Lease if Tenant (a) fails to pay any rent or other sum required hereunder within twelve (12) days after its due date; or (b) fails to maintain any insurance required hereunder; or (c) abandons the Premises or fails to conduct business therein for a period of fifteen (15) or more consecutive days, absent a casualty and then only after allowing a period of as much as six (6) months in which to replace the affected Barge; or (d) assigns this Lease or sublets all or any portion of the Premises in violation of Section 19; or (e) fails to continue to operate its existing businesses on Barges 7, 8, and 9; or (f) files for relief under the United States Bankruptcy Code (the "Bankruptcy Code") or under any other state or federal bankruptcy or insolvency law, or Tenant files an assignment for the benefit of creditors, or if an involuntary proceeding under the Bankruptcy Code or under any other federal or state bankruptcy or insolvency



law is commenced against Tenant; or (g) defaults in any other obligation herein and such default is not remedied within thirty (30) days after written notice of the default from Landlord; provided, however, that Tenant's failure to perform any non-monetary obligation set forth in this Lease on its part to be performed three (3) or more times in any twelve (12) month period shall effect an immediate default, and Landlord thereupon may exercise any remedy set forth in Section 22 below without affording Tenant any opportunity to cure such default.

## ***22. Landlord's Remedies in Case of Tenant's Default.***

A. At any time after Tenant's default under this Lease, Landlord may (i) terminate this Lease upon notice to Tenant or by any available judicial process; and/or (ii) re-enter the Premises (with or without terminating the Lease), remove all property, which may include towing the Barge or Barges and storing same, at Tenant's expense without being deemed guilty of trespass and without liability for any loss or damage, and/or relet or otherwise deal with the Premises in any manner which Landlord determines in its sole discretion.

B. Should Landlord terminate this Lease after Tenant's default, Landlord may recover from Tenant all costs (including attorneys' fees) and other damages incurred by Landlord as a result of such default, and, without limiting the generality of the foregoing, (i) all rent to the time of such termination shall be paid by Tenant immediately, together with all expenses (including attorneys' fees) of retaking possession of the Premises, as shall the cost of preparing the Premises for reletting and the costs (including brokerage fees and advertising) of actually reletting same; (ii) Landlord may take all steps, including repair or alteration of the Premises, to prepare the Premises for reletting; (iii) Landlord may relet all or any part of the Premises for such term, at such rental, and upon such conditions as Landlord deems advisable; and (iv) Tenant shall pay to Landlord, as liquidated damages, for each month during the balance of the Term (but for termination of the Lease by Landlord), any deficiency between (a) all rent and additional rent herein reserved for each such month, and (b) the net rent for each such month collected upon any reletting. Alternatively, if Landlord terminates this Lease at any time after Tenant's default, Landlord may elect, in addition to the damages described in clauses (i) - (iii) of the preceding sentence, and the damages due under clause (iv) up to the time of said election, to recover from Tenant the value at the time of said election of the excess, if any, of all rent and additional rent due under this Lease for the remainder of the Term (but for termination of the Lease by Landlord) over the then reasonable rental value of the Premises for that period.

C. If Landlord elects not to terminate this Lease after Tenant's default, Tenant shall continue to be liable for all rent and additional rent due hereunder, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.

D. If Tenant abandons the Premises, Landlord may re-enter the Premises without judicial process and relet them, and such re-entry or reletting shall not terminate this Lease, and Tenant shall continue to be liable for all rent and additional rent due under the Lease, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.



**23. *Landlord's Right to Cure Tenant's Default.***

A. If Tenant shall default in the keeping, observance or performance of any provision or obligation of this Lease, Landlord, without thereby waiving such default, may perform the same for the account and at the expense of Tenant, without notice in a case of emergency and in any other case if such default continues after thirty (30) days from the date of the giving by Landlord to Tenant a notice of intention so to do. Bills for any reasonable expense incurred by Landlord in connection with any such performance by Landlord for the account of Tenant, and bills for all reasonable costs, expenses and disbursements of every kind and nature whatsoever, including attorneys' fees, involved in collecting or endeavoring to collect any sums due hereunder or enforcing or endeavoring to enforce any rights against Tenant, under or in connection with this Lease, or pursuant to law, including any such reasonable cost, expense and disbursement involved in instituting and prosecuting any action or proceeding (including any summary dispossession proceeding), may be sent by Landlord to be due and payable in accordance with the terms of said bills, and if not paid when due, the amounts thereof shall immediately become due and payable as Additional Rent under this Lease.

B. No entry in accordance with this Lease by Landlord or its employees, agents or representatives, or by any other party at the direction of Landlord, shall ever be construed or interpreted as an ouster of Tenant from possession or as a constructive eviction or to alter, diminish or abate Landlord's rights under this Lease.

**24. *[Intentionally Omitted].***

**25. *Holding Over.***

If Tenant lawfully remains in possession of the Premises after the expiration of the Term, Tenant shall be a tenant from month to month, upon all the terms hereof which are not inconsistent with such tenancy; provided, however, that Tenant covenants to pay to Landlord as Minimum Rent during such tenancy one hundred fifty percent (150%) of the Minimum Rent in effect immediately before expiration of the Term, in addition to all other rent and other charges due hereunder. Such tenancy may be terminated by Landlord or Tenant upon thirty (30) days notice.

**26. *Surrender of Premises.***

Upon termination of the Term for any reason, Tenant shall remove the Barges and any other property of Tenant, and surrender the Premises to Landlord in the same condition as they were in on the Commencement Date. If Tenant fails to remove the Barges or other property, it shall become Landlord's property or, at Landlord's option, shall be removed and stored at Tenant's expense, without Landlord being liable for trespass, conversion or negligence in respect of such property. If Tenant fails to surrender the Premises in the condition required by this Section, Landlord may restore the Premises to their condition as of the Commencement Date and Tenant shall reimburse Landlord for the cost of the restoration.

A handwritten signature in black ink, appearing to be "BWT", is located in the bottom right corner of the page.



**27. *Limitation on Landlord's Liability.***

A. Notwithstanding anything to the contrary in this Lease, (i) Landlord shall not be liable to Tenant for any loss or damage to property which is either covered by insurance or which Tenant is required to insure under this Lease, and (ii) any liability of Landlord to Tenant under this Lease shall be limited to direct damages and shall not include indirect, consequential, incidental, or punitive damages, including any liability to Tenant for lost profits or interruption of business. Tenant shall look to its property damage or business interruption insurance policies, and not to Landlord, its agents or employees for any loss incurred as a result of damage to its property or interruption of its business.

B. Except for damages resulting from the gross negligence or willful misconduct of Landlord, Landlord shall not be liable to Tenant, its employees, agents or other invitees for any damage, compensation, claim or expense arising from (i) damage or loss to the property of Tenant or others located anywhere in the Project), or (ii) death, accident or injury to persons occurring anywhere in the Project). Landlord shall have no liability to Tenant for any delay in completing Landlord's Work.

**28. *Notices.***

All notices and other communications hereunder shall be in writing, and shall be hand delivered, delivered by a recognized overnight delivery service (e.g., Federal Express), or sent by certified or registered U.S. mail, postage prepaid, to Landlord or Tenant, as the case may be, at the address set forth below. All notices hereunder shall also be delivered to counsel for the party to receive such notice, at the address set forth below, in order to effectuate good and valid notice hereunder.

If to Landlord:

Director, District of Columbia Department of Housing  
and Community Development  
801 North Capitol Street, N.E.  
8<sup>th</sup> Floor  
Washington, D.C. 20002



With a required copy to:

Andrew Ridley, Esquire  
Assistant Corporation Counsel  
801 North Capitol Street, N.E.  
Room 734  
Washington, D.C. 20002

If to Tenant:

BRW, Inc.  
t/a Capt. White Seafood City  
1100 Maine Avenue, S.W.  
Washington, D.C. 20024  
Attn: Billy White

With a required copy to:

Richard L. Aguglia, Esquire  
Hunton & Williams  
1900 K Street, N.W., Suite 1200  
Suite 1200  
Washington, D.C. 20006

Either party may designate in writing a change in its notice address, which shall be effective ten (10) days following receipt of such writing by the other party. Notices which are delivered in person shall be deemed given when received. Notices which are mailed shall be deemed given on the date they are mailed. Notices which are sent by overnight delivery service shall be deemed given on the date they are deposited with the delivery service.

### **29. *Quiet Enjoyment.***

As long as it is not in default under this Lease, Tenant may peaceably and quietly enjoy the Premises for the Term without hindrance, ejection or molestation by Landlord or anyone claiming or acting by or through Landlord.

### **30. *Security Deposit.***

Tenant has deposited with Landlord the sum set forth in Section 1.L (the "Security Deposit") as security for performance of Tenant's obligations hereunder. The Security Deposit shall be returned to Tenant, with interest, within forty-five (45) days after the expiration of the Term, provided that Tenant has discharged all such obligations. Landlord may apply the Security Deposit to cure any default of Tenant, and Tenant shall deposit with Landlord the amount applied within thirty (30) days after written demand.





**31. *[Intentionally Omitted].***

**32. *Rules and Regulations.***

Tenant will comply with the Rules and Regulations set forth on Exhibit E, and with any other reasonable rules and regulations as Landlord adopts for the Premises. Such rules and regulations shall not unreasonably interfere with the conduct of Tenant's business. In particular instances, where in Landlord's reasonable judgment such rules and regulations may be infeasible, Landlord shall have the right to modify or waive such rules and regulations as they apply to particular other tenants. Any failure by Tenant to comply with any rule or regulation established pursuant to this Lease shall be a default under this Lease subject to Section 21. Landlord shall exercise its rights in respect of the promulgation, revision, and enforcement of Rules and Regulations in a non-discriminatory manner.

**33. *Waiver of Jury Trial.***

Landlord and Tenant hereby waive all right to trial by jury in any claim, action, proceeding or counterclaim by either Landlord or Tenant against the other pertaining to any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use of the Premises.

**34. *Covenant Against Contingent Fees***

Tenant warrants that it has not employed any person to solicit or secure this Lease upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give Landlord the right to terminate this Lease, or, in its discretion, to add to the rental or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by Tenant upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by Tenant for the purposes of securing business, or to Tenant's attorneys' fees. Landlord shall pay any and all commissions and other compensation due to any broker, finder or other person with whom Landlord has dealt with regard to this Lease.

**35. *Facilities Nondiscrimination.***

A. As used in this section, the term "facility" means the entire Premises.

B. Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, sexual orientation, physical disability, marital status or national origin, in furnishing, or by refusing to furnish, to any person or persons the use of any facility, including any and all service, privileges, accommodations and activities provided thereby.

C. It is agreed that Tenant's noncompliance with the provisions of this Article, as determined by a final, unappealable judgment by a court of competent jurisdiction,



shall constitute material breach of this lease Agreement. In the event of such a determination of noncompliance, and Tenant's failure to cure such non-compliance within ten (10) days after such determination becomes final, Landlord may take appropriate action to enforce compliance, and may pursue remedies as may be provided by law or in equity.

D. Tenant agrees to include, or to require the inclusion of, the foregoing provisions of this section (with terms "The District" and "Tenant" appropriately modified) in every agreement or concession pursuant to which any person other than Tenant operates or has the right to operate the facility. Tenant also agrees that it will also comply with any final, unappealable court order directing Tenant to take any action with respect to any such agreement in order to enforce the provisions of this section, including but not limited to termination of the agreement or concession in question; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a person as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **36. *Nondiscrimination in Employment.***

A. In connection with the conduct of business on the Premises, Tenant agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Tenant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex orientation, physical disability, marital status or national origin. Such action shall include, but not limited to the following: employment, upgrading demotion or transfer, recruitment or recruitment advertising, layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, as required by applicable law. Tenant agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by Landlord setting forth the provisions of this nondiscrimination clause.

B. Tenant will, in all solicitations for advertisements for employees placed by or on behalf of the Tenant, state that qualified applicants will receive consideration for employment without regard to race, creed, color, sexual orientation, physical disability, marital status or national origin.

C. Tenant will send to each union or representative of workers with which it has collective bargaining agreement(s) or other contracts of understandings a notice to be provided by Landlord in advising the said labor union or worker's representative of Tenant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. Tenant will permit Landlord access to their books, records, and accounts, or their agents, for purposes of investigation to ascertain compliance with such rules, regulations and orders, as provided by applicable law.

E. In the event of any final, unappealable determination by any court or administrative body, of noncompliance of Tenant with the nondiscrimination clauses of this



Lease Agreement, and Tenant's failure to cure such discrimination within ten (10) days after such determination becomes final, this Lease Agreement may be canceled in whole or in part and Tenant may be declared ineligible for further leases with the District of Columbia.

F. Tenant further agrees to insert the foregoing provisions of nondiscrimination in employment in all subcontracts hereunder, unless exempted by rules and regulations or orders of Landlord so that such provisions will be binding and regulations or orders of Landlord so that such provisions will be binding upon each subcontractor or vendor. Tenant will take such action with respect to any subcontract as required by any final, unappealable order of a court or governmental agency of competent jurisdiction in order to enforce such provisions, including sanctions for noncompliance; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a subcontractor or vendor as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **37. *Environment Protection.***

Tenant shall not pollute the air, ground or water in, on or under the premises. Tenant shall comply promptly with any laws, regulations, conditions or instructions applicable to the Tenant's business(es) at the Premises, if and when issued by the Environmental Protection Agency, or any Federal, state, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous material within the Premises in violation of applicable laws or codes is specifically prohibited. Tenant shall require the owners/operators of boats moored at the Premises, including rental boats, to seal all sanitation facilities or such boats against any discharge into the Washington Channel. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Tenant as reasonably appropriate. Tenant shall not discharge waste or effluent from the Premises, including Barges, in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

A. If damage to the environment or natural resources is proximately caused by Tenant's activities at the premises, Tenant shall be liable to restore the damaged resources.

### **38. *Miscellaneous.***

A. **Entire Agreement; Joint and Several Liability; Successors and Assigns.** This Lease constitutes the entire agreement between the parties concerning the matters set forth herein. If Tenant shall include more than one person, the obligations hereunder of all such persons shall be joint and several. This Lease shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs and legal representatives.

B. **Interpretation.** The named Exhibits are part of this Lease. Section and subsection headings are for convenience only, and not for use in interpreting this Lease. If a court finds any provision of this Lease unenforceable, all other provisions remain enforceable.



C. **Costs; Include; Shall; May.** Except as expressly provided otherwise in this Lease, the party obligated or permitted to perform an obligation is also obligated, as between Landlord and Tenant, to pay the cost of performance. "Include," "includes," and "including" mean considered as part of a larger group, and not limited to the items recited. "Shall" means is obligated to. "May" means "is permitted to."

D. **Waiver.** No provision of this Lease is waived by Landlord or Tenant unless waived by them in writing. Landlord's acceptance of rent is not a waiver of any default of Tenant, regardless of Landlord's knowledge of a default when it accepts the rent. No waiver by Landlord or Tenant of any default is a waiver of any other default of the same or any other provision of this Lease.

E. **Rule Against Perpetuities.** Notwithstanding any provision in this Lease to the contrary, if the Lease Term has not commenced within three (3) years after the date of this Lease, this Lease shall automatically terminate on the third (3rd) anniversary of the date hereof. The sole purpose of this provision is to avoid any possible interpretation that this Lease violates the Rule Against Perpetuities or other rule of law against restraints on alienation.

F. **Remedies.** The rights and remedies mentioned in this Lease are in addition to, and do not deprive a party of any other rights at law or in equity.

G. **No Option.** The submission of this Lease for examination does not constitute a reservation of or option for the Premises, and this Lease becomes effective only upon execution and delivery of it by Landlord.

H. **Additional Rent.** All sums owed by Tenant to Landlord in connection with this Lease which are not otherwise designated as rent shall be deemed to be additional rent.

I. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the District of Columbia.

J. **Waiver and Release of Claims.** In consideration of the execution and delivery of this Lease by the parties hereto, each of such parties hereto (each, a "Releasing Party") hereby unconditionally releases, remises, acquits, and forever discharges the other party hereto (at such time as such other party shall have executed and delivered this Lease), as well as each of the other tenants of the Project (at such time as each such tenant shall have executed and delivered a Lease containing waiver and release provisions identical to the provisions of this Section 38.J, and provided such tenant shall not have instituted litigation against such Releasing Party after the date hereof and before the date of such Lease) (collectively, the "Released Parties"), from any and all claims, demands, liabilities, damages, losses, costs, expenses, causes of action, covenants, contracts, torts, controversies, agreements, promises, representations, breaches of contract or of obligations to perform, and any other type of conduct or misconduct, whether negligent, intentional or otherwise, whether at law or in equity, whether matured or unmatured, and whether known or unknown, that the Releasing Party, or any person or entity claiming by, through or under the Releasing Party, ever had, now has, or hereafter may have, against any of the Released Parties at any time from the beginning of the world to the date hereof related to, arising out of, or in any manner connected with



(1) the Project, the operations of the businesses within the Project, or the conduct of any of the Released Parties that relates in any manner to the Project; or (2) this Lease or other lease agreements entered into at any time before the date hereof or simultaneously herewith relating to the Project (collectively, the "Project Leases"), the procurement or negotiation of any of the Project Leases or the terms thereof, or the performance or non-performance by any party under any of such Project Leases.

IN WITNESS WHEREOF, the District of Columbia has caused this Lease to be executed in its corporate name by Anthony Williams, its Mayor, and attested by Beverly Rivers, its Secretary of D.C., and its seal to be hereunto affixed and does hereby constitute and appoint Anthony Williams its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

LANDLORD:

WITNESS:

THE DISTRICT OF COLUMBIA, as agent for  
THE UNITED STATES OF AMERICA

Beverly R. Rivers

By Anthony A. Williams  
Name: Anthony A. Williams  
Title: Mayor of the District of Columbia

Approved for Legal Sufficiency:

Andrew Earl Ridley  
Name: Andrew Earl Ridley  
Title: Assistant Corporation Counsel

Date: 2-21-01

IN WITNESS WHEREOF, BRW, Inc., has caused this Lease to be executed in its corporate name by Billy R. White, its President, and attested by Billy R. White, its Secretary, and its seal to be hereunto affixed and does hereby constitute and appoint Billy R. White its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

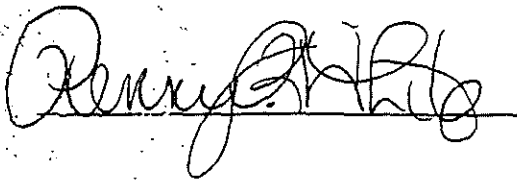
TENANT:

ATTEST:

BRW, INC., a District of Columbia corporation

Billy R. White




By: Billy Ray WhiteName: BILLY RAY WHITETitle: PRES.

(Seal)

DISTRICT OF COLUMBIA, SS.

I, Gladys Herring, a Notary Public in and for the District of Columbia, do hereby certify that Anthony A. Williams, who is personally well known (or satisfactorily proven) to me to be the person named as Mayor of the District of Columbia, a municipal corporation, in the foregoing Lease, bearing date as of July 12, 2000, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of the District of Columbia, for the purposes therein contained.

WITNESS my hand and seal this 21<sup>st</sup> day of February, 2001.

Gladys W. Herring  
Notary Public

My commission expires: June 30, 2004

DISTRICT OF COLUMBIA, SS.

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that Billy R. White, who is personally well known (or satisfactorily proven) to me to be the person named as PRESIDENT of BRW, Inc., a District of Columbia corporation, in the foregoing Lease, bearing date as of July 12, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of BRW, Inc., for the purposes therein contained.

WITNESS my hand and seal this 12<sup>th</sup> day of July, 2000.

[Signature]  
Notary Public

MY COMMISSION EXPIRES

My commission expires: SEPTEMBER 14, 2000



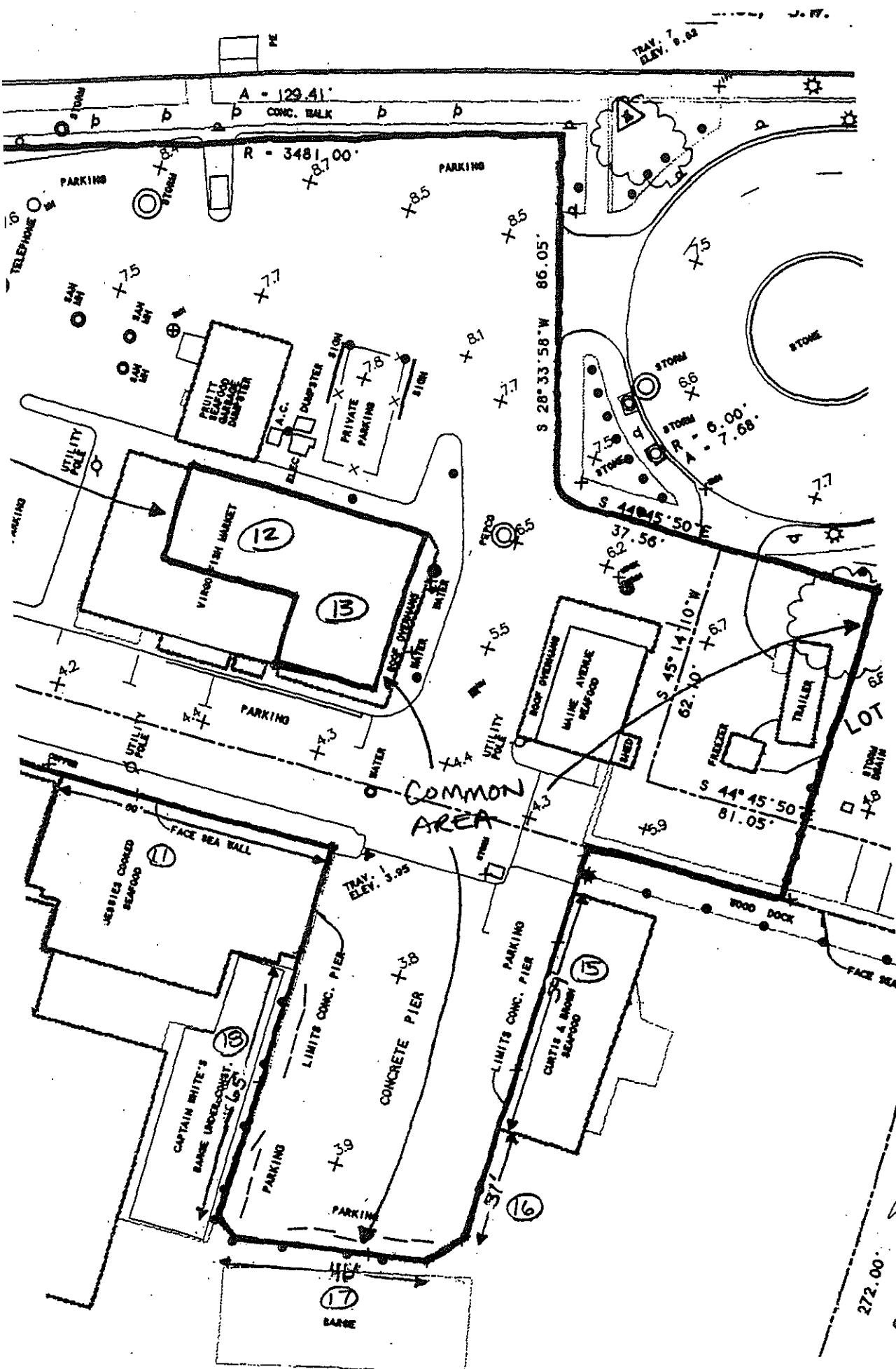


**EXHIBIT A**

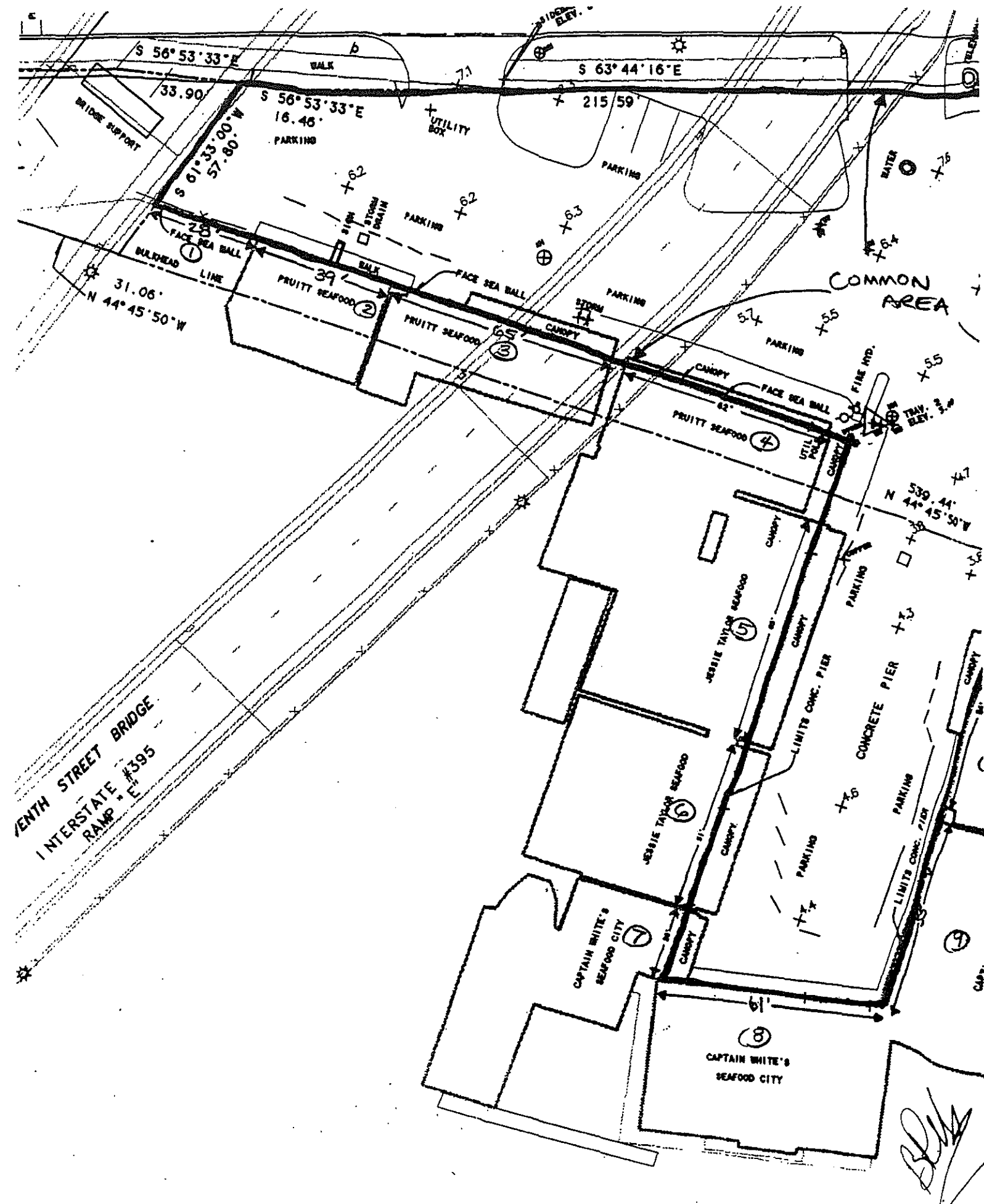
[Outline of Premises -- to be initialed by the parties and attached upon completion of design and engineering for Landlord's Work.]

A handwritten signature or set of initials, possibly reading 'BAC', is located in the lower right quadrant of the page.









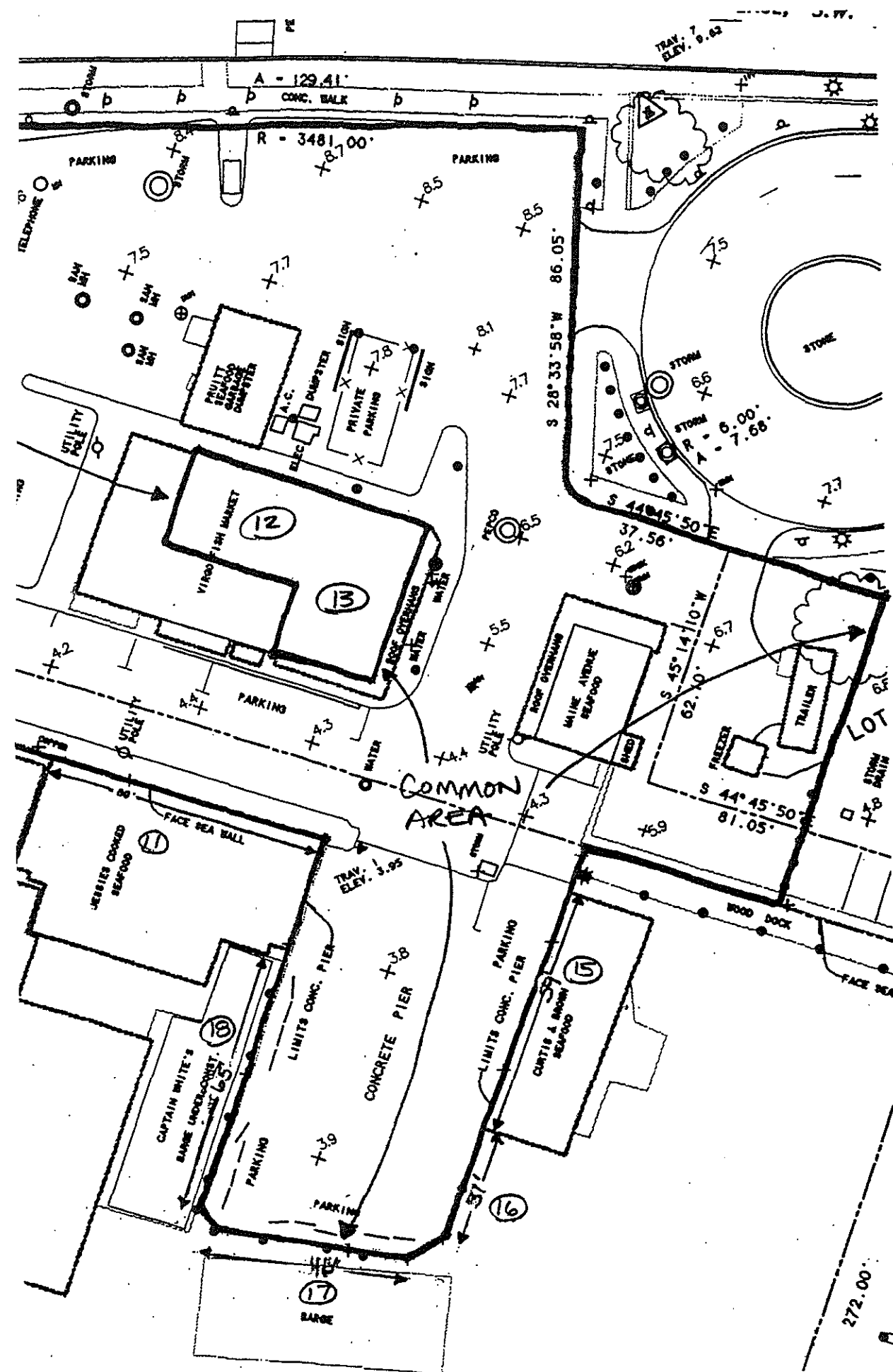


**EXHIBIT B**

[Site Plan of the Project]

A handwritten signature in black ink, appearing to be 'BMC' or similar, located in the bottom right corner of the page.











# EXHIBIT 3



**DISTRICT OF COLUMBIA**

**ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT ("Assignment"), made and entered into as of the 20<sup>th</sup> day of March, 2014 by and between

**DNM SEAFOOD, INC.** (the "Assignor"), a District of Columbia corporation; and  
**W.D. INC.** (the "Assignee"), a Virginia corporation.

**RECITALS**

**WHEREAS**, Pruitt's Seafood (the "Original Tenant") entered into a certain lease agreement (the "Lease Agreement or "Lease") dated April 1, 2001, with the District of Columbia, a municipal corporation, acting as an agent for the United States of America, (the "Landlord"), demising the premises located at 1100 Maine Avenue, SW, Washington, DC commonly known as Premises Nos. 1, 2, 3 and 4 of Municipal Fish Wharf (the "Premises"), for a term of thirty (30) years commencing on the New Rent Commencement Date as defined in the Lease Agreement, a copy of which Lease Agreement is attached hereto and made a part hereof; and

**WHEREAS**, the Original Tenant assigned its leasehold interests in the Premises and the Lease Agreement to Assignor, and Assignor accepted such assignment and assumed all of the rights, obligations and duties of the Original Tenant therein described in the said Lease Agreement; and

**WHEREAS**, the Assignor is currently referred to as "Tenant" in the said Lease Agreement; and

**WHEREAS**, the Assignor desires to assign and convey, insofar as its title enables it to legally so do, its leasehold interests in the Premises and the Lease Agreement to the Assignee, and the Assignee does agree to accept such assignment and conveyance and assume all of the rights, obligations and duties of the Assignor therein described in the said Lease Agreement; and

**WHEREAS**, the Landlord desires to grant its consent to this Assignment and Assumption of Lease Agreement, but expressly subject to the conditions set forth herein and in the Lease Agreement, with no intent on the part of the Landlord or the Assignor/Tenant to further modify any other terms and conditions of the Lease Agreement; and

**WHEREAS**, the Assignor and Assignee, with the consent of the Landlord, desire to modify certain terms of the Lease only in the manner contained in this Assignment.



**WITNESSETH: THAT**

**NOW, THEREFORE**, for and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows: to wit,

1. The above Recitals are incorporated herein and made a part of the terms and conditions of this Assignment.
2. The Assignor does hereby assign, transfer, and convey to the Assignee all the right, title and interest that Assignor has or may have under the Lease Agreement to have and to hold the same unto the Assignee, its successors, and assigns, for and during the remainder of the term of the Lease Agreement, and any renewals or extensions therein provided, subject to the terms, covenants, conditions, and agreements contained herein and in the Lease Agreement.
3. The Assignee does hereby accept the foregoing assignment and agrees to assume all of the duties which the Assignor is/was obligated to perform under the Lease Agreement including, but not limited to, the payment of rent and other charges, for the balance of the term thereof and any renewals or extensions of the term(s) of the Lease, maintenance of the premises, and operation the fish selling business and other limited business operations for the demised premises in the described manner.
4. The Assignee warrants and represents to the Landlord and the Assignor that the Assignee is a corporation validly existing in the Commonwealth of Virginia and in good standing in the District of Columbia, has demonstrated the financial capacity, and has the legal capacity, as such, to fully perform the obligations required under the said Lease Agreement.
5. The Assignor hereby represents and warrants to the Assignee that the Lease Agreement is in full force and effect and no breaches or defaults exist as of the date of execution of this Assignment and with further warranty that the Assignor shall pay or cause to be paid to the Landlord a sum of One Thousand Dollars (\$1000.00) as consideration in connection with Landlord's consent to an assignment of the Lease Agreement, as prescribed under Article 19(A) of the said Lease Agreement.
6. The Assignor hereby covenants to remove that certain No. 3 boat and the tank attached to it and remove that certain 20x40 wooden boar (collectively, the "Removal Obligations"), each being located on, under or about the Premises, within twenty-one (21) days following the Effective Date of this Assignment and in compliance with all applicable laws. The Assignor shall indemnify and hold the Landlord and the Assignee harmless from and against any claims asserted by any party in connection with the Removal Obligations and any actual losses, damages or liabilities of the Landlord or the Assignee arising as a result of the Assignor's performance of or failure to perform the Removal



Obligations. If the Assignor fails to complete the Removal Obligations within thirty (30) days following the Effective Date of this Assignment and in compliance with all applicable laws, the Assignee may complete the Removal Obligations, provided that the Assignor's indemnity obligations shall not be modified as a result of the performance of the Removal Obligations by the Assignee.

7. The parties hereto agree that the security deposit under the Lease Agreement in the amount of \$2,666.66 shall be held for the account of the Assignee from the Effective Date of this Assignment. The Effective Date of this Assignment shall be the date when the Landlord indicates Landlord's consent to this Assignment, evidenced by Landlord's execution in the appropriate space on this Assignment, as described in Article 8 of this Assignment. By its execution of this Assignment, Landlord also retroactively consents to the assignment by Original Tenant to Assignor of the Lease Agreement and Original Tenant's leasehold interests in the Premises.
8. The Assignor and the Assignee shall, jointly or separately, notify or cause the Landlord to be notified that, as of the Effective Date of this Assignment, all notices prescribed under the said Lease Agreement shall be sent to the Assignee at the following address:

W.D. Inc  
1100 Maine Avenue, S.W.  
Washington, DC 20024  
Attn: Mr. Billy White

9. The Assignor and Assignee understand and agree that this Assignment shall not become effective unless and until the Landlord shall indicate its consent and agreement to this Assignment, evidenced by the signature of the Mayor of the District of Columbia to this Assignment. By its execution of this Assignment, the Landlord hereby affirms that it previously consented to the assignment of the Lease Agreement from the Original Tenant to the Tenant prior to the Tenant taking occupancy of the Premises.
10. The Landlord and the Assignee acknowledge and confirm that the expiration date of the Lease is March 15, 2044.

[Signature Pages Follow.]




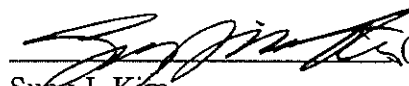
IN WITNESS WHEREOF, DNM Seafood, Inc. has caused this Assignment and Assumption of Lease Agreement to be executed in its corporate name by Sung J. Kim, its President, and attested by Yong W. Kim, its Secretary, and its seal to hereunto affixed and does hereby constitute and appoint Sung J. Kim its true and lawful Attorney-in-Fact for it and in its name to acknowledge and deliver this Assignment as its act and deed as of the 20<sup>th</sup> day of March, 2014.

**ASSIGNOR:**

**DNM SEAFOOD, INC.**

ATTEST:

  
\_\_\_\_\_  
Yong W. Kim, Secretary

By:  (Seal)  
Name: Sung J. Kim  
Title: President

**ACKNOWLEDGMENT**

DISTRICT OF COLUMBIA:

On this 20<sup>th</sup> day of March, 2014, before me Lorraine White, the undersigned notary, personally appeared Sung J. Kim, who acknowledged himself to be the President of DNM Seafood, Inc., a District of Columbia corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of DNM Seafood, Inc.

In witness whereof I hereunto set my hand.

  
\_\_\_\_\_  
Notary Public

My commission expires:

LORRAINE V. WHITE  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires November 14, 2017



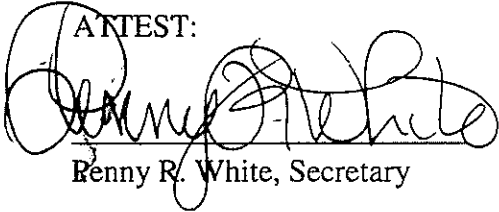


IN WITNESS WHEREOF, W.D., Inc. has caused this Assignment and Assumption of Lease Agreement to be executed in its corporate name by Billy White, its President, and attested by Penny R. White, its Secretary, and its seal to hereunto affixed and does hereby constitute and appoint Billy White its true and lawful Attorney-in-Fact for it and in its name to acknowledge and deliver this Assignment as its act and deed as of the 20<sup>th</sup> day of March, 2014.

**ASSIGNEE:**

**W.D., INC.**

ATTEST:

  
Penny R. White, Secretary

By:  (Seal)

Name: Billy White

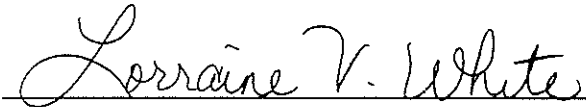
Title: President

**ACKNOWLEDGMENT**

DISTRICT OF COLUMBIA:

On this 20<sup>th</sup> day of March, 2014, before me Lorraine White the undersigned notary, personally appeared Billy White, who acknowledged himself to be the President of W.D., Inc., a Virginia corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of W.D., Inc.

In witness whereof I hereunto set my hand.

  
Notary Public

My commission expires:

LORRAINE V. WHITE  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires November 14, 2017





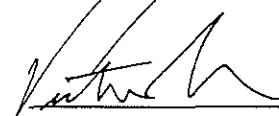
CONSENTED AND AGREED TO as of the 31 day of March, 2014.

**LANDLORD:**

WITNESS:

**THE DISTRICT OF COLUMBIA, a municipal corporation, by The Deputy Mayor for Planning and Economic Development, acting as agent for THE UNITED STATES OF AMERICA**

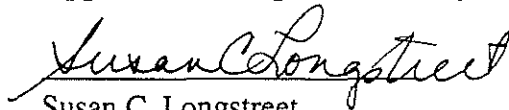


By:  (Seal)

Name: Victor L. Hoskins

Title: Deputy Mayor for Planning and Economic Development

**Approved for Legal Sufficiency**



Susan C. Longstreet  
Deputy Attorney General  
Commercial Division

**ACKNOWLEDGMENT**

DISTRICT OF COLUMBIA

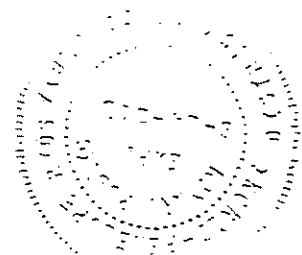
I, Imad P. Rios, a Notary Public in and for the said District of Columbia, do hereby certify that Victor L. Hoskins, Deputy Mayor for Planning and Economic Development, who is named as Attorney-in-Fact for the District of Columbia, acting as agent for the United States of America, in the foregoing and annexed Assignment and Assumption of Lease Agreement, bearing date the 20<sup>th</sup> day of March, 2014, personally appeared before me in the said District of Columbia, and the said Victor L. Hoskins is personally well known to me as the person named as the Attorney-in-Fact in the said Assignment and Assumption of Lease Agreement for the District of Columbia and acknowledged said Assignment and Assumption of Lease Agreement to be the act and deed of the said District of Columbia, and that he delivered the same as such.

GIVEN under my hand and seal this 31 day of March, 2014.

  
Notary Public

My commission expires:

June 14 2017



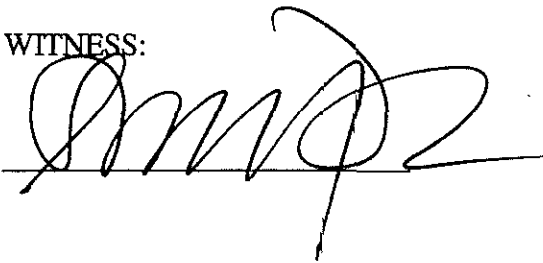


**BILL OF SALE**

**DNM SEAFOOD, INC.**, a District of Columbia corporation d/b/a Pruitt's Seafood, having a place of business at 1100 Maine Avenue, SW, Washington, District of Columbia 20024 ("Seller"), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby sells and delivers to **W.D., Inc.**, a District of Columbia corporation, having a place of business at 1100 Maine Avenue, SW, Washington, District of Columbia 20024 ("Purchaser") the personal property, equipment and fixtures described on Schedule 1 attached hereto (the "Personal Property"), which Personal Property is located in the City of Washington, District of Columbia, on the premises situated at 1100 Maine Avenue, SW, Washington, District of Columbia 20024 (the "Leased Property"), without representation or warranty except as provided in that certain Purchase and Sale Agreement between Seller and Purchaser dated as of March 13, 2014.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Bill of Sale to be executed and effective as of this 3<sup>rd</sup> day of April, 2014.

WITNESS:



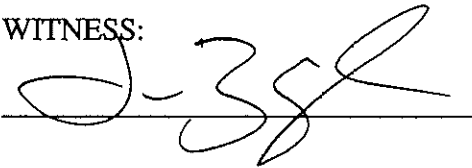
**DNM Seafood, Inc.**

BY: 

NAME: Sung J. Kim

TITLE: President

WITNESS:



**W.D., Inc.**

BY: 

NAME: Billy R. White

TITLE: President



Schedule 1 to Bill of Sale

Two boats located on Leased Property having the following identifying DC Numbers:

DC 2587 N (Sticker 0262)

DC 2588 N (Sticker 0263)

Inventory listed on following page

A handwritten signature in black ink, appearing to be "JW" or similar, with a large, stylized flourish underneath.



**Equipment List**  
**Of DNM Seafood, Inc. d/b/a Pruitt Seafood**


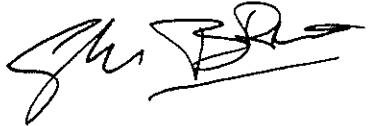
1. Office Refrigerator & Table
2. Digital Video Recorder – 16 Camera & Monitor
3. Canon Fax Copy Machine Super G3
4. Telephone 2-Line Telephone
5. Hot Water Heater – 2
6. House hold Refrigerator – 1
7. Kitchen – Microwave
8. Kitchen – 2 Story Stainless Shelves – 1
9. Kitchen Shelves – 2
10. Electric 2 Round Range
11. Electric Square Grill
12. 2 Door Small Freezer
13. 2 Door Small Refrigerator
14. 1 Door Tall Freezer
15. 10'x20' Walk in Freezer with 2 Compression
16. 5hp Columbia Boiler Diesel
17. 10hp Columbia Boiler Diesel
18. Stainless Water Return Tank
19. 50 or Up Gallons of Diesel Tank
20. Small Hot Water Heater
21. 20x20 Walk in Cooler with 2 Compression
22. 10,000 lb Ice Machine
23. 5,000 lb Ice Machine with Water Tower & Water Return Barrel
24. Hoshizaki Ice Machine with Cooling Fan
25. 10'x30' Walk in Fish Cooler with Compression
26. 8'x8' Walk in with Compression
27. 1 Door Freezer – Storage Room
28. Sandwich Refrigerator – 2
29. 3 Well Sink – L-2 , S-1
30. Stainless Table 4x8 – 2EA
31. Pallet Jack – 1
32. 24x30 Stainless Table – Cook & Oyster – 2
33. Picnic Table – 1
34. 30"x8' – 3 Well Steamer
35. 2 Bu Steamer – 2
36. 1 Bu Steamer – 3
37. 2 Story Steamer – 2
38. 3'x12' Stainless Hoods – Fan
39. Hand Sink
40. 1'x4' Shelve
41. 30"x4' Stainless Table – 2 Ice Machine
42. Square Steamer – 4 – Roof
43. Quick Freezing Machine 2 Door – 1
44. Long Ladder – 2 , M-1
45. Freezer Shelves 4 Story – 3





- 46. Crab Table - 2
- 47. Claim Table - 1
- 48. 3 Story Stainless Shelves -1 Front
- 49. 1'x6' Shell Front
- 50. Ex Shelves - 4
- 51. Stainless Shelf Table - Fish Boat
- 52. Ice Box - 10
- 53. Trash Can - 8



Additional Items:   
5 scales 



## **LEASE AGREEMENT**

**THE DISTRICT OF COLUMBIA,  
acting on behalf of THE UNITED STATES OF AMERICA,**

**LANDLORD**

**and**

**PRUITT'S SEAFOOD, INC.,  
a Virginia corporation,**

**TENANT**

**for**

**Premises Nos. 1, 2, 3, and 4  
Municipal Fish Wharf**



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Exhibit A - Outline of the Premises  
Exhibit B - Site Plan of the Project  
Exhibit C - Certificate of Acceptance  
Exhibit D - Work Letter  
Exhibit E - Rules and Regulations



## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made this 1st day of April, <sup>2001</sup>~~2000~~, S.B.1  
by and between THE DISTRICT OF COLUMBIA, acting on behalf of THE UNITED STATES OF AMERICA, whose notice address is Director, District of Columbia Department of Housing and Community Development, 801 North Capitol Street, N.E., 8<sup>th</sup> Floor, Washington, D.C. 20002 ("Landlord"), and PRUITT'S SEAFOOD, INC., a Virginia corporation, whose notice address is 1100 Maine Avenue, S.W., Washington, D.C. 20024 ("Tenant").

In consideration of the promises in the Lease, Landlord and Tenant agree as follows:

### 1. *Definitions.*

Certain terms in this Lease are defined below:

A. **Barges:** The barges owned by Tenant on which Tenant operates its business. The Barges are located on the Premises.

B. **Commencement Date:** The date of this Lease.

C. **Common Areas:** "Common Areas" mean all areas within the Project that Landlord makes available to tenants and their customers for their general use, convenience and benefit, including restrooms, parking areas, driveways, walkways, landscaped or planted areas, lighting facilities, service areas and loading and unloading areas, as depicted on Exhibit B hereto.

D. **Consumer Price Index:** The "Consumer Price Index" means the index for the Washington - Baltimore, DC - MD - VA - WV area, now known as the United States Bureau of Labor Statistics, consumer Price Index, for All Urban Consumers, all items (1996=100).

E. **Lease Year:** The first "Lease Year" shall begin on the New Rent Commencement Date and shall end on December 31 of the year following the year in which the New Rent Commencement Date shall occur, in order that each subsequent Lease Year hereunder shall coincide with the calendar year. Each subsequent Lease Year shall commence on the day immediately following the last day of the preceding Lease Year, and shall continue for a period of twelve (12) full calendar months.

F. **Minimum Rent:** The minimum rent payable during the Term, as follows:

(1) From the Commencement Date to the date that is four (4) months after the New Rent Commencement Date, equal monthly installments in the amount of THREE HUNDRED THREE AND 03/100 DOLLARS (\$303.03).

(2) Commencing on the date that is four (4) months after the New Rent Commencement Date and for the first Lease Year, equal monthly installments in the amount of TWO THOUSAND SIX HUNDRED SIXTY-SIX AND 66/100 DOLLARS (\$2,666.66). Thereafter, on the first day of the second



(2<sup>nd</sup>), third (3<sup>rd</sup>), fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) Lease Years, the Minimum Rent shall be adjusted for the following Lease Year by the CPI adjustment described in Section 7 below.

(3) On the first day of the sixth (6<sup>th</sup>) Lease Year, and upon the expiration of each period of five (5) consecutive Lease Years thereafter during the Term, the Minimum Rent shall be increased by three percent (3%) for the succeeding period of five (5) Lease Years.

G. **New Rent Commencement Date:** The date upon which "Landlord's Work" (as defined in Section 3) is substantially completed; i.e., upon receipt of a Certificate of Substantial Completion from the Corps of Engineers, and provided that all utilities to be delivered to the Premises are then in working order.

H. **Percentage Rent:** For each Lease Year commencing with the sixth (6<sup>th</sup>) Lease Year:

- (i) with respect to all "Gross Non-Taxable Sales" (as defined in Section 7), an amount equal to 6/10 of one percent (0.6%) of the excess of (A) Tenant's Gross Non-Taxable Sales for the Premises during the Lease Year, over (B) the "Non-Taxable Base Amount," which means the average of actual Gross Non-Taxable Sales for the Premises for the first five (5) Lease Years; and
- (ii) with respect to all "Gross Taxable Sales" (as defined in Section 7), an amount equal to 6/10 of one percent (0.6%) of the excess of (A) Tenant's Gross Taxable Sales for the Premises during the Lease Year, over (B) the "Taxable Base Amount," which means the average of actual Gross Taxable Sales for the Premises for the first five (5) Lease Years.

I. **Permitted Uses:** The retail sale of seafood (fresh and prepared) and of fresh produce, including accessory items such as cole slaw, french fries, and the like, or any other use consistent with and permitted by the 1913 Federal legislation creating the Project and appointing the District of Columbia as manager of the Project. Notwithstanding the foregoing, (i) prepared food shall be sold only on a "takeout" basis; and (ii) there shall be no serviced tables situated within the Premises or in the Common Area unless plans for same shall have been approved by Landlord and unless Landlord and Tenant shall have executed an amendment hereto providing for a change to restaurant use and, among other things, revising the Percentage Rent payable hereunder in respect of the portion of the Premises to be devoted to such restaurant use. As to clauses (i) and (ii) above, Landlord shall enforce parallel restrictions on all other tenants within the Project.

J. **Premises:** The spaces in the Project identified on Exhibit A as Nos. 1, 2, 3, and 4. The Premises consist of an area on the surface of the water sufficient to moor three Barges to the concrete pier [one in No. 2 ("Barge 2"), one in No. 3 ("Barge 3"), and one in No. 4 ("Barge 4")]. Barge 2 shall have no more than 39 linear feet, Barge 3 shall have no more than 65 linear feet, and,



subject to the immediately succeeding sentence, Barge 4 shall have no more than 71 linear feet. Landlord and Tenant acknowledge and agree that Landlord has determined that the space identified on Exhibit B as Space No. 1, as presently configured, is not suitable or available for retail sales. Accordingly, although Tenant shall have the right, at any time during the Term, to expand its existing Barge 2, or to install a new barge, in the area comprising Space No.1, Tenant shall not have the right hereunder to utilize any of the sea wall frontage abutting Space No. 1 for the sale of goods or services, unless Landlord later determines that Space No. 1 has become suitable or available for retail sales. In the event that Landlord makes such a determination regarding Space No. 1, Tenant shall have the option to expand its existing Barge 2, or to install a new barge, in the area comprising Space No. 1, provided such alterations satisfy the requirements of Section 13 below, and provided Tenant executes and delivers an amendment to this Lease acknowledging the resulting increase in frontage created by such alterations, and agreeing to increase the Minimum Rent and Tenant's Proportionate Share of Common Area Operating Costs proportionate to the increased linear feet of frontage.

**K. Project:** The Municipal Fish Wharf located between 11<sup>th</sup> and 12<sup>th</sup> Streets, south of Maine Avenue, S.W., Washington, D.C. The Project includes the portion of the Potomac River in which the tenants' barges are moored. A site plan of the Project is attached as Exhibit B. A certified survey of the Project, to include references to all Lots and Squares, or portions thereof, included within the Project, has been commissioned and will be delivered to the parties upon completion, at which time a legal description of the Project shall be initialed and attached hereto as a substitute and replacement for the existing Exhibit B.

**L. Security Deposit:** \$2,666.66, which shall be due and payable within thirty (30) days after the effective date of this Lease.

**M. Tenant Committee:** A committee representing the tenants of the Project and composed of one representative to be named by each such tenant. The Tenant Committee shall cooperate with the Management Agent to be retained for the Project, as provided herein, to carry out the operation, maintenance, and repair of the Common Areas of the Project. The Tenant Committee may, at its option, elect to operate by means of a limited liability company or other legal entity. All matters requiring decisions by the Tenant Committee shall be decided on the basis of a simple majority. Voting on all such matters by Tenant and the other tenants of the Project shall be based upon the "Proportionate Share" (hereinafter defined) of each.

**N. Tenant's Proportionate Share:** 21.03%, which equals the percentage that the number of linear feet of frontage in the Premises bears to the number of linear feet of frontage in the Project. If the number of linear feet of frontage in the Project changes, Tenant's Proportionate Share will be adjusted accordingly.

**O. Term:** The period that begins on the Commencement Date and ends thirty (30) Lease Years after the New Rent Commencement Date, unless sooner terminated pursuant to this Lease. Tenant acknowledges that it has no right hereunder to renew or extend the Term hereof, or to negotiate for a renewal of the Term hereof. However, Landlord acknowledges that nothing contained herein shall prevent Tenant hereafter from seeking to obtain any such rights.



**P. Prohibited Use:** Anything herein to the contrary notwithstanding, Tenant covenants that during the term of this Lease, (1) it shall not engage in the business of fish cutting or oyster shucking, nor shall it offer non-alcoholic beverages from vending machines; provided, that the provisions of this Section 1.P shall be enforceable only during such times as Virgo Fish House, its successors or permitted assigns, shall engage in the activities described herein at other premises within the Project; and (2) it shall not engage in the sale of liquor for consumption off the Premises. It is understood and agreed that the foregoing prohibition on oyster shucking is intended to apply only to the shucking of oysters conducted as an independent business, and shall not apply to the shucking by Tenant of oysters sold by Tenant.

**Q. Restrictions on Sales.** The following restrictions shall appear in all Leases of Barge Spaces within the Project. In the particular Lease or Leases to which any such restriction pertains, such provision shall act as a restriction imposed and enforceable by Landlord for its benefit, and imposed and enforceable by the other tenants of the Project for their benefit, and accepted by the tenant or tenants occupying the area to which such restriction directly pertains.

(i) For a period of ten (10) years, expiring on the tenth (10) anniversary of this Lease, the sale of seafood of any type shall be prohibited throughout the rectangular area comprising the southernmost twenty-four feet (24') of Barge 6.

(ii) For the entire Term of this Lease, the sale of crabs anywhere on Barge 6 or 16 shall be prohibited.

## ***2. Lease of the Premises; Termination of Prior Lease; Tenant's Acceptance of Premises; .***

A. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term.

B. Landlord is presently leasing the Premises to Tenant pursuant to an existing lease agreement dated February 20, 1986 (the "Prior Lease"). Effective as of the Commencement Date, the Prior Lease shall terminate, and Tenant's use and occupancy of the Premises will be governed by this Lease.

C. Tenant has accepted delivery of the Premises under the Prior Lease, and at the commencement of the Term hereunder, Tenant shall continue to occupy the Premises in their "as is" condition, subject to Section 3. Effective as of the Commencement Date, Tenant does hereby release, remise, discharge, and forever waive any and all claims, actions, or causes of action, whether known or unknown, arising from or relating to the Prior Lease that Tenant has or may have against landlord, or its affiliated entities, predecessors, successors, assigns, legal representatives, agents, employees, servants, attorneys, officers, or other representatives.

## ***3. Landlord's Work.***



A. Landlord has been allocated \$3,000,000 from the federal government (the "Federal Appropriation") to make improvements to the Project and to the marina located next to the Project at 1300 Maine Avenue. Landlord and Tenant have heretofore agreed upon the nature of the improvements to be made to the Project with the Federal Appropriation and such other sources of funding as may be available to landlord, all as embodied in the Work Orders issued by the Corps of Engineers and reviewed and approved by Landlord and Tenant, and attached hereto as Exhibit D. (The improvements to be made to the Project with the Federal Appropriation and such other sources of funding as may be available to Landlord are referred to hereafter as "Landlord's Work.") Landlord shall have no obligation to spend any funds to complete Landlord's Work in excess of the Federal Appropriation and such other sources of funding as may be available to Landlord.

B. After Landlord's Work has been determined in accordance with subsection A above, Landlord will complete construction of Landlord's Work in a good and workmanlike manner and in accordance with requirements of governmental authorities. Tenant shall be consulted with regard to materials and structural details of Landlord's Work, but the final choice thereof shall be in Landlord's sole discretion. Except for Landlord's Work and except as provided in Section 9, Landlord shall not be required to make any repairs or improvements to the Project.

C. Landlord shall use reasonable commercial efforts to complete Landlord's Work by June 30, 2001, but shall have no liability to Tenant if it is unable to complete Landlord's Work by that date or by any other date. Within five (5) days after the New Rent Commencement Date, Tenant shall execute and deliver to Landlord a Certificate of Acceptance, in the form attached hereto as Exhibit C.

D. Landlord's Work shall comply with ADA requirements, as well as all other applicable Federal and local governmental requirements.

**4. *[Intentionally Omitted]***

**5. *Minimum Rent.***

A. During the Term, Tenant shall pay all rent, without demand and without setoff, counterclaim, recoupment or other reduction, to the "Management Agent" (defined below) for the Project, including Minimum Rent in monthly installments as set forth in Section 1.F. All monthly installments of Minimum Rent shall be payable in advance on the first day of each month, except that the first payment shall be due on the New Rent Commencement Date. If the Commencement Date or the New Rent Commencement Date is not the first day of a month, the rent for the months in which those dates fall shall be prorated.

B. On or before the New Rent Commencement Date, the Tenant Committee shall select, following consultation with, and with the approval of, the Landlord, a "Management Agent" that shall be charged with responsibility for the operation, maintenance, repair, and replacement of all elements of the Common Areas and the orderly operation of the Project. The Management Agent, throughout the term of its employment as such with respect to the Project: (1) shall maintain insurance that includes employee dishonesty or fidelity coverage in an amount at least as great as the amount of funds the Management Agent has access to at any time; and (2) shall



covenant not to, and shall not, discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Landlord, subject to the review and approval, not to be unreasonably conditioned, delayed, or withheld, of the Tenant Committee, shall negotiate and enter into a Management Agreement with the Management Agent. The Management Agreement shall provide that, before payment to Landlord of any amounts due Landlord hereunder: (i) twenty-five percent (25%) of the Minimum Rent and all other Rent from this Lease and all other leases of premises within the Project shall be placed in an interest-bearing escrow account with the Management Agent as a reserve for future capital expenditures in respect of the Common Areas, of which as much as one-fifth (1/5) (or five percent (5%) of the Minimum Rent) may be used for advertising the Fish Wharf in local media and signage in Common Areas, although it is acknowledged by the parties that establishing reasonable reserves for capital needs shall have priority; (ii) all "Common Area Operating Costs" shall be paid to, and applied by, Management Agent, as provided in Section 10 below; and (iii) Management Agent shall deduct the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) (the "Accounting Reserve") from the Rent payable hereunder and shall deposit the same in a reserve account to remain available for purposes paying any accounting or auditing charges incurred by Landlord under Section 7.D below from time to time. As and when funds in the Accounting Reserve are expended, Management Agent shall again deduct sufficient monies from the Rent payable hereunder to replenish the Accounting Reserve to the level established above.

C. No payment by Tenant of a lesser amount than the monthly installment of rent or other charges herein stipulated shall be deemed to be other than on account of the earliest stipulated rent or other charges, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord and satisfaction. Landlord may accept any check for payment without prejudice to Landlord's right to recover the balance of the rent due or to pursue any other remedy available to Landlord.

## **6. *Late Charges.***

Any rental or other payment due from Tenant hereunder which is not received when due shall be payable by Tenant to Landlord, without demand, with interest from the due date until paid at the rate of fifteen percent (15%) per annum (1-1/4% per month), but no less than One Hundred Dollars (\$100.00), and Tenant shall reimburse Landlord for reasonable attorneys' fees, if any, incurred by Landlord by reason of Tenant's failure to make timely payment. In addition, Tenant shall pay Landlord a \$100.00 fee for each check received by Landlord which is returned by Tenant's bank unpaid.

## **7. *Additional Rent: CPI Adjustment; Percentage Rent.***

A. Upon the first (1st) day of the second (2<sup>nd</sup>) Lease Year, and upon each anniversary thereof through the first day of the sixth (6<sup>th</sup>) Lease Year (each, an "Adjustment Date"), the Minimum Rent herein provided shall be adjusted to reflect increases in the Consumer Price Index (as defined in Section 1.D above). Such adjustment shall be accomplished by multiplying the Minimum Rent by a fraction, the numerator of which shall be the Consumer Price Index as of the most recent date prior to such Adjustment Date, and the denominator of which shall be the Consumer Price Index as of the most recent date prior to the New Rent Commencement Date;



provided, however, that in no event shall the Minimum Rent be reduced as a result of such adjustment below the Minimum Rent for the immediately preceding year. The increased Minimum Rent established pursuant to this Section 7 shall continue in effect as, and for all purposes of this Lease be defined as, the Minimum Rent until again increased as herein provided. [As an example, to calculate the adjustment in Minimum Rent on the first day of the second (2<sup>nd</sup>) Lease Year, assuming that (x) the annual Minimum Rent is \$30,000.00; (y) the CPI Index is at 175 at the time of the New Rent Commencement Date; and (z) the CPI Index is at 185 at the time of the first day of the second (2<sup>nd</sup>) Lease Year, then the adjustment to Minimum Rent would be calculated as follows:  $(\$30,000.00) \times (185/175) = (\$30,000) \times (1.057) = \$31,710.$  ]

B. Within seventy-five (75) days after the end of each Lease Year beginning with the sixth (6<sup>th</sup>) Lease Year, Tenant shall pay to Landlord, as additional rent, within seventy-five (75) days after the end of each Lease Year, Percentage Rent calculated in accordance with Section 1.H. Tenant's annual payment of Percentage Rent shall be accompanied by a financial statement (the "Annual Statement"), signed by Tenant and reviewed by an independent certified public accountant, showing the "Gross Sales," "Gross Taxable Sales," and "Gross Non-Taxable Sales" (as such terms are defined in Section 6.B) and the Percentage Rent for the Lease Year.

C. "Gross Sales" means the gross amount charged for all sales or services made upon or from the Premises, including any rent or other sum received by Tenant from licensees or concessionaires. "Gross Non-Taxable Sales" means the amount of Gross Sales, minus the amount of all sales and services that shall be subject to, and with respect to which Tenant shall pay, District of Columbia Sales and Use Tax. "Gross Taxable Sales" means the amount of Gross Sales minus the amount of Gross Non-Taxable Sales. Each sale shall be valued at the actual sales price charged the customer, even if the sale is a credit or installment sale, and reported in full in the month in which the sale occurs, even if full payment is not received at the time of the sale.

D. Tenant shall furnish to Management Agent, simultaneously with the filing thereof with the District of Columbia, copies of the Sales and Use Tax Returns currently required to be filed by Tenant in respect of prepared foods and other taxable goods sold by Tenant within the Premises. In addition, Tenant shall prepare, file with the District of Columbia, and make simultaneously available to Landlord informational returns in respect of all raw foods and other goods sold by Tenant within the Premises. Such records shall be open to inspection and audit by Landlord or its accountants. If any audit discloses a deficiency in payment of Percentage Rent, Tenant shall immediately pay Landlord the deficient amount, together with interest thereon at the rate of fifteen percent (15%) per annum from the date such Percentage Rent should have been paid. If a discrepancy of three percent (3%) or more in the reported amount of Gross Sales is uncovered as a result of any audit, Tenant shall reimburse Landlord for the cost of the audit (including the cost of Landlord's accountant). Landlord shall bear the cost of any audit in which no discrepancy or a discrepancy of less than three percent (3%) shall be found (including the cost of Tenant's accountant). Except to the extent required by law or required to exercise its rights hereunder, Landlord shall maintain the confidentiality of all information furnished by Tenant pursuant to this Section 7.D or otherwise made available to Landlord in connection with the exercise of its rights under Section 7.B above.



## **8. *Utilities.***

During the Term, Tenant shall pay directly to the supplier all charges for water, sewer, gas, electricity, telephone and other utilities used upon the Premises. Expenses for maintenance of utility meters shall be borne by Tenant, and if Landlord pays any such expenses, Tenant shall reimburse Landlord promptly upon demand. Landlord shall not be liable for any failure to furnish or for any interruption of utility services, unless caused by the gross negligence of Landlord or Landlord's agents. Upon Tenant's request, Landlord shall furnish a copy of the surety bond or indemnity agreement from any contractor performing work in the Project.

## **9. *Common Areas; Employee Parking.***

A. Landlord grants to Tenant the right, in common with other tenants in the Project, to use the Common Areas during the Term. Such right of use shall be deemed a license coupled with an interest, and shall subsist until the expiration or the earlier termination of the Term. After completion of Landlord's Work, and with the approval of the Tenant Committee, Landlord may change the size, location or nature of the Common Areas, and may locate on the Common Areas structures of any type; provided no such structures would materially interfere with access to the Premises across the Common Areas and to and from Maine Avenue. Subject to the terms of the Management Agreement, Landlord shall have exclusive control and management of the Common Areas and Landlord may establish and enforce rules therefor.

B. Parking, including, without limitation, employee parking, within the Project shall be regulated by the Tenant Committee, which shall promulgate parking regulations to be enforced by the Management Agent; provided, that no area within the Project shall be dedicated to parking for employees of Tenant or any other tenant of the Project; and provided, further, that no parking shall be permitted in any area designated for table space in the plans for Landlord's Work.

## **10. *Common Area Operating Costs.***

A. Commencing with the New Rent Commencement Date, Tenant shall pay to Management Agent (as agent for Landlord), as additional rent, Tenant's Proportionate Share of all "Common Area Operating Costs" (as hereafter defined). Common Area Operating Costs means the sum of the following costs and charges incurred by Landlord for each calendar year or part thereof during the Term: (i) "Common Area Costs" (as hereafter defined); (ii) repair and maintenance costs for the structure and exterior of the buildings in the Project, exclusive of improvements located on barges within the Project and exclusive of expenditures that under "generally accepted accounting principles," as that term is defined by the financial Accounting Standards Board, would be capitalized ("Capital Expenditures"); (iii) "Insurance Costs" (as hereafter defined); and (iv) the monthly fee due Management Agent under the Management Agreement. Common Area Costs mean all costs incurred by Landlord, excluding Capital Expenditures, to operate, maintain, replace and repair the Common Areas, including costs for the following: security services; gardening and landscaping; repairs; painting; striping and sweeping; lighting (including the cost of electricity and maintenance and replacement of exterior fixtures and bulbs); and other utility costs for the public restrooms and other facilities located within the Common Area; refuse removal, including dumpsters; ice and snow removal; equipment and supplies related to Common Area maintenance;



water and maintenance charges for sprinklers and hydrants; any dues, fees or assessments paid by Landlord with respect to storm water management facilities that benefit the Project; and personnel of Management Agent to operate, maintain and repair the Common Areas (including salaries, employment taxes and workmen's compensation insurance for such personnel). "Insurance Costs" mean all insurance premiums and other costs incurred by Landlord in connection with fire and extended coverage, public liability, business interruption, sign, and any other insurance maintained by Landlord relating to the Project.

B. Landlord shall annually notify Tenant of Tenant's Proportionate Share of Common Area Operating Costs for each calendar year, and Tenant shall pay to Management Agent (as agent for Landlord) such amount in equal monthly installments in advance on the first day of each of the twelve (12) months after the date of such notice, the first such monthly installment to be due on the New Rent Commencement Date. If the New Rent Commencement Date is a date other than the first day of a month, Tenant's Proportionate Share of Common Area Operating Costs for that month shall be prorated. Landlord shall annually submit to Tenant a statement showing the actual Tenant's Proportionate Share of Common Area Operating Costs for the prior calendar year, the amount paid by Tenant, and the balance due or overpayment. The balance due shall be paid by Tenant to Management Agent (as agent for Landlord), or the overpayment shall be paid by Landlord to Tenant, without interest, within thirty (30) days after the date of the statement. Tenant may, upon reasonable notice, examine Project records at the office of the Management Agent during ordinary business hours to verify the statement for the immediately preceding year, but such examination shall not excuse the timely payment of Tenant's Proportionate Share of Common Area Operating Costs.

C. The Tenant Committee, in conjunction with the Management Agent, shall prepare an annual budget for operation of, and any contemplated repairs and replacements of, the Common Areas, which shall be made available for the review and reasonable approval of Landlord. As and when capital expenditures are required, the Tenant Committee, in conjunction with the Management Agent, shall prepare a scope of work and budget therefor, and shall submit same to Landlord for approval, which shall not be unreasonably withheld. Until the New Rent Commencement Date, Tenant, in conjunction with the other tenants of the Project, shall continue to be responsible for and pay operating costs of the Project in the same manner as has been the case before the date of this Lease, subject to adjustment for any changes being implemented currently in tenants' respective Proportionate Shares.

## ***11. Use of Premises.***

A. Tenant shall use the Premises exclusively for conduct of the business set forth in Section 1.I.

B. Tenant shall keep the Premises open for business at least forty-five (45) hours per week, excluding any closures caused by fire, natural disasters, or other casualties, required by the Landlord's Work or by repair or renovation work by Tenant, or by dredging activity required by the terms of this Lease.



C. Tenant shall comply with all laws, ordinances, rules and regulations pertaining to the use and occupancy of the Premises, including the Americans with Disabilities Act and other laws relating to the use of the public areas of the Premises by individuals with disabilities. Tenant shall not permit any act upon the Premises which (i) disturbs tenants of the Project or injures the reputation of the Project, (ii) subjects Landlord to liability for injury or damage to persons or property, or (iii) invalidates any insurance policy pertaining to the Project.

## **12. Signs.**

A. Landlord consents to Tenant's existing exterior signage ("Tenant's Signage") which is in place on the date hereof on Barges 2, 3, and 4. Any changes to Tenant's Signage shall be subject to Landlord's approval, which shall not be unreasonably withheld.

B. Tenant shall maintain Tenant's Signage in good repair, and shall replace it when needed so that Tenant's Signage is in good condition at all times. If Tenant fails promptly to perform its obligations under this Section, Landlord may perform the repairs, replacements or removal, at Tenant's expense, and Tenant shall reimburse Landlord for the cost thereof promptly upon demand.

## **13. Alterations.**

Tenant may alter the Barges, provided such alterations shall not harm the Project and must comply with all applicable Federal and local building codes, regulations and laws, and provided that any alteration that includes an expansion of the horizontal space covered by such Barges, or the amount or location of the frontage currently occupied by such Barges for purposes of effecting sales to the public, shall require the written consent of Landlord. Provisions identical to the foregoing provisions of this Section 13 shall appear in all Leases of Barge Space within the Project.

## **14. Fixtures and Equipment.**

All of Tenant's equipment, furniture, and moveable trade fixtures shall remain Tenant's property, and Tenant shall have sole responsibility therefor. Tenant may remove them at any time prior to expiration of the Term, provided that Tenant is not then in default under this Lease and provided further that Tenant repairs any damage to the Premises occasioned by removal.



**15. *Tenant's Maintenance; Condition of the Premises.***

A. Tenant shall, at all times throughout the Term, at its cost, put, keep and maintain the Barges and Premises and every improvement located thereon in good order, condition and repair, except for reasonable wear and tear, condemnation and casualty loss. As used herein, "repairs" shall include replacements, restorations and/or renewals, when necessary or appropriate to keep the Barges and Premises in good order, condition and repair at all times throughout the Term. All repairs shall be made in a first class workmanlike manner. In addition, Tenant shall keep and maintain the Barges and Premises in a clean and orderly condition, free of dirt, rubbish, snow and ice. The necessity for and adequacy of repairs to the Barges and Premises shall be measured by the standard that is appropriate for a first class wharf and fish market.

B. Tenant shall deposit its refuse in the compactor, dumpster or other trash receptacle supplied by Landlord for Tenant's use as of the Commencement Date. Throughout the Term, the Tenant Committee shall provide compactors or dumpsters and/or trash collection service, the cost of which shall be included among the Common Area Costs. Tenant shall not use the compactors, dumpsters or trash collection service for discarding "Hazardous Materials" (as such term is defined below). Tenant, at its expense, shall dispose of its Hazardous Materials in accordance with applicable federal, state and local laws and regulations. "Hazardous Materials" means all substances declared to be hazardous, toxic or infectious under any applicable law or regulation.

C. Tenant shall cooperate with the other tenants of the Project, if given reasonable notice, in arranging for movement of the Barges as necessary to accommodate the maintenance, repair, and replacement of Barges and the dredging of submerged areas within the Project. All dredging activities shall be carried out and concluded as quickly as is commercially reasonable in the circumstances. Provisions identical to the foregoing provisions of this Section 15.C shall appear in all leases of Barge Space within the Project. It is the intent of the parties that all tenants of the Project shall have the rights of third-party beneficiaries with respect to the provisions of this Section 15.C.

**16. *Landlord's Right of Entry.***

Landlord and its agents may enter the Premises at reasonable hours to inspect or exhibit them; to place and maintain a "FOR RENT" sign thereon at any time within six (6) months prior to termination of the Term; or to enter them after Tenant defaults hereunder, and alter, repair or otherwise prepare the Premises for reoccupancy.

**17. *Tenant's Indemnity; Insurance.***

A. Landlord shall not be liable for, and Tenant shall protect, defend, indemnify and hold Landlord harmless from and against, any liability or claim (including attorneys' fees) in connection with any injury or loss to any person or property (i) arising within the Premises, unless caused by the gross negligence or willful misconduct of Landlord, or (ii) arising out of any act or omission of Tenant or its agents or contractors.



B. Throughout the Term, Tenant shall maintain, with a company licensed to sell insurance in the District of Columbia, (i) commercial general liability insurance (the "Liability Policy") with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate combined for all locations in which Tenant operates its business in a form providing occurrence basis coverage; and (ii) an all-risk policy of insurance covering the Barges and all trade fixtures, equipment and personal property kept at the Premises, in an amount not less than the full replacement value of said items. All such insurance policies shall (i) be written as primary coverage and not contributing with or in excess of any coverage that Landlord may carry; (ii) contain an express waiver of any right of subrogation by the insurer against Landlord; and (iii) provide that the insurance policy may not be cancelled unless Landlord has been given thirty (30) days' prior written notice. Notwithstanding the foregoing, the Liability Policy shall be increased at the end of each period of five (5) Lease Years during the Term by an amount equal to the increase in the Consumer Price Index during such period. In addition, Tenant's Liability Policy shall (i) list as additional insured Landlord and any other parties with an insurable interest in the Premises designated by Landlord, and (ii) be endorsed to require the insurance carrier to notify Landlord in writing of any losses charged against the policy. Before the Term commences, and before any such insurance policy expires, Tenant shall deliver to Landlord a certificate of insurance for each policy or renewal thereof that Tenant is required to maintain under this Section. If Tenant fails to maintain any insurance required by this Section, Landlord may obtain such insurance, and any premium paid by Landlord shall be immediately payable by Tenant to Landlord as additional rent.

C. Neither party shall be liable to the other or to any insurer (by way of subrogation or otherwise) for any loss or damage, even though such loss or damage may have been occasioned by the negligence of such party, if such loss was covered by an insurance policy containing an endorsement to the effect that any such release by the insured shall not adversely affect the insured's right to recover for such loss, and that the insurer waives its right of subrogation.

**18. *[Intentionally Omitted].***

**19. *Assignment and Subletting.***

A. Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or otherwise permit others to use all or any part of the Premises, whether voluntarily, by operation of law or otherwise (collectively, an "Assignment"), without the prior written consent of Landlord, which Landlord may withhold in its absolute discretion. However, Landlord shall not withhold its consent if such assignee, transferee, subtenant or occupant (collectively, the "Assignee") is financially capable of satisfying its obligations under this Lease, and shall have previously and successfully sold seafood at retail. Any attempted Assignment shall be void and confer no rights upon any third party. If an Assignment is effected in violation of the terms of this Lease, Landlord may collect rent from the Assignee and apply the net amount collected to the rent herein reserved, but no such Assignment or collection shall be deemed a waiver of this covenant, acceptance of the Assignee as tenant, or release of Tenant hereunder. In addition, if Landlord consents to an Assignment, Tenant shall pay Landlord One Thousand and No/100 Dollars (\$1,000.00) (the "Assignment Fee") as payment for legal fees and costs incurred in connection with



the preparation of the documents to effectuate the Assignment. The Assignment Fee shall be paid to Landlord prior to the preparation of the Assignment documents. The following events shall also constitute an Assignment: (a) if Tenant is a corporation, the transfer of more than fifty percent (50%) of the voting stock of Tenant, or (b) if Tenant is a partnership, the transfer of more than fifty percent (50%) of the partnership interests of Tenant or the transfer of any general partnership interest of Tenant. This clause shall not be interpreted to preclude an Assignment to siblings and direct descendants of individuals owning, as of the Commencement Date, a majority of the voting stock of Tenant, or a transfer to a new entity as a result of a reorganization that does not result in a change in beneficial ownership.

B. If Landlord approves an assignment or subletting, Tenant shall pay to Landlord, as and when received by Tenant, an amount equal to 50% of the difference between (i) all sums paid to Tenant by or on behalf of such assignee or subtenant under the assignment or sublease, and (ii) the Rent paid by Tenant under this Lease and attributable to the portion of the Premises assigned or sublet.

C. In addition to the foregoing, if Tenant notifies Landlord that Tenant desires to assign a portion of this Lease or sublet a portion of the Premises (the "Proposed Sublet Space"), Landlord shall have the option to regain possession of the Proposed Sublet Space and amend this Lease to exclude the Proposed Sublet Space and effect a proportionate reduction in Minimum Rent and Tenant's Proportionate Share based upon the relative size of the Premises as so reduced. All other terms and conditions of this Lease shall remain in effect and applicable to the Premises as reduced, and Tenant shall execute documents to effect such amendment at Landlord's request. If Landlord does not exercise its right to regain possession of the Proposed Sublet Space, Tenant may seek an acceptable assignee or subtenant for a sublease term no longer than that set forth in Tenant's notice. If Tenant does not find an assignee or subtenant acceptable to Landlord within 120 days from the date of Tenant's most recent notice, Tenant may not enter into any assignment or sublease without first submitting a new notice to Landlord and affording Landlord an opportunity to amend or terminate this Lease as set forth above.

## **20. *[Intentionally Omitted]*.**

## **21. *Tenant's Defaults.***

Tenant shall be in default under this Lease if Tenant (a) fails to pay any rent or other sum required hereunder within twelve (12) days after its due date; or (b) fails to maintain any insurance required hereunder; or (c) abandons the Premises or fails to conduct business therein for a period of fifteen (15) or more consecutive days, absent a casualty and then only after allowing a period of as much as six (6) months in which to replace the affected Barge; or (d) assigns this Lease or sublets all or any portion of the Premises in violation of Section 19; or (e) fails to continue to operate its existing businesses on Barges 2, 3, and 4; or (f) files for relief under the United States Bankruptcy Code (the "Bankruptcy Code") or under any other state or federal bankruptcy or insolvency law, or Tenant files an assignment for the benefit of creditors, or if an involuntary proceeding under the Bankruptcy Code or under any other federal or state bankruptcy or insolvency law is commenced against Tenant; or (g) defaults in any other obligation herein and such default is not remedied within thirty (30) days after written notice of the default from Landlord; provided,



however, that Tenant's failure to perform any non-monetary obligation set forth in this Lease on its part to be performed three (3) or more times in any twelve (12) month period shall effect an immediate default, and Landlord thereupon may exercise any remedy set forth in Section 22 below without affording Tenant any opportunity to cure such default.

## ***22. Landlord's Remedies in Case of Tenant's Default.***

A. At any time after Tenant's default under this Lease, Landlord may (i) terminate this Lease upon notice to Tenant or by any available judicial process; and/or (ii) re-enter the Premises (with or without terminating the Lease), remove all property, which may include towing the Barge or Barges and storing same, at Tenant's expense without being deemed guilty of trespass and without liability for any loss or damage, and/or relet or otherwise deal with the Premises in any manner which Landlord determines in its sole discretion.

B. Should Landlord terminate this Lease after Tenant's default, Landlord may recover from Tenant all costs (including attorneys' fees) and other damages incurred by Landlord as a result of such default, and, without limiting the generality of the foregoing, (i) all rent to the time of such termination shall be paid by Tenant immediately, together with all expenses (including attorneys' fees) of retaking possession of the Premises, as shall the cost of preparing the Premises for reletting and the costs (including brokerage fees and advertising) of actually reletting same; (ii) Landlord may take all steps, including repair or alteration of the Premises, to prepare the Premises for reletting; (iii) Landlord may relet all or any part of the Premises for such term, at such rental, and upon such conditions as Landlord deems advisable; and (iv) Tenant shall pay to Landlord, as liquidated damages, for each month during the balance of the Term (but for termination of the Lease by Landlord), any deficiency between (a) all rent and additional rent herein reserved for each such month, and (b) the net rent for each such month collected upon any reletting. Alternatively, if Landlord terminates this Lease at any time after Tenant's default, Landlord may elect, in addition to the damages described in clauses (i) - (iii) of the preceding sentence, and the damages due under clause (iv) up to the time of said election, to recover from Tenant the value at the time of said election of the excess, if any, of all rent and additional rent due under this Lease for the remainder of the Term (but for termination of the Lease by Landlord) over the then reasonable rental value of the Premises for that period.

C. If Landlord elects not to terminate this Lease after Tenant's default, Tenant shall continue to be liable for all rent and additional rent due hereunder, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.

D. If Tenant abandons the Premises, Landlord may re-enter the Premises without judicial process and relet them, and such re-entry or reletting shall not terminate this Lease, and Tenant shall continue to be liable for all rent and additional rent due under the Lease, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.



**23. *Landlord's Right to Cure Tenant's Default.***

A. If Tenant shall default in the keeping, observance or performance of any provision or obligation of this Lease, Landlord, without thereby waiving such default, may perform the same for the account and at the expense of Tenant, without notice in a case of emergency and in any other case if such default continues after thirty (30) days from the date of the giving by Landlord to Tenant a notice of intention so to do. Bills for any reasonable expense incurred by Landlord in connection with any such performance by Landlord for the account of Tenant, and bills for all reasonable costs, expenses and disbursements of every kind and nature whatsoever, including attorneys' fees, involved in collecting or endeavoring to collect any sums due hereunder or enforcing or endeavoring to enforce any rights against Tenant, under or in connection with this Lease, or pursuant to law, including any such reasonable cost, expense and disbursement involved in instituting and prosecuting any action or proceeding (including any summary dispossession proceeding), may be sent by Landlord to be due and payable in accordance with the terms of said bills, and if not paid when due, the amounts thereof shall immediately become due and payable as Additional Rent under this Lease.

B. No entry in accordance with this Lease by Landlord or its employees, agents or representatives, or by any other party at the direction of Landlord, shall ever be construed or interpreted as an ouster of Tenant from possession or as a constructive eviction or to alter, diminish or abate Landlord's rights under this Lease.

**24. *[Intentionally Omitted].***

**25. *Holding Over.***

If Tenant lawfully remains in possession of the Premises after the expiration of the Term, Tenant shall be a tenant from month to month, upon all the terms hereof which are not inconsistent with such tenancy; provided, however, that Tenant covenants to pay to Landlord as Minimum Rent during such tenancy one hundred fifty percent (150%) of the Minimum Rent in effect immediately before expiration of the Term, in addition to all other rent and other charges due hereunder. Such tenancy may be terminated by Landlord or Tenant upon thirty (30) days notice.

**26. *Surrender of Premises.***

Upon termination of the Term for any reason, Tenant shall remove the Barges and any other property of Tenant, and surrender the Premises to Landlord in the same condition as they were in on the Commencement Date. If Tenant fails to remove the Barges or other property, it shall become Landlord's property or, at Landlord's option, shall be removed and stored at Tenant's expense, without Landlord being liable for trespass, conversion or negligence in respect of such property. If Tenant fails to surrender the Premises in the condition required by this Section, Landlord may restore the Premises to their condition as of the Commencement Date and Tenant shall reimburse Landlord for the cost of the restoration.



**27. *Limitation on Landlord's Liability.***

A. Notwithstanding anything to the contrary in this Lease, (i) Landlord shall not be liable to Tenant for any loss or damage to property which is either covered by insurance or which Tenant is required to insure under this Lease, and (ii) any liability of Landlord to Tenant under this Lease shall be limited to direct damages and shall not include indirect, consequential, incidental, or punitive damages, including any liability to Tenant for lost profits or interruption of business. Tenant shall look to its property damage or business interruption insurance policies, and not to Landlord, its agents or employees for any loss incurred as a result of damage to its property or interruption of its business.

B. Except for damages resulting from the gross negligence or willful misconduct of Landlord, Landlord shall not be liable to Tenant, its employees, agents or other invitees for any damage, compensation, claim or expense arising from (i) damage or loss to the property of Tenant or others located anywhere in the Project), or (ii) death, accident or injury to persons occurring anywhere in the Project). Landlord shall have no liability to Tenant for any delay in completing Landlord's Work.

**28. *Notices.***

All notices and other communications hereunder shall be in writing, and shall be hand delivered, delivered by a recognized overnight delivery service (e.g., Federal Express), or sent by certified or registered U.S. mail, postage prepaid, to Landlord or Tenant, as the case may be, at the address set forth below. All notices hereunder shall also be delivered to counsel for the party to receive such notice, at the address set forth below, in order to effectuate good and valid notice hereunder.

If to Landlord:

Director, District of Columbia Department of Housing  
and Community Development  
801 North Capitol Street, N.E.  
8<sup>th</sup> Floor  
Washington, D.C. 20002

With a required copy to:

Andrew Ridley, Esquire  
Assistant Corporation Counsel  
801 North Capitol Street, N.E.  
7<sup>th</sup> Floor  
Washington, D.C. 20002

If to Tenant:

Pruitt's Seafood, Inc.



C/o Stewart B. Pruitt, President  
8344 Seaside Road  
P.O. Box 921  
Nassawadox, Virginia 23413

With a required copy to:

Gordon S. Vincent, Esquire  
Vincent, Northam & Lewis  
23391 Front Street  
P.O. Box 90  
Accomac, Virginia 23301

Either party may designate in writing a change in its notice address, which shall be effective ten (10) days following receipt of such writing by the other party. Notices which are delivered in person shall be deemed given when received. Notices which are mailed shall be deemed given on the date they are mailed. Notices which are sent by overnight delivery service shall be deemed given on the date they are deposited with the delivery service.

**29. *Quiet Enjoyment.***

As long as it is not in default under this Lease, Tenant may peaceably and quietly enjoy the Premises for the Term without hindrance, ejection or molestation by Landlord or anyone claiming or acting by or through Landlord.

**30. *Security Deposit.***

Tenant has deposited with Landlord the sum set forth in Section 1.L (the "Security Deposit") as security for performance of Tenant's obligations hereunder. Upon appointment of the Management Agent, the Security Deposit shall be transferred to an interest-bearing escrow account to be maintained by the Management Agent hereunder. Upon the request of Tenant, the Management Agent shall distribute to Tenant, on an annual basis, all interest accrued on the Security Deposit from the time of its deposit or the time of the immediately preceding distribution, as the case may be. The Security Deposit shall be returned to Tenant, with interest, within forty-five (45) days after the expiration of the Term, provided that Tenant has discharged all such obligations. Landlord may apply the Security Deposit to cure any default of Tenant, and Tenant shall deposit with Landlord the amount applied within thirty (30) days after written demand.

**31. *[Intentionally Omitted].***



### **32. Rules and Regulations.**

Tenant will comply with the Rules and Regulations set forth on Exhibit E, and with any other reasonable rules and regulations as Landlord adopts for the Premises. Such rules and regulations shall not unreasonably interfere with the conduct of Tenant's business. In particular instances, where in Landlord's reasonable judgment such rules and regulations may be infeasible, Landlord shall have the right to modify or waive such rules and regulations as they apply to particular other tenants. Any failure by Tenant to comply with any rule or regulation established pursuant to this Lease shall be a default under this Lease subject to Section 21. Landlord shall exercise its rights in respect of the promulgation, revision, and enforcement of Rules and Regulations in a non-discriminatory manner.

### **33. Waiver of Jury Trial.**

Landlord and Tenant hereby waive all right to trial by jury in any claim, action, proceeding or counterclaim by either Landlord or Tenant against the other pertaining to any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use of the Premises.

### **34. Covenant Against Contingent Fees**

Tenant warrants that it has not employed any person to solicit or secure this Lease upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give Landlord the right to terminate this Lease, or, in its discretion, to add to the rental or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by Tenant upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by Tenant for the purposes of securing business, or to Tenant's attorneys' fees. Landlord shall pay any and all commissions and other compensation due to any broker, finder or other person with whom Landlord has dealt with regard to this Lease.

### **35. Facilities Nondiscrimination.**

A. As used in this section, the term "facility" means the entire Premises.

B. Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, sexual orientation, physical disability, marital status or national origin, in furnishing, or by refusing to furnish, to any person or persons the use of any facility, including any and all service, privileges, accommodations and activities provided thereby.

C. It is agreed that Tenant's noncompliance with the provisions of this Article, as determined by a final, unappealable judgement by a court of competent jurisdiction, shall constitute material breach of this lease Agreement. In the event of such a determination of noncompliance, and Tenant's failure to cure such non-compliance within ten (10) days after such



determination becomes final, Landlord may take appropriate action to enforce compliance, and may pursue remedies as may be provided by law or in equity.

D. Tenant agrees to include, or to require the inclusion of, the foregoing provisions of this section (with terms "The District" and "Tenant" appropriately modified) in every agreement or concession pursuant to which any person other than Tenant operates or has the right to operate the facility. Tenant also agrees that it will also comply with any final, unappealable court order directing Tenant to take any action with respect to any such agreement in order to enforce the provisions of this section, including but not limited to termination of the agreement or concession in question; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a person as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **36. *Nondiscrimination in Employment.***

A. In connection with the conduct of business on the Premises, Tenant agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Tenant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex orientation, physical disability, marital status or national origin. Such action shall include, but not limited to the following: employment, upgrading demotion or transfer, recruitment or recruitment advertising, layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, as required by applicable law. Tenant agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by Landlord setting forth the provisions of this nondiscrimination clause.

B. Tenant will, in all solicitations for advertisements for employees placed by or on behalf of the Tenant, state that qualified applicants will receive consideration for employment without regard to race, creed, color, sexual orientation, physical disability, marital status or national origin.

C. Tenant will send to each union or representative of workers with which it has collective bargaining agreement(s) or other contracts of understandings a notice to be provided by Landlord in advising the said labor union or worker's representative of Tenant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. Tenant will permit Landlord access to their books, records, and accounts, or their agents, for purposes of investigation to ascertain compliance with such rules, regulations and orders, as provided by applicable law.

E. In the event of any final, unappealable determination by any court or administrative body, of noncompliance of Tenant with the nondiscrimination clauses of this Lease Agreement, and Tenant's failure to cure such discrimination within ten (10) days after



such determination becomes final, this Lease Agreement may be canceled in whole or in part and Tenant may be declared ineligible for further leases with the District of Columbia.

F. Tenant further agrees to insert the foregoing provisions of nondiscrimination in employment in all subcontracts hereunder, unless exempted by rules and regulations or orders of Landlord so that such provisions will be binding and regulations or orders of Landlord so that such provisions will be binding upon each subcontractor or vendor. Tenant will take such action with respect to any subcontract as required by any final, unappealable order of a court or governmental agency of competent jurisdiction in order to enforce such provisions, including sanctions for noncompliance; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a subcontractor or vendor as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **37. *Environment Protection.***

A. Tenant shall not pollute the air, ground or water in, on or under the premises. Tenant shall comply promptly with any laws, regulations, conditions or instructions applicable to the Tenant's business(es) at the Premises, if and when issued by the Environmental Protection Agency, or any Federal, state, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous material within the Premises in violation of applicable laws or codes is specifically prohibited. Tenant shall require the owners/operators of boats moored at the Premises, including rental boats, to seal all sanitation facilities or such boats against any discharge into the Washington Channel. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Tenant as reasonably appropriate. Tenant shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

B. If damage to the environment or natural resources is proximately caused by Tenant's activities at the premises, Tenant shall be liable to restore the damaged resources.

### **38. *Miscellaneous.***

A. **Entire Agreement; Joint and Several Liability; Successors and Assigns.** This Lease constitutes the entire agreement between the parties concerning the matters set forth herein. If Tenant shall include more than one person, the obligations hereunder of all such persons shall be joint and several. This Lease shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs and legal representatives.

B. **Interpretation.** The named Exhibits are part of this Lease. Section and subsection headings are for convenience only, and not for use in interpreting this Lease. If a court finds any provision of this Lease unenforceable, all other provisions remain enforceable.

C. **Costs; Include; Shall; May.** Except as expressly provided otherwise in this Lease, the party obligated or permitted to perform an obligation is also obligated, as between



Landlord and Tenant, to pay the cost of performance. "Include," "includes," and "including" mean considered as part of a larger group, and not limited to the items recited. "Shall" means is obligated to. "May" means "is permitted to."

D. **Waiver.** No provision of this Lease is waived by Landlord or Tenant unless waived by them in writing. Landlord's acceptance of rent is not a waiver of any default of Tenant, regardless of Landlord's knowledge of a default when it accepts the rent. No waiver by Landlord or Tenant of any default is a waiver of any other default of the same or any other provision of this Lease.

E. **Rule Against Perpetuities.** Notwithstanding any provision in this Lease to the contrary, if the Lease Term has not commenced within three (3) years after the date of this Lease, this Lease shall automatically terminate on the third (3rd) anniversary of the date hereof. The sole purpose of this provision is to avoid any possible interpretation that this Lease violates the Rule Against Perpetuities or other rule of law against restraints on alienation.

F. **Remedies.** The rights and remedies mentioned in this Lease are in addition to, and do not deprive a party of any other rights at law or in equity.

G. **No Option.** The submission of this Lease for examination does not constitute a reservation of or option for the Premises, and this Lease becomes effective only upon execution and delivery of it by Landlord.

H. **Additional Rent.** All sums owed by Tenant to Landlord in connection with this Lease which are not otherwise designated as rent shall be deemed to be additional rent.

I. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the District of Columbia.

J. **Waiver and Release of Claims.** In consideration of the execution and delivery of this Lease by the parties hereto, each of such parties hereto (each, a "Releasing Party") hereby unconditionally releases, remises, acquits, and forever discharges the other party hereto (at such time as such other party shall have executed and delivered this Lease), as well as each of the other tenants of the Project (at such time as each such tenant shall have executed and delivered a Lease containing waiver and release provisions identical to the provisions of this Section 38.J, and provided such tenant shall not have instituted litigation against such Releasing Party after the date hereof and before the date of such Lease) (collectively, the "Released Parties"), from any and all claims, demands, liabilities, damages, losses, costs, expenses, causes of action, covenants, contracts, torts, controversies, agreements, promises, representations, breaches of contract or of obligations to perform, and any other type of conduct or misconduct, whether negligent, intentional or otherwise, whether at law or in equity, whether matured or unmatured, and whether known or unknown, that the Releasing Party, or any person or entity claiming by, through or under the Releasing Party, ever had, now has, or hereafter may have, against any of the Released Parties at any time from the beginning of the world to the date hereof related to, arising out of, or in any manner connected with: (1) the Project, the operations of the businesses within the Project, or the conduct of any of the Released Parties that relates in any manner to the Project; or (2) this Lease or other lease agreements



entered into at any time before the date hereof or simultaneously herewith relating to the Project (collectively, the "Project Leases"), the procurement or negotiation of any of the Project Leases or the terms thereof, or the performance or non-performance by any party under any of such Project Leases.



IN WITNESS WHEREOF, the District of Columbia has caused this Lease to be executed in its corporate name by Anthony A. Williams its Mayor, and attested by Joseph Wolfe, its Project Manager, and its seal to be hereunto affixed and does hereby constitute and appoint Anthony A. Williams its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

LANDLORD:

WITNESS:

THE DISTRICT OF COLUMBIA, as agent for  
THE UNITED STATES OF AMERICA



By: Anthony A. Williams (Seal)  
Name: Anthony A. Williams  
Title: Mayor of the District of Columbia

Approved for Legal Sufficiency:



Name: Andrew Axel Ridley  
Title: Senior Counsel

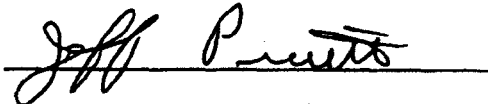
Date: 10/2/01

IN WITNESS WHEREOF, Pruitt's Seafood, Inc., has caused this Lease to be executed in its corporate name by Stewart B. Pruitt, its President, and attested by JEFF PRUITT, its \_\_\_\_\_, and its seal to be hereunto affixed and does hereby constitute and appoint STEWART B. PRUITT its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

TENANT:

ATTEST:

PRUITT'S SEAFOOD, INC., a Virginia corporation



By: Stewart Pruitt (Seal)  
Name: Stewart Pruitt  
Title: President



DISTRICT OF COLUMBIA, SS.

I, Gladys Herring, a Notary Public in and for the District of Columbia, do hereby certify that Anthony A. Williams, who is personally well known (or satisfactorily proven) to me to be the person named as the Mayor of the District of Columbia, a municipal corporation, in the foregoing Lease, bearing date as of Oct 2, 2001, 9 6-2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of the District of Columbia, for the purposes therein contained.

WITNESS my hand and seal this 2nd day of October, 2000. 96

Gladys W. Herring  
Notary Public

My commission expires: June 30, 2004

DISTRICT OF COLUMBIA, SS.

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that \_\_\_\_\_, who is personally well known (or satisfactorily proven) to me to be the person named as \_\_\_\_\_ of \_\_\_\_\_, a District of Columbia corporation, in the foregoing Lease, bearing date as of \_\_\_\_\_, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of \_\_\_\_\_ for the purposes therein contained.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



STATE OF VIRGINIA, SS.

I, Gordon S. Vincent, a Notary Public in and for the State of Virginia, do hereby certify that Stewart B. Pruitt, who is personally well known (or satisfactorily proven) to me to be the person named as President of Pruitt's Seafood, Inc., a Virginia corporation, in the foregoing Lease, bearing date of April 1, 2001, and hereto annexed, personally appeared before me in the said State of Virginia and acknowledged the same to be the act and deed of Pruitt's Seafood, Inc., for the purposes therein contained.

WITNESS my hand and seal this 14<sup>th</sup> day of March, 2001.

Gordon S. Vincent  
Notary Public

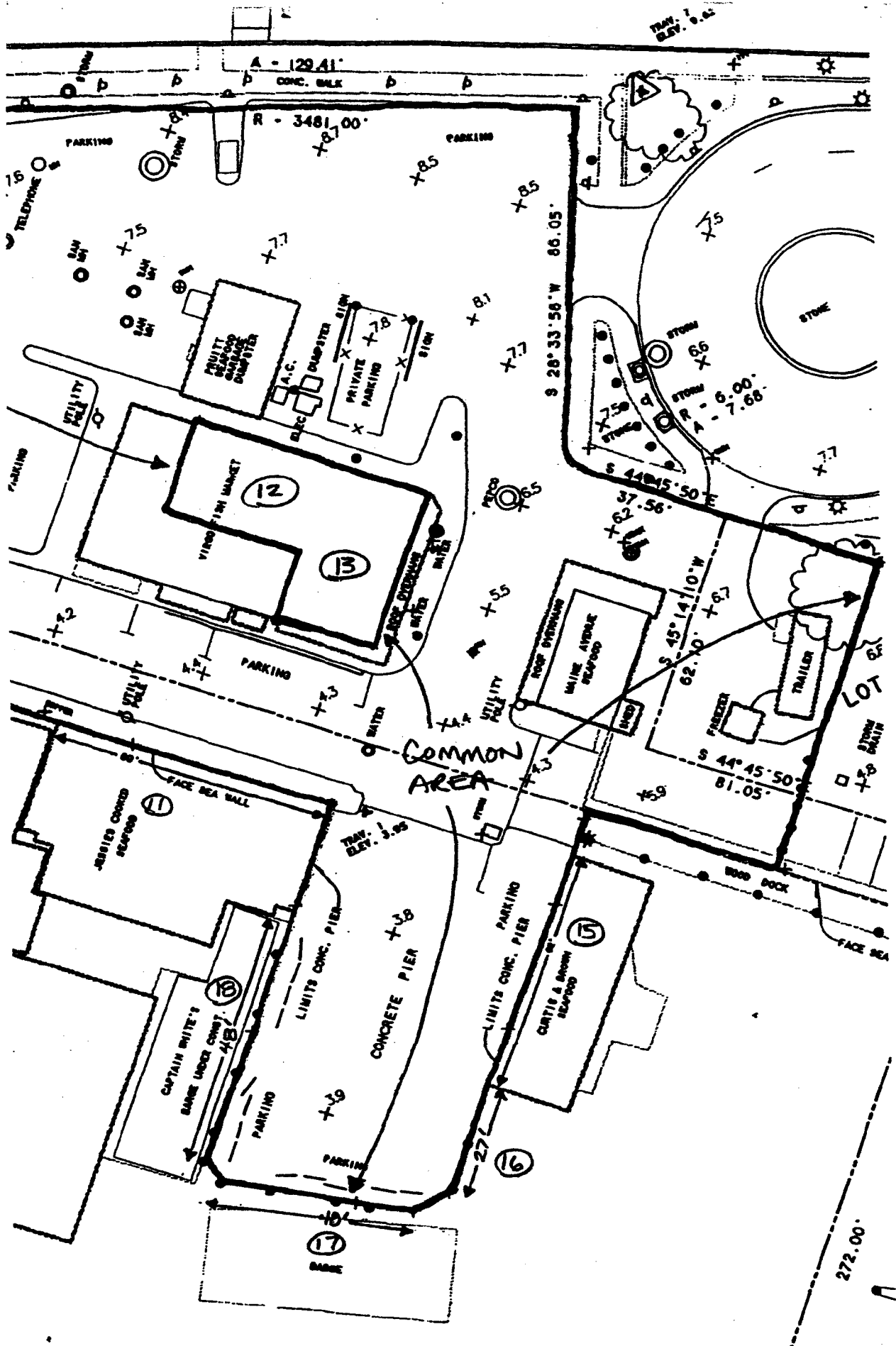
My Commission Expires: Jan. 31, 2003



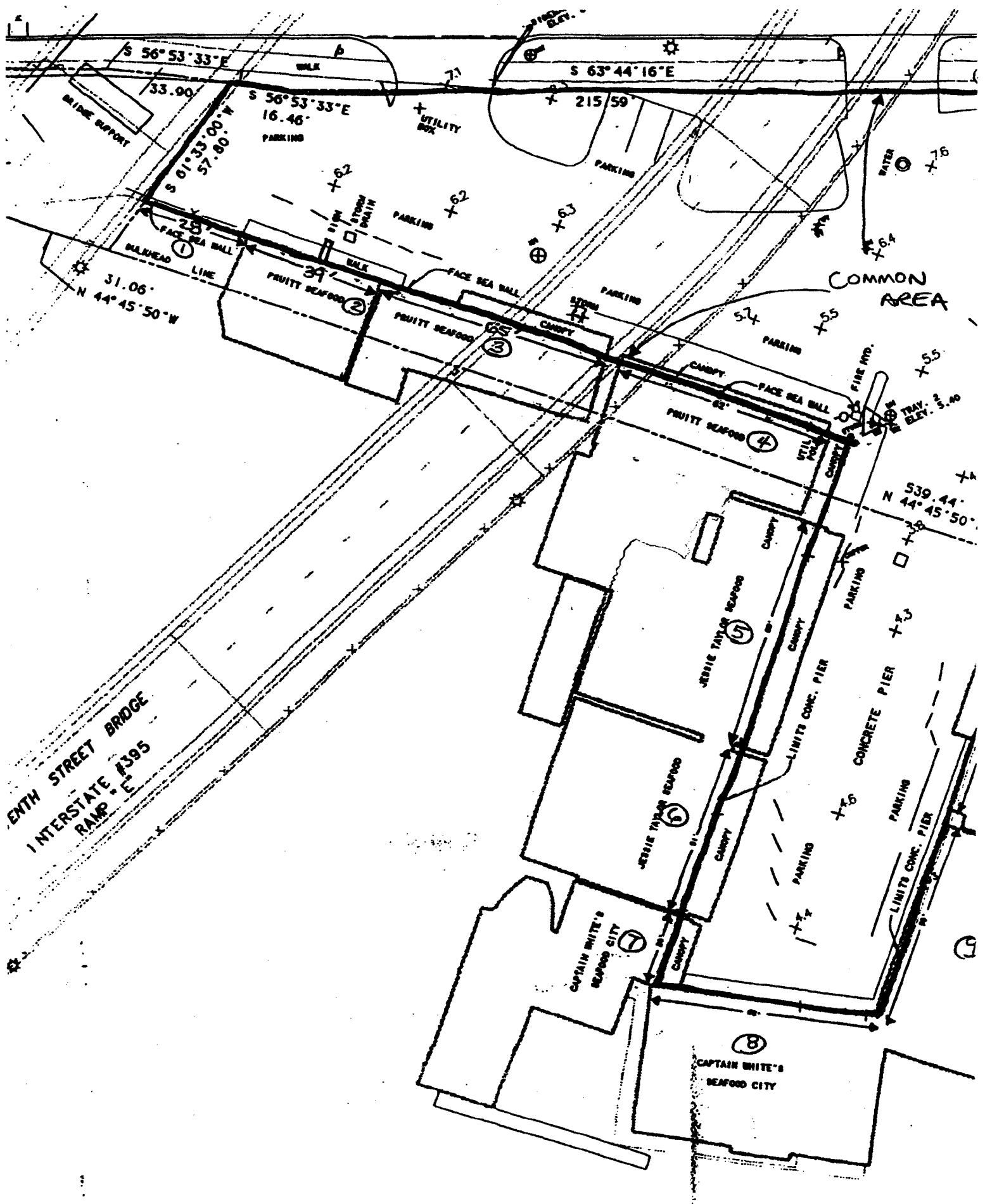
**EXHIBIT A**

[Outline of Premises -- to be initialed by the parties and attached upon completion of design and engineering for Landlord's Work.]









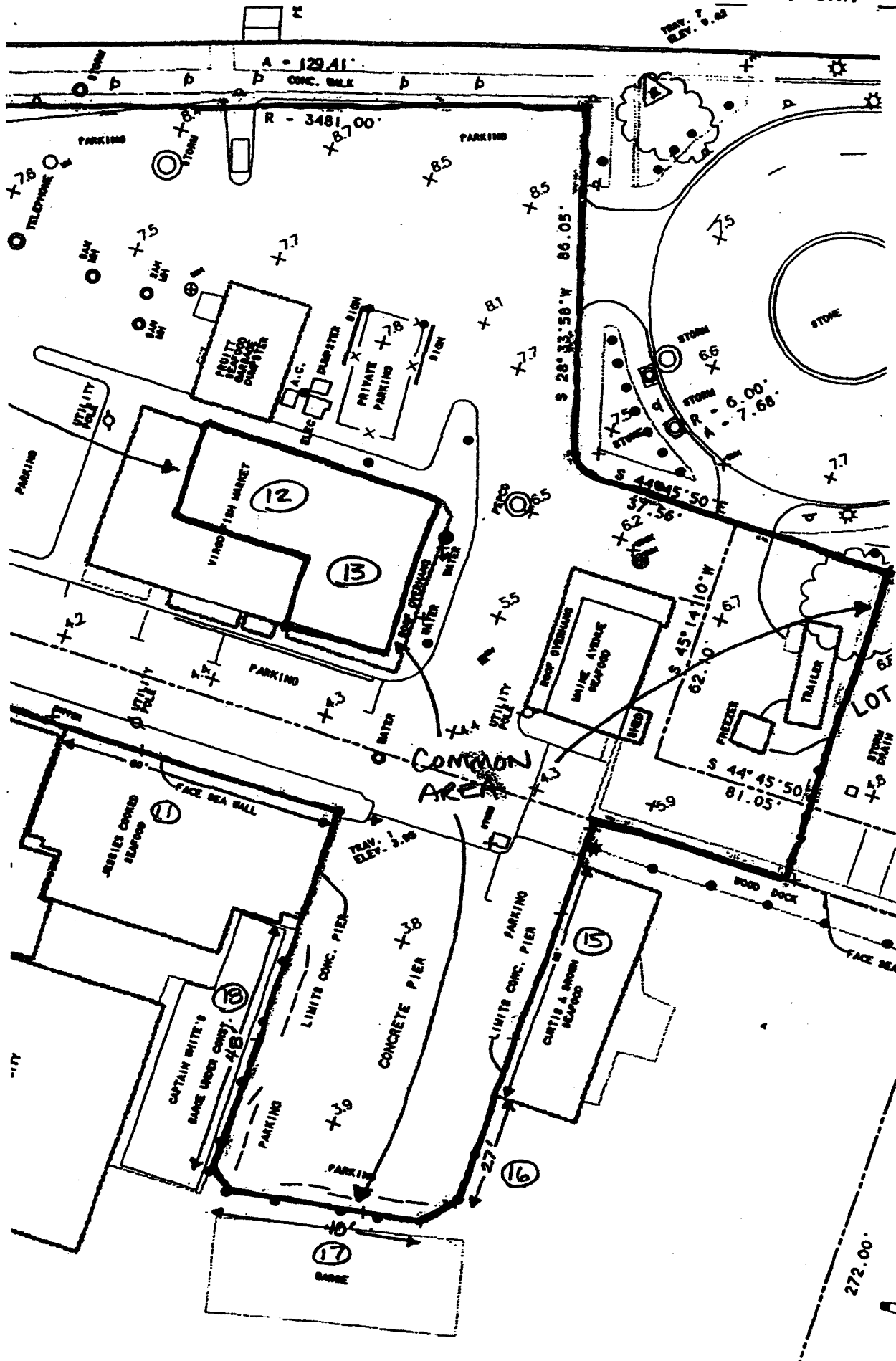


**EXHIBIT B**

**[Site Plan of the Project]**



EXHIBIT 3









**EXHIBIT C**

**[Certificate of Acceptance – establishing New Rent Commencement Date]**



**EXHIBIT C**

**CERTIFICATE OF ACCEPTANCE**

The undersigned, having entered into a certain Lease Agreement dated \_\_\_\_\_, 2000, by and between the undersigned, as Tenant, and THE DISTRICT OF COLUMBIA, acting on behalf of THE UNITED STATES OF AMERICA, as Landlord, DOES HEREBY CERTIFY to Landlord that:

- (1) The Lease is in full force and effect without offset or defense;
- (2) Tenant has taken possession of the Premises described in said Lease, namely, \_\_\_\_\_, 1100 Maine Avenue, S. W., Washington, D.C. 20024;
- (3) The Commencement Date is \_\_\_\_\_, 2000;
- (4) The New Rent Commencement Date is \_\_\_\_\_, \_\_\_\_\_; and
- (5) The condition of the Premises is satisfactory to Tenant.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_(Seal)



**EXHIBIT D**

**[Work Letter – U.S. Army Corps of Engineers Work Order]**



Page 1 of 9

<b>US ARMY CORPS OF ENGINEERS</b> <b>INTERAGENCY AGREEMENT</b> <b>(ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 3 <b>2. <input type="checkbox"/> INITIAL AGREEMENT</b> <b><input type="checkbox"/> AMENDMENT NUMBER</b>
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 25 October 1999 <b>5. COMPLETION DATE</b> 21 April 2000
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 301 North Capitol Street, N.E., 8th Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed) <p>In accordance with the FY 1999 Omnibus Appropriations Bill, the Corps of Engineers will prepare all necessary environmental and cultural/Section 106 compliance documentation needed to implement the improvements identified in the Southwest Waterfront Development Needs Assessment dated July 1999. The specific tasks and budgets are as follows:</p> <ol style="list-style-type: none"> <li>1. Management - The Corps of Engineers will provide a project manager to provide overall management of the effort. \$5,000 budget, \$24,000 project contingency.</li> <li>2. Environmental Compliance - All necessary environmental compliance documentation will be prepared. \$55,000 budget.</li> <li>3. Cultural/Section 106 Compliance - All necessary coordination with the D.C. Historical Preservation Officer will be accomplished and all necessary compliance documentation will be prepared. \$14,000 budget.</li> </ol>		
<b>9. CUSTOMER EXPECTATIONS</b> (Additional pages may be used as needed) <p>The Corps will make every effort to complete the environmental and cultural compliance work within 5 months and to limit project expenditures to \$74,000. The five months' timeframe begins when CENAB receives a letter from DCDHCD acknowledging deviations from the 1991 Master Plan. DCDHCD will forward CENAB all existing NEPA (if any), NCEPC comments on the proposed improvements, and documents that address the ownership of the land.</p>		
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410) 962-3377 FAX: (410) 962-9512	<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-7255 FAX: (202) 442-5391	



**12. REPORTS**

A copy of all compliance documentation will be provided.

**13. FUNDS** (Page(s) with cost breakdown may be attached as necessary)

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. LEASE AMOUNT			
b. CUSTOMER AMOUNT	\$80,000 <i>JN</i>	\$98,000	\$178,000 <i>98,000 JN</i>
c. TOTAL PROJECT COST	\$80,000 <i>JN</i>	\$98,000	\$178,000 <i>98,000 JN</i>

**14. FUNDING** Funds will be provided by:

- ☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)

b. Appropriation:

LINE	AGY	YR	INDEX	PCA	AOBJ
001	DB0	98	84040	04012	1506

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)  
 b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)  
 c. Request for payment will cite the following accounting information (describe necessary documentation):  
 d. Submit to: D.C. Dept. of Housing & Community Development  
 Office of the Comptroller  
 801 North Capitol Street, N.E., 7<sup>th</sup> Floor  
 Washington, DC 20002

**16. AUTHORITY**

FY 1999 Omnibus Appropriations Bill, 31 USC 1535 - Economy Act, and Interagency Agreement.

**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE	SIGNATURE	DATE
James R. Jones Chief, Programs and Project Management Division	<i>[Signature]</i>	10-18-99
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER	SIGNATURE	DATE
Ohello Mahone, Interim Director Department of Housing and Community Development	<i>[Signature]</i>	10-15-99



<b>US ARMY CORPS OF ENGINEERS INTERAGENCY AGREEMENT (ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> W04 <b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT</b> <b><input type="checkbox"/> AMENDMENT NUMBER</b>	
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 13 March 2000 <b>5. COMPLETION DATE</b> 30 September 2000	
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715		<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 7th Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed)  In accordance with the FY 1999 Omnibus and the FY 2000 DC Appropriations Bills, the Corps of Engineers will provide the following:  1. Management – The Corps of Engineers will provide a project manager to provide overall management of the wooden pile investigation and preparation of contract documents for selected improvements to the Washington Marina, Municipal Fish Wharf, and adjacent DC Government Properties. \$20,000 budget, \$10,000 contingency for investigation and preparation of contract documents. 2. Property Description – Using existing survey information and lease exhibits, a property description will be provided for the Washington Marina and Municipal Fish Wharf. The description will precisely identify the property being leased, to include the common area and pier frontage at the Municipal Fish Wharf. \$8,000 budget. 3. Wooden Pile Investigation and Report – A contract for a wooden pile investigation will be issued. Wooden foundation piles under the fish wharf and marina piers and under the seawall/bulkhead will be inspected by underwater divers and a civil/ structural engineer will characterize the condition of the piles, make a determination as to whether the piles need to be repaired or replaced, and estimate the remaining useful life of the piles. \$25,000 budget. 4. Design Plans – The Corps of Engineers will prepare a site plan identifying the improvements to be made to the Washington Marina, Municipal Fish Wharf, and Redevelopment Land Agency premises. The site plan will be coordinated with the Washington Marina, Municipal Fish Wharf, and Capital Yacht Club tenants and DHCD. After an investigation of the wooden piles is conducted, and after NEPA/Sect 106 compliance documentation is completed, design and construction contract documents for the repair or replacement of the wooden piles and/or for the work listed on the attached sheet will be prepared as the budget will allow. Design-build and task-order contracts will be used to implement the improvements. The contractors will be responsible for securing all necessary permits. \$110,000 budget.			
<b>9. CUSTOMER EXPECTATIONS</b> (Additional pages may be used as needed)  The Corps of Engineers will make every effort to minimize project costs and complete the scope of work within 7 months of signing this work order by both parties. Priorities will be to complete the survey in April 2000 and the underwater investigation by June 2000. After the Corps of Engineers has completed the underwater investigation, the Corps of Engineers and the Department of Housing and Community Development will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project costs do not exceed funds available.			
<b>10. USACE PROJECT OFFICER</b>  Name: Mary Y. Dan <i>myd</i> 3/15/00 Voice: (410) 962-3377 FAX: (410) 962-9312		<b>11. CUSTOMER PROJECT OFFICER</b>  Name: Joseph J. Wolfe Voice: (202) 442-6977 FAX: (202) 442-6967	
<b>ADDRESS</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715		<b>ADDRESS</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 7th Floor Washington, DC 20002	



EXHIBIT B, Page 4 of 9

**12. REPORTS**

A copy of the property descriptions, underwater investigation report, site plan, development concept, and contract documents will be provided.

**13. FUNDS** *(Page(s) with cost breakdown may be attached as necessary)*

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$0	<del>\$140,000</del> \$173,000 <i>900</i>	<del>\$140,000</del> \$173,000 <i>900</i>
c. TOTAL PROJECT COST	\$0	<del>\$140,000</del> \$173,000 <i>900</i>	<del>\$140,000</del> \$173,000 <i>900</i>

**14. FUNDING.** Funds will be provided by:

a. ☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)

☒ Reimbursable Order (31 USC 1535 - Economy Act)

☐ Other (describe)

b. Appropriation:

**15. BILLING**

a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)

b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)

c. Request for payment will cite the following accounting information (describe necessary documentation):

d. Submit to: D.C. Dept of Housing & Community Development  
ATTN: Mr. Joseph Wolfe  
801 North Capitol Street, N.E., 7th Floor  
Washington, DC 20002

**16. AUTHORITY**

FY 1999 Omnibus Appropriations Bill, FY 2000 District of Columbia Appropriations Bill, 31 USC 1535 - Economy Act, and Memorandum of Agreement Between the District of Columbia and the U.S. Army Corps of Engineers regarding Improvements to the Southwest Waterfront.

**17. APPROVALS**

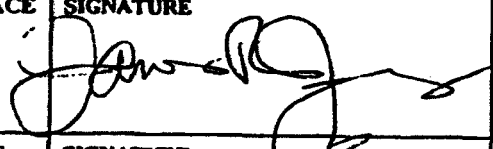

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE James R. Jones Chief, Programs and Project Management Division	SIGNATURE 	DATE 3/13/00
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER Othello Mahone, Interim Director Department of Housing and Community Development	SIGNATURE 	DATE 4-3-00



Exhibit D

Page 5 of 9

**Improvements to the Southwest Waterfront Fish Market and Washington Marina**  
**Attachment to Interagency Agreement WO-4**

The following will be removed/ constructed:

- **Underground Storage Tanks** – Four underground storage tanks (one 4,000 gallon, two 2,000 gallon, and one 30,000 gallon) will be closed and the tanks, associated piping, ancillary equipment, and contaminated soil will be removed and disposed of in accordance with D.C. regulations. (task order contract)
- **Fish Market Building** – The facility will be demolished and disposed of. (task order contract)
- **Concrete Bulkhead** – The area of the bulkhead to be repaired is beneath the I-395 bridge. The top 6" of concrete will be removed. The bulkhead will be drilled to tie in new reinforcing steel. A concrete section approximately 50' long, 2' wide, and 2.5' deep will be added to the top of the bulkhead, and the area behind the bulkhead will be backfilled. The existing railing between the marina and Pruitt Seafood will be removed and a new railing will be installed.
- **Electrical Utilities** – The Contractor will prepare an electrical plan that provides sufficient power for projected activities and operation and will coordinate the electrical plan with PEPCO to define/delineate responsibilities for relocating utilities and implementing/constructing the plan. Utility trenches will be excavated and approximately 5,100 lf of electrical ductbanks will be constructed and overhead electrical distribution lines will be relocated underground.
- **Remove Fence** – 60 lf of chain link fence between the fish wharf and the Capitol Yacht Club parking areas will be removed.
- **Equipment on Site** – The existing equipment on Lot 846 that is not being used will be removed.
- **Fish Cleaning Building** – The central historic portion of the structure will be renovated for the fish cleaning service and vending machines. The remainder of the building will be demolished. A new facility for the public restrooms and dumpsters will be constructed at the eastern edge of Lot 846. The new facility will be a masonry structure similar to the existing.
- **Concrete Piers** – The existing wooden piles under the marina and fish wharf piers will be repaired and replaced as needed. The fish wharf piers, approximately 16,868 sf, will be repaved with a new concrete surface and made ADA compliant. 1.5" of the existing surface will be removed to level the piers. A new concrete surface will be poured with 6 x 6 inch wire reinforcing. A patterned surface will be provided and color dye will be included. Utilities serving the fish wharf barges will be upgraded to meet current codes.
- **Safety Railings and Fences** – Existing safety railings along the bulkhead will be removed. Guardrails will be installed for parking areas along the waterfront and bulkhead west of the marina and along the bulkhead between the marina and fish wharf. As much as 2,000 lf of 2 rail, 2" dia, steel pipe, safety railing will be installed along the concrete piers and bulkhead, as needed for pedestrians.
- **Piers and Boat Slips** – Remove, as necessary, existing piles and piers and install fully-functional floating pier/dock replacements with such accessories (water, electric, etc.) as specified by the Tenant in a configuration shown in the attached site plan. The number of floating piers and docks to be installed by the government government will be the maximum number which can be installed within a \$1,150,000 budget. The remaining floating piers will be provided by others. ( design-build contract)
- **Site Lighting** – Site lighting will be upgraded throughout the site in order to comply with current code requirements. Approximately 5,100 lf of utility trenches will be excavated. 41 lighting fixtures and associated conduit and wiring will be installed.
- **Paving** – Approximately 50,000 sf of paving, trees and stumps throughout the site, and chainlink fences around the parking lot west of the marina and to the east of the Maine Avenue Seafood building will be removed. The entire site, approximately 100,000 sf, will be cut, filled, and graded to provide larger, more level, parking areas and to improve stormwater management. A concrete walkway along the waterfront between the marina building and the east edge of the fish wharf will be provided.
- **Sidewalks** – Approximately 7,100 sf of sidewalks will be provided.
- **Marina Building** – A new membrane roof will be installed, and the electrical service will be upgraded. The electrical upgrades will include demolition and removal of the existing 400 A service and the installation of 1 – 1200 A 208/120V 3 phase electrical service, 3 – 400 A distribution panels, feeders from the new 1200 A service to each (3) 400 A panel, and reconnection of the existing store circuits to a new 400 A panel.
- **Landscaping** – Landscaping improvements will be provided along Main Avenue and around parking lots in areas that will not reduce parking capacity.



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<b>US ARMY CORPS OF ENGINEERS INTERAGENCY AGREEMENT (ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 5 <b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT</b> <b><input type="checkbox"/> AMENDMENT NUMBER</b>	
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 1 July 2000 <b>5. COMPLETION DATE</b> 30 June 2001	
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002		
<b>8. SCOPE OF WORK</b> <i>(Additional pages may be used as needed)</i> In accordance with Public Law 106-113, the Corps of Engineers agrees to prepare, procure, and oversee contracts for improvements to the Southwest Waterfront in the District of Columbia as follows: <ol style="list-style-type: none"> <li>Management – The Corps of Engineers will provide a project manager to provide overall management of contract procurement and construction of the improvements noted in item 3. \$11,140 budget, \$41,210 contingency for entire project.</li> <li>Construction Supervision &amp; Inspection – A project engineer will oversee the construction contractor and verify that improvements are being provided in accordance with the construction contract. \$29,700 budget.</li> <li>The following will be removed/ constructed:             <ul style="list-style-type: none"> <li>Underground Storage Tanks – Four underground storage tanks (one 4,000 gallon, two 2,000 gallon, and one 30,000 gallon) will be closed and the tanks, associated piping, ancillary equipment, and contaminated soil will be removed and disposed of in accordance with D.C. regulations. \$100,000 budget.</li> <li>Electrical Utilities – Utility trenches will be excavated and approximately 3,000 lf of overhead electrical distribution lines will be relocated underground. \$107,590 budget.</li> <li>Fish Market Building – The facility will be demolished and disposed of. \$8,470 budget.</li> <li>Site Lighting – Site lighting will be upgraded throughout the site in order to comply with current code requirements. Approximately 5,100 lf of utility trenches will be excavated. 41 lighting fixtures and associated conduit and wiring will be installed. \$66,890 budget.</li> <li>Concrete Bulkhead – The area of the bulkhead to be repaired is beneath the I-395 bridge. The top 6" of concrete will be removed. The bulkhead will be drilled to tie in new reinforcing steel. A concrete section approximately 50' long, 2' wide, and 2.5' deep will be added to the top of the bulkhead, and the area behind the bulkhead will be backfilled. The existing railing between the marina and Pruitt Seafood will be removed and a new walkway railing will be installed. \$24,080 budget.</li> <li>Safety Railings and Fences – Existing safety railings along the bulkhead will be removed. Guardrails will be installed for parking areas along the waterfront and bulkhead west of the marina and along the bulkhead between the marina and fish wharf. As much as 2,000 lf of 2 rail, 2" dia, steel pipe, safety railing will be installed along the concrete piers and bulkhead, as needed for pedestrians. \$38,260 budget.</li> <li>Remove Fence – 60 lf of chain link fence between the fish wharf and the Capitol Yacht Club parking areas will be removed. \$330 budget.</li> <li>Equipment on Site – The existing equipment on Lot 846 that is not being used will be removed. \$1,530 budget.</li> <li>Sidewalks – Provide 7,100 sf of sidewalk. \$24,070 budget.</li> </ul> </li> </ol>			
<b>9. CUSTOMER EXPECTATIONS</b> <i>(Additional pages may be used as needed)</i> The Corps of Engineers will make every effort to minimize project costs and complete the project within 15 months. After the Corps of Engineers has completed the design work, the Corps of Engineers and the Department of Housing and Community Development will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project budget amount does not exceed \$453,260. The Corps of Engineers will make reasonable efforts to accommodate the tenant's priorities for work performed. However, the final decisions shall remain with DHCD. The priority of the items in the scope of work will generally be in the order listed. The Corps of Engineers will make reasonable efforts to minimize the disruption to Tenant's business. The majority of construction on the fish wharf property will be scheduled to occur during the winter months. If multiple design-build contracts are awarded, the contracts will require close coordination with the Corps project manager to avoid construction scheduling conflicts.			
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410)962-3377 FAX: (410)962-9312		<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-6977 FAX: (202) 442-6967	
<b>ADDRESS</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715		<b>ADDRESS</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	



Exhibit 10 Page 7 of 9

**12. REPORTS**

A complete set of as-built drawings shall be provided.

**13. FUNDS** *(Page(s) with cost breakdown may be attached as necessary)*

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$	\$453,260	\$453,260
c. TOTAL PROJECT COST	\$	\$453,260	\$453,260

**14. FUNDING** Funds will be provided by:

- a. ☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)
- b. Appropriation:

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)
- b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)
- c. Request for payment will cite the following accounting information (describe necessary documentation):
- d. Submit to: D.C. Dept of Housing & Community Development  
Office of the Comptroller  
801 North Capitol Street, N.E., 7<sup>th</sup> Floor  
Washington, DC 20002

**16. AUTHORITY**

Public Law 106-113, District of Columbia FY 2000 Appropriations, 31 USC 1535 - Economy Act, and Memorandum of Agreement Between the District of Columbia and the U.S. Army Corps of Engineers regarding Improvements to the Southwest Waterfront.

**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE James R. Jones Chief, Programs and Project Management Division	SIGNATURE	DATE
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER Stanley Jackson, Acting Director Department of Housing and Community Development	SIGNATURE	DATE



Exhibit 7, Page 6 of 9

<b>US ARMY CORPS OF ENGINEERS INTERAGENCY AGREEMENT (ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 6 <b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT</b> <b><input type="checkbox"/> AMENDMENT NUMBER</b>	
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 1 July 2000 <b>5. COMPLETION DATE</b> 30 June 2001	
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715		<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed) In accordance with Public Law 106-113, the Corps of Engineers agrees to prepare, procure, and oversee contracts for improvements to the Southwest Waterfront in the District of Columbia as follows: <ol style="list-style-type: none"> <li>Management – The Corps of Engineers will provide a project manager to provide overall management of contract procurement and construction of the improvements. \$73,710 budget, \$272,730 contingency for entire project.</li> <li>Construction Supervision &amp; Inspection – A project engineer will oversee the construction contractor and verify that improvements are being provided in accordance with the construction contract. \$196,560 budget.</li> <li>The following will be removed/ constructed:             <ul style="list-style-type: none"> <li>Marina Building – A new membrane roof will be installed, and the electrical service will be upgraded. The electrical upgrades will include demolition and removal of the existing 400 A service and the installation of 1 – 1200 A 208/120V 3 phase electrical service, 3 – 400 A distribution panels, feeders from the new 1200 A service to each (3) 400 A panel, and reconnection of the existing store circuits to a new 400 A panel. \$255,000 budget.</li> <li>Piers and Boat Slips – Remove, as necessary, existing piles and piers and install fully-functional floating pier/dock replacements with such accessories (water, electric, etc.) as specified by the Tenant in a configuration shown in the attached site plan. The number of floating piers and docks to be installed by the government will be the maximum number which can be installed within a \$1,150,000 budget.</li> <li>Fish Cleaning Building – The central historic portion of the structure will be renovated for the fish cleaning service and vending machines. The remainder of the building will be demolished. A new facility for the public restrooms and dumpsters will be constructed at the eastern edge of Lot 846. The new facility will be a masonry structure similar to the existing. \$365,390 budget.</li> <li>Concrete Piers – The existing wooden piles under the marina and fish wharf piers will be repaired and replaced as needed. The fish wharf piers, approximately 16,868 sf, will be repaved with a new concrete surface and made ADA compliant. 1.5" of the existing surface will be removed to level the piers. A new concrete surface will be poured with 6 x 6 inch wire reinforcing. A patterned surface will be provided and color dye will be included. Utilities serving the fish wharf barges will be upgraded to meet current codes. \$225,000 budget excluding pile repairs or replacement.</li> <li>Paving – Approximately 50,000 sf of paving, trees and stumps throughout the site, and chainlink fences around the parking lot west of the marina and to the east of the Maine Avenue Seafood building will be removed. The entire site, approximately 100,000 sf, will be cut, filled, and graded to provide larger, more level, parking areas and to improve stormwater management. 6" subbase, 6" base, and 3" wearing courses and striping will be provided. A concrete walkway along the waterfront between the marina building and the east edge of the fish wharf will be provided. \$414,370 budget.</li> <li>Landscaping – Landscaping improvements will be provided along Main Avenue and around parking lots in areas that will not reduce parking capacity. \$47,240 budget.</li> </ul> </li> </ol>			
<b>9. CUSTOMER EXPECTATIONS</b> (Additional pages may be used as needed) The Corps of Engineers will make every effort to minimize project costs and complete the project within 15 months. After the Corps of Engineers has completed the design work, the Corps of Engineers and the Department of Housing and Community Development (DHCD) will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project budget amount does not exceed \$3,000,000. The Corps of Engineers will make reasonable efforts to accommodate the tenant's priorities for work performed. However, the final decisions shall remain with DHCD. The marina building roof and the marina piers and boat slips will be first and second priority respectively. The priority of the remaining items in the scope of work will generally be in the order listed. The Corps of Engineers will make reasonable efforts to minimize the disruption to Tenant's business. The majority of construction on the fish wharf property will be scheduled to occur during the winter months. If multiple design-build contracts are awarded, the contracts will require close coordination with the Corps project manager to avoid construction scheduling conflicts.			
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410)962-3377 FAX: (410)962-9312		<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-6977 FAX: (202) 442-6967	
<b>ADDRESS</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715		<b>ADDRESS</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	



Exhibit D, Page 9 of 9

**12. REPORTS**

A complete set of as-built drawings shall be provided.

**13. FUNDS** *(Page(s) with cost breakdown may be attached as necessary)*

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$	\$3,000,000	\$3,000,000
c. TOTAL PROJECT COST	\$	\$3,000,000	\$3,000,000

**14. FUNDING** Funds will be provided by:

- a. ☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)
- b. Appropriation:

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)
- b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)
- c. Request for payment will cite the following accounting information (describe necessary documentation):
- d. Submit to: D.C. Dept of Housing & Community Development  
Office of the Comptroller  
801 North Capitol Street, N.E., 7<sup>th</sup> Floor  
Washington, DC 20002

**16. AUTHORITY**

Public Law 106-113 - District of Columbia FY 2000 Appropriation, 31 USC 1535 - Economy Act, and Memorandum of Agreement Between the District of Columbia and the U.S. Army Corps of Engineers regarding Improvements to the Southwest Waterfront.

**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE James R. Jones Chief, Programs and Project Management Division	SIGNATURE	DATE
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER Stanley Jackson, Acting Director Department of Housing and Community Development	SIGNATURE	DATE



**EXHIBIT E**

**[Rules and Regulations]**



## **EXHIBIT E**

### **RULES AND REGULATIONS**

#### **Purpose**

The purpose of these Rules and Regulations is to summarize Tenant's responsibilities with respect to the day-to-day operation and maintenance of the Project.

#### **Common Area Use**

To ensure a pleasing and safe environment in the common areas (parking lots and sidewalks) of the Project, each Tenant shall:

1. Keep the sidewalk in front of its Premises clear and free from ice and snow. (Use only sodium based ice melters that do not damage the pavement.)
2. Not place any objects in the common areas of the Project, except in areas, if any, designated for tables by the Tenant Committee.
3. Not solicit business in the common areas; i.e., no signs or displays, except as approved by the Tenant Committee.
4. Not use the common areas for the sale of merchandise without the prior written consent of Landlord.

#### **Storefronts and Signs**

To ensure a consistent appearance throughout the Project:

1. Tenant shall keep the storefront of its Premises in good repair and clean condition.
2. Any temporary sign used by Tenant in its door or window must be professionally made and must comply with District of Columbia sign regulations.



### **Tenant Advertising**

1. Tenant shall not utilize any advertising medium within the Project that can be seen, heard, or experienced outside of the Premises, including, but not limited to, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions, except as may be approved by the Tenant Committee, as, for example, seasonal displays of lighting and music.
2. Tenant shall not display, paint, place or cause to be displayed, painted, or placed, any handbills, bumper stickers, sandwich boards or other advertising devices in any portion Common Area.
3. Tenant shall not distribute, or cause to be distributed, in the Project, any handbills or other advertising devices; and will not conduct or permit any activities that might constitute a nuisance.

### **Loading and Unloading**

All shipping, receiving, loading or unloading of Tenant's merchandise, supplies or other property shall take place only in the areas, and at times, designated therefor by the Tenant Committee. Tenant shall not permit any trucks, trailers, or other vehicles or equipment engaged in such activities to interfere with the use of any Common Area or any pedestrian or vehicular use.

### **Noise**

Tenant shall not permit any noise to be made inside of its Premises which can be heard outside of the Premises. Tenant shall not use any loudspeaker or other communications equipment that may be heard or seen outside of its Premises.

### **Odors**

Tenant shall prevent the emission of odors from its Premises that are objectionable to its neighbors.

### **Refuse**

To ensure a clean and equitable refuse handling system:

1. The Management Agent for the Project shall provide refuse containers and disposal service and will allocate the costs thereof to each tenant as provided in its lease.
2. Tenant shall keep its refuse in proper containers in its Premises and shall place it in the refuse container when taken outside the Premises.



### **Pest Exterminator Services**

Tenant shall contract with a professional exterminator for monthly inspections and treatments as necessary, to ensure that infestations by insects and rodents do not occur on the Premises.

### **Store Plans and Permits**

The plans and contractors for doing any work in the Premises that requires a permit must be submitted to the Landlord for approval. This includes but is not limited to work that requires a building, mechanical, electrical, or plumbing permit.

### **Parking**

To ensure that adequate and convenient parking is available to customers of the Project, no part of the Common Area may be used for parking by employees of Tenant or other Tenants of the Project.

### **Emergencies**

Tenant must notify the Landlord, as soon as possible, of any emergency situation, injury, fire or disorder that occurs in the Tenant's Premises or any common area of the Project.

### **Outside Promotional Activities**

To avoid undesired disturbances of Tenants and customers of the Project, outside promotional activities will only be permitted with approval of the Tenant Committee.

### **Video Games**

Tenant shall not permit the installation or use in any portion of its Premises of a pinball, video or other amusement or game machine of any kind.



# EXHIBIT 4

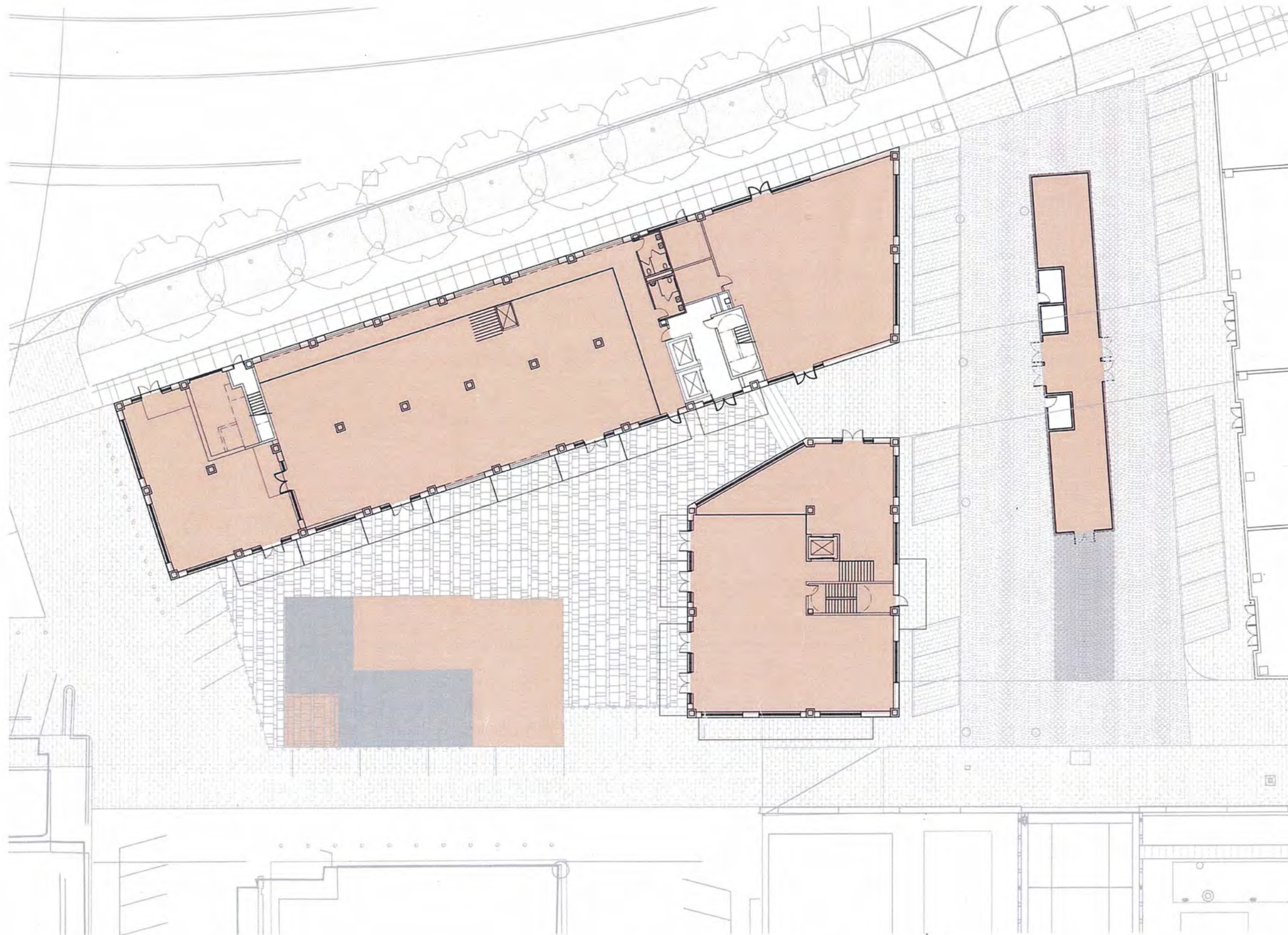




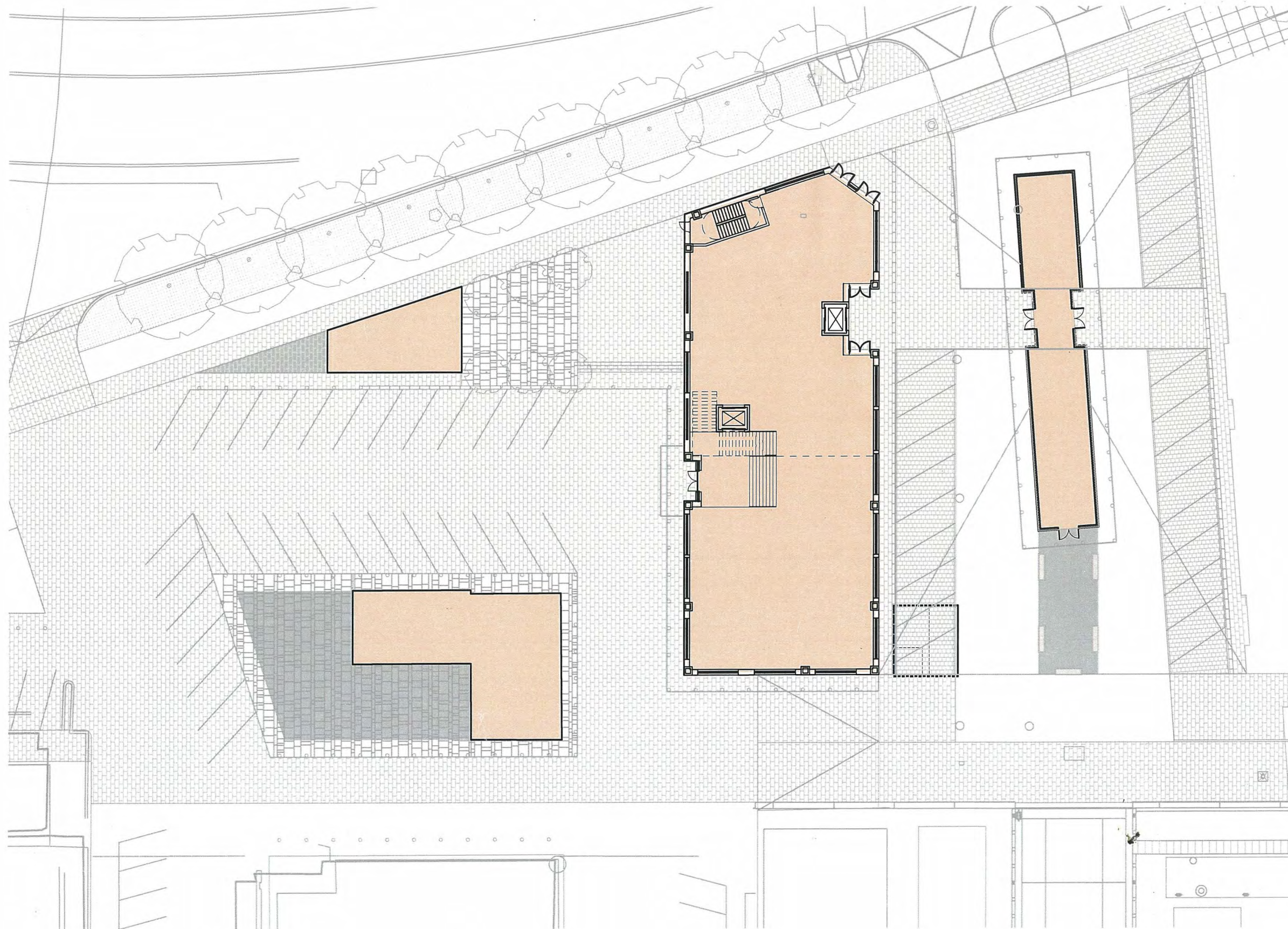


# EXHIBIT 5

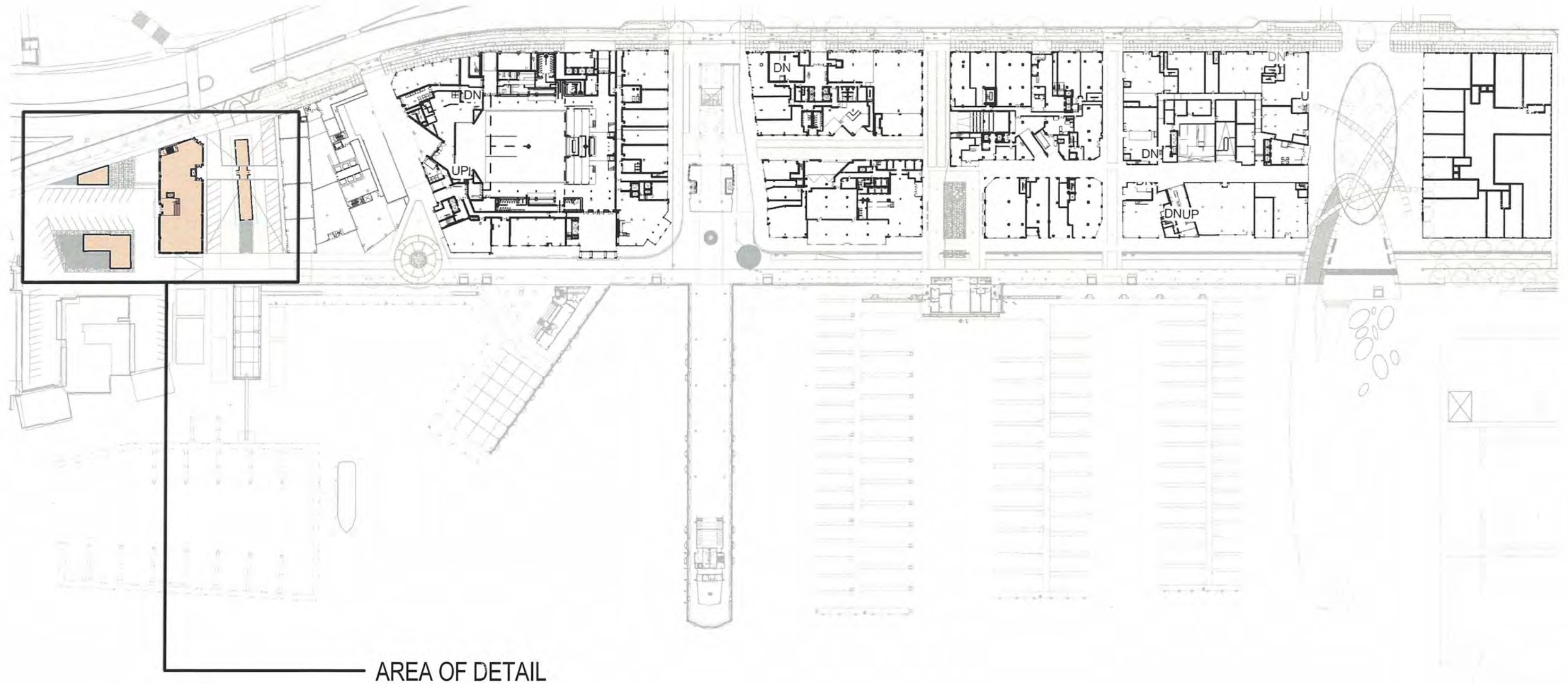








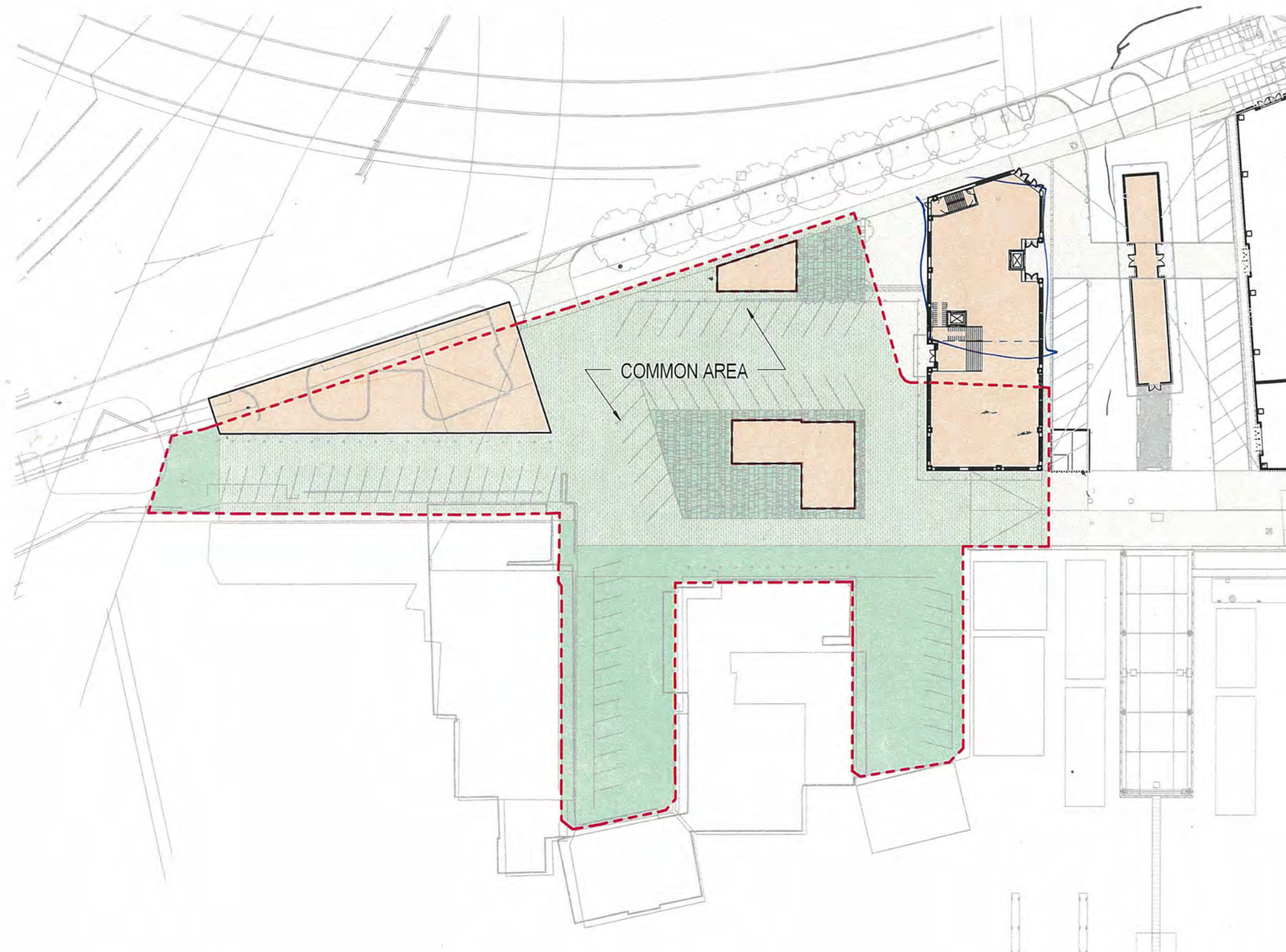




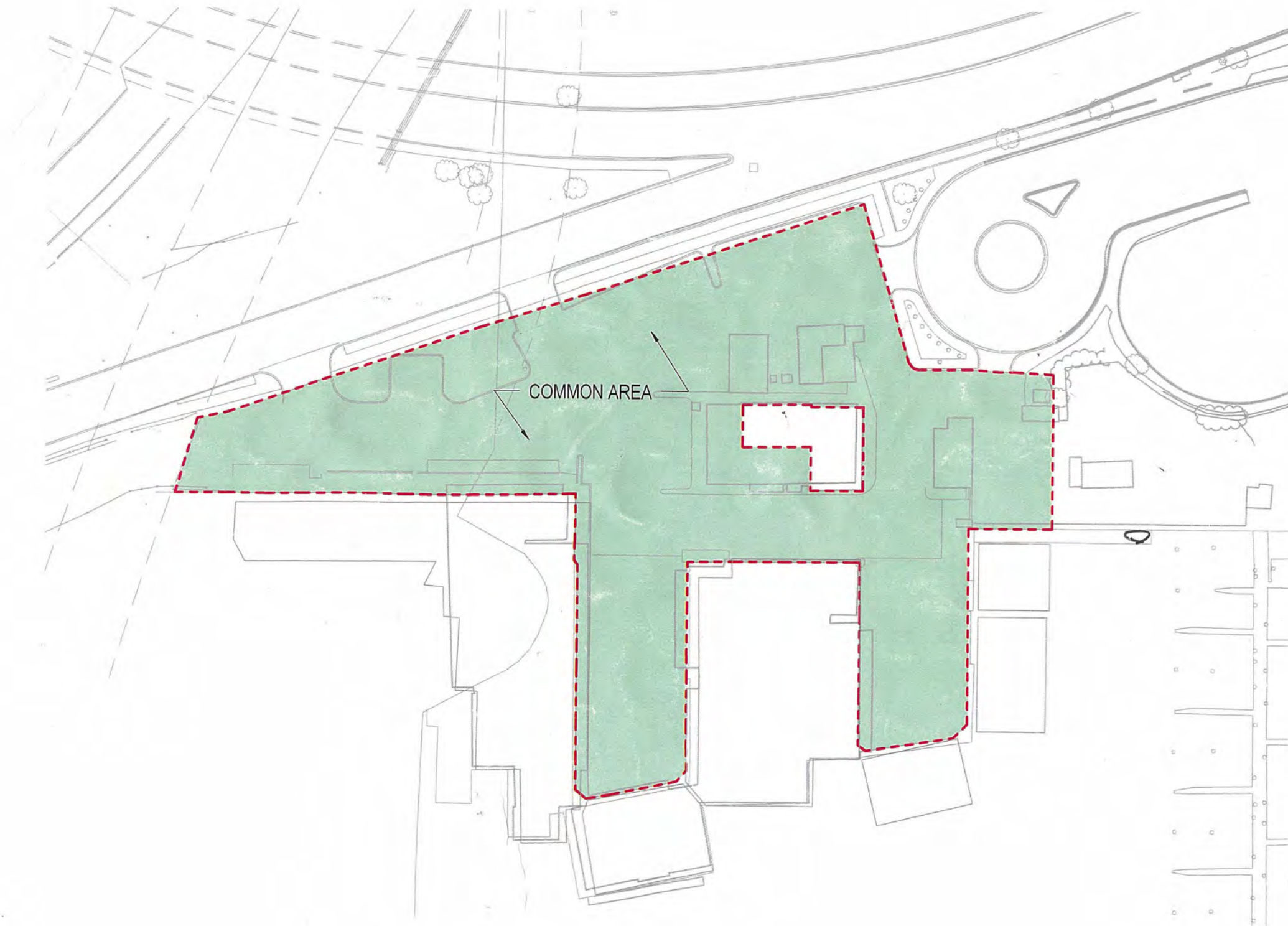


# EXHIBIT 6











# EXHIBIT 7-1



**Fish Market  
Customer  
Parking**  
**LIMITED TO**  
**60**  
**MINUTES ONLY**  
Unauthorized Vehicles  
Will Be Towed  
at Owners'  
Liability and Expense

  
**Fish Market  
60 Minute  
Parking  
Only**  
**Towing Enforced**  
DC TOWING AND RECOVERY  
**202.460.0040**  




# EXHIBIT 7-2







# EXHIBIT 7-3







# EXHIBIT 7-4







# EXHIBIT 7-5







# EXHIBIT 7-6





12/30/ 2014



# EXHIBIT 7-7







# EXHIBIT 7-8







# EXHIBIT 7-9







# EXHIBIT 8







# EXHIBIT 9



**THE WHARF** WASHINGTON, D.C.

THIS VEHICLE IS PARKED ILLEGALLY ON PRIVATE  
PROPERTY AND IS SUBJECT TO A \$250 FINE AND  
SUBSEQUENT TOWING AT OWN EXPENSE AND  
LIABILITY. PAID PARKING AVAILABLE AT  
COLONIAL PARKING, LOCATED AT THE CORNER  
OF 6<sup>TH</sup> ST. AND WATER ST.

**THE WHARF**



# EXHIBIT 10







# EXHIBIT 11



LAW OFFICES

**ALBERT & SCHULWOLF, LLC**

2273 RESEARCH BOULEVARD  
SUITE 200  
ROCKVILLE, MD 20850

(301) 519-1919  
FACSIMILE (301) 519-9222

ANDREW B. SCHULWOLF \*

WRITER'S E-MAIL: Andrew@AlbertandSchulwolf.com

\* ALSO ADMITTED IN DC, VA and FL

June 25, 2015

**Hand Delivered**

W.D. Inc.  
d/b/a Pruitt's Seafood  
1100 Maine Avenue, S.W.  
Washington, D.C. 20024  
Attn: Billy White

**Re: Notice of Termination of Lease Agreement Dated April 1, 2001  
("Lease") By and Between Wharf Horizontal REIT Leaseholder, LLC,  
as Successor-in-Interest by Assignment from The District of Columbia  
("Wharf Horizontal"), as landlord, and W.D. Inc. d/b/a Pruitt's Seafood,  
as Successor by Assignment from DNM Seafood, Inc. ("Tenant"), as Tenant,  
for the Premises Located Within the Municipal Fish Wharf at 1100 Maine  
Avenue, S.W., Spaces 1, 2, 3 and 4, Washington, D.C. (collectively, the  
"Premises") and Notice to Quit and Vacate the Premises**

---

Dear Mr. White:

This Firm represents Wharf Horizontal, the owner of the Premises. Wharf Horizontal has made multiple, unsuccessful requests of Tenant to cease its alterations and construction of the Barges located at the Premises and to provide it with copies of plans, permits and insurance coverage for the construction work. In its March 23, 2015 letter to Tenant, Wharf Horizontal advised Tenant that it was required to obtain the landlord's consent before performing any construction work, including alterations, to the Barges. In that letter, the landlord further requested that Tenant provide, among other things, all permits for the construction work and copies of plans prepared by a licensed architect specializing in waterside/barge construction.

As Tenant failed to provide Wharf Horizontal with any of the information requested in its March 23, 2015 letter and failed to cease its construction work at the Barges, Wharf Horizontal, through its counsel Michael S. McNamara, Esq., served Tenant with a Notice of Default dated April 20, 2015, notifying Tenant that its failure to obtain the landlord's consent to perform the construction work at the Barges and/or to obtain a building permit for the work, as required under Section 13 of the Lease (Alterations), constituted a default of the Lease. Tenant was further advised that if it failed, within thirty (30) days after the delivery of the foregoing Notice of Default, to (i) obtain landlord's approval for the construction work, (ii) provide landlord with a copy of all permits for the work performed; and (iii) provide evidence of all marine work insurance covering the construction work, Wharf Horizontal would exercise all of its rights under Section 22 of the Lease (Landlord's Remedies in Case of Tenant's Default). Such remedies include the right to immediately terminate the Lease. Despite Wharf Horizontal's repeated



requests that Tenant cease its construction on the Barges at the Premises and that it provide copies of architectural plans, permits and insurance, Tenant has failed and refused to provide any of the information requested within the foregoing thirty (30) cure period nor has it ceased its construction work at the Barges. Although it appears as if Tenant obtained a Building Permit on June 2, 2015 to perform construction work to the "crab steam house water vessel," Tenant commenced performing the construction work well before the permit was issued. In addition, the Tenant has apparently not obtained a permit to construct and build-out the new Barge nor has it obtained a permit to renovate the existing Barge. As such, Tenant has illegally performed alterations and construction work on the Barges in violation of applicable District of Columbia building codes and law. Furthermore, Tenant failed to obtain Wharf Horizontal's consent to perform any of the construction work and/or to install a new Barge prior to performing the work, as required under Section 13 of the Lease. Tenant's actions constitute a Default under the Lease.

Please be advised, therefore, that in accordance with Section 22(A) of the Lease, and as a result of Tenant's Default, Wharf Horizontal hereby exercises its right to terminate Tenant's Lease for the Premises **effective immediately**. As such, any and all rights that Tenant may have had to occupy and/or to possess the Premises are hereby terminated. Notwithstanding Wharf Horizontal's termination of the Lease and any action(s) taken by Wharf Horizontal to regain possession of the Premises, Tenant shall continue to remain liable to Wharf Horizontal for the payment of all Rent and damages incurred as reserved under Section 22(B) of the Lease.

Furthermore, notice is hereby given for Tenant to quit, vacate and surrender the Premises no later than **11:59 p.m. (EST) on July 31, 2015 ("Premises Surrender Date")**. As provided in Section 26 of the Lease, if Tenant shall fail "to remove the Barges or other property" from the Premises upon the termination of the Lease, such property, at Landlord's option, shall become the property of Landlord or shall be removed and stored by Landlord at Tenant's expense. Please be further advised that if Tenant shall fail to remove the Barges and its property from the Premises by the Premises Surrender Date, Wharf Horizontal shall, in its sole discretion, become the owner of the Barges and property or it will elect, at Tenant's costs, to remove and store the property. Tenant shall be responsible for all damages to Wharf Horizontal's Premises in connection with the removal and disposal of any Tenant property that may remain in the Premises after the Premises Surrender Date.

In the event Tenant shall fail or refuse to vacate the Premises by the Premises Surrender Date, Landlord shall undertake any and all actions necessary to regain possession of the Premises from Tenant including, without limitation, the institution of legal proceedings for possession of the Premises and money damages. Any such legal proceeding shall request that Tenant be required to reimburse Wharf Horizontal for its reasonable attorney fees and costs incurred in connection with Tenant's Default, including any eviction proceedings.

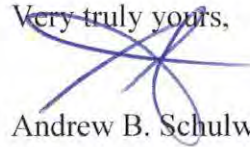
Finally, Wharf Horizontal's acceptance of any subsequent payments from Tenant and/or its application of any existing Security Deposit, towards any unpaid Rent, any future unpaid Rent, its attorney fees and/or any damages suffered by Wharf Horizontal in this matter, shall not constitute a waiver of any Default nor shall it be considered a waiver of, or a rescission of, Wharf Horizontal's termination of the Lease.

Wharf Horizontal reserves all rights and remedies available under the Lease, including Section 22, at law and/or in equity in connection with Tenant's Default and the termination of the Lease.



Please govern yourself accordingly.

Very truly yours,

  
Andrew B. Schulwolf

cc: Mark Dorigan  
Dan McCahan  
Bob Rubenkonig  
Michael S. McNamara, Esq.

**Via Electronic Mail and  
Next Business Day Delivery**

Jason Zeigler, Esq.  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037



ALBERT & SCHULWOLF, LLC

2273 RESEARCH BOULEVARD  
SUITE 200  
ROCKVILLE, MD 20850

(301) 519-1919  
FACSIMILE (301) 519-9222

ANDREW B. SCHULWOLF \*

WRITER'S E-MAIL: Andrew@AlbertandSchulwolf.com

\* ALSO ADMITTED IN DC, VA and FL

June 25, 2015

**Hand Delivered**

The Wharf, Inc.  
All Occupants of the Premises  
Captain White Seafood  
1100 Maine Avenue, S.W.  
Washington, D.C. 20024  
Attn: Billy White

**Re: Notice to Quit and to Vacate - Municipal Fish Wharf  
1100 Maine Ave., S.W., Spaces 16, 17, 18 and 19, Washington, DC ("Premises")**

Dear Mr. White:

This Firm represents Wharf Horizontal REIT Leaseholder, LLC ("Wharf Horizontal"), the owner of the Premises. Despite Wharf Horizontal's several requests for a fully executed copy of the purported Lease Agreement between the prior owner of the Premises, The District of Columbia, as landlord, and The Wharf, Inc. ("The Wharf"), as tenant, for the Premises, no such Lease Agreement has been provided. As such, and until such time as you produce a copy of a Lease Agreement for the Premises that has been signed by both The District of Columbia and The Wharf, Wharf Horizontal is proceeding under the assumption that no valid Lease Agreement or any other agreement exists which would give The Wharf, Captain White Seafood or any other current occupant(s) of the Premises, the right to possess and/or to use the Premises. Accordingly, Wharf Horizontal considers any entity currently in possession of the Premises to be occupying the Premises without any legal right to do so.

Accordingly, notice is hereby given for The Wharf, Captain White Seafood and/or all other occupants of the Premises to quit, vacate and surrender the entire Premises to Wharf Horizontal no later than **11:59 p.m. (EST) on July 31, 2015 ("Premises Surrender Date")**. In the event that any occupant or operator in the Premises shall fail or refuse to vacate the Premises by the Premises Surrender Date, Landlord shall undertake any and all actions necessary to regain possession of the Premises from such occupant including, without limitation, the institution of legal proceedings for possession of the Premises.

In addition, Captain White Seafood has been utilizing Barge No. 17 as a dining area for its customers' exclusive use. Although Captain White Seafood has no legal or other right to use this Barge, for any purpose, it does not appear as if The Wharf, Captain White Seafood or any other occupant has obtained a permit or a Certificate of Occupancy to operate the Barge as a dining facility for use by the public. Wharf Horizontal is greatly concerned that the use of the Barge as a customer dining area poses a significant safety risk to the public, particularly as the



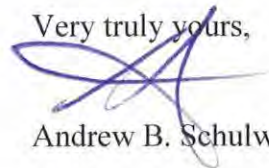
Barge is not intended or designed for this use and it has not been approved, either by Wharf Horizontal or The District of Columbia, for a public dining use. In fact, it has recently come to the landlord's attention that a young child had to be rescued from the water after falling off of the Barge. Accordingly, demand is hereby made upon The Wharf, Captain White Seafood and/or any other occupant(s) of Barge No. 17 to immediately cease and desist using the Barge for public dining. If Barge No. 17 is not immediately closed to the public, Wharf Horizontal will contact the appropriate governmental agency, including the District of Columbia Department of Consumer and Regulatory Affairs, to force the closure of the Barge. The Wharf, Captain White Seafood and/or any other occupant(s) of the Premises, including their respective owners, shall be held directly responsible for any injuries that may result from the continued unauthorized use of Barge No. 17 as a public dining area. It is expected that The Wharf, Captain White Seafood and/or any other occupant of Barge No. 17 will prioritize the safety of the public over its own business interests by immediately closing Barge No. 17 to the public.

Finally, Wharf Horizontal's acceptance of any payment(s) from any occupant in connection with the use of Premises shall not constitute a waiver of this Notice to Quit and to Vacate the Premises nor shall it provide any such occupant with any rights in and to the Premises.

Wharf Horizontal reserves all rights and remedies available at law and/or in equity in connection with this matter including, without limitation, the right to seek injunctive relief to enjoin the continued use of Barge No. 17.

Please govern yourself accordingly.

Very truly yours,



Andrew B. Schulwolf

cc: Mark Dorigan  
Dan McCahan  
Bob Rubenkonig  
Michael S. McNamara, Esq.

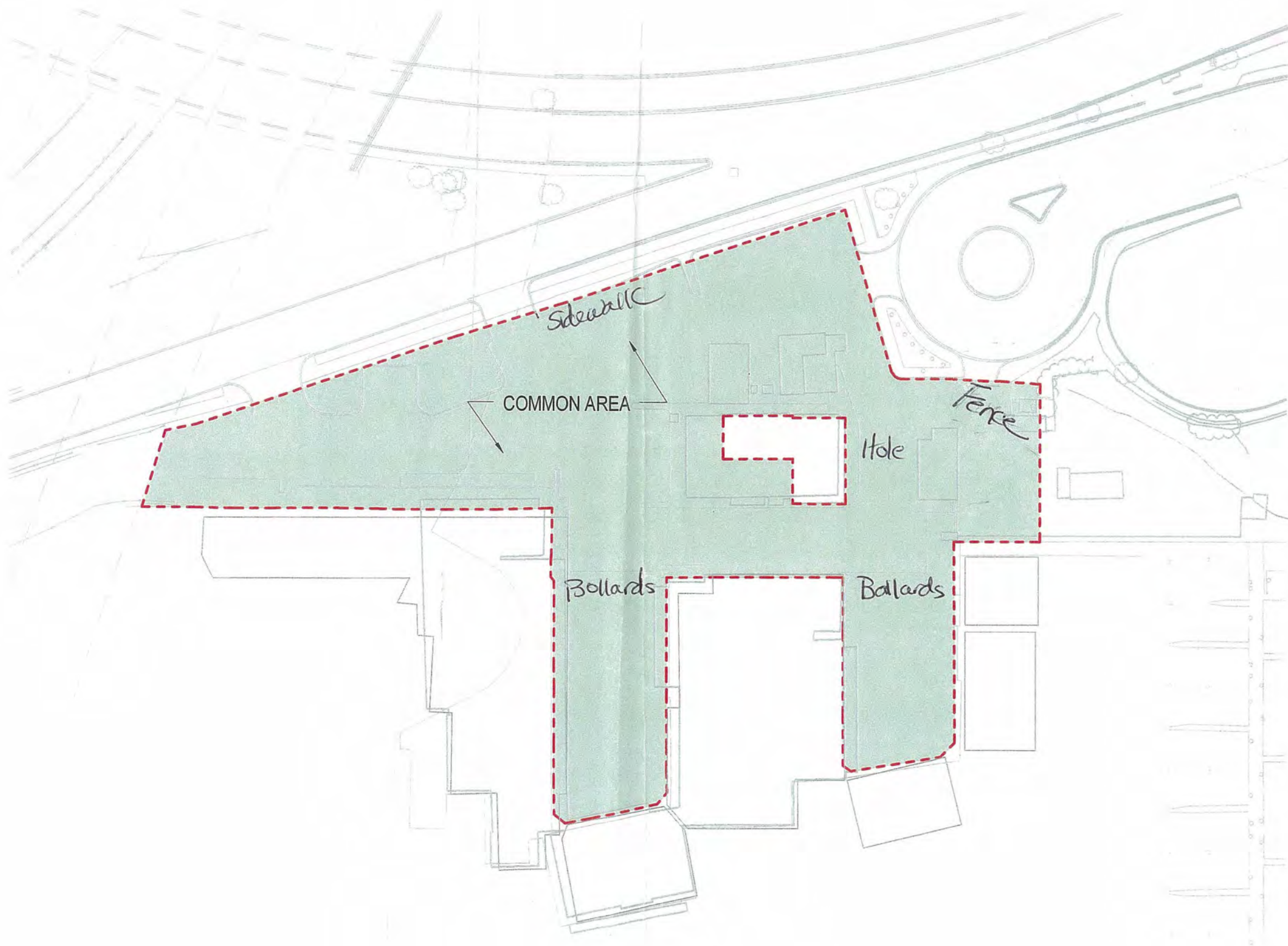
**Via Electronic Mail and  
Next Business Day Delivery**

Jason Zeigler, Esq.  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037



# EXHIBIT 12







# EXHIBIT B





**STRUEVER BROS. ECCLES & ROUSE**  
Transforming America's Cities

## PN Hoffman, Struever Brothers, Eccles & Rouse Selected as Developer of Southwest Waterfront

*Community is Key as Team Seeks to Establish a World-Class Destination  
Reconnecting Washington, DC with its Waterfront*

**FOR IMMEDIATE RELEASE**

**CONTACT:** Alanna Deal  
202.686.0010 ext. 253  
adeal@pnhoffman.com

**Washington, D.C., September 29, 2006** – The team of **PN Hoffman, Struever Brothers, Eccles & Rouse (Hoffman-Struever Waterfront LLC)** today announced that it has been selected by the Anacostia Waterfront Corporation as the Master Developer for Washington DC's Southwest Waterfront.

The developer's plan aims to produce an active, urban riverfront and park system, showcase distinctive cultural destinations, and build upon the existing, strong waterfront community. It features the following components:

- **Housing** – approximately 650 units of market-rate residential and 290 units of affordable housing.
- **Cultural** – a 150,000 square foot cultural component focused on education.
- **Hotel** – 360 hotel rooms.
- **Neighborhood amenities** – neighborhood-serving retail such as a gourmet grocery, casual and upscale dining, cafes, shops and opportunities for local, small retailers.
- **Parks** – 14 acres of parks, open space, and promenades throughout the project.
- **Water-focused development** – significant improvements to the existing marina and pier facilities.
- **Sustainable Design** – the first LEED-Silver certified mixed-use project in the city.
- **Significant local, small and disadvantaged business enterprises (LSDBE) Participation** – participation by Washington DC-based LSDBE team members in all aspects of the project, including ownership.

"This project is about more than bricks and mortar," said Monty Hoffman, CEO of PN Hoffman. "Our philosophy is 'neighborhood first,' and while we plan to create a world-class waterfront destination, appealing to visitors from around the globe, our first commitment is to the people of Washington, DC and the existing Southwest Waterfront community. First and foremost, this project will reconnect Washington with its waterfront."

The vision organizes the site into three districts that will link an expansive pedestrian promenade along the Washington Channel:

- more -



**City Pier District:** The northwest end of the site will be the more active district of the development, due to its proximity to the National Mall, L'Enfant Plaza and the active historic fish market. It will contain the majority of the restaurant and retail uses and is the location of 360 hotel rooms. Additional features include a fresh produce market pier to enhance the existing fish market, a water taxi service connecting the Southwest Waterfront with the new baseball stadium, Old Town Alexandria, Georgetown and other destinations, a performance space for cultural use, and a pedestrian bridge at 10<sup>th</sup> Street, linking the site to the National Mall.

**Esplanade District:** The central core of the project features a substantial amount of apartment and condominium development, a small amount of office space, and neighborhood-serving retail such as a gourmet grocery, small neighborhood bistros and waterfront cafes.

**Cultural Park District:** The southeastern end of the project, closest to existing neighborhoods, is the least intense development area. The cultural park itself is a 5.5-acre green park that will be the centerpiece of the cultural zone. Cultural uses will feature educational opportunities at the water, such as programs by Living Classrooms Foundation and the National Maritime Heritage Foundation.

"We are thrilled with the selection of the Hoffman-Struever Waterfront team as our partners in the redevelopment of the Southwest Waterfront," said Adrian Washington, CEO of the Anacostia Waterfront Corporation. This is an impressive team with significant local and national expertise and a successful track record revitalizing DC neighborhoods. We look forward to working with the team to develop not only a world-class waterfront destination, but also a sustainable neighborhood on a human scale."

The Hoffman-Struever Waterfront team consists of PN Hoffman, Washington's premier developer of residential mixed-use projects, largely responsible for the dramatic revitalization of the 14<sup>th</sup> Street Corridor; Struever Brothers, Eccles & Rouse, a developer that has reclaimed and transformed the urban waterfront throughout Baltimore; McCormack Baron Salazar, a national mixed-income and affordable housing developer; and approximately 30 other entities that are market leaders locally and nationally in the areas of affordable housing, mixed-use retail, cultural programming, urban planning, finance and maritime development.

"As a Southwest resident for nearly 30 years and ANC commissioner, I have followed the submittal and selection process very closely," said Andy Litsky, Chairman of ANC-6D. "I am pleased with the selection of a truly local development team that has demonstrated sensitivity in other parts of the city and will work with us to meet the needs of our waterfront community. I look forward to working with Hoffman-Struever Waterfront to see this project through to completion."

The team was chosen from among 17 highly qualified teams that initially responded to the request for expressions of interest from the Anacostia Waterfront Corporation. After months of rigorous review and negotiation, the AWC made its selection between the two finalists yesterday.

#### **About PN Hoffman**

Since 1993, PN Hoffman has been developing extraordinary upscale residential and mixed-use properties in the Washington, DC Metro area. The Company is deeply committed to serving the neighborhoods of Washington and has built over 30 developments in the City since its inception.

#### **About Struever Brothers, Eccles & Rouse**

Established in 1974, Struever Brothers, Eccles & Rouse has a long-standing and prestigious record of success as a unique development company. Known for conquering challenging locations as a multi-role developer and construction manager, the firm has an intentional focus on urban mixed-use projects, neighborhood transformation, historic adaptive reuse and reinvigorating city waterfronts. With more than 16 million square feet and nearly \$5 billion of total investment costs in projects completed or under development, Struever Brothers, Eccles & Rouse is a uniquely diversified, full-service real estate development and construction company.

#### **About the Anacostia Waterfront Corporation**

The Anacostia Waterfront Corporation is an instrumentality of the Government of the District of Columbia charged with responsibility for facilitating and implementing the development, redevelopment, and revitalization of the lands adjacent to the Anacostia River and associated waterways and for environmental restoration of the Anacostia River and associated waterways.



# EXHIBIT C



A World-Class Waterfront in the Heart of the Nation's Capital

THE WHARF

About The Wharf

Contracting + Employment

Office Leasing

Retail Leasing

News

Community Updates

Directions

- PLAY HERE  
Future Events + Attractions
- SHOP + DINE HERE  
Future Retail Shops + Restaurants
- STAY HERE  
Future Hotels at The Wharf
- WORK HERE  
Office Space + Leasing Information
- LIVE HERE  
Future Condos, Apartments + More

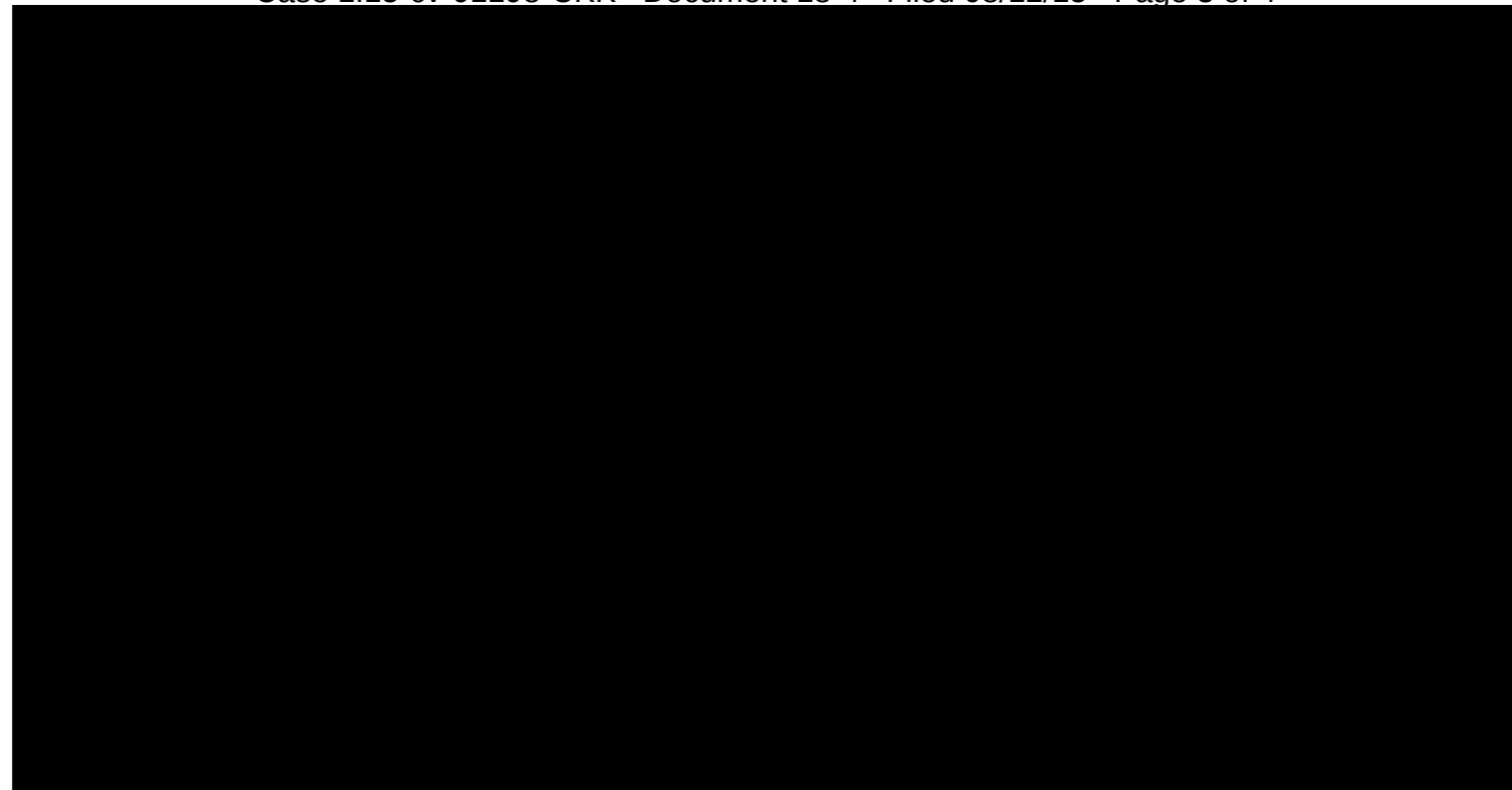
Home » About The Wharf

# About The Wharf

Watch this short video detailing the vision for the Wharf and how all of Washington and beyond will benefit.







The Wharf is the result of Hoffman-Madison Waterfront's commitment to revitalizing the Southwest waterfront, stretching across 27 acres of land and more than 50 acres of water from the Municipal Fish Market to Fort McNair. From a storied maritime history to untapped potential and vibrant cultural scene, The Wharf is the waterfront escape that Washington so richly deserves, one that puts it in the illustrious company of world-famous waterfronts.

A remarkable, mile-long waterfront neighborhood is taking shape in Washington, D.C. The Wharf is a mixed-use waterfront opportunity, coming to life in the heart of the Nation's Capital. Located within walking distance of major commerce, The Wharf is centrally situated on the Potomac River, along the historic Washington Channel, a short distance from beloved national monuments, The White House, The Capitol and Smithsonian Museums. The Wharf holds an unrivaled location, and an extraordinary vision for a new waterfront neighborhood, presenting what is truly a once-in-a-generation opportunity. With 27 acres of land at 50 acres of waterfront and an exciting, innovative vision, The Wharf is poised to become D.C.'s next great meeting place.

The Wharf is being brought to life as a result of multiple visions: restoring the Southwest waterfront, celebrating the culture of the waterfront lifestyle, and creating a cohesive public space that the community can truly rally behind.

This is a complex project, a great challenge, and a once-in-a-generation opportunity. Ultimately, we will measure the success of The Wharf in the way that the people of the district embrace it as their own. The Wharf's distinctive features, commitment to the celebrating the community and rich history of the Southwest waterfront will make it a truly vibrant neighborhood.

Click here for more information about [Madison Marquette](#). For more information about [PN Hoffman](#), click here.

“A magnificent waterfront entranceway.”



- Pierre Charles L'Enfant, architect of the nation's capital city, describing the Southwest Waterfront to President George Washington.

## Rich History

This area of Washington, D.C. is fascinating. From the Southwest quadrant's position as entryway into the nation's capital, to its storied history as military hub and its cultural significance for fishmongering, Hoffman-Madison Waterfront's vision for the Wharf seeks to connect it back to these amazing roots.



## More About The Wharf

- ☐ The Development Plan
- ☐ The Wharf Book
- ☐ History
- ☐ Timeline
- ☐ Development Team
- ☐ Sustainability

**Contact Us**



# EXHIBIT D



## ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this “**Assignment**”) is made as of the 23rd day of April, 2014, by and between the **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Deputy Mayor for Planning and Economic Development pursuant to delegation by Mayor’s Order 2008-43 (“**Assignor**”), and **WHARF HORIZONTAL REIT LEASEHOLDER LLC**, a Delaware limited liability company (“**Assignee**”). Assignor and Assignee are sometimes referred to herein collectively as the “**Parties**.”

### WITNESSETH

In connection with that certain Cover Agreement to Fish Market Ground Lease dated June 10, 2013 (the “**Agreement**”) between Assignor and Assignee, Assignor desires to assign and convey to Assignee all of Assignor’s right, title and interest in and to the leases listed on Exhibit A attached hereto (the “**Leases**”) on and after the date hereof.

NOW, THEREFORE, in consideration of the Agreement, the promises and covenants hereinafter set forth, and other good and valuable hereto consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals; Defined Terms. The recitals above are hereby incorporated into and made a part of this Assignment as if fully set forth herein. Each capitalized term used herein that is not defined in this Assignment shall have the meaning ascribed to it in the Agreement.
2. Assignment. Assignor hereby transfers, assigns, conveys and sets over unto Assignee all of Assignor’s right, title and interest as landlord in and under the Leases. Assignee hereby accepts the foregoing assignment and assumes all obligations of the “Landlord” under the Leases.
3. Successors; Governing Law. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns. This Assignment shall be governed by and construed in accordance with the laws of the District of Columbia without regard to the principles of conflicts of laws.
4. JURY TRIAL WAIVER. EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS ASSIGNMENT AND THE RELATIONSHIP OF ASSIGNOR AND ASSIGNEE HEREUNDER. THIS JURY TRIAL WAIVER PROVISION SHALL SURVIVE THE CLOSING AND THE TERMINATION OF THIS ASSIGNMENT.
5. Merger. This Assignment shall not merge with or limit or restrict any provision of the Agreement, and the provisions of the Agreement shall govern and control the rights and obligations of Assignor and Assignee with respect to all matters described therein, including,



without limitation, representations and warranties, the apportionment of payment obligations, and indemnification obligations in addition to those set forth herein.

6. Counterparts. This Assignment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Assignment.

7. Severability. If any provision of this Assignment, or the application thereof to any person or circumstances, shall, for any reason and to any extent, be or become invalid or unenforceable, the remainder of this Assignment and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent possible.

*[Signature Page Follows]*



IN TESTIMONY WHEREOF, the undersigned caused the foregoing instrument to be executed as of the date first written above.

DISTRICT:

APPROVED AS TO LEGAL  
SUFFICIENCY

DISTRICT OF COLUMBIA,  
by and through the Office of the Deputy Mayor for  
Planning and Economic Development

Office of the Attorney General for the  
District of Columbia

By: Jennifer Carson  
Name: Tennifer Carter  
Title: Assistant Attorney General

By: Victor L. Hoskins  
Name: Victor L. Hoskins  
Title: Deputy Mayor for Planning and Economic  
Development

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this 23<sup>rd</sup> day of April, 2014, by Victor L. Hoskins, Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as his free act and deed, for the purposes therein contained.

Elizabeth T. McMahon  
Notary Public

[Notarial Seal]

Elizabeth T. McMahon  
Notary Public, District of Columbia  
My Commission Expires 3/14/2015

My commission expires: \_\_\_\_\_



[Signatures Continue on Following Page]

[Signature page to Assignment of Existing Fish Market Leases]



**ASSIGNEE:**

WHARF HORIZONTAL REIT  
LEASEHOLDER LLC, a Delaware limited  
liability company

By: 

Name: Lament Hoffman

Title: Co-President



**Exhibit A**

**Leases**

1. Lease Agreement dated January 27, 2000 between District and Benjamin F. Edwards and Daryl V. Jones t/a Virgo Fish House (Premises Fish Cutting House 12 and 13)
2. Lease Agreement dated July 12, 2000 between District and BRW, Inc. t/a Capt. White Seafood City (Premises Nos. 7, 8, and 9)
3. Lease Agreement dated March 20, 2014 between District and W.D. Inc., a Virginia Corporation, as successor by assignments to Pruitt Seafood, Inc. (Premises 1, 2, 3, and 4).
4. Lease Agreement dated February 14, 2001 between District and C. & F. Evans Seafood, Inc., and Stan Evans Seafood, Inc., together trading as Jessie Taylor Seafood (Premises Nos. 5, 6, and 11)
5. Lease Agreement dated February 21, 2001 between District and Evans Brothers Seafood, Inc. t/a Custis & Brown Seafood (Premises Nos. 10 and 15)
6. Lease Agreement dated July 20, 2000 between District and The Wharf, Inc. trading as The Wharf (Premises Nos. 16, 17, 18, and 19) (not executed)



# EXHIBIT E



## LEASE AGREEMENT

THE DISTRICT OF COLUMBIA,  
acting on behalf of THE UNITED STATES OF AMERICA,

LANDLORD

and

THE WHARF, INC.  
T/A THE WHARF

TENANT

for

Premises Nos. 16, 17, 18, and 19  
Municipal Fish Wharf



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Exhibit A - Outline of the Premises  
Exhibit B - Site Plan of the Project  
Exhibit C - Certificate of Acceptance  
Exhibit D - Work Orders 4 & 5  
Exhibit E - Rules and Regulations



## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made this 12<sup>th</sup> day of July, 2000, by and between THE DISTRICT OF COLUMBIA, acting on behalf of THE UNITED STATES OF AMERICA, whose notice address is Director, District of Columbia Department of Housing and Community Development, 801 North Capitol Street, N.E., 8<sup>th</sup> Floor, Washington, D.C. 20002 ("Landlord"), and THE WHARF, INC., a District of Columbia corporation, t/a The Wharf, whose notice address is 1100 Maine Avenue, S.W., Washington, D.C. 20024 ("Tenant").

In consideration of the promises in the Lease, Landlord and Tenant agree as follows:

### 1. *Definitions.*

Certain terms in this Lease are defined below:

A. **Barges:** The barges owned by Tenant on which Tenant operates its business. The Barges are, or will be, located on the Premises.

B. **Commencement Date:** The date of this Lease.

C. **Common Areas:** "Common Areas" mean all areas within the Project that Landlord makes available to tenants and their customers for their general use, convenience and benefit, including restrooms, parking areas, driveways, walkways, landscaped or planted areas, lighting facilities, service areas and loading and unloading areas, as depicted on Exhibit B hereto.

D. **Lease Year:** The first "Lease Year" shall begin on the New Rent Commencement Date and shall end on December 31 of the year following the year in which the New Rent Commencement Date shall occur, in order that each subsequent Lease Year hereunder shall coincide with the calendar year. Each subsequent Lease Year shall commence on the day immediately following the last day of the preceding Lease Year, and shall continue for a period of twelve (12) full calendar months.

E. **Minimum Rent:** The annual minimum rent payable during the Term, which shall be as follows:

Before New Rent Commencement Date		
Time Period	Annual	Monthly
Commencing on earlier of (1) date on which Tenant opens for business on any portion of the Premises; or (2) availability of utilities to the Premises, and continuing until the New Rent Commencement Date	\$3,636.36 [or \$303.03 per month during long first Lease Year]	\$303.03



After New Rent Commencement Date		
Lease Years	Annual	Monthly
1 – 5	\$16,400.00 [OR \$1,366.66 PER MONTH IN LONG FIRST LEASE YEAR, SUBJECT TO CPI ADJUSTMENT UNDER SEC. 7 BELOW IN YEARS 2 THROUGH 5]	\$1,366.66 [FOR LEASE YEAR ONE ONLY]
6 – 10	[MINIMUM RENT FOR LEASE YEAR 5, AS DETERMINED BY CPI ADJUSTMENTS UNDER SEC. 7 BELOW, PLUS 3%]	[N.B. – MINIMUM RENT FOR ALL YEARS AFTER YEAR 5 TO BE PRO-RATED IN ACCORDANCE WITH RELATIVE FRONTAGE IF TENANT EXERCISES 5 <sup>TH</sup> YEAR PARTIAL TERMINATION RIGHT]
11 – 15	[MINIMUM RENT FOR LEASE YEAR 10 PLUS 3%]	
16 – 20	[MINIMUM RENT FOR LEASE YEAR 15 PLUS 3%]	
21 – 25	[MINIMUM RENT FOR LEASE YEAR 20 PLUS 3%]	
26 – 30	[MINIMUM RENT FOR LEASE YEAR 25 PLUS 3%]	

F. **New Rent Commencement Date:** The date upon which “Landlord’s Work” (as defined in Section 3) is substantially completed; i.e., upon receipt of a Certificate of Substantial Completion from the Corps of Engineers, and provided that all utilities to be delivered to the Premises are then in working order.

G. **Percentage Rent:** For each Lease Year commencing with the Sixth (6<sup>th</sup>) Lease Year:

- (i) with respect to all “Gross Non-Taxable Sales” (as defined in Section 7), an amount equal to 1/2 of one percent (0.5%) of the excess of (A) Tenant’s Gross Non-Taxable Sales for the Premises during the Lease Year, over (B) the “Non-Taxable Base Amount,” which means the amount of actual Gross Non-Taxable Sales for the Premises for the Fifth (5<sup>th</sup>) Lease Year; and
- (ii) with respect to all “Gross Taxable Sales” (as defined in Section 7), the following percentages, depending on the ratio for such Lease Year of “Gross Taxable Sales” to “Gross Sales”:
  - (A) zero, provided Gross Taxable Sales for such Lease Year total less than fifteen percent (15%) of Gross Sales for such Lease Year;



(B) with respect to those Gross Taxable Sales that constitute greater than fifteen percent (15%) and less than fifty percent (50%) of total Gross Sales for such Lease Year, one-half of one percent (0.5%) of the excess of (A) such Gross Taxable Sales for the Premises during the Lease Year, over (B) the "Taxable Base Amount," which means the amount of actual Gross Taxable Sales for the Premises for the Fifth (5<sup>th</sup>) Lease Year; and

(C) with respect to those Gross Taxable Sales that constitute greater than fifty percent (50%) of total Gross Sales for such Lease Year, one and one-half percent (1.5%) of the excess of (A) such Gross Taxable Sales for the Premises during the Lease Year, over (B) the Taxable Base Amount.

H. **Consumer Price Index:** The "Consumer Price Index" means the index for the Washington - Baltimore, DC - MD - VA - WV area, now known as the United States Bureau of Labor Statistics, consumer Price Index, for All Urban Consumers, all items (1996=100).

I. **Permitted Uses:** The retail sale of seafood (fresh and prepared) and of fresh produce, including accessory items such as cole slaw, french fries, and the like, or any other use consistent with and permitted by the 1913 Federal legislation creating the Project and appointing the District of Columbia as manager of the Project. Notwithstanding the foregoing, (i) prepared food shall be sold only on a "takeout" basis; and (iii) there shall be no serviced tables situated within the Premises or in the Common Area unless plans for same shall have been approved by Landlord and unless Landlord and Tenant shall have executed an amendment hereto providing for a change to restaurant use and, among other things, revising the Percentage Rent payable hereunder in respect of the portion of the Premises to be devoted to such restaurant use. As to clauses (i) and (ii) above, Landlord shall enforce parallel restrictions on all other tenants within the Project.

J. **Premises:** The spaces in the Project identified on Exhibit A as Nos. 16, 17, 18, and 19. The Premises consist of an area on the surface of the water sufficient to moor three Barges to the concrete pier [one in No. 16 ("Barge 16"), one in No. 17 ("Barge 17"), and one in Nos. 18 and 19 ("Barge 18")]. Barge 16 shall have no more than 27 linear feet, Barge 17 shall have no more than 48 linear feet, and Barge 18 shall have no more than 48 linear feet. None of the Barges shall have a depth from the pier greater than the barge currently occupying Space No. 8. Tenant shall have the right to connect the Barges that comprise the Premises under this Lease as well as the Barges that comprise the "Premises" under the Lease between Landlord and BRW, Inc., t/a Capt. White Seafood City by a floating walkway that shall not exceed six feet (6') width, as shown on Exhibit B-1 hereto.

K. **Project:** The Municipal Fish Wharf located between 11<sup>th</sup> and 12<sup>th</sup> Streets, south of Maine Avenue, S.W., Washington, D.C. The Project includes the portion of the Potomac River in which the tenants' barges are moored. A site plan of the Project is attached as Exhibit B. A certified survey of the Project, to include references to all Lots and Squares, or portions thereof, included within the Project, has been commissioned and will be delivered to the parties upon



completion, at which time a legal description of the Project shall be initialed and attached hereto as a substitute and replacement for the existing Exhibit B.

L. **Security Deposit:** \$1,366.66, which shall be due and payable within thirty (30) days after the effective date of this Lease.

M. **Tenant Committee:** A committee representing the tenants of the Project and composed of one representative to be named by each such tenant. The Tenant Committee shall cooperate with the Management Agent to be retained for the Project, as provided herein, to carry out the operation, maintenance, and repair of the Common Areas of the Project. The Tenant Committee may, at its option, elect to operate by means of a limited liability company or other legal entity. All matters requiring decisions by the Tenant Committee shall be decided on the basis of a simple majority. Voting on all such matters by Tenant and the other tenants of the Project shall be based upon the "Proportionate Share" (hereinafter defined) of each.

N. **Tenant's Proportionate Share:** 14.81%, which equals the percentage that the number of linear feet of frontage in the Premises bears to the number of linear feet of frontage in the Project. If the number of linear feet of frontage in the Project changes, Tenant's Proportionate Share will be adjusted accordingly.

O. **Term:** The period that begins on the Commencement Date and ends thirty (30) Lease Years after the New Rent Commencement Date, unless sooner terminated pursuant to this Lease. Tenant acknowledges that it has no right hereunder to renew or extend the Term hereof, or to negotiate for a renewal of the Term hereof. However, Landlord acknowledges that nothing contained herein shall prevent Tenant hereafter from seeking to obtain any such rights.

P. **Prohibited Use:** Anything herein to the contrary notwithstanding, Tenant covenants that during the term of this Lease, (1) it shall not engage in the business of fish cutting or oyster shucking, nor shall it offer non-alcoholic beverages from vending machines; provided, that the provisions of this Section 1.P shall be enforceable only during such times as Virgo Fish House, its successors or permitted assigns, shall engage in the activities described herein at other premises within the Project; and (2) it shall not engage in the sale of liquor for consumption off the Premises. It is understood and agreed that the foregoing prohibition on oyster shucking is intended to apply only to the shucking of oysters conducted as an independent business, and shall not apply to the shucking by Tenant of oysters sold by Tenant.

Q. **Restrictions on Sales.** The following restrictions shall appear in all Leases of Barge Spaces within the Project. In the particular Lease or Leases to which any such restriction pertains, such provision shall act as a restriction imposed and enforceable by Landlord for its benefit, and imposed and enforceable by the other tenants of the Project for their benefit, and accepted by the tenant or tenants occupying the area to which such restriction directly pertains.

(i) For a period of ten (10) years, expiring on the tenth (10) anniversary of this Lease, the sale of seafood of any type shall be prohibited throughout the rectangular area comprising the southernmost twenty-four feet (24') of Barge 6.



(ii) For the entire Term of this Lease, the sale of crabs anywhere on Barge 6 or 16 shall be prohibited.

## **2. *Lease of the Premises; Tenant's Acceptance of Premises; Termination Right.***

A. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. At the commencement of the Term hereunder, Tenant shall occupy the Premises in their "as is" condition, subject to Section 3, and subject to the removal by Landlord of the barge in Lease Space No. 17 and the boat in Lease Space No. 16, which shall be accomplished as quickly as practicable, given legal constraints. Effective as of the Commencement Date, Tenant does hereby release, remise, discharge, and forever waive any and all claims, actions, or causes of action, whether known or unknown, arising from or relating to the Prior Lease that Tenant has or may have against landlord, or its affiliated entities, predecessors, successors, assigns, legal representatives, agents, employees, servants, attorneys, officers, or other representatives.

B. Anything herein to the contrary notwithstanding, Tenant shall have the right, exercisable by written notice given to Landlord not later than ninety (90) days before the end of the 5<sup>th</sup> Lease Year, to terminate this Lease altogether, or to terminate it in part as to any one or more of the Barge spaces leased hereunder (collectively, the "Terminated Premises") effective upon the expiration of the 5<sup>th</sup> Lease Year. Upon surrender of the Terminated Premises in the manner required hereby, the parties shall be released and relieved of any obligations accruing after the effective date of such termination with respect to the Terminated Premises.

C. Anything herein to the contrary notwithstanding, Tenant shall have the right, exercisable by written notice given to Landlord not later than ninety (90) days after submission of the Annual Statement (as defined in Section 7 below), to terminate this Lease if the total of the Minimum Rent and the Percentage Rent (as defined in Sections 1.E, 1.G and 1.I above, as the case may be) for the Lease Year to which such Annual Statement pertains exceeds ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$125,000.00). This termination right is specifically limited to the first Lease Year in which Minimum Rent and Percentage Rent hereunder exceed such sum. Such termination shall be effective for all purposes one (1) calendar year following the date of such notice. Upon the expiration of such one (1) year period, and upon the surrender of the Premises in the manner required hereby upon the expiration or termination of this Lease, the parties shall be released and relieved of any obligations accruing in respect of the Premises after the expiration of such one (1) year period.

## **3. *Landlord's Work.***

A. Landlord has been allocated \$3,000,000 from the federal government (the "Federal Appropriation") to make improvements to the Project and to the marina located next to the Project at 1300 Maine Avenue. Landlord and Tenant have heretofore agreed upon the nature of the improvements to be made to the Project with the Federal Appropriation and such other source of funding as may be available to landlord, all as embodied in the Work Orders issued by the Corps of

*BLW*



Engineers and reviewed and approved by Landlord and Tenant, and attached hereto as Exhibit D. (The improvements to be made to the Project with the Federal Appropriation and such other sources of funding as may be available to Landlord are referred to hereafter as "Landlord's Work.") Landlord shall have no obligation to spend any funds to complete Landlord's Work in excess of the Federal Appropriation and such other sources of funding as may be available to Landlord.

B. After Landlord's Work has been determined in accordance with subsection A above, Landlord will complete construction of Landlord's Work in a good and workmanlike manner and in accordance with requirements of governmental authorities. Tenant shall be consulted with regard to materials and structural details of Landlord's Work, but the final choice thereof shall be in Landlord's sole discretion. Except for Landlord's Work and except as provided in Section 9, Landlord shall not be required to make any repairs or improvements to the Project.

C. Landlord shall use reasonable commercial efforts to complete Landlord's Work by June 30, 2001, but shall have no liability to Tenant if it is unable to complete Landlord's Work by that date or by any other date. Within five (5) days after the New Rent Commencement Date, Tenant shall execute and deliver to Landlord a Certificate of Acceptance, in the form attached hereto as Exhibit C.

D. Landlord's Work shall comply with ADA requirements, as well as all other applicable Federal and local governmental requirements.

#### **4. *Tenant's Work.***

A. Landlord hereby conveys to Tenant all of its right, title and interest in and to the portion of the Premises, and any rights of Landlord to items located in such portion of the Premises, occupied by Barge 18. (Landlord claims no right to any Barge or other thing floating in the water.) Landlord is conveying such portion of the Premises to Tenant in its existing "as is" condition, without warranty of any kind whatsoever, except that Landlord agrees to supply all utilities necessary to make the Barges operational as part of Landlord's Work.

B. As soon as practicable after the Commencement Date, Tenant shall make all repairs and improvements to Premises Nos. 18 and 19 necessary for Tenant to operate its business thereon (collectively, "Tenant's Work"). Specifications for Tenant's Work shall be submitted to Landlord prior to commencement of Tenant's Work, and shall be subject to Landlord's approval, which shall not be unreasonably withheld. Tenant's Work shall be performed in a good and workmanlike manner in accordance with requirements of governmental authorities and all reasonable rules made by Landlord and its agents and without interference with or damage to work performed by Landlord or its agents as part of Landlord's Work. If Tenant causes any such interference or damage, Tenant shall be liable therefor.

C. Tenant shall not permit any materialmen's or mechanic's lien to be filed against the Project in connection with any item of construction or repair performed by Tenant, including Tenant's Work. If any such lien is filed, Tenant shall, within thirty (30) days after notice, discharge the lien of record or, if Tenant elects to contest the lien by appropriate proceedings, bond off the lien and prosecute the proceedings. If Tenant fails to discharge or bond off the lien,



Landlord may do so, and any monies expended by Landlord in doing so, including attorneys' fees, shall be reimbursed by Tenant promptly.

D. Within fifteen (15) days after the Commencement Date, if the District of Columbia shall then issue occupancy permits for improvements of the type subject to this Lease, Tenant shall apply for a permit from the District of Columbia to occupy and use the Premises (the "Occupancy Permit"). Tenant shall use its best efforts to obtain final approval of its application and issuance of the Occupancy Permit as soon as possible. Tenant shall send Landlord a copy of its Occupancy Permit within ten (10) days after Tenant receives it.

## 5. *Minimum Rent.*

A. During the Term, Tenant shall pay all rent, without demand and without setoff, counterclaim, recoupment or other reduction, to the "Management Agent" (defined below) for the Project, including Minimum Rent in monthly installments as set forth in Section 1.E. All monthly installments of Minimum Rent shall be payable in advance on the first day of each month, except that the first payment shall be due on the New Rent Commencement Date. If the Commencement Date or the New Rent Commencement Date is not the first day of a month, the rent for the months in which those dates fall shall be prorated.

B. On or before the New Rent Commencement Date, the Tenant Committee shall select, following consultation with, and with the approval of, the Landlord, a "Management Agent" that shall be charged with responsibility for the operation, maintenance, repair, and replacement of all elements of the Common Areas and the orderly operation of the Project. The Management Agent, throughout the term of its employment as such with respect to the Project: (1) shall maintain insurance that includes employee dishonesty or fidelity coverage in an amount at least as great as the amount of funds the Management Agent has access to at any time; and (2) shall covenant not to, and shall not, discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Landlord, subject to the review and approval, not to be unreasonably conditioned, delayed, or withheld, of the Tenant Committee, shall negotiate and enter into a Management Agreement with the Management Agent. The Management Agreement shall provide that, before payment to Landlord of any amounts due Landlord hereunder: (i) twenty-five percent (25%) of the Minimum Rent and all other Rent from this Lease and all other leases of premises within the Project shall be placed in an interest-bearing escrow account with the Management Agent as a reserve for future capital expenditures in respect of the Common Areas, of which as much as one-fifth (1/5) (or five percent (5%) of the Minimum Rent) may be used for advertising the Fish Wharf in local media and signage in Common Areas, although it is acknowledged by the parties that establishing reasonable reserves for capital needs shall have priority; (ii) all "Common Area Operating Costs" shall be paid to, and applied by, Management Agent, as provided in Section 10 below; and (iii) Management Agent shall deduct the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) (the "Accounting Reserve") from the Rent payable hereunder and shall deposit the same in a reserve account to remain available for purposes paying any accounting or auditing charges incurred by Landlord under Section 7.D below from time to time. As and when funds in the Accounting Reserve are expended, Management Agent shall again deduct sufficient monies



from the Rent payable hereunder to replenish the Accounting Reserve to the level established above..

C. No payment by Tenant of a lesser amount than the monthly installment of rent or other charges herein stipulated shall be deemed to be other than on account of the earliest stipulated rent or other charges, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord and satisfaction. Landlord may accept any check for payment without prejudice to Landlord's right to recover the balance of the rent due or to pursue any other remedy available to Landlord.

## **6. *Late Charges.***

Any rental or other payment due from Tenant hereunder which is not received when due shall be payable by Tenant to Landlord, without demand, with interest from the due date until paid at the rate of fifteen percent (15%) per annum (1-1/4% per month), but no less than One Hundred Dollars (\$100.00), and Tenant shall reimburse Landlord for reasonable attorneys' fees, if any, incurred by Landlord by reason of Tenant's failure to make timely payment. In addition, Tenant shall pay Landlord a \$100.00 fee for each check received by Landlord which is returned by Tenant's bank unpaid.

## **7. *Additional Rent: CPI Adjustment; Percentage Rent.***

A. Upon the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) Lease Year, and upon each anniversary thereof through the first day of the sixth (6<sup>th</sup>) Lease Year (each, an "Adjustment Date"), the Minimum Rent herein provided shall be adjusted to reflect increases in the Consumer Price Index (as defined in Section 1.H above). Such adjustment shall be accomplished by multiplying the Minimum Rent by a fraction, the numerator of which shall be the Consumer Price Index as of the most recent date prior to such Adjustment Date, and the denominator of which shall be the Consumer Price Index as of the most recent date prior to the New Rent Commencement Date; provided, however, that in no event shall the Minimum Rent be reduced as a result of such adjustment below the Minimum Rent for the immediately preceding year; and provided further that the increase in Minimum Rent as a result of any such annual adjustment shall be limited by the provisions of the immediately succeeding sentence. For purposes of the annual adjustment in Minimum Rent provided for herein, the Minimum Rent shall be divided into two parts, as follows: (i) an amount equal to seventy-five percent (75%) of the Minimum Rent for the immediately preceding year (the "Capped Portion"); and (ii) an amount equal to twenty-five percent (25%) of the Minimum Rent for the immediately preceding year (the "Uncapped Portion"). Anything herein to the contrary notwithstanding, the adjustment of the Capped Portion of the Minimum Rent on any individual Adjustment Date shall not result in an increase in the Capped Portion in excess of three percent (3%) over the amount of the Capped Portion for the immediately preceding year. The Uncapped Portion of the Minimum Rent shall be subject to no such limitation and shall be adjusted in accordance with the formula set forth in the second sentence of this Section 7. [As an example, to calculate the adjustment in Minimum Rent on the first day of the second (2<sup>nd</sup>) Lease Year, assuming that (x) the annual Minimum Rent is \$16,400.00; (y) the CPI Index is at 175 at the time of the New Rent Commencement Date; and (z) the CPI Index is at 185 at the time of the first day of



the second (2<sup>nd</sup>) Lease Year, then the adjustment to Minimum Rent would be calculated as follows: (1) the Minimum Rent to be adjusted is \$16,400, divided for this purpose into the Capped Portion of \$12,300 and an Uncapped Portion of \$4,100; (2) the Capped Portion is increased by 3% from \$12,300 to \$12,669, and the Uncapped Portion is increased by 5.7% from \$4,100 to \$4,333.70, producing a total increase in Minimum Rent of \$602.70 (or a blended increase of 3.68%) from \$16,400 to \$17,002.70.] The increased Minimum Rent established pursuant to this Section 7 shall continue in effect as, and for all purposes of this Lease be defined as, the Minimum Rent until again increased as herein provided.

B. Within seventy-five (75) days after the end of each Lease Year beginning with the Sixth (6<sup>th</sup>) Lease Year, Tenant shall pay to Landlord, as additional rent, Percentage Rent calculated in accordance with Section 1.G. Tenant's annual payment of Percentage Rent shall be accompanied by a financial statement (the "Annual Statement"), signed by Tenant and reviewed by an independent certified public accountant, showing "Gross Sales" and "Gross Non-Taxable Sales" (as such terms are defined below) and the Percentage Rent for the Lease Year.

C. "Gross Sales" means the gross amount charged for all sales or services made upon or from the Premises, including any rent or other sum received by Tenant from licensees or concessionaires. "Gross Non-Taxable Sales" means the amount of Gross Sales, minus the amount of all sales and services that shall be subject to, and with respect to which Tenant shall pay, District of Columbia Sales and Use Tax. "Gross Taxable Sales" means the amount of Gross Sales minus the amount of Gross Non-Taxable Sales. Each sale shall be valued at the actual sales price charged the customer, even if the sale is a credit or installment sale, and reported in full in the month in which the sale occurs, even if full payment is not received at the time of the sale.

D. Tenant shall furnish to Management Agent, simultaneously with the filing thereof with the District of Columbia, copies of the Sales and Use Tax Returns currently required to be filed by Tenant in respect of prepared foods and other taxable goods sold by Tenant within the Premises. In addition, Tenant shall prepare, file with the District of Columbia, and make simultaneously available to Landlord informational returns in respect of all raw foods and other non-taxable goods sold by Tenant within the Premises. Such records shall be open to inspection and audit by Landlord or its accountants. If any audit discloses a deficiency in payment of Percentage Rent, Tenant shall immediately pay Landlord the deficient amount, together with interest thereon at the rate of fifteen percent (15%) per annum from the date such Percentage Rent should have been paid. If a discrepancy of three percent (3%) or more in the reported amount of Gross Non-Taxable Sales is uncovered as a result of any audit, Tenant shall reimburse Landlord for the cost of the audit (including the cost of Landlord's accountant). Landlord shall bear the cost of any audit in which no discrepancy or a discrepancy of less than three percent (3%) shall be found (including the cost of Tenant's accountant). Except to the extent required by law or required to exercise its rights hereunder, Landlord shall maintain the confidentiality of all information furnished by Tenant pursuant to this Section 7.D or otherwise made available to Landlord in connection with the exercise of its rights under Section 7.B above.

## 8. *Utilities.*



During the Term, Tenant shall pay directly to the supplier all charges for water, sewer, gas, electricity, telephone and other utilities used upon the Premises. Expenses for maintenance of utility meters shall be borne by Tenant, and if Landlord pays any such expenses, Tenant shall reimburse Landlord promptly upon demand. Landlord shall not be liable for any failure to furnish or for any interruption of utility services, unless caused by the gross negligence of Landlord or Landlord's agents. Upon Tenant's request, Landlord shall furnish a copy of the surety bond or indemnity agreement from any contractor performing work in the Project.

## **9. Common Areas; Employee Parking.**

**A.** Landlord grants to Tenant the right, in common with other tenants in the Project, to use the Common Areas during the Term. Such right of use shall be deemed a license coupled with an interest, and shall subsist until the expiration or the earlier termination of the Term. After the completion of Landlord's Work, and with the approval of the Tenant Committee, Landlord may change the size, location or nature of the Common Areas, and may locate on the Common Areas structures of any type; provided no such structures would materially interfere with access to the Premises across the Common Areas and to and from Maine Avenue. Subject to the terms of the Management Agreement, Landlord shall have exclusive control and management of the Common Areas and Landlord may establish and enforce rules therefor.

**B.** Parking, including, without limitation, employee parking, within the Project shall be regulated by the Tenant Committee, which shall promulgate parking regulations to be enforced by the Management Agent; provided, that no area within the Project shall be dedicated to parking for employees of Tenant or any other tenant of the Project; and provided, further, that no parking shall be permitted in any area designated for table space in the plans for Landlord's Work.

## **10. Common Area Operating Costs.**

**A.** Commencing with the New Rent Commencement Date, Tenant shall pay to Management Agent (as agent for Landlord), as additional rent, Tenant's Proportionate Share of all "Common Area Operating Costs" (as hereafter defined). Common Area Operating Costs means the sum of the following costs and charges incurred by Landlord for each calendar year or part thereof during the Term: (i) "Common Area Costs" (as hereafter defined); (ii) repair and maintenance costs for the structure and exterior of the buildings in the Project, exclusive of improvements located on barges within the Project and exclusive of expenditures that under "generally accepted accounting principles," as that term is defined by the financial Accounting Standards Board, would be capitalized ("Capital Expenditures"); (iii) "Insurance Costs" (as hereafter defined); and (iv) the monthly fee due Management Agent under the Management Agreement. Common Area Costs mean all costs incurred by Landlord, excluding Capital Expenditures, to operate, maintain, replace and repair the Common Areas, including costs for the following: security services; gardening and landscaping; repairs; painting; striping and sweeping; lighting (including the cost of electricity and maintenance and replacement of exterior fixtures and bulbs); and other utility costs for the public restrooms and other facilities located within the Common Area; refuse removal, including dumpsters; ice and snow removal; equipment and supplies related to Common Area maintenance; water and maintenance charges for sprinklers and hydrants; any dues, fees or assessments paid by Landlord with respect to storm water management facilities that benefit the Project; and personnel



of Management Agent to operate, maintain and repair the Common Areas (including salaries, employment taxes and workmen's compensation insurance for such personnel). "Insurance Costs" mean all insurance premiums and other costs incurred by Landlord in connection with fire and extended coverage, public liability, business interruption, sign, and any other insurance maintained by Landlord relating to the Project.

B. Landlord shall annually notify Tenant of Tenant's Proportionate Share of Common Area Operating Costs for each calendar year, and Tenant shall pay to Management Agent (as agent for Landlord) such amount in equal monthly installments in advance on the first day of each of the twelve (12) months after the date of such notice, the first such monthly installment to be due on the New Rent Commencement Date. If the New Rent Commencement Date is a date other than the first day of a month, Tenant's Proportionate Share of Common Area Operating Costs for that month shall be prorated. Landlord shall annually submit to Tenant a statement showing the actual Tenant's Proportionate Share of Common Area Operating Costs for the prior calendar year, the amount paid by Tenant, and the balance due or overpayment. The balance due shall be paid by Tenant to Management Agent (as agent for Landlord), or the overpayment shall be paid by Landlord to Tenant, without interest, within thirty (30) days after the date of the statement. Tenant may, upon reasonable notice, examine Project records at the office of Management Agent during ordinary business hours to verify the statement for the immediately preceding year, but such examination shall not excuse the timely payment of Tenant's Proportionate Share of Common Area Operating Costs.

C. The Tenant Committee, in conjunction with the Management Agent, shall prepare an annual budget for operation of, and any contemplated repairs and replacements of, the Common Areas, which shall be made available for the review and reasonable approval of Landlord. As and when capital expenditures are required, the Tenant Committee, in conjunction with the Management Agent, shall prepare a scope of work and budget therefor, and shall submit same to Landlord for approval, which shall not be unreasonably withheld. Until the New Rent Commencement Date, Tenant, in conjunction with the other tenants of the Project, shall continue to be responsible for and pay operating costs of the Project in the same manner as has been the case before the date of this Lease, subject to adjustment for any changes being implemented currently in tenants' respective Proportionate Shares.

## ***11. Use of Premises.***

A. Tenant shall use the Premises exclusively for conduct of the business set forth in Section 1.1.

B. Tenant shall keep the Premises open for business at least forty-five (45) hours per week, excluding any closures caused by fire, natural disasters, or other casualties, required by the Landlord's Work or by repair or renovation work by Tenant, or by dredging activity required by the terms of this Lease.

C. Tenant shall comply with all laws, ordinances, rules and regulations pertaining to the use and occupancy of the Premises, including the Americans with Disabilities Act



and other laws relating to the use of the public areas of the Premises by individuals with disabilities. Tenant shall not permit any act upon the Premises which (i) disturbs tenants of the Project or injures the reputation of the Project, (ii) subjects Landlord to liability for injury or damage to persons or property, or (iii) invalidates, or increases the cost of, any insurance policy pertaining to the Project. Tenant shall pay to Landlord the amount of any increase in Landlord's insurance costs caused by Tenant's activities.

## ***12. Signs.***

A. Tenant, at its expense, shall install exterior signage on the Premises ("Tenant's Signage"), which shall be subject to Landlord's approval and shall comply with all applicable codes, regulations and laws. Any changes to Tenant's Signage shall be subject to Landlord's approval, which shall not be unreasonably withheld.

B. Tenant shall maintain Tenant's Signage in good repair, and shall replace it when needed so that Tenant's Signage is in good condition at all times. If Tenant fails promptly to perform its obligations under this Section, Landlord may perform the repairs, replacements or removal, at Tenant's expense, and Tenant shall reimburse Landlord for the cost thereof promptly upon demand.

## ***13. Alterations.***

Tenant may alter the Barges provided such alterations shall not harm the Project and must comply with all applicable Federal and local building codes, regulations and laws, and provided that any alteration that includes an expansion of the horizontal space covered by such Barges, or the amount or location of the frontage currently occupied by such Barges for purposes of effecting sales to the public, shall require the written consent of Landlord. Provisions identical to the foregoing provisions of this Section 13 shall appear in all Leases of Barge Space within the Project.

## ***14. Fixtures and Equipment.***

All of Tenant's equipment, furniture, and moveable trade fixtures shall remain Tenant's property, and Tenant shall have sole responsibility therefor. Tenant may remove them at any time prior to expiration of the Term, provided that Tenant is not then in default under this Lease and provided further that Tenant repairs any damage to the Premises occasioned by removal.

## ***15. Tenant's Maintenance; Condition of the Premises.***



A. Tenant shall, at all times throughout the Term, at its cost, put, keep and maintain the Barges and Premises and every improvement located thereon in good order, condition and repair, except for reasonable wear and tear, condemnation and casualty loss. As used herein, "repairs" shall include replacements, restorations and/or renewals, when necessary or appropriate to keep the Barges and Premises in good order, condition and repair at all times throughout the Term. All repairs shall be made in a first class workmanlike manner. In addition, Tenant shall keep and maintain the Barges and Premises in a clean and orderly condition, free of dirt, rubbish, snow and ice. The necessity for and adequacy of repairs to the Barges and Premises shall be measured by the standard that is appropriate for a first class wharf and fish market.

B. Tenant shall deposit its refuse in the compactor, dumpster or other trash receptacle supplied by Landlord for Tenant's use as of the Commencement Date. Throughout the Term, the Tenant Committee shall provide compactors or dumpsters and/or trash collection service, the cost of which shall be included among the Common Area Costs. Tenant shall not use the compactors, dumpsters or trash collection service for discarding "Hazardous Materials" (as such term is defined below). Tenant, at its expense, shall dispose of its Hazardous Materials in accordance with applicable federal, state and local laws and regulations. "Hazardous Materials" means all substances declared to be hazardous, toxic or infectious under any applicable law or regulation.

C. Tenant shall cooperate with the other tenants of the Project, if given reasonable notice, in arranging for movement of the Barges as necessary to accommodate the maintenance, repair, and replacement of Barges and dredging of submerged areas within the Project. All dredging activities shall be carried out and concluded as quickly as is commercially reasonable in the circumstances. Provisions identical to the foregoing provisions of this Section 15.C shall appear in all leases of Barge Space within the Project. It is the intent of the parties that all tenants of the Project shall have the rights of third-party beneficiaries with respect to the provisions of this Section 15.C.

## ***16. Landlord's Right of Entry.***

Landlord and its agents may enter the Premises at reasonable hours to inspect or exhibit them; to place and maintain a "FOR RENT" sign thereon at any time within six (6) months prior to termination of the Term; or to enter them after Tenant defaults hereunder, and alter, repair or otherwise prepare the Premises for reoccupancy.

## ***17. Tenant's Indemnity; Insurance.***

A. Landlord shall not be liable for, and Tenant shall protect, defend, indemnify and hold Landlord harmless from and against, any liability or claim (including attorneys' fees) in connection with any injury or loss to any person or property (i) arising within the Premises, unless caused by the gross negligence or willful misconduct of Landlord, or (ii) arising out of any act or omission of Tenant or its agents or contractors.

B. Throughout the Term, Tenant shall maintain, with a company licensed to sell insurance in the District of Columbia, (i) commercial general liability insurance (the "Liability



Policy”) with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate combined for all locations in which Tenant operates its business (Nos. 7, 8, 9, 16, 17, 18, and 19), in a form providing occurrence basis coverage; and (ii) an all-risk policy of insurance covering the Barges and all trade fixtures, equipment and personal property kept at the Premises, in an amount not less than the full replacement value of said items. All such insurance policies shall (i) be written as primary coverage and not contributing with or in excess of any coverage that Landlord may carry; (ii) contain an express waiver of any right of subrogation by the insurer against Landlord; and (iii) provide that the insurance policy may not be cancelled unless Landlord has been given thirty (30) days’ prior written notice. Notwithstanding the foregoing, the Liability Policy shall be increased at the end of each period of five (5) Lease Years during the Term by an amount equal to the increase in the Consumer Price Index during such period. In addition, Tenant’s Liability Policy shall (i) list as additional insured Landlord and any other parties with an insurable interest in the Premises designated by Landlord, and (ii) be endorsed to require the insurance carrier to notify Landlord in writing of any losses charged against the policy. Before the Term commences, and before any such insurance policy expires, Tenant shall deliver to Landlord a certificate of insurance for each policy or renewal thereof that Tenant is required to maintain under this Section. If Tenant fails to maintain any insurance required by this Section, Landlord may obtain such insurance, and any premium paid by Landlord shall be immediately payable by Tenant to Landlord as additional rent.

C. Neither party shall be liable to the other or to any insurer (by way of subrogation or otherwise) for any loss or damage, even though such loss or damage may have been occasioned by the negligence of such party, if such loss was covered by an insurance policy containing an endorsement to the effect that any such release by the insured shall not adversely affect the insured’s right to recover for such loss, and that the insurer waives its right of subrogation.

## **18. *[Intentionally Omitted].***

## **19. *Assignment and Subletting.***

A. Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or otherwise permit others to use all or any part of the Premises, whether voluntarily, by operation of law or otherwise (collectively, an “Assignment”), without the prior written consent of Landlord, which Landlord may withhold in its absolute discretion. However, Landlord shall not withhold its consent if such assignee, transferee, subtenant or occupant (collectively, the “Assignee”) is financially capable of satisfying its obligations under this Lease, and shall have previously and successfully sold seafood at retail. Any attempted Assignment shall be void and confer no rights upon any third party. If an Assignment is effected in violation of the terms of this Lease, Landlord may collect rent from the Assignee and apply the net amount collected to the rent herein reserved, but no such Assignment or collection shall be deemed a waiver of this covenant, acceptance of the Assignee as tenant, or release of Tenant hereunder. In addition, if Landlord consents to an Assignment, Tenant shall pay Landlord One Thousand and No/100 Dollars (\$1,000.00) (the “Assignment Fee”) as payment for legal fees and costs incurred in connection with the preparation of the documents to effectuate the Assignment. The Assignment Fee shall be paid to Landlord prior to the preparation of the Assignment documents. The following events shall also



constitute an Assignment: (a) if Tenant is a corporation, the transfer of more than fifty percent (50%) of the voting stock of Tenant, or (b) if Tenant is a partnership, the transfer of more than fifty percent (50%) of the partnership interests of Tenant or the transfer of any general partnership interest of Tenant. This clause shall not be interpreted to preclude an Assignment to siblings and direct descendants of individuals owning, as of the Commencement Date, a majority of the voting stock of Tenant, or a transfer to a new entity as a result of a reorganization that does not result in a change in beneficial ownership.

B. If Landlord approves an assignment or subletting, Tenant shall pay to Landlord, as and when received by Tenant, an amount equal to 50% of the difference between (i) all sums paid to Tenant by or on behalf of such assignee or subtenant under the assignment or sublease, and (ii) the Rent paid by Tenant under this Lease and attributable to the portion of the Premises assigned or sublet.

C. In addition to the foregoing, if Tenant notifies Landlord that Tenant desires to assign a portion of this Lease or sublet a portion of the Premises (the "Proposed Sublet Space"), Landlord shall have the option to regain possession of the Proposed Sublet Space and amend this Lease to exclude the Proposed Sublet Space and effect a proportionate reduction in Minimum Rent and Tenant's Proportionate Share based upon the relative size of the Premises as so reduced. All other terms and conditions of this Lease shall remain in effect and applicable to the Premises as reduced, and Tenant shall execute documents to effect such amendment at Landlord's request. If Landlord does not exercise its right to regain possession of the Proposed Sublet Space, Tenant may seek an acceptable assignee or subtenant for a sublease term no longer than that set forth in Tenant's notice. If Tenant does not find an assignee or subtenant acceptable to Landlord within 120 days from the date of Tenant's most recent notice, Tenant may not enter into any assignment or sublease without first submitting a new notice to Landlord and affording Landlord an opportunity to amend or terminate this Lease as set forth above.

## **20. *[Intentionally Omitted]*.**

## **21. *Tenant's Defaults.***

Tenant shall be in default under this Lease if Tenant (a) fails to pay any rent or other sum required hereunder within twelve (12) days after its due date; or (b) fails to maintain any insurance required hereunder; or (c) abandons the Premises or fails to conduct business therein for a period of fifteen (15) or more consecutive days, absent a casualty and then only after allowing a period of as much as six (6) months in which to replace the affected Barge, or (d) assigns this Lease or sublets all or any portion of the Premises in violation of Section 19; or (e) fails to open for business in the Premises within one (1) year after the New Rent Commencement Date; or (f) files for relief under the United States Bankruptcy Code (the "Bankruptcy Code") or under any other state or federal bankruptcy or insolvency law, or Tenant files an assignment for the benefit of creditors, or if an involuntary proceeding under the Bankruptcy Code or under any other federal or state bankruptcy or insolvency law is commenced against Tenant; or (g) defaults in any other obligation herein and such default is not remedied within thirty (30) days after written notice of the default from Landlord; provided, however, that Tenant's failure to perform any non-monetary obligation set forth in this Lease on its part to be performed three (3) or more times in any twelve



(12) month period shall effect an immediate default, and Landlord thereupon may exercise any remedy set forth in Section 22 below without affording Tenant any opportunity to cure such default.

## **22. *Landlord's Remedies in Case of Tenant's Default.***

A. At any time after Tenant's default under this Lease, Landlord may (i) terminate this Lease upon notice to Tenant or by any available judicial process; and/or (ii) re-enter the Premises (with or without terminating the Lease), remove all property, which may include towing the Barge or Barges and storing same, at Tenant's expense without being deemed guilty of trespass and without liability for any loss or damage, and/or relet or otherwise deal with the Premises in any manner which Landlord determines in its sole discretion.

B. Should Landlord terminate this Lease after Tenant's default, Landlord may recover from Tenant all costs (including attorneys' fees) and other damages incurred by Landlord as a result of such default, and, without limiting the generality of the foregoing, (i) all rent to the time of such termination shall be paid by Tenant immediately, together with all expenses (including attorneys' fees) of retaking possession of the Premises, as shall the cost of preparing the Premises for reletting and the costs (including brokerage fees and advertising) of actually reletting same; (ii) Landlord may take all steps, including repair or alteration of the Premises, to prepare the Premises for reletting; (iii) Landlord may relet all or any part of the Premises for such term, at such rental, and upon such conditions as Landlord deems advisable; and (iv) Tenant shall pay to Landlord, as liquidated damages, for each month during the balance of the Term (but for termination of the Lease by Landlord), any deficiency between (a) all rent and additional rent herein reserved for each such month, and (b) the net rent for each such month collected upon any reletting. Alternatively, if Landlord terminates this Lease at any time after Tenant's default, Landlord may elect, in addition to the damages described in clauses (i) - (iii) of the preceding sentence, and the damages due under clause (iv) up to the time of said election, to recover from Tenant the value at the time of said election of the excess, if any, of all rent and additional rent due under this Lease for the remainder of the Term (but for termination of the Lease by Landlord) over the then reasonable rental value of the Premises for that period.

C. If Landlord elects not to terminate this Lease after Tenant's default, Tenant shall continue to be liable for all rent and additional rent due hereunder, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.

D. If Tenant abandons the Premises, Landlord may re-enter the Premises without judicial process and relet them, and such re-entry or reletting shall not terminate this Lease, and Tenant shall continue to be liable for all rent and additional rent due under the Lease, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.



**23. *Landlord's Right to Cure Tenant's Default.***

A. If Tenant shall default in the keeping, observance or performance of any provision or obligation of this Lease, Landlord, without thereby waiving such default, may perform the same for the account and at the expense of Tenant, without notice in a case of emergency and in any other case if such default continues after thirty (30) days from the date of the giving by Landlord to Tenant a notice of intention so to do. Bills for any reasonable expense incurred by Landlord in connection with any such performance by Landlord for the account of Tenant, and bills for all reasonable costs, expenses and disbursements of every kind and nature whatsoever, including attorneys' fees, involved in collecting or endeavoring to collect any sums due hereunder or enforcing or endeavoring to enforce any rights against Tenant, under or in connection with this Lease, or pursuant to law, including any such reasonable cost, expense and disbursement involved in instituting and prosecuting any action or proceeding (including any summary dispossession proceeding), may be sent by Landlord to be due and payable in accordance with the terms of said bills, and if not paid when due, the amounts thereof shall immediately become due and payable as Additional Rent under this Lease.

B. No entry in accordance with this Lease by Landlord or its employees, agents or representatives, or by any other party at the direction of Landlord, shall ever be construed or interpreted as an ouster of Tenant from possession or as a constructive eviction or to alter, diminish or abate Landlord's rights under this Lease.

**24. *[Intentionally Omitted].***

**25. *Holding Over.***

If Tenant lawfully remains in possession of the Premises after the expiration of the Term, Tenant shall be a tenant from month to month, upon all the terms hereof which are not inconsistent with such tenancy; provided, however, that Tenant covenants to pay to Landlord as Minimum Rent during such tenancy one hundred fifty percent (150%) of the Minimum Rent in effect immediately before expiration of the Term, in addition to all other rent and other charges due hereunder. Such tenancy may be terminated by Landlord or Tenant upon thirty (30) days notice.

**26. *Surrender of Premises.***

Upon termination of the Term for any reason, Tenant shall remove the Barges and any other property of Tenant, and surrender the Premises to Landlord in the same condition as they were in on the Commencement Date. If Tenant fails to remove the Barges or other property, it shall become Landlord's property or, at Landlord's option, shall be removed and stored at Tenant's expense, without Landlord being liable for trespass, conversion or negligence in respect of such property. If Tenant fails to surrender the Premises in the condition required by this Section, Landlord may restore the Premises to their condition as of the Commencement Date and Tenant shall reimburse Landlord for the cost of the restoration.



## **27. *Limitation on Landlord's Liability.***

A. Notwithstanding anything to the contrary in this Lease, (i) Landlord shall not be liable to Tenant for any loss or damage to property which is either covered by insurance or which Tenant is required to insure under this Lease, and (ii) any liability of Landlord to Tenant under this Lease shall be limited to direct damages and shall not include indirect, consequential, incidental, or punitive damages, including any liability to Tenant for lost profits or interruption of business. Tenant shall look to its property damage or business interruption insurance policies, and not to Landlord, its agents or employees for any loss incurred as a result of damage to its property or interruption of its business.

B. Except for damages resulting from the gross negligence or willful misconduct of Landlord, Landlord shall not be liable to Tenant, its employees, agents or other invitees for any damage, compensation, claim or expense arising from (i) damage or loss to the property of Tenant or others located anywhere in the Project), or (ii) death, accident or injury to persons occurring anywhere in the Project). Landlord shall have no liability to Tenant for any delay in completing Landlord's Work.

## **28. *Notices.***

All notices and other communications hereunder shall be in writing, and shall be hand delivered, delivered by a recognized overnight delivery service (e.g., Federal Express), or sent by certified or registered U.S. mail, postage prepaid, to Landlord or Tenant, as the case may be, at the address set forth below. All notices hereunder shall also be delivered to counsel for the party to receive such notice, at the address set forth below, in order to effectuate good and valid notice hereunder.

If to Landlord:

Director, District of Columbia Department of Housing  
and Community Development  
801 North Capitol Street, N.E.  
8<sup>th</sup> Floor  
Washington, D.C. 20002

With a required copy to:

Andrew Ridley, Esquire  
Assistant Corporation Counsel  
801 North Capitol Street, N.E.  
Room 734  
Washington, D.C. 20002



If to Tenant:

THE WHARF, INC.  
t/a The Wharf  
1100 Maine Avenue, S.W.  
Washington, D.C. 20024  
Attn: Billy White

With a required copy to:

Richard L. Aguglia, Esquire  
Hunton & Williams  
1900 K Street, N.W., Suite 1200  
Washington, D.C. 20006

Either party may designate in writing a change in its notice address, which shall be effective ten (10) days following receipt of such writing by the other party. Notices which are delivered in person shall be deemed given when received. Notices which are mailed shall be deemed given on the date they are mailed. Notices which are sent by overnight delivery service shall be deemed given on the date they are deposited with the delivery service.

**29. *Quiet Enjoyment.***

As long as it is not in default under this Lease, Tenant may peaceably and quietly enjoy the Premises for the Term without hindrance, ejection or molestation by Landlord or anyone claiming or acting by or through Landlord.

**30. *Security Deposit.***

Tenant has deposited with Landlord the sum set forth in Section 1.L (the "Security Deposit") as security for performance of Tenant's obligations hereunder. The Security Deposit shall be returned to Tenant, with interest, within forty-five (45) days after the expiration of the Term, provided that Tenant has discharged all such obligations. Landlord may apply the Security Deposit to cure any default of Tenant, and Tenant shall deposit with Landlord the amount applied within thirty (30) days after written demand.

**31. *[Intentionally Omitted].***



**32. Rules and Regulations.**

Tenant will comply with the Rules and Regulations set forth on Exhibit E, and with any other reasonable rules and regulations as Landlord adopts for the Premises. Such rules and regulations shall not unreasonably interfere with the conduct of Tenant's business. In particular instances, where in Landlord's reasonable judgment such rules and regulations may be infeasible, Landlord shall have the right to modify or waive such rules and regulations as they apply to particular other tenants. Any failure by Tenant to comply with any rule or regulation established pursuant to this Lease shall be a default under this Lease subject to Section 21. Landlord shall exercise its rights in respect of the promulgation, revision, and enforcement of Rules and Regulations in a non-discriminatory manner.

**33. Waiver of Jury Trial.**

Landlord and Tenant hereby waive all right to trial by jury in any claim, action, proceeding or counterclaim by either Landlord or Tenant against the other pertaining to any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use of the Premises.

**34. Covenant Against Contingent Fees**

Tenant warrants that it has not employed any person to solicit or secure this Lease upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give Landlord the right to terminate this Lease, or, in its discretion, to add to the rental or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by Tenant upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by Tenant for the purposes of securing business, or to Tenant's attorneys' fees. Landlord shall pay any and all commissions and other compensation due to any broker, finder or other person with whom Landlord has dealt with regard to this Lease.

**35. Facilities Nondiscrimination.**

A. As used in this section, the term "facility" means the entire Premises.

B. Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, sexual orientation, physical disability, marital status or national origin, in furnishing, or by refusing to furnish, to any person or persons the use of any facility, including any and all service, privileges, accommodations and activities provided thereby.

C. It is agreed that Tenant's noncompliance with the provisions of this Article, as determined by a final, unappealable judgment by a court of competent jurisdiction, shall constitute material breach of this lease Agreement. In the event of such a determination of noncompliance, and Tenant's failure to cure such non-compliance within ten (10) days after such





determination becomes final, Landlord may take appropriate action to enforce compliance, and may pursue remedies as may be provided by law or in equity.

D. Tenant agrees to include, or to require the inclusion of, the foregoing provisions of this section (with terms "The District" and "Tenant" appropriately modified) in every agreement or concession pursuant to which any person other than Tenant operates or has the right to operate the facility. Tenant also agrees that it will also comply with any final, unappealable court order directing Tenant to take any action with respect to any such agreement in order to enforce the provisions of this section, including but not limited to termination of the agreement or concession in question; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a person as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **36. *Nondiscrimination in Employment.***

A. In connection with the conduct of business on the Premises, Tenant agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Tenant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex orientation, physical disability, marital status or national origin. Such action shall include, but not limited to the following: employment, upgrading demotion or transfer, recruitment or recruitment advertising, layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, as required by applicable law. Tenant agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by Landlord setting forth the provisions of this nondiscrimination clause.

B. Tenant will, in all solicitations for advertisements for employees placed by or on behalf of the Tenant, state that qualified applicants will receive consideration for employment without regard to race, creed, color, sexual orientation, physical disability, marital status or national origin.

C. Tenant will send to each union or representative of workers with which it has collective bargaining agreement(s) or other contracts of understandings a notice to be provided by Landlord in advising the said labor union or worker's representative of Tenant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. Tenant will permit Landlord access to their books, records, and accounts, or their agents, for purposes of investigation to ascertain compliance with such rules, regulations and orders, as provided by applicable law.

E. In the event of any final, unappealable determination by any court or administrative body, of noncompliance of Tenant with the nondiscrimination clauses of this Lease Agreement, and Tenant's failure to cure such discrimination within ten (10) days after such determination becomes final, this Lease Agreement may be canceled in whole or in part and



Tenant may be declared ineligible for further leases with the District of Columbia.

F. Tenant further agrees to insert the foregoing provisions of nondiscrimination in employment in all subcontracts hereunder, unless exempted by rules and regulations or orders of Landlord so that such provisions will be binding and regulations or orders of Landlord so that such provisions will be binding upon each subcontractor or vendor. Tenant will take such action with respect to any subcontract as required by any final, unappealable order of a court or governmental agency of competent jurisdiction in order to enforce such provisions, including sanctions for noncompliance; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a subcontractor or vendor as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **37. *Environment Protection.***

A. Tenant shall not pollute the air, ground or water in, on or under the premises. Tenant shall comply promptly with any laws, regulations, conditions or instructions applicable to the Tenant's business(es) at the Premises, if and when issued by the Environmental Protection Agency, or any Federal, state, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous material within the Premises in violation of applicable laws or codes is specifically prohibited. Tenant shall require the owners/operators of boats moored at the Premises, including rental boats, to seal all sanitation facilities or such boats against any discharge into the Washington Channel. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Tenant as reasonably appropriate. Tenant shall not discharge waste or effluent from the Premises, including Barges, in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

B. If damage to the environment or natural resources is proximately caused by Tenant's activities at the premises, Tenant shall be liable to restore the damaged resources.

### **38. *Miscellaneous.***

A. **Entire Agreement; Joint and Several Liability; Successors and Assigns.** This Lease constitutes the entire agreement between the parties concerning the matters set forth herein. If Tenant shall include more than one person, the obligations hereunder of all such persons shall be joint and several. This Lease shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs and legal representatives.

B. **Interpretation.** The named Exhibits are part of this Lease. Section and subsection headings are for convenience only, and not for use in interpreting this Lease. If a court finds any provision of this Lease unenforceable, all other provisions remain enforceable.

C. **Costs; Include; Shall; May.** Except as expressly provided otherwise in this Lease, the party obligated or permitted to perform an obligation is also obligated, as between Landlord and Tenant, to pay the cost of performance. "Include," "includes," and "including" mean



considered as part of a larger group, and not limited to the items recited. "Shall" means is obligated to. "May" means "is permitted to."

D. **Waiver.** No provision of this Lease is waived by Landlord or Tenant unless waived by them in writing. Landlord's acceptance of rent is not a waiver of any default of Tenant, regardless of Landlord's knowledge of a default when it accepts the rent. No waiver by Landlord or Tenant of any default is a waiver of any other default of the same or any other provision of this Lease.

E. **Rule Against Perpetuities.** Notwithstanding any provision in this Lease to the contrary, if the Lease Term has not commenced within three (3) years after the date of this Lease, this Lease shall automatically terminate on the third (3rd) anniversary of the date hereof. The sole purpose of this provision is to avoid any possible interpretation that this Lease violates the Rule Against Perpetuities or other rule of law against restraints on alienation.

F. **Remedies.** The rights and remedies mentioned in this Lease are in addition to, and do not deprive a party of any other rights at law or in equity.

G. **No Option.** The submission of this Lease for examination does not constitute a reservation of or option for the Premises, and this Lease becomes effective only upon execution and delivery of it by Landlord.

H. **Additional Rent.** All sums owed by Tenant to Landlord in connection with this Lease which are not otherwise designated as rent shall be deemed to be additional rent.

I. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the District of Columbia.

A handwritten signature in black ink, appearing to be "B. White", is located in the bottom right corner of the page.



**J. Waiver and Release of Claims.** In consideration of the execution and delivery of this Lease by the parties hereto, each of such parties hereto (each, a "Releasing Party") hereby unconditionally releases, remises, acquits, and forever discharges the other party hereto (at such time as such other party shall have executed and delivered this Lease), as well as each of the other tenants of the Project (at such time as each such tenant shall have executed and delivered a Lease containing waiver and release provisions identical to the provisions of this Section 38.J, and provided such tenant shall not have instituted litigation against such Releasing Party after the date hereof and before the date of such Lease) (collectively, the "Released Parties"), from any and all claims, demands, liabilities, damages, losses, costs, expenses, causes of action, covenants, contracts, torts, controversies, agreements, promises, representations, breaches of contract or of obligations to perform, and any other type of conduct or misconduct, whether negligent, intentional or otherwise, whether at law or in equity, whether matured or unmatured, and whether known or unknown, that the Releasing Party, or any person or entity claiming by, through or under the Releasing Party, ever had, now has, or hereafter may have, against any of the Released Parties at any time from the beginning of the world to the date hereof related to, arising out of, or in any manner connected with: (1) the Project, the operations of the businesses within the Project, or the conduct of any of the Released Parties that relates in any manner to the Project; or (2) this Lease or other lease agreements entered into at any time before the date hereof or simultaneously herewith relating to the Project (collectively, the "Project Leases"), the procurement or negotiation of any of the Project Leases or the terms thereof, or the performance or non-performance by any party under any of such Project Leases.

[Signatures commence on following page]





IN WITNESS WHEREOF, the District of Columbia has caused this Lease to be executed in its corporate name by Anthony Williams, its Mayor, and attested by Beverly Rivers, its Secretary of D.C., and its seal to be hereunto affixed and does hereby constitute and appoint Anthony Williams its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

**LANDLORD:**

WITNESS:

**THE DISTRICT OF COLUMBIA, as agent for  
THE UNITED STATES OF AMERICA**

Beverly A. Rivers

By Anthony A. Williams  
Name: Anthony A. Williams  
Title: Mayor of the District of Columbia

Approved for Legal Sufficiency:

Andrew Paul Ridley  
Name: Andrew Paul Ridley  
Title: Assistant Corporation Counsel

Date: 2-21-01

IN WITNESS WHEREOF, THE WHARF, INC., has caused this Lease to be executed in its corporate name by Billy R. White, its President, and attested by Penny R. White, its Secretary, and its seal to be hereunto affixed and does hereby constitute and appoint Billy R. White its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

**TENANT:**

ATTEST:

**THE WHARF, INC., a District of Columbia  
corporation**

Penny R. White

By Billy R. White  
Name: Billy RAY WHITE  
Title: President

(Seal)



DISTRICT OF COLUMBIA, SS.

I, R. Gladys Herring, a Notary Public in and for the District of Columbia, do hereby certify that Anthony Williams who is personally well known (or satisfactorily proven) to me to be the person named as Mayor of the District of Columbia, a municipal corporation, in the foregoing Lease, bearing date as of July 12, 2000, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of the District of Columbia, for the purposes therein contained.

WITNESS my hand and seal this 21<sup>st</sup> day of February, 2001.

Gladys W. Herring  
Notary Public

My commission expires: June 30, 2004

DISTRICT OF COLUMBIA, SS.

I, REGINA HOLMES, a Notary Public in and for the District of Columbia, do hereby certify that Billy Ray WHITE, who is personally well known (or satisfactorily proven) to me to be the person named as PRESIDENT of THE WHARF, INC., a District of Columbia corporation, in the foregoing Lease, bearing date as of July 12, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of THE WHARF, INC., for the purposes therein contained.

WITNESS my hand and seal this 2<sup>th</sup> day of July, 2000.

REGINA HOLMES  
Notary Public  
MY COMMISSION EXPIRES  
**SEPTEMBER 14, 2000**

My commission expires: \_\_\_\_\_

Billy Ray White



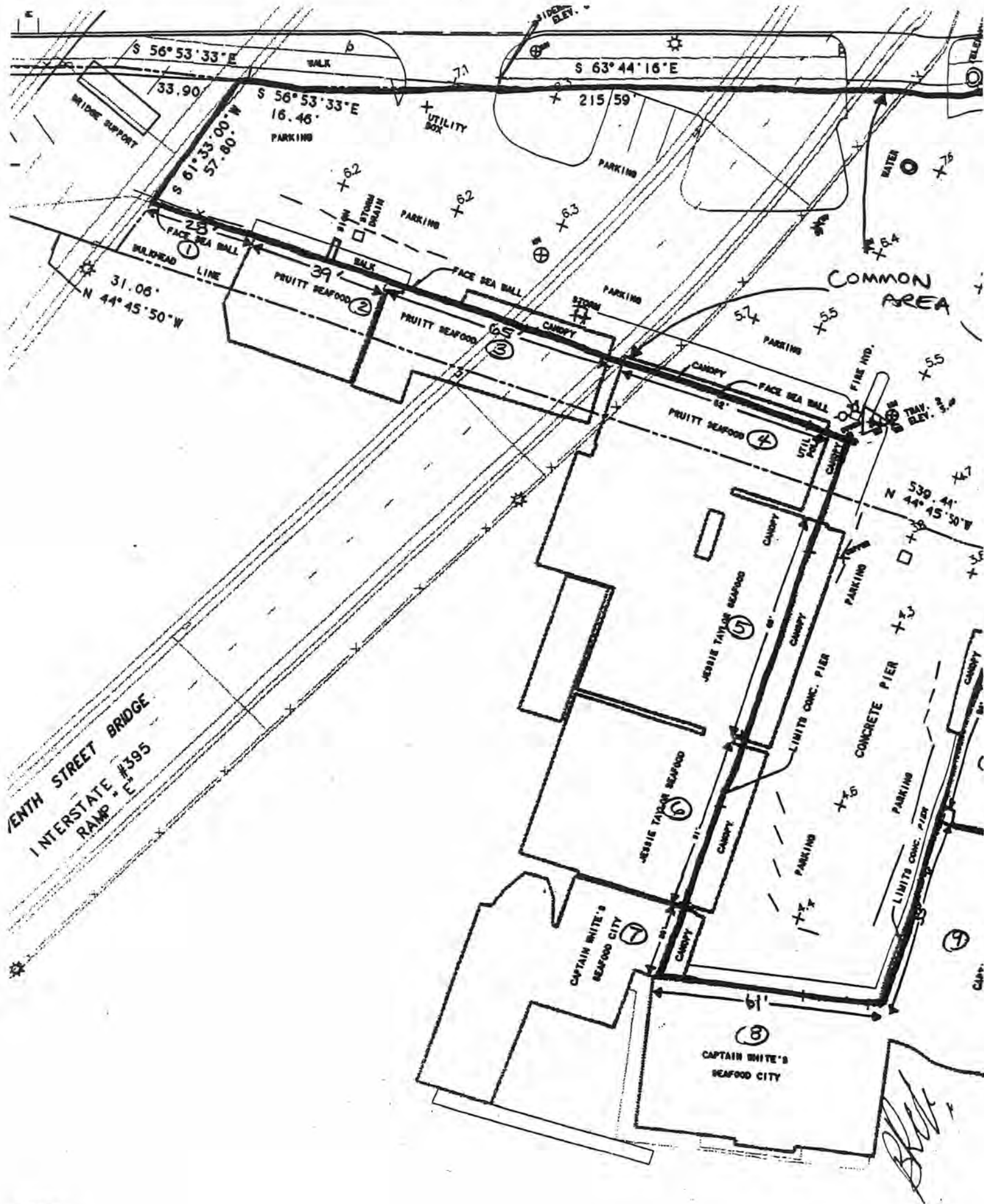
**EXHIBIT A**

[Outline of Premises -- to be initialed by the parties and attached upon completion of design and engineering for Landlord's Work.]

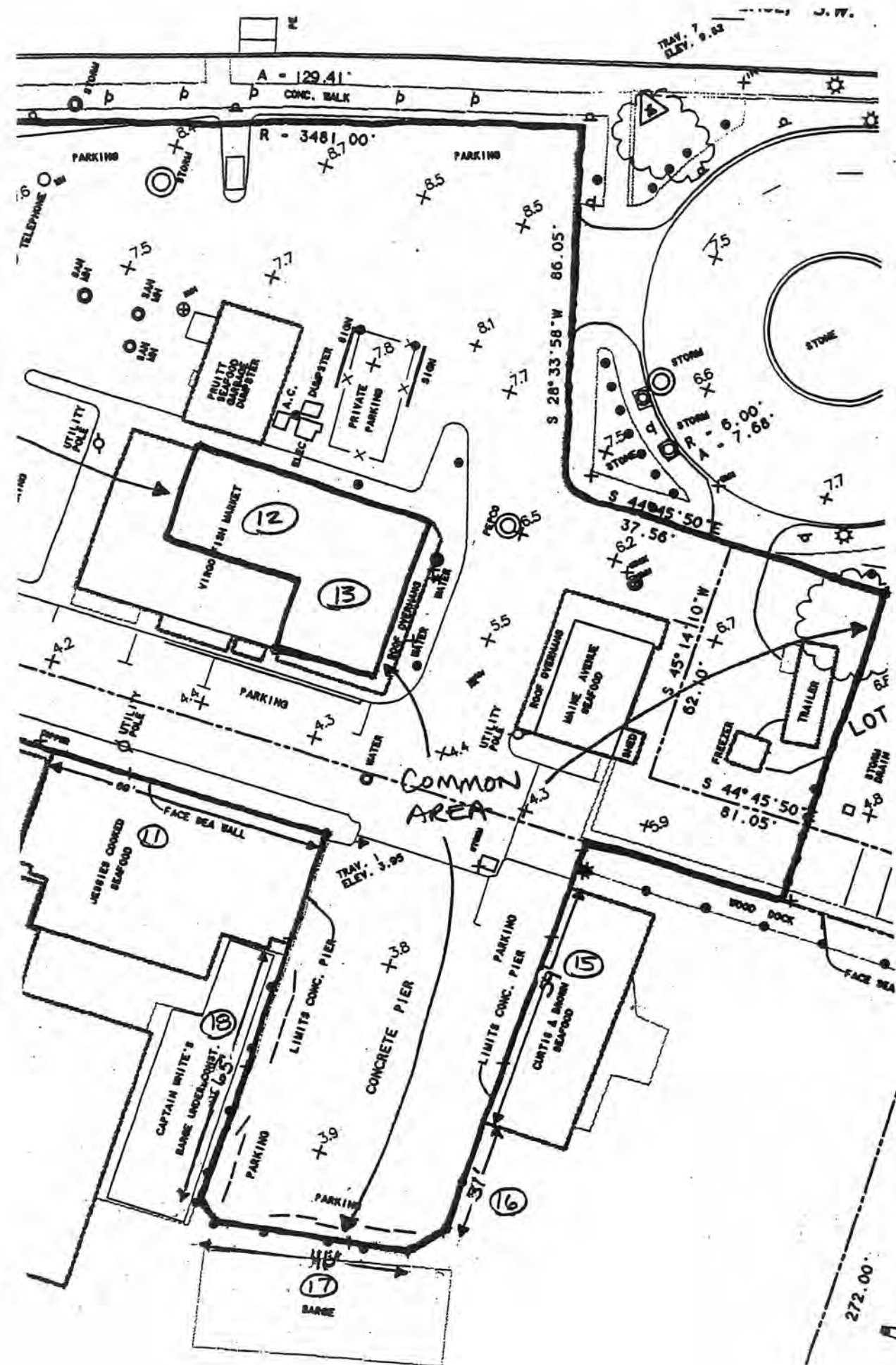




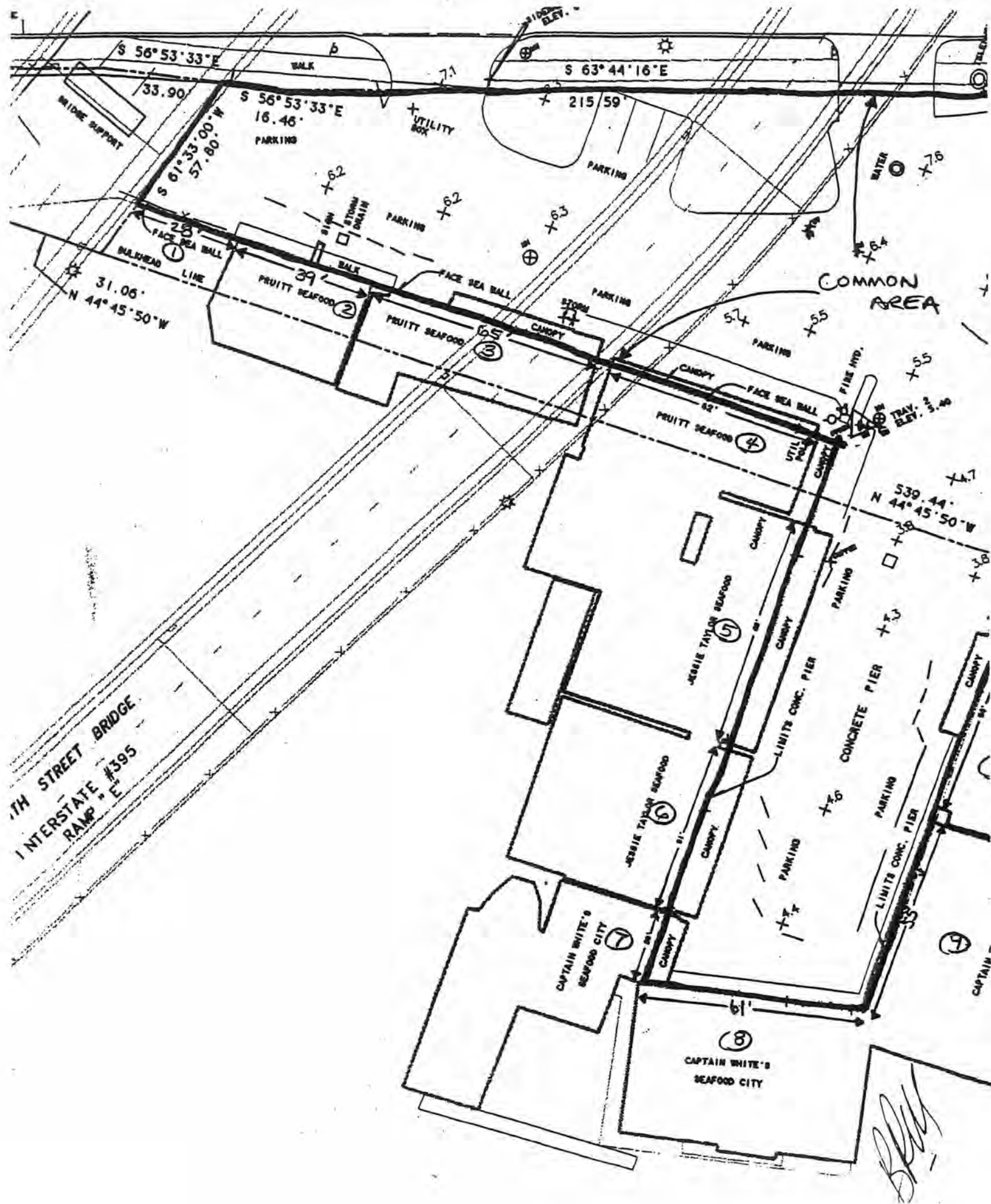










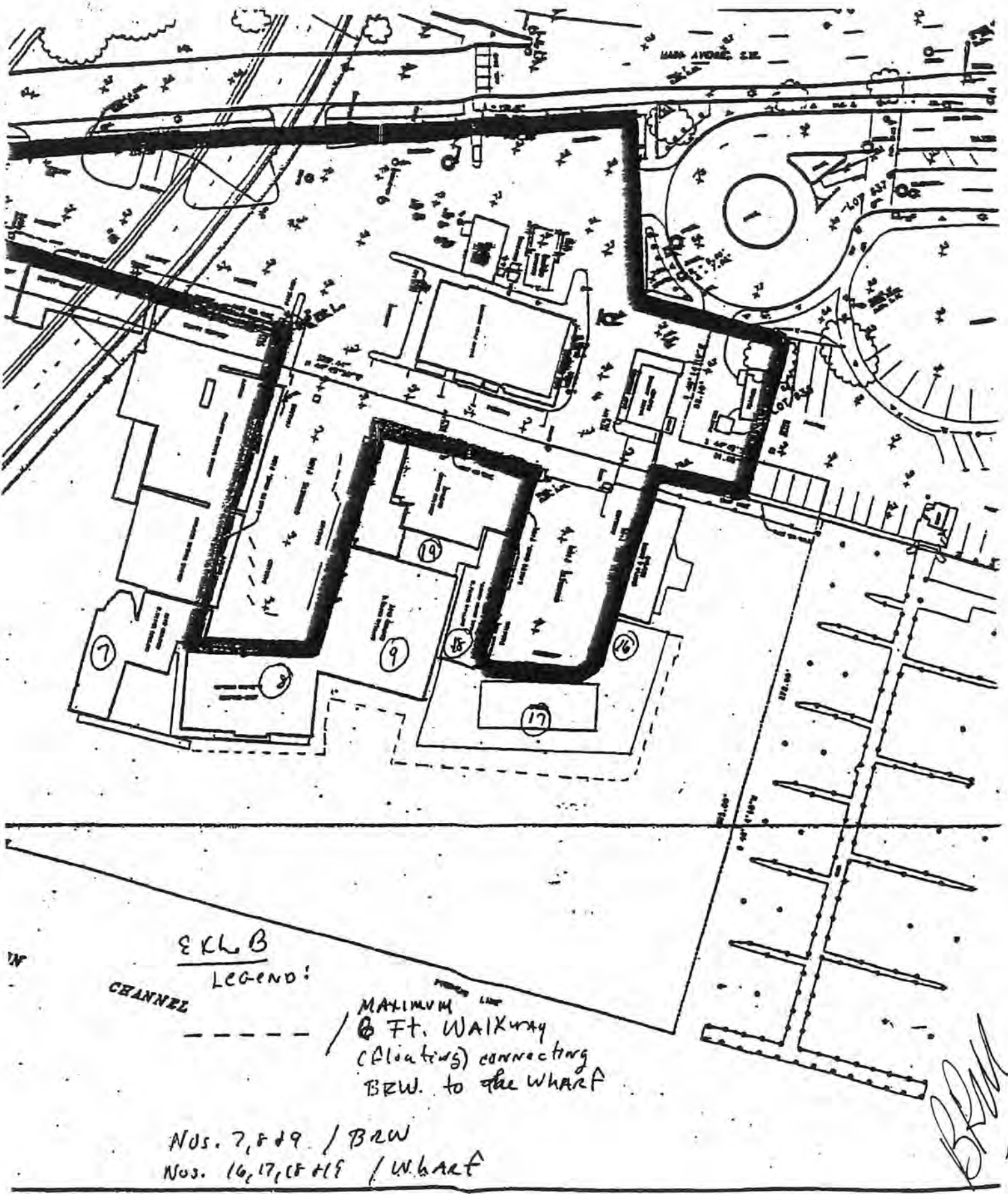




**EXHIBIT B**

[Site Plan of the Project]







Lease Space No. LS-16  
Frontage Linear Distance: 28.30  
Lessor: Washington, DC  
Page 1 of 1 pages

Fishwharf Lease Spaces  
Southwest Waterfront, Northside Washington Channel  
Washington, District of Columbia  
15 June 2000 / ghb

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**LEASE FRONTAGE DESCRIPTION**

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A certain waterfront linear frontage strip situate in Washington, District of Columbia, in square 473 and being located along the top and easterly face of the east concrete pier within of the area commonly known as the Washington Municipal Fish Wharf located on the Washington, District of Columbia southwest waterfront between Maine Avenue, S.W and the Washington Channel, said frontage space designated as LS-16 as shown on a property location plat attached as Exhibit B and made a part hereof, and more particularly bounded and described as follows:

Commencing at a copper in the division line between Lot 846 in Square 473 and Lot 850 in Square 473, said copper in the top of the curb; thence from said copper running,

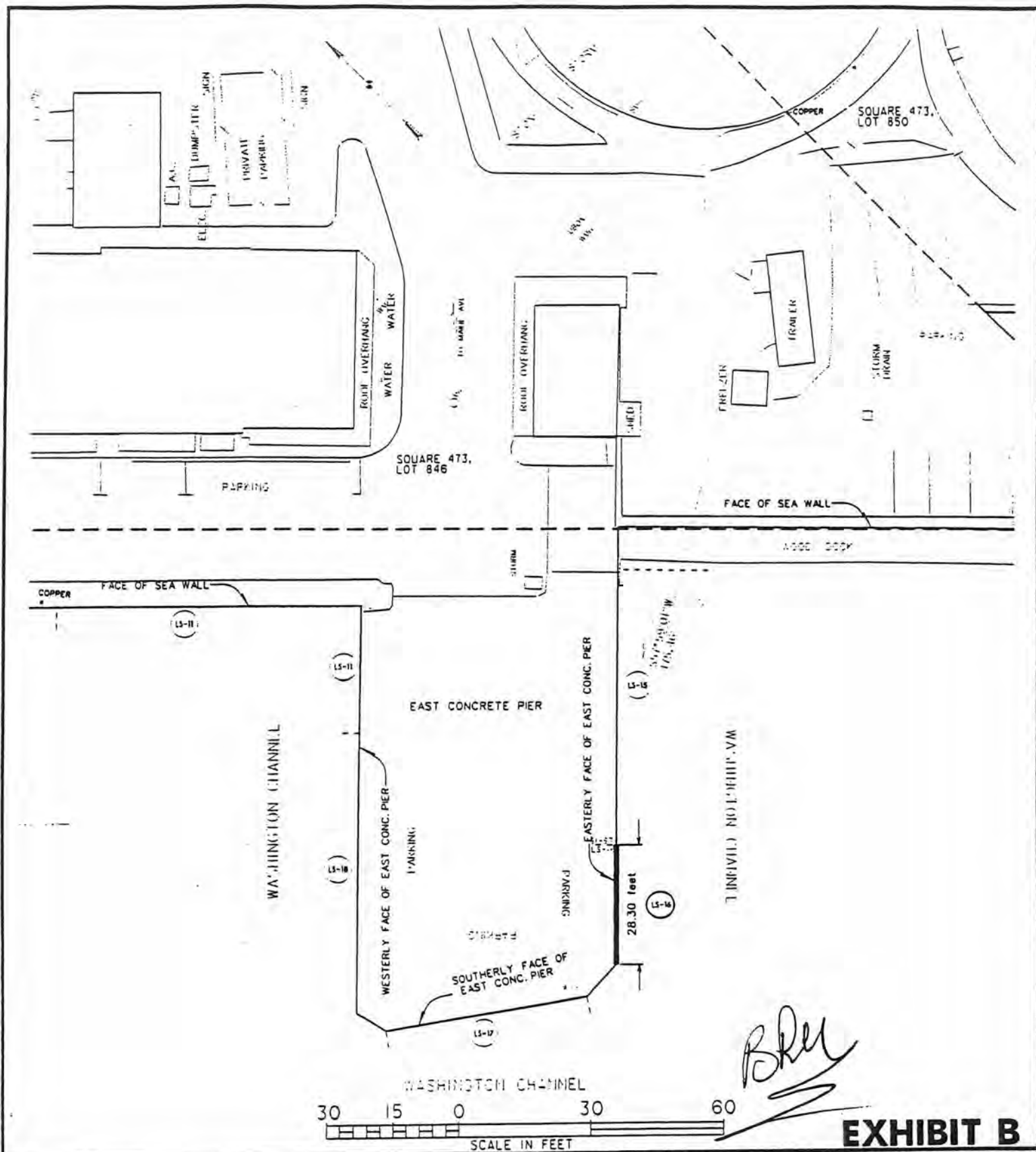
South 57°59'01" West 175.46 feet to a point on the top and easterly face of said east concrete pier and the True Point of Beginning of the herein described frontage strip; thence running along said top and westerly face of said concrete pier,

South 45°46'12" East 28.30 feet to the terminus point.

The bearings used herein are referenced to a plat of survey dated 26 August 1988 by the District of Columbia Government, Office of the Surveyor.

A handwritten signature in black ink, appearing to be 'BPH', with a long, sweeping horizontal line underneath it.



**EXHIBIT B****LEGEND**

- FRONTAGE SPACE
- TAX LOT BOUNDARY
- (LS-1) LEASE SPACE NUMBER

SQUARE / LOT NO. : 473 / NOT ACCESSED	PROPERTY LOCATION PLAT	DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT	
ESTATE TYPE: FRONTAGE LEASE		FISHWHARF SOUTHWEST WATERFRONT NORTHSIDE WASHINGTON CHANNEL WASHINGTON, D.C.	
LESSOR: WASHINGTON, D.C.			
LINEAR FRONTAGE FEET: 28.30	ACRES: 0.000		
JURISDICTION: WASHINGTON, DISTRICT OF COLUMBIA		SCALE: AS SHOWN DATE: 14 JUNE 2000	TRACT NO. : LS-16
DRAWN BY: GHB	CHECKED BY: SLM	CAD FILE: X	

US Army Corps  
of Engineers



Lease Space No. LS-17  
Frontage Linear Distance: 46.56  
Lessor: Washington, DC  
Page 1 of 1 pages

Fishwharf Lease Spaces  
Southwest Waterfront, Northside Washington Channel  
Washington, District of Columbia  
15 June 2000 / ghb

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**LEASE FRONTAGE DESCRIPTION**

---

A certain waterfront linear frontage strip situate in Washington, District of Columbia, in square 473 and being located along the top and southerly face of the east concrete pier within of the area commonly known as the Washington Municipal Fish Wharf located on the Washington, District of Columbia southwest waterfront between Maine Avenue, S.W and the Washington Channel, said frontage space designated as LS-17 as shown on a property location plat attached as Exhibit B and made a part hereof, and more particularly bounded and described as follows:

Commencing at a copper in the division line between Lot 846 in Square 473 and Lot 850 in Square 473, said copper in the top of the curb; thence from said copper running,

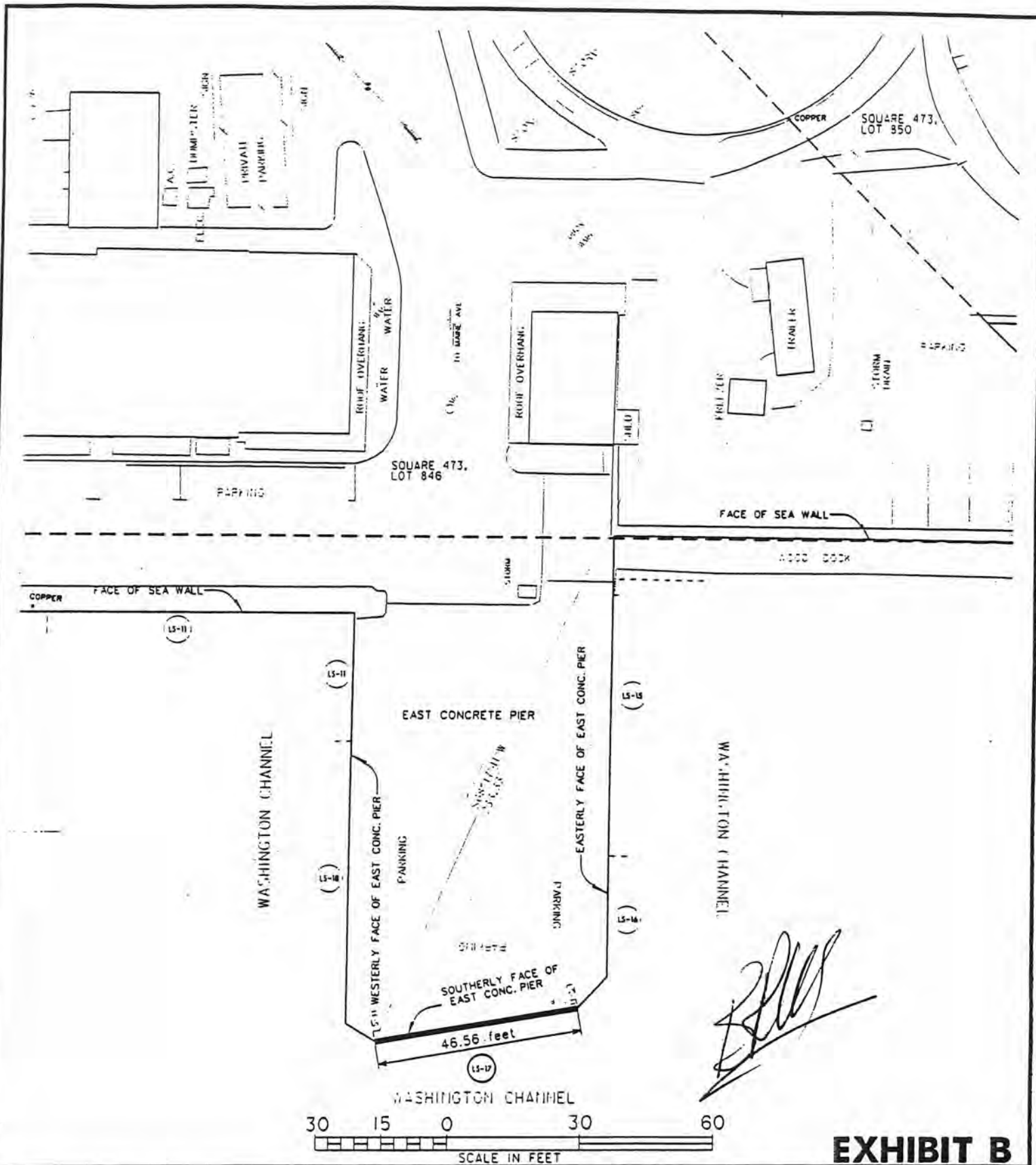
South 68°17'41" West 233.33 feet to a point on the top and southerly face of said east concrete pier and the True Point of Beginning of the herein described frontage strip: thence running along said top and westerly face of said concrete pier,

South 54°31'50" East 46.56 feet to the terminus point.

The bearings used herein are referenced to a plat of survey dated 26 August 1988 by the District of Columbia Government, Office of the Surveyor.

A handwritten signature in black ink, appearing to be "B. P. M." followed by a long, sweeping horizontal stroke.



**EXHIBIT B****LEGEND**

- FRONTAGE SPACE
- - - TAX LOT BOUNDARY
- (LS-1) LEASE SPACE NUMBER

SQUARE / LOT NO. : 473 / NOT ACCESSED	PROPERTY LOCATION PLAT	DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT	
ESTATE TYPE: FRONTAGE LEASE		FISHWHARF  SOUTHWEST WATERFRONT NORTHSIDE WASHINGTON CHANNEL  WASHINGTON, D.C.	
LESSOR: WASHINGTON, D.C.			
LINEAR FRONTAGE FEET: 46.56	ACRES: 0.000		
JURISDICTION: WASHINGTON, DISTRICT OF COLUMBIA		SCALE: AS SHOWN DATE: 14 JUNE 2011	TRACT NO. : LS-17
DRAWN BY: GHB	CHECKED BY: SLM	EAS FILE: X	



City of  
Engineers



Lease Space No. LS-18  
Frontage Linear Distance: 65.82  
Lessor: Washington, DC  
Page 1 of 1 pages

Fishwharf Lease Spaces  
Southwest Waterfront, Northside Washington Channel  
Washington, District of Columbia  
15 June 2000 / ghb

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**LEASE FRONTAGE DESCRIPTION**

---

A certain waterfront linear frontage strip situate in Washington, District of Columbia, in square 473 and being located along the top and westerly face of the east concrete pier within of the area commonly known as the Washington Municipal Fish Wharf located on the Washington, District of Columbia southwest waterfront between Maine Avenue, S.W and the Washington Channel, said frontage space designated as LS-18 as shown on a property location plat attached as Exhibit B and made a part hereof, and more particularly bounded and described as follows:

Commencing at a copper in the division line between Lot 846 in Square 473 and Lot 850 in Square 473, said copper in the top of the curb; thence from said copper running,

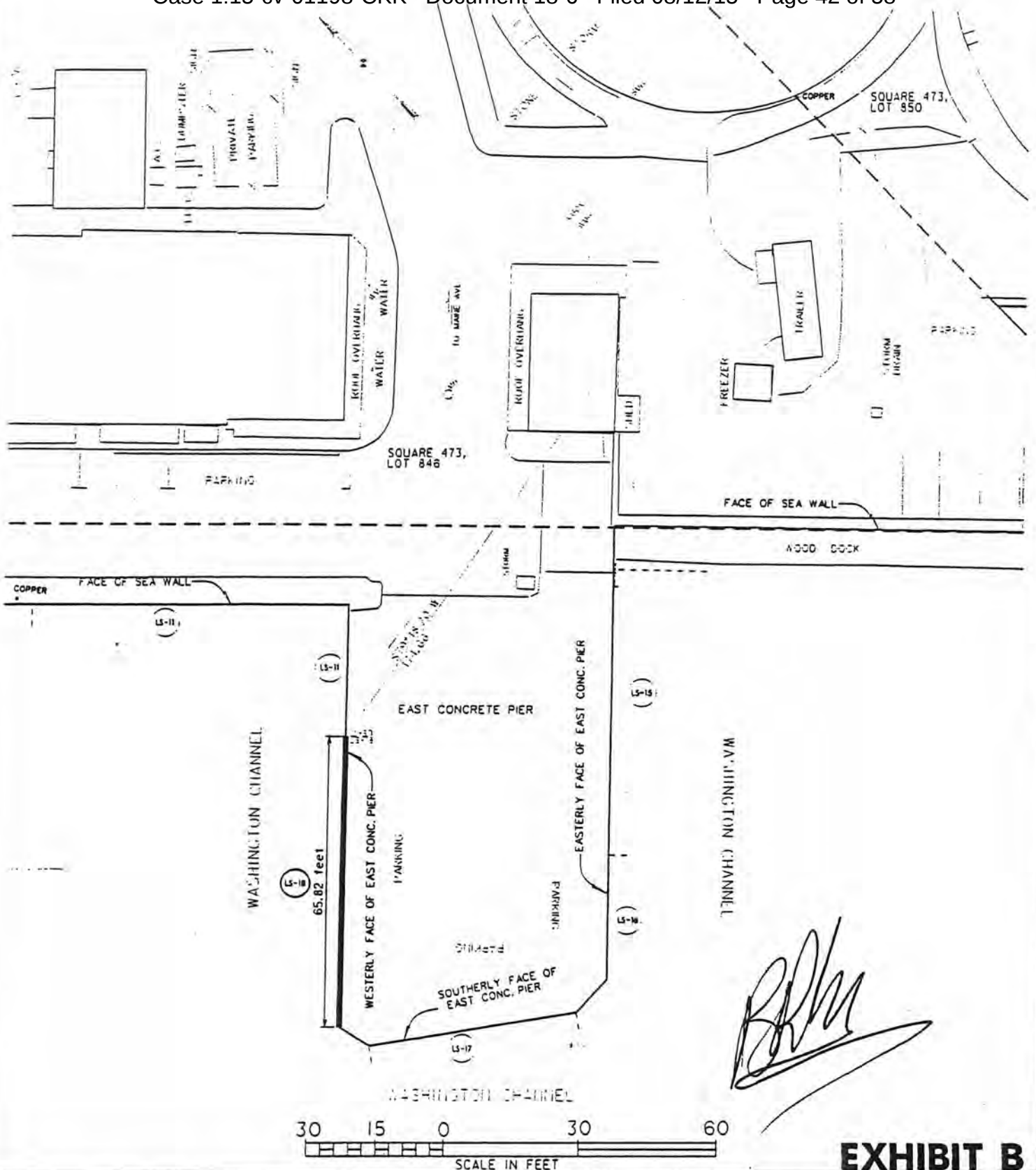
South 79°18'20" West 174.66 feet to a point on the top and westerly face of said east concrete pier and the True Point of Beginning of the herein described frontage strip: thence running along said top and westerly face of said concrete pier,

South 45°23'42" West 65.82 feet to the terminus point.

The bearings used herein are referenced to a plat of survey dated 26 August 1988 by the District of Columbia Government, Office of the Surveyor.

A handwritten signature in black ink, appearing to be 'B. H. H.', is located in the lower right quadrant of the page.



**EXHIBIT B****LEGEND**

- FRONTAGE SPACE  
 TAX LOT BOUNDARY  
 LEASE SPACE NUMBER



US Army Corps  
of Engineers

SQUARE / LOT NO. : 473 / NOT ACCESSED		PROPERTY LOCATION PLAT		DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT	
ESTATE TYPE: FRONTAGE LEASE		FISHWHARF SOUTHWEST WATERFRONT NORTHSIDE WASHINGTON CHANNEL WASHINGTON, D.C.			
LESSOR: WASHINGTON, D.C.					
LINEAR FRONTAGE FEET: 65.82	ACRES: 0.000				
JURISDICTION: WASHINGTON, DISTRICT OF COLUMBIA		SCALE: AS SHOWN DATE: 14 JUNE 2000		TRACT NO. : LS-18	
DRAWN BY: CHB		CHECKED BY: SLM		CAD FILE: X	



**EXHIBIT C**

[Certificate of Acceptance – establishing New Rent Commencement Date]

A handwritten signature in black ink, appearing to be "B. Williams", is located in the bottom right corner of the page.



**EXHIBIT C**

**CERTIFICATE OF ACCEPTANCE**

The undersigned, having entered into a certain Lease Agreement dated \_\_\_\_\_, 2000, by and between the undersigned, as Tenant, and THE DISTRICT OF COLUMBIA, acting on behalf of THE UNITED STATES OF AMERICA, as Landlord, DOES HEREBY CERTIFY to Landlord that:

- (1) The Lease is in full force and effect without offset or defense;
- (2) Tenant has taken possession of the Premises described in said Lease, namely, \_\_\_\_\_, 1100 Maine Avenue, S. W., Washington, D.C. 20024;
- (3) The Commencement Date is \_\_\_\_\_, 2000;
- (4) The New Rent Commencement Date is \_\_\_\_\_, \_\_\_\_; and
- (5) The condition of the Premises is satisfactory to Tenant.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_(Seal)

A handwritten signature in black ink, appearing to be 'BAM' with a stylized flourish at the end.



**EXHIBIT D**

[Work Letter – U.S. Army Corps of Engineers Work Order]

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be written in a cursive or script font.



Exhibit D

Page 1 of 9

<b>US ARMY CORPS OF ENGINEERS INTERAGENCY AGREEMENT (ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 3 <b>2. <input type="checkbox"/> INITIAL AGREEMENT <input type="checkbox"/> AMENDMENT NUMBER</b>
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 25 October 1999 <b>5. COMPLETION DATE</b> 21 April 2000
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8th Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed)  In accordance with the FY 1999 Omnibus Appropriations Bill, the Corps of Engineers will prepare all necessary environmental and cultural/Section 106 compliance documentation needed to implement the improvements identified in the Southwest Waterfront Development Needs Assessment dated July 1999. The specific tasks and budgets are as follows:  1. Management - The Corps of Engineers will provide a project manager to provide overall management of the effort. \$5,000 budget, \$24,000 project contingency. 2. Environmental Compliance - All necessary environmental compliance documentation will be prepared. \$55,000 budget. 3. Cultural/Section 106 Compliance - All necessary coordination with the D.C. Historical Preservation Officer will be accomplished and all necessary compliance documentation will be prepared. \$14,000 budget.		
<b>9. CUSTOMER EXPECTATIONS.</b> (Additional pages may be used as needed)  The Corps will make every effort to complete the environmental and cultural compliance work within 5 months and to limit project expenditures to \$74,000. The five months timeframe begins when CENAB receives a letter from DCDHCD acknowledging deviations from the 1991 Master Plan. DCDHCD will forward CENAB all existing NEPA (if any), NCPC comments on the proposed improvements, and documents that address the ownership of the land.		
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410) 962-3377 FAX: (410) 962-9312		<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-7255 FAX: (202) 442-8391



Exhibit D

Page 2 of 9

**12. REPORTS**

A copy of all compliance documentation will be provided.

**13. FUNDS** (Page(s) with cost breakdown may be attached as necessary):

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$80,000 <i>gn</i>	\$98,000	\$178,000 <i>98,000 gn</i>
c. TOTAL PROJECT COST	\$80,000 <i>gn</i>	\$98,000	\$178,000 <i>98,000 gn</i>

**14. FUNDING** Funds will be provided by:

- a. ☐ Transfer Appropriation (SF 1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)

b. Appropriations:  
 LINE AGY YR INDEX PCA AOBJ  
 001 DB 98 84040 04012 1506

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)  
 b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)  
 c. Request for payment will cite the following accounting information (describe necessary documentation):  
 d. Submit to: D.C. Dept. of Housing & Community Development  
 Office of the Comptroller  
 801 North Capitol Street, N.E., 7<sup>th</sup> Floor  
 Washington, DC 20002

**16. AUTHORITY**

FY 1999 Omnibus Appropriations Bill, 31 USC 1535 - Economy Act, and Interagency Agreement.

**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE	SIGNATURE	DATE
James R. Jones Chief, Programs and Project Management Division	<i>[Signature]</i>	10-18-99
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER	SIGNATURE	DATE
Othello Mahone, Interim Director Department of Housing and Community Development	<i>[Signature]</i>	10-15-99



<b>US ARMY CORPS OF ENGINEERS</b> <b>INTERAGENCY AGREEMENT</b> <b>(ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 4 <b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT</b> <b><input type="checkbox"/> AMENDMENT NUMBER</b>
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> <u>X</u> 13 March 2000 <b>5. COMPLETION DATE</b> 30 September 2000
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 7th Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed) <p>In accordance with the FY 1999 Omnibus and the FY 2000 DC Appropriations Bills, the Corps of Engineers will provide the following:</p> <ol style="list-style-type: none"> <li>1. Management – The Corps of Engineers will provide a project manager to provide overall management of the wooden pile investigation and preparation of contract documents for selected improvements to the Washington Marina, Municipal Fish Wharf, and adjacent DC Government Properties. \$20,000 budget, \$10,000 contingency for investigation and preparation of contract documents.</li> <li>2. Property Description – Using existing survey information and lease exhibits, a property description will be provided for the Washington Marina and Municipal Fish Wharf. The description will precisely identify the property being leased, to include the common area and pier frontage at the Municipal Fish Wharf. \$8,000 budget.</li> <li>3. Wooden Pile Investigation and Report – A contract for a wooden pile investigation will be issued. Wooden foundation piles under the fish wharf and marina piers and under the seawall/ bulkhead will be inspected by underwater divers and a civil/ structural engineer will characterize the condition of the piles, make a determination as to whether the piles need to be repaired or replaced, and estimate the remaining useful life of the piles. \$25,000 budget.</li> <li>4. Design Plans – The Corps of Engineers will prepare a site plan identifying the improvements to be made to the Washington Marina, Municipal Fish Wharf, and Redevelopment Land Agency premises. The site plan will be coordinated with the Washington Marina, Municipal Fish Wharf, and Capital Yacht Club tenants and DHCD. After an investigation of the wooden piles is conducted, and after NEPA/Sect 106 compliance documentation is completed, design and construction contract documents for the repair or replacement of the wooden piles and/or for the work listed on the attached sheet will be prepared as the budget will allow. Design-build and task-order contracts will be used to implement the improvements. The contractors will be responsible for securing all necessary permits. \$110,000 budget.</li> </ol>		
<b>9. CUSTOMER EXPECTATIONS</b> (Additional pages may be used as needed) <p>The Corps of Engineers will make every effort to minimize project costs and complete the scope of work within 7 months of signing this work order by both parties. Priorities will be to complete the survey in April 2000 and the underwater investigation by June 2000. After the Corps of Engineers has completed the underwater investigation, the Corps of Engineers and the Department of Housing and Community Development will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project costs do not exceed funds available.</p>		
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410) 962-3377 FAX: (410) 962-9312 ADDRESS Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-6977 FAX: (202) 442-6967 ADDRESS D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 7th Floor Washington, DC 20002	



**12. REPORTS**

A copy of the property descriptions, underwater investigation report, site plan, development concept, and contract documents will be provided.

**13. FUNDS** [Page(s) with cost breakdown may be attached as necessary]

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$0	<del>\$140,000</del> \$173,000 <i>900</i>	<del>\$140,000</del> \$173,000 <i>900</i>
c. TOTAL PROJECT COST	\$0	<del>\$140,000</del> \$173,000 <i>900</i>	<del>\$140,000</del> \$173,000 <i>900</i>

**14. FUNDING** Funds will be provided by:

☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)

☒ Reimbursable Order (31 USC 1535 - Economy Act)

☐ Other (describe)

b. Appropriation:

**15. BILLING**

a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)

b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)

c. Request for payment will cite the following accounting information (describe necessary documentation):

d. Submit to: D.C. Dept of Housing & Community Development  
ATTN: Mr. Joseph Wolfe  
801 North Capitol Street, N.E., 7th Floor  
Washington, DC 20002

**16. AUTHORITY**

FY 1999 Omnibus Appropriations Bill, FY 2000 District of Columbia Appropriations Bill, 31 USC 1535 - Economy Act, and Memorandum of Agreement Between the District of Columbia and the U.S. Army Corps of Engineers regarding Improvements to the Southwest Waterfront.

**17. APPROVALS**

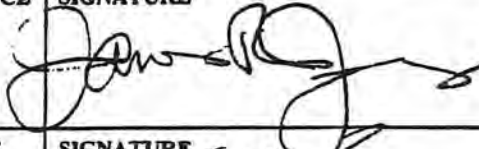

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE James R. Jones Chief, Programs and Project Management Division	SIGNATURE 	DATE 3/13/00
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER Othello Mahone, Interim Director Department of Housing and Community Development	SIGNATURE 	DATE 4-3-00



Exhibit D

Page 5 of 9

**Improvements to the Southwest Waterfront Fish Market and Washington Marina****Attachment to Interagency Agreement WO-4**

The following will be removed/ constructed:

- **Underground Storage Tanks** – Four underground storage tanks (one 4,000 gallon, two 2,000 gallon, and one 30,000 gallon) will be closed and the tanks, associated piping, ancillary equipment, and contaminated soil will be removed and disposed of in accordance with D.C. regulations. (task order contract)
- **Fish Market Building** – The facility will be demolished and disposed of. (task order contract)
- **Concrete Bulkhead** – The area of the bulkhead to be repaired is beneath the I-395 bridge. The top 6" of concrete will be removed. The bulkhead will be drilled to tie in new reinforcing steel. A concrete section approximately 50' long, 2' wide, and 2.5' deep will be added to the top of the bulkhead, and the area behind the bulkhead will be backfilled. The existing railing between the marina and Pruitt Seafood will be removed and a new railing will be installed.
- **Electrical Utilities** – The Contractor will prepare an electrical plan that provides sufficient power for projected activities and operation and will coordinate the electrical plan with PEPCO to define/delineate responsibilities for relocating utilities and implementing/constructing the plan. Utility trenches will be excavated and approximately 5,100 lf of electrical ductbanks will be constructed and overhead electrical distribution lines will be relocated underground.
- **Remove Fence** – 60 lf of chain link fence between the fish wharf and the Capitol Yacht Club parking areas will be removed.
- **Equipment on Site** – The existing equipment on Lot 846 that is not being used will be removed.
- **Fish Cleaning Building** – The central historic portion of the structure will be renovated for the fish cleaning service and vending machines. The remainder of the building will be demolished. A new facility for the public restrooms and dumpsters will be constructed at the eastern edge of Lot 846. The new facility will be a masonry structure similar to the existing.
- **Concrete Piers** – The existing wooden piles under the marina and fish wharf piers will be repaired and replaced as needed. The fish wharf piers, approximately 16,868 sf, will be repaved with a new concrete surface and made ADA compliant. 1.5" of the existing surface will be removed to level the piers. A new concrete surface will be poured with 6 x 6 inch wire reinforcing. A patterned surface will be provided and color dye will be included. Utilities serving the fish wharf barges will be upgraded to meet current codes.
- **Safety Railings and Fences** – Existing safety railings along the bulkhead will be removed. Guardrails will be installed for parking areas along the waterfront and bulkhead west of the marina and along the bulkhead between the marina and fish wharf. As much as 2,000 lf of 2 rail, 2" dia, steel pipe, safety railing will be installed along the concrete piers and bulkhead, as needed for pedestrians.
- **Piers and Boat Slips** – Remove, as necessary, existing piles and piers and install fully-functional floating pier/dock replacements with such accessories (water, electric, etc.) as specified by the Tenant in a configuration shown in the attached site plan. The number of floating piers and docks to be installed by the government government will be the maximum number which can be installed within a \$1,150,000 budget. The remaining floating piers will be provided by others. (design-build contract)
- **Site Lighting** – Site lighting will be upgraded throughout the site in order to comply with current code requirements. Approximately 5,100 lf of utility trenches will be excavated. 41 lighting fixtures and associated conduit and wiring will be installed.
- **Paving** – Approximately 50,000 sf of paving, trees and stumps throughout the site, and chainlink fences around the parking lot west of the marina and to the east of the Maine Avenue Seafood building will be removed. The entire site, approximately 100,000 sf, will be cut, filled, and graded to provide larger, more level, parking areas and to improve stormwater management. A concrete walkway along the waterfront between the marina building and the east edge of the fish wharf will be provided.
- **Sidewalks** – Approximately 7,100 sf of sidewalks will be provided.
- **Marina Building** – A new membrane roof will be installed, and the electrical service will be upgraded. The electrical upgrades will include demolition and removal of the existing 400 A service and the installation of 1 – 1200 A 208/120V 3 phase electrical service, 3 – 400 A distribution panels, feeders from the new 1200 A service to each (3) 400 A panel, and reconnection of the existing store circuits to a new 400 A panel.
- **Landscaping** – Landscaping improvements will be provided along Main Avenue and around parking lots in areas that will not reduce parking capacity.



Exhibit D, Page 6 of 9

<b>US ARMY CORPS OF ENGINEERS</b> <b>INTERAGENCY AGREEMENT</b> <b>(ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 5 <b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT</b> <b><input type="checkbox"/> AMENDMENT NUMBER</b>
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 1 July 2000 <b>5. COMPLETION DATE</b> 30 June 2001
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed) In accordance with Public Law 106-113, the Corps of Engineers agrees to prepare, procure, and oversee contracts for improvements to the Southwest Waterfront in the District of Columbia as follows:		
<ol style="list-style-type: none"> <li>1. Management – The Corps of Engineers will provide a project manager to provide overall management of contract procurement and construction of the improvements noted in item 3. \$11,140 budget, \$ 41,210 contingency for entire project.</li> <li>2. Construction Supervision &amp; Inspection – A project engineer will oversee the construction contractor and verify that improvements are being provided in accordance with the construction contract. \$29,700 budget.</li> <li>3. The following will be removed/ constructed:           <ul style="list-style-type: none"> <li>• Underground Storage Tanks – Four underground storage tanks (one 4,000 gallon, two 2,000 gallon, and one 30,000 gallon) will be closed and the tanks, associated piping, ancillary equipment, and contaminated soil will be removed and disposed of in accordance with D.C. regulations. \$100,000 budget.</li> <li>• Electrical Utilities – Utility trenches will be excavated and approximately 3,000 lf of overhead electrical distribution lines will be relocated underground. \$107,590 budget.</li> <li>• Fish Market Building – The facility will be demolished and disposed of. \$8,470 budget.</li> <li>• Site Lighting - Site lighting will be upgraded throughout the site in order to comply with current code requirements. Approximately 5,100 lf of utility trenches will be excavated. 41 lighting fixtures and associated conduit and wiring will be installed. \$66,890 budget.</li> <li>• Concrete Bulkhead – The area of the bulkhead to be repaired is beneath the I-395 bridge. The top 6" of concrete will be removed. The bulkhead will be drilled to tie in new reinforcing steel. A concrete section approximately 50' long, 2' wide, and 2.5' deep will be added to the top of the bulkhead, and the area behind the bulkhead will be backfilled. The existing railing between the marina and Pruitt Seafood will be removed and a new walkway railing will be installed. \$24,080 budget.</li> <li>• Safety Railings and Fences – Existing safety railings along the bulkhead will be removed. Guardrails will be installed for parking areas along the waterfront and bulkhead west of the marina and along the bulkhead between the marina and fish wharf. As much as 2,000 lf of 2 rail, 2" dia, steel pipe, safety railing will be installed along the concrete piers and bulkhead, as needed for pedestrians. \$38,260 budget.</li> <li>• Remove Fence – 60 lf of chain link fence between the fish wharf and the Capitol Yacht Club parking areas will be removed. \$330 budget.</li> <li>• Equipment on Site – The existing equipment on Lot 846 that is not being used will be removed. \$1,530 budget.</li> <li>• Sidewalks – Provide 7,100 sf of sidewalk. \$24,070 budget.</li> </ul> </li> </ol>		
<b>9. CUSTOMER EXPECTATIONS</b> (Additional pages may be used as needed) The Corps of Engineers will make every effort to minimize project costs and complete the project within 15 months. After the Corps of Engineers has completed the design work, the Corps of Engineers and the Department of Housing and Community Development will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project budget amount does not exceed \$453,260. The Corps of Engineers will make reasonable efforts to accommodate the tenant's priorities for work preformed. However, the final decisions shall remain with DHCD. The priority of the items in the scope of work will generally be in the order listed. The Corps of Engineers will make reasonable efforts to minimize the disruption to Tenant's business. The majority of construction on the fish wharf property will be scheduled to occur during the winter months. If multiple design-build contracts are awarded, the contracts will require close coordination with the Corps project manager to avoid construction scheduling conflicts.		
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410)962-3377 FAX: (410)962-9312	<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-6977 FAX: (202) 442-6967	
<b>ADDRESS</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>ADDRESS</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	



**12. REPORTS**

A complete set of as-built drawings shall be provided.

**13. FUNDS** [Page(s) with cost breakdown may be attached as necessary]

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$	\$453,260	\$453,260
c. TOTAL PROJECT COST	\$	\$453,260	\$453,260

**14. FUNDING** Funds will be provided by:

- a. ☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)
- b. Appropriation:

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)
- b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)
- c. Request for payment will cite the following accounting information (describe necessary documentation):
- d. Submit to: D.C. Dept of Housing & Community Development  
Office of the Comptroller  
801 North Capitol Street, N.E., 7<sup>th</sup> Floor  
Washington, DC 20002

**16. AUTHORITY**

Public Law 106-113, District of Columbia FY 2000 Appropriations, 31 USC 1535 - Economy Act, and Memorandum of Agreement Between the District of Columbia and the U.S. Army Corps of Engineers regarding Improvements to the Southwest Waterfront.

**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE James R. Jones Chief, Programs and Project Management Division	SIGNATURE	DATE
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER Othello Mahone, Interim Director Department of Housing and Community Development	SIGNATURE	DATE



Exhibit D, Page 8 of 9

<b>US ARMY CORPS OF ENGINEERS INTERAGENCY AGREEMENT (ER 1140-1-211)</b>		<b>1. AGREEMENT NUMBER</b> WO 6 <b>2. <input checked="" type="checkbox"/> INITIAL AGREEMENT</b> <input type="checkbox"/> AMENDMENT NUMBER	
<b>3. PROJECT TITLE</b> Improvements to the Southwest Waterfront Fish Market and Washington Marina		<b>4. EFFECTIVE DATE</b> 1 July 2000 <b>5. COMPLETION DATE</b> 30 June 2001	
<b>6. NAME AND ADDRESS OF USACE ORGANIZATION</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715	<b>7. NAME AND ADDRESS OF CUSTOMER</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002		
<b>8. SCOPE OF WORK</b> (Additional pages may be used as needed) In accordance with Public Law 106-113, the Corps of Engineers agrees to prepare, procure, and oversee contracts for improvements to the Southwest Waterfront in the District of Columbia as follows: <ol style="list-style-type: none"> <li>Management – The Corps of Engineers will provide a project manager to provide overall management of contract procurement and construction of the improvements. \$73,710 budget, \$272,730 contingency for entire project.</li> <li>Construction Supervision &amp; Inspection – A project engineer will oversee the construction contractor and verify that improvements are being provided in accordance with the construction contract. \$196,560 budget.</li> <li>The following will be removed/ constructed:             <ul style="list-style-type: none"> <li>Marina Building – A new membrane roof will be installed, and the electrical service will be upgraded. The electrical upgrades will include demolition and removal of the existing 400 A service and the installation of 1 – 1200 A 208/120V 3 phase electrical service, 3 – 400 A distribution panels, feeders from the new 1200 A service to each (3) 400 A panel, and reconnection of the existing store circuits to a new 400 A panel. \$255,000 budget.</li> <li>Piers and Boat Slips – Remove, as necessary, existing piles and piers and install fully-functional floating pier/dock replacements with such accessories (water, electric, etc.) as specified by the Tenant in a configuration shown in the attached site plan. The number of floating piers and docks to be installed by the government will be the maximum number which can be installed within a \$1,150,000 budget.</li> <li>Fish Cleaning Building – The central historic portion of the structure will be renovated for the fish cleaning service and vending machines. The remainder of the building will be demolished. A new facility for the public restrooms and dumpsters will be constructed at the eastern edge of Lot 846. The new facility will be a masonry structure similar to the existing. \$365,390 budget.</li> <li>Concrete Piers – The existing wooden piles under the marina and fish wharf piers will be repaired and replaced as needed. The fish wharf piers, approximately 16,868 sf, will be repaved with a new concrete surface and made ADA compliant. 1.5" of the existing surface will be removed to level the piers. A new concrete surface will be poured with 6 x 6 inch wire reinforcing. A patterned surface will be provided and color dye will be included. Utilities serving the fish wharf barges will be upgraded to meet current codes. \$225,000 budget excluding pile repairs or replacement.</li> <li>Paving – Approximately 50,000 sf of paving, trees and stumps throughout the site, and chainlink fences around the parking lot west of the marina and to the east of the Maine Avenue Seafood building will be removed. The entire site, approximately 100,000 sf, will be cut, filled, and graded to provide larger, more level, parking areas and to improve stormwater management. 6" subbase, 6" base, and 3" wearing courses and striping will be provided. A concrete walkway along the waterfront between the marina building and the east edge of the fish wharf will be provided. \$414,370 budget.</li> <li>Landscaping – Landscaping improvements will be provided along Main Avenue and around parking lots in areas that will not reduce parking capacity. \$47,240 budget.</li> </ul> </li> </ol>			
<b>9. CUSTOMER EXPECTATIONS</b> (Additional pages may be used as needed) The Corps of Engineers will make every effort to minimize project costs and complete the project within 15 months. After the Corps of Engineers has completed the design work, the Corps of Engineers and the Department of Housing and Community Development (DHCD) will reevaluate the estimated duration, construction costs, and scope of work to ensure that the total project budget amount does not exceed \$3,000,000. The Corps of Engineers will make reasonable efforts to accommodate the tenant's priorities for work performed. However, the final decisions shall remain with DHCD. The marina building roof and the marina piers and boat slips will be first and second priority respectively. The priority of the remaining items in the scope of work will generally be in the order listed. The Corps of Engineers will make reasonable efforts to minimize the disruption to Tenant's business. The majority of construction on the fish wharf property will be scheduled to occur during the winter months. If multiple design-build contracts are awarded, the contracts will require close coordination with the Corps project manager to avoid construction scheduling conflicts.			
<b>10. USACE PROJECT OFFICER</b> Name: Mary Y. Dan Voice: (410)962-3377 FAX: (410)962-9312		<b>11. CUSTOMER PROJECT OFFICER</b> Name: Joseph J. Wolfe Voice: (202) 442-6977 FAX: (202) 442-6967	
<b>ADDRESS</b> Baltimore District, U.S. Army Corps of Engineers P.O. Box 1715 Baltimore, MD 21203-1715		<b>ADDRESS</b> D.C. Dept of Housing & Community Development 801 North Capitol Street, N.E., 8 <sup>th</sup> Floor Washington, DC 20002	



**12. REPORTS**

A complete set of as-built drawings shall be provided.

**13. FUNDS** [Page(s) with cost breakdown may be attached as necessary]

SOURCE	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
a. USACE AMOUNT			
b. CUSTOMER AMOUNT	\$	\$3,000,000	\$3,000,000
c. TOTAL PROJECT COST	\$	\$3,000,000	\$3,000,000

**14. FUNDING** Funds will be provided by:

- a. ☐ Transfer Appropriation (SF1151, Non-Expenditure Transfer Authorization)  
☒ Reimbursable Order (31 USC 1535 - Economy Act)  
☐ Other (describe)

b. Appropriation:

**15. BILLING**

- a. Request for payment will be made by: ☒ SF 1080 ☐ SF 1081 ☐ Other (describe)
- b. Frequency: ☒ Monthly ☐ Quarterly ☐ Upon Work Completion ☐ Other (describe)
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- d. Submit to: D.C. Dept of Housing & Community Development  
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Washington, DC 20002

**16. AUTHORITY**

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**17. APPROVALS**

a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE James R. Jones Chief, Programs and Project Management Division	SIGNATURE	DATE
b. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR THE CUSTOMER Othello Mahone, Interim Director Department of Housing and Community Development	SIGNATURE	DATE



**EXHIBIT E**

[Rules and Regulations]

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**EXHIBIT E**

**RULES AND REGULATIONS**

**Purpose**

The purpose of these Rules and Regulations is to summarize Tenant's responsibilities with respect to the day-to-day operation and maintenance of the Project.

**Common Area Use**

To ensure a pleasing and safe environment in the common areas (parking lots and sidewalks) of the Project, each Tenant shall:

1. Keep the sidewalk in front of its Premises clear and free from ice and snow. (Use only sodium based ice melters that do not damage the pavement.)
2. Not place any objects in the common areas of the Project, except in areas, if any, designated for tables by the Tenant Committee.
3. Not solicit business in the common areas; i.e., no signs or displays, except as approved by the Tenant Committee.
4. Not use the common areas for the sale of merchandise without the prior written consent of Landlord.

**Storefronts and Signs**

To ensure a consistent appearance throughout the Project:

1. Tenant shall keep the storefront of its Premises in good repair and clean condition.
2. Any temporary sign used by Tenant in its door or window must be professionally made and must comply with District of Columbia sign regulations.

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### **Tenant Advertising**

1. Tenant shall not utilize any advertising medium within the Project that can be seen, heard, or experienced outside of the Premises, including, but not limited to, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions, except as may be approved by the Tenant Committee, as, for example, seasonal displays of lighting and music.
2. Tenant shall not display, paint, place or cause to be displayed, painted, or placed, any handbills, bumper stickers, sandwich boards or other advertising devices in any portion Common Area.
3. Tenant shall not distribute, or cause to be distributed, in the Project, any handbills or other advertising devices; and will not conduct or permit any activities that might constitute a nuisance.

### **Loading and Unloading**

All shipping, receiving, loading or unloading of Tenant's merchandise, supplies or other property shall take place only in the areas, and at times, designated therefor by the Tenant Committee. Tenant shall not permit any trucks, trailers, or other vehicles or equipment engaged in such activities to interfere with the use of any Common Area or any pedestrian or vehicular use.

### **Noise**


Tenant shall not permit any noise to be made inside of its Premises which can be heard outside of the Premises. Tenant shall not use any loudspeaker or other communications equipment that may be heard or seen outside of its Premises.

### **Odors**

Tenant shall prevent the emission of odors from its Premises that are objectionable to its neighbors.

### **Refuse**

To ensure a clean and equitable refuse handling system:

1. The Management Agent for the Project shall provide refuse containers and disposal service and will allocate the costs thereof to each tenant as provided in its lease.
  2. Tenant shall keep its refuse in proper containers in its Premises and shall place it in the refuse container when taken outside the Premises.
- 



**Pest Exterminator Services**

Tenant shall contract with a professional exterminator for monthly inspections and treatments as necessary, to ensure that infestations by insects and rodents do not occur on the Premises.

**Store Plans and Permits**

The plans and contractors for doing any work in the Premises that requires a permit must be submitted to the Landlord for approval. This includes but is not limited to work that requires a building, mechanical, electrical, or plumbing permit.

**Parking**

To ensure that adequate and convenient parking is available to customers of the Project, no part of the Common Area may be used for parking by employees of Tenant or other Tenants of the Project.

**Emergencies**

Tenant must notify the Landlord, as soon as possible, of any emergency situation, injury, fire or disorder that occurs in the Tenant's Premises or any common area of the Project.

**Outside Promotional Activities**

To avoid undesired disturbances of Tenants and customers of the Project, outside promotional activities will only be permitted with approval of the Tenant Committee.

**Video Games**

Tenant shall not permit the installation or use in any portion of its Premises of a pinball, video or other amusement or game machine of any kind.

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# EXHIBIT F



## LEASE AGREEMENT

THE DISTRICT OF COLUMBIA,  
acting on behalf of THE UNITED STATES OF AMERICA,

LANDLORD

and

BRW, INC.,  
T/A CAPT. WHITE SEAFOOD CITY,

TENANT

for

Premises Nos. 7, 8, and 9  
Municipal Fish Wharf

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Exhibit A - Outline of the Premises  
Exhibit B - Site Plan of the Project  
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Exhibit D - Work Orders 4 & 5  
Exhibit E - Rules and Regulations





## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made this 12<sup>th</sup> day of July, 2000, by and between THE DISTRICT OF COLUMBIA, acting on behalf of THE UNITED STATES OF AMERICA, whose notice address is Director, District of Columbia Department of Housing and Community Development, 801 North Capitol Street, N.E., 8<sup>th</sup> Floor, Washington, D.C. 20002 ("Landlord"), and BRW, INC., a District of Columbia corporation, t/a Capt. White Seafood City, whose notice address is 1100 Maine Avenue, S.W., Washington, D.C. 20024 ("Tenant").

In consideration of the promises in the Lease, Landlord and Tenant agree as follows:

### 1. **Definitions.**

Certain terms in this Lease are defined below:

A. **Barges:** The barges owned by Tenant on which Tenant operates its business. The Barges are located on the Premises.

B. **Commencement Date:** The date of this Lease.

C. **Common Areas:** "Common Areas" mean all areas within the Project that Landlord makes available to tenants and their customers for their general use, convenience and benefit, including restrooms, parking areas, driveways, walkways, landscaped or planted areas, lighting facilities, service areas and loading and unloading areas, as depicted on Exhibit B hereto.

D. **Consumer Price Index:** The "Consumer Price Index" means the index for the Washington - Baltimore, DC - MD - VA - WV area, now known as the United States Bureau of Labor Statistics, consumer Price Index, for All Urban Consumers, all items (1996=100).

E. **Lease Year:** The first "Lease Year" shall begin on the New Rent Commencement Date and shall end on December 31 of the year following the year in which the New Rent Commencement Date shall occur, in order that each subsequent Lease Year hereunder shall coincide with the calendar year. Each subsequent Lease Year shall commence on the day immediately following the last day of the preceding Lease Year, and shall continue for a period of twelve (12) full calendar months.

F. **Minimum Rent:** The minimum rent payable during the Term, as follows: from the Commencement Date to the New Rent Commencement Date, equal monthly installments in the amount of THREE HUNDRED THREE AND 03/100 DOLLARS (\$303.03), as provided herein. Commencing on the New Rent Commencement Date and for the first Lease Year, equal monthly installments in the amount of TWO THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$2,250.00). Thereafter, on the first day of the second (2<sup>nd</sup>) and each succeeding Lease Year, the Minimum Rent shall be adjusted for the following Lease Year by the CPI adjustment described in Section 7 below until the date on which the "Base Amount," as defined in Section 1.H below, shall have been reached, at which point the Minimum Rent then prevailing shall be fixed as the Minimum Rent applicable for the succeeding five (5) Lease Years,



and thereafter, upon the expiration of such five (5) Lease Year period, and for each succeeding five (5) Lease Year period during the Term, the Minimum Rent shall be increased by three percent (3.0%) over the Minimum Rent applicable during the preceding five (5) Lease Year period. [As an example, see the following chart, which assumes CPI increases during 2001 and 2002 of 3% each year, and a "Base Amount" of \$15,000,000.]

LEASE YEAR	MINIMUM RENT	GROSS NON-TAXABLE SALES	PERCENTAGE RENT	TOTAL RENT
2001	27,000	\$10mm	0	\$27,000
2002	27,810	\$11mm	0	\$27,810
2003	28,644	\$16mm	\$5,000	\$33,644
2004	28,644	\$17mm	\$10,000	\$38,644
2005	28,644	\$14mm	0	\$28,644
2006	28,644	\$18mm	\$15,000	\$43,644
2007	28,644	\$19mm	\$20,000	\$48,644

G. **New Rent Commencement Date:** The date upon which "Landlord's Work" (as defined in Section 3) is substantially completed; i.e., upon receipt of a Certificate of Substantial Completion from the Corps of Engineers, and provided that all utilities to be delivered to the Premises are then in working order.

H. **Percentage Rent:** For each Lease Year, an amount equal to 1/2 of one percent (0.5%) of the excess of (A) Tenant's "Gross Non-Taxable Sales" (as defined in Section 7) made during the Lease Year, over (B) the "Base Amount" (defined below). The term "Base Amount," for purposes of this definition, means one hundred fifty-five and one-half percent (155.5%) of the amount of actual Gross Non-Taxable Sales for the Premises for calendar year 1999.

I. **Permitted Uses:** The retail sale of seafood (fresh and prepared) and of fresh produce, including accessory items such as cole slaw, french fries, and the like, or any other use consistent with and permitted by the 1913 Federal legislation creating the Project and appointing the District of Columbia as manager of the Project. Notwithstanding the foregoing, (i) the proportion of the total area leased by Tenant and any person or entity related to Tenant (a "Tenant Affiliate") within the Project, exclusive of any area leased by THE WHARF, INC., a District of Columbia corporation t/a The Wharf, that is devoted to the preparation and sale of prepared food by Tenant or such Affiliate shall not be increased significantly above the proportion devoted to such use as of the date hereof; (ii) prepared food shall be sold only on a "takeout" basis; and (iii) there shall be no serviced tables situated within the Premises or in the Common Area unless plans for same shall



have been approved by Landlord and unless Landlord and Tenant shall have executed an amendment hereto providing for a change to restaurant use and, among other things, revising the Percentage Rent payable hereunder in respect of the portion of the Premises to be devoted to such restaurant use. As to clauses (i), (ii), and (iii) above, Landlord shall enforce parallel restrictions on all other tenants within the Project.

J. **Premises:** The spaces in the Project identified on Exhibit A as Nos. 7, 8, and 9. The Premises consist of an area on the surface of the water sufficient to moor three Barges to the concrete pier [one in No. 7 ("Barge 7"), one in No. 8 ("Barge 8"), and one in No. 9 ("Barge 9")]. Barge 7 shall have no more than 20 linear feet, Barge 8 shall have no more than 65 linear feet, and Barge 9 shall have no more than 56 linear feet. Tenant shall have the right to connect the Barges that comprise the Premises under this Lease as well as the Barges that comprise the "Premises" under the Lease between Landlord and The Wharf, Inc. t/a The Wharf by a floating walkway that shall not exceed six feet (6') in width, as shown on Exhibit B-1 hereto.

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K. **Project:** The Municipal Fish Wharf located between 11<sup>th</sup> and 12<sup>th</sup> Streets, south of Maine Avenue, S.W., Washington, D.C. The Project includes the portion of the Potomac River in which the tenants' barges are moored. A site plan of the Project is attached as Exhibit B. A certified survey of the Project, to include references to all Lots and Squares, or portions thereof, included within the Project, has been commissioned and will be delivered to the parties upon completion, at which time a legal description of the Project shall be initialed and attached hereto as a substitute and replacement for the existing Exhibit B.

L. **Security Deposit:** \$2,250.00, which shall be due and payable within thirty (30) days after the effective date of this Lease.

M. **Tenant Committee:** A committee representing the tenants of the Project and composed of one representative to be named by each such tenant. The Tenant Committee shall cooperate with the Management Agent to be retained for the Project, as provided herein, to carry out the operation, maintenance, and repair of the Common Areas of the Project. The Tenant Committee may, at its option, elect to operate by means of a limited liability company or other legal entity. All matters requiring decisions by the Tenant Committee shall be decided on the basis of a simple majority. Voting on all such matters by Tenant and the other tenants of the Project shall be based upon the "Proportionate Share" (hereinafter defined) of each.

N. **Tenant's Proportionate Share:** 16.97%, which equals the percentage that the number of linear feet of frontage in the Premises bears to the number of linear feet of frontage in the Project. If the number of linear feet of frontage in the Project changes, Tenant's Proportionate Share will be adjusted accordingly.

O. **Term:** The period that begins on the Commencement Date and ends thirty (30) Lease Years after the New Rent Commencement Date, unless sooner terminated pursuant to this Lease. Tenant acknowledges that it has no right hereunder to renew or extend the Term hereof,



or to negotiate for a renewal of the Term hereof. However, Landlord acknowledges that nothing contained herein shall prevent Tenant hereafter from seeking to obtain any such rights.

P. **Prohibited Use:** Anything herein to the contrary notwithstanding, Tenant covenants that during the term of this Lease, (1) it shall not engage in the business of fish cutting or oyster shucking, nor shall it offer non-alcoholic beverages from vending machines; provided, that the provisions of this Section 1.P shall be enforceable only during such times as Virgo Fish House, its successors or permitted assigns, shall engage in the activities described herein at other premises within the Project; and (2) it shall not engage in the sale of liquor for consumption off the Premises. It is understood and agreed that the foregoing prohibition on oyster shucking is intended to apply only to the shucking of oysters conducted as an independent business, and shall not apply to the shucking by Tenant of oysters sold by Tenant.

Q. **Restrictions on Sales.** The following restrictions shall appear in all Leases of Barge Spaces within the Project. In the particular Lease or Leases to which any such restriction pertains, such provision shall act as a restriction imposed and enforceable by Landlord for its benefit, and imposed and enforceable by the other tenants of the Project for their benefit, and accepted by the tenant or tenants occupying the area to which such restriction directly pertains.

(i) For a period of ten (10) years, expiring on the tenth (10) anniversary of this Lease, the sale of seafood of any type shall be prohibited throughout the rectangular area comprising the southernmost twenty-four feet (24') of Barge 6.

(ii) For the entire Term of this Lease, the sale of crabs anywhere on Barge 6 or 16 shall be prohibited.

## 2. *Lease of the Premises; Termination of Prior Lease; Tenant's Acceptance of Premises; Termination Right.*

A. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term.

B. Landlord is presently leasing the Premises to Tenant pursuant to an existing lease agreement dated February 20, 1986 (the "Prior Lease"). Effective as of the Commencement Date, the Prior Lease shall terminate, and Tenant's use and occupancy of the Premises will be governed by this Lease.

C. Tenant has accepted delivery of the Premises under the Prior Lease, and at the commencement of the Term hereunder, Tenant shall continue to occupy the Premises in their "as is" condition, subject to Section 3. Effective as of the Commencement Date, Tenant does hereby release, remise, discharge, and forever waive any and all claims, actions, or causes of action, whether known or unknown, arising from or relating to the Prior Lease that Tenant has or may have against landlord, or its affiliated entities, predecessors, successors, assigns, legal representatives, agents, employees, servants, attorneys, officers, or other representatives.





D. Anything herein to the contrary notwithstanding, Tenant shall have the right, exercisable by written notice given to Landlord not later than ninety (90) days after submission of the Annual Statement (as defined in Section 7 below), to terminate this Lease if the total of the Minimum Rent and the Percentage Rent (as defined in Sections 1.F and 1.H above) for the Lease Year to which such Annual Statement pertains exceeds ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$125,000.00). This termination right is specifically limited to the first Lease Year in which Minimum Rent and Percentage Rent hereunder exceed such sum. Such termination shall be effective for all purposes one (1) calendar year following the date of such notice. Upon the expiration of such one (1) year period, and upon the surrender of the Premises in the manner required hereby upon the expiration or termination of this Lease, the parties shall be released and relieved of any obligations accruing in respect of the Premises after the expiration of such one (1) year period.

### 3. **Landlord's Work.**

A. Landlord has been allocated \$3,000,000 from the federal government (the "Federal Appropriation") to make improvements to the Project and to the marina located next to the Project at 1300 Maine Avenue. Landlord and Tenant have heretofore agreed upon the nature of the improvements to be made to the Project with the Federal Appropriation and such other sources of funding as may be available to landlord, all as embodied in the Work Orders issued by the Corps of Engineers and reviewed and approved by Landlord and Tenant, and attached hereto as Exhibit D. (The improvements to be made to the Project with the Federal Appropriation and such other sources of funding as may be available to Landlord are referred to hereafter as "Landlord's Work.") Landlord shall have no obligation to spend any funds to complete Landlord's Work in excess of the Federal Appropriation and such other sources of funding as may be available to Landlord.

B. After Landlord's Work has been determined in accordance with subsection A above, Landlord will complete construction of Landlord's Work in a good and workmanlike manner and in accordance with requirements of governmental authorities. Tenant shall be consulted with regard to materials and structural details of Landlord's Work, but the final choice thereof shall be in Landlord's sole discretion. Except for Landlord's Work and except as provided in Section 9, Landlord shall not be required to make any repairs or improvements to the Project.

C. Landlord shall use reasonable commercial efforts to complete Landlord's Work by June 30, 2001, but shall have no liability to Tenant if it is unable to complete Landlord's Work by that date or by any other date. Within five (5) days after the New Rent Commencement Date, Tenant shall execute and deliver to Landlord a Certificate of Acceptance, in the form attached hereto as Exhibit C.

D. Landlord's Work shall comply with ADA requirements, as well as all other applicable Federal and local governmental requirements.

### 4. **[Intentionally Omitted]**



## 5. *Minimum Rent.*

A. During the Term, Tenant shall pay all rent, without demand and without setoff, counterclaim, recoupment or other reduction, to the "Management Agent" (defined below) for the Project, including Minimum Rent in monthly installments as set forth in Section 1.F. All monthly installments of Minimum Rent shall be payable in advance on the first day of each month, except that the first payment shall be due on the New Rent Commencement Date. If the Commencement Date or the New Rent Commencement Date is not the first day of a month, the rent for the months in which those dates fall shall be prorated.

B. On or before the New Rent Commencement Date, the Tenant Committee shall select, following consultation with, and with the approval of, the Landlord, a "Management Agent" that shall be charged with responsibility for the operation, maintenance, repair, and replacement of all elements of the Common Areas and the orderly operation of the Project. The Management Agent, throughout the term of its employment as such with respect to the Project: (1) shall maintain insurance that includes employee dishonesty or fidelity coverage in an amount at least as great as the amount of funds the Management Agent has access to at any time; and (2) shall covenant not to, and shall not, discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Landlord, subject to the review and approval, not to be unreasonably conditioned, delayed, or withheld, of the Tenant Committee, shall negotiate and enter into a Management Agreement with the Management Agent. The Management Agreement shall provide that, before payment to Landlord of any amounts due Landlord hereunder: (i) twenty-five percent (25%) of the Minimum Rent and all other Rent from this Lease and all other leases of premises within the Project shall be placed in an interest-bearing escrow account with the Management Agent as a reserve for future capital expenditures in respect of the Common Areas, of which as much as one-fifth (1/5) (or five percent (5%) of the Minimum Rent) may be used for advertising the Fish Wharf in local media and signage in Common Areas, although it is acknowledged by the parties that establishing reasonable reserves for capital needs shall have priority; (ii) all "Common Area Operating Costs" shall be paid to, and applied by, Management Agent, as provided in Section 10 below; and (iii) Management Agent shall deduct the sum of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) (the "Accounting Reserve") from the Rent payable hereunder and shall deposit the same in a reserve account to remain available for purposes paying any accounting or auditing charges incurred by Landlord under Section 7.D below from time to time. As and when funds in the Accounting Reserve are expended, Management Agent shall again deduct sufficient monies from the Rent payable hereunder to replenish the Accounting Reserve to the level established above..

C. No payment by Tenant of a lesser amount than the monthly installment of rent or other charges herein stipulated shall be deemed to be other than on account of the earliest stipulated rent or other charges, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord and satisfaction. Landlord may accept any check for payment without prejudice to Landlord's right to recover the balance of the rent due or to pursue any other remedy available to Landlord.



## 6. *Late Charges.*

Any rental or other payment due from Tenant hereunder which is not received when due shall be payable by Tenant to Landlord, without demand, with interest from the due date until paid at the rate of fifteen percent (15%) per annum (1-1/4% per month), but no less than One Hundred Dollars (\$100.00), and Tenant shall reimburse Landlord for reasonable attorneys' fees, if any, incurred by Landlord by reason of Tenant's failure to make timely payment. In addition, Tenant shall pay Landlord a \$100.00 fee for each check received by Landlord which is returned by Tenant's bank unpaid.

## 7. *Additional Rent: CPI Adjustment; Percentage Rent.*

A. Upon the first (1st) day of the second (2<sup>nd</sup>) Lease Year, and upon each anniversary thereof occurring during the term of this Lease until such time as Tenant shall have reached the Base Amount (as defined in Section 1.H above) (each, an "Adjustment Date"), the Minimum Rent herein provided shall be adjusted to reflect increases in the Consumer Price Index (as defined in Section 1.D above). Such adjustment shall be accomplished by multiplying the Minimum Rent by a fraction, the numerator of which shall be the Consumer Price Index as of the most recent date prior to such Adjustment Date, and the denominator of which shall be the Consumer Price Index as of the most recent date prior to the New Rent Commencement Date; provided, however, that in no event shall the Minimum Rent be reduced as a result of such adjustment below the Minimum Rent for the immediately preceding year. The increased Minimum Rent established pursuant to this Section 7 shall continue in effect as, and for all purposes of this Lease be defined as, the Minimum Rent until again increased as herein provided.

B. From and after such time as Tenant shall reach the Base Amount (as defined in Section 1.H above), Tenant shall pay to Landlord, as additional rent, within seventy-five (75) days after the end of each Lease Year, Percentage Rent calculated in accordance with Section 1.H. Tenant's annual payment of Percentage Rent shall be accompanied by a financial statement (the "Annual Statement"), signed by Tenant and reviewed by an independent certified public accountant, showing "Gross Sales" and "Gross Non-Taxable Sales" (as such terms are defined below) and the Percentage Rent for the Lease Year.

C. "Gross Sales" means the gross amount charged for all sales or services made upon or from the Premises, including any rent or other sum received by Tenant from licensees or concessionaires. "Gross Non-Taxable Sales" means the amount of Gross Sales, minus the amount of all sales and services that shall be subject to, and with respect to which Tenant shall pay, District of Columbia Sales and Use Tax. Each sale shall be valued at the actual sales price charged the customer, even if the sale is a credit or installment sale, and reported in full in the month in which the sale occurs, even if full payment is not received at the time of the sale.

D. Tenant shall furnish to Management Agent, simultaneously with the filing thereof with the District of Columbia, copies of the Sales and Use Tax Returns currently required to be filed by Tenant in respect of prepared foods and other taxable goods sold by Tenant within the Premises. In addition, Tenant shall prepare, file with the District of Columbia, and make simultaneously available to Landlord informational returns in respect of all raw foods and other



non-taxable goods sold by Tenant within the Premises. Such records shall be open to inspection and audit by Landlord or its accountants. If any audit discloses a deficiency in payment of Percentage Rent, Tenant shall immediately pay Landlord the deficient amount, together with interest thereon at the rate of fifteen percent (15%) per annum from the date such Percentage Rent should have been paid. If a discrepancy of three percent (3%) or more in the reported amount of Gross Non-Taxable Sales is uncovered as a result of any audit, Tenant shall reimburse Landlord for the cost of the audit (including the cost of Landlord's accountant). Landlord shall bear the cost of any audit in which no discrepancy or a discrepancy of less than three percent (3%) shall be found (including the cost of Tenant's accountant). Except to the extent required by law or required to exercise its rights hereunder, Landlord shall maintain the confidentiality of all information furnished by Tenant pursuant to this Section 7.D or otherwise made available to Landlord in connection with the exercise of its rights under Section 7.B above.

## **8. Utilities.**

During the Term, Tenant shall pay directly to the supplier all charges for water, sewer, gas, electricity, telephone and other utilities used upon the Premises. Expenses for maintenance of utility meters shall be borne by Tenant, and if Landlord pays any such expenses, Tenant shall reimburse Landlord promptly upon demand. Landlord shall not be liable for any failure to furnish or for any interruption of utility services, unless caused by the gross negligence of Landlord or Landlord's agents. Upon Tenant's request, Landlord shall furnish a copy of the surety bond or indemnity agreement from any contractor performing work in the Project.

## **9. Common Areas; Employee Parking.**

**A.** Landlord grants to Tenant the right, in common with other tenants in the Project, to use the Common Areas during the Term. Such right of use shall be deemed a license coupled with an interest, and shall subsist until the expiration or the earlier termination of the Term. After completion of Landlord's Work, and with the approval of the Tenant Committee, Landlord may change the size, location or nature of the Common Areas, and may locate on the Common Areas structures of any type; provided no such structures would materially interfere with access to the Premises across the Common Areas and to and from Maine Avenue.. Subject to the terms of the Management Agreement, Landlord shall have exclusive control and management of the Common Areas and Landlord may establish and enforce rules therefor.

**B.** Parking, including, without limitation, employee parking, within the Project shall be regulated by the Tenant Committee, which shall promulgate parking regulations to be enforced by the Management Agent; provided, that no area within the Project shall be dedicated to parking for employees of Tenant or any other tenant of the Project; and provided, further, that no parking shall be permitted in any area designated for table space in the plans for Landlord's Work.

## **10. Common Area Operating Costs.**

**A.** Commencing with the New Rent Commencement Date, Tenant shall pay to Management Agent (as agent for Landlord), as additional rent, Tenant's Proportionate Share of all "Common Area Operating Costs" (as hereafter defined). Common Area Operating Costs means the



sum of the following costs and charges incurred by Landlord for each calendar year or part thereof during the Term: (i) "Common Area Costs" (as hereafter defined); (ii) repair and maintenance costs for the structure and exterior of the buildings in the Project, exclusive of improvements located on barges within the Project and exclusive of expenditures that under "generally accepted accounting principles," as that term is defined by the financial Accounting Standards Board, would be capitalized ("Capital Expenditures"); (iii) "Insurance Costs" (as hereafter defined); and (iv) the monthly fee due Management Agent under the Management Agreement. Common Area Costs mean all costs incurred by Landlord, excluding Capital Expenditures, to operate, maintain, replace and repair the Common Areas, including costs for the following: security services; gardening and landscaping; repairs; painting; striping and sweeping; lighting (including the cost of electricity and maintenance and replacement of exterior fixtures and bulbs); and other utility costs for the public restrooms and other facilities located within the Common Area; refuse removal, including dumpsters; ice and snow removal; equipment and supplies related to Common Area maintenance; water and maintenance charges for sprinklers and hydrants; any dues, fees or assessments paid by Landlord with respect to storm water management facilities that benefit the Project; and personnel of Management Agent to operate, maintain and repair the Common Areas (including salaries, employment taxes and workmen's compensation insurance for such personnel). "Insurance Costs" mean all insurance premiums and other costs incurred by Landlord in connection with fire and extended coverage, public liability, business interruption, sign, and any other insurance maintained by Landlord relating to the Project.

B. Landlord shall annually notify Tenant of Tenant's Proportionate Share of Common Area Operating Costs for each calendar year, and Tenant shall pay to Management Agent (as agent for Landlord) such amount in equal monthly installments in advance on the first day of each of the twelve (12) months after the date of such notice, the first such monthly installment to be due on the New Rent Commencement Date. If the New Rent Commencement Date is a date other than the first day of a month, Tenant's Proportionate Share of Common Area Operating Costs for that month shall be prorated. Landlord shall annually submit to Tenant a statement showing the actual Tenant's Proportionate Share of Common Area Operating Costs for the prior calendar year, the amount paid by Tenant, and the balance due or overpayment. The balance due shall be paid by Tenant to Management Agent (as agent for Landlord), or the overpayment shall be paid by Landlord to Tenant, without interest, within thirty (30) days after the date of the statement. Tenant may, upon reasonable notice, examine Project records at the office of the Management Agent during ordinary business hours to verify the statement for the immediately preceding year, but such examination shall not excuse the timely payment of Tenant's Proportionate Share of Common Area Operating Costs.

C. The Tenant Committee, in conjunction with the Management Agent, shall prepare an annual budget for operation of, and any contemplated repairs and replacements of, the Common Areas, which shall be made available for the review and reasonable approval of Landlord. As and when capital expenditures are required, the Tenant Committee, in conjunction with the Management Agent, shall prepare a scope of work and budget therefor, and shall submit same to Landlord for approval, which shall not be unreasonably withheld. Until the New Rent Commencement Date, Tenant, in conjunction with the other tenants of the Project, shall continue to be responsible for and pay operating costs of the Project in the same manner as has been the case



before the date of this Lease, subject to adjustment for any changes being implemented currently in tenants' respective Proportionate Shares.

### ***11. Use of Premises.***

A. Tenant shall use the Premises exclusively for conduct of the business set forth in Section 1.1.

B. Tenant shall keep the Premises open for business at least forty-five (45) hours per week, excluding any closures caused by fire, natural disasters, or other casualties, required by the Landlord's Work or by repair or renovation work by Tenant, or by dredging activity required by the terms of this Lease.

C. Tenant shall comply with all laws, ordinances, rules and regulations pertaining to the use and occupancy of the Premises, including the Americans with Disabilities Act and other laws relating to the use of the public areas of the Premises by individuals with disabilities. Tenant shall not permit any act upon the Premises which (i) disturbs tenants of the Project or injures the reputation of the Project, (ii) subjects Landlord to liability for injury or damage to persons or property, or (iii) invalidates any insurance policy pertaining to the Project.

### ***12. Signs.***

A. Landlord consents to Tenant's existing exterior signage ("Tenant's Signage") which is in place on the date hereof on Barges 7, 8 and 9. Any changes to Tenant's Signage shall be subject to Landlord's approval, which shall not be unreasonably withheld.

B. Tenant shall maintain Tenant's Signage in good repair, and shall replace it when needed so that Tenant's Signage is in good condition at all times. If Tenant fails promptly to perform its obligations under this Section, Landlord may perform the repairs, replacements or removal, at Tenant's expense, and Tenant shall reimburse Landlord for the cost thereof promptly upon demand.

### ***13. Alterations.***

Tenant may alter the Barges provided such alterations shall not harm the Project and must comply with all applicable Federal and local building codes, regulations and laws, and provided that any alteration that includes an expansion of the horizontal space covered by such Barges, or the amount or location of the frontage currently occupied by such Barges for purposes of effecting sales to the public, shall require the written consent of Landlord. Provisions identical to the foregoing provisions of this Section 13 shall appear in all Leases of Barge Space within the Project.

### ***14. Fixtures and Equipment.***

All of Tenant's equipment, furniture, and moveable trade fixtures shall remain Tenant's property, and Tenant shall have sole responsibility therefor. Tenant may remove them at



any time prior to expiration of the Term, provided that Tenant is not then in default under this Lease and provided further that Tenant repairs any damage to the Premises occasioned by removal.

**15. *Tenant's Maintenance; Condition of the Premises.***

A. Tenant shall, at all times throughout the Term, at its cost, put, keep and maintain the Barges and Premises and every improvement located thereon in good order, condition and repair, except for reasonable wear and tear, condemnation and casualty loss. As used herein, "repairs" shall include replacements, restorations and/or renewals, when necessary or appropriate to keep the Barges and Premises in good order, condition and repair at all times throughout the Term. All repairs shall be made in a first class workmanlike manner. In addition, Tenant shall keep and maintain the Barges and Premises in a clean and orderly condition, free of dirt, rubbish, snow and ice. The necessity for and adequacy of repairs to the Barges and Premises shall be measured by the standard that is appropriate for a first class wharf and fish market.

B. Tenant shall deposit its refuse in the compactor, dumpster or other trash receptacle supplied by Landlord for Tenant's use as of the Commencement Date. Throughout the Term, the Tenant Committee shall provide compactors or dumpsters and/or trash collection service, the cost of which shall be included among the Common Area Costs. Tenant shall not use the compactors, dumpsters or trash collection service for discarding "Hazardous Materials" (as such term is defined below). Tenant, at its expense, shall dispose of its Hazardous Materials in accordance with applicable federal, state and local laws and regulations. "Hazardous Materials" means all substances declared to be hazardous, toxic or infectious under any applicable law or regulation.

C. Tenant shall cooperate with the other tenants of the Project, if given reasonable notice, in arranging for movement of the Barges as necessary to accommodate maintenance, repair, and replacement of Barges and dredging of submerged areas within the Project. All dredging activities shall be carried out and concluded as quickly as is commercially reasonable in the circumstances. Provisions identical to the foregoing provisions of this Section 15.C shall appear in all leases of Barge Space within the Project. It is the intent of the parties that all tenants of the Project shall have the rights of third-party beneficiaries with respect to the provisions of this Section 15.C.

**16. *Landlord's Right of Entry.***

Landlord and its agents may enter the Premises at reasonable hours to inspect or exhibit them; to place and maintain a "FOR RENT" sign thereon at any time within six (6) months prior to termination of the Term; or to enter them after Tenant defaults hereunder, and alter, repair or otherwise prepare the Premises for reoccupancy.

**17. *Tenant's Indemnity; Insurance.***

A. Landlord shall not be liable for, and Tenant shall protect, defend, indemnify and hold Landlord harmless from and against, any liability or claim (including attorneys' fees) in connection with any injury or loss to any person or property (i) arising within the Premises, unless



caused by the gross negligence or willful misconduct of Landlord, or (ii) arising out of any act or omission of Tenant or its agents or contractors.

B. Throughout the Term, Tenant shall maintain, with a company licensed to sell insurance in the District of Columbia, (i) commercial general liability insurance (the "Liability Policy") with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate combined for all locations in which Tenant operates its business (Nos. 7, 8, 9, 16, 17, 18, and 19), in a form providing occurrence basis coverage; and (ii) an all-risk policy of insurance covering the Barges and all trade fixtures, equipment and personal property kept at the Premises, in an amount not less than the full replacement value of said items. All such insurance policies shall (i) be written as primary coverage and not contributing with or in excess of any coverage that Landlord may carry; (ii) contain an express waiver of any right of subrogation by the insurer against Landlord; and (iii) provide that the insurance policy may not be cancelled unless Landlord has been given thirty (30) days' prior written notice. Notwithstanding the foregoing, the Liability Policy shall be increased at the end of each period of five (5) Lease Years during the Term by an amount equal to the increase in the Consumer Price Index during such period. In addition, Tenant's Liability Policy shall (i) list as additional insured Landlord and any other parties with an insurable interest in the Premises designated by Landlord, and (ii) be endorsed to require the insurance carrier to notify Landlord in writing of any losses charged against the policy. Before the Term commences, and before any such insurance policy expires, Tenant shall deliver to Landlord a certificate of insurance for each policy or renewal thereof that Tenant is required to maintain under this Section. If Tenant fails to maintain any insurance required by this Section, Landlord may obtain such insurance, and any premium paid by Landlord shall be immediately payable by Tenant to Landlord as additional rent.

C. Neither party shall be liable to the other or to any insurer (by way of subrogation or otherwise) for any loss or damage, even though such loss or damage may have been occasioned by the negligence of such party, if such loss was covered by an insurance policy containing an endorsement to the effect that any such release by the insured shall not adversely affect the insured's right to recover for such loss, and that the insurer waives its right of subrogation.

## **18. *[Intentionally Omitted].***

## **19. *Assignment and Subletting.***

A. Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or otherwise permit others to use all or any part of the Premises, whether voluntarily, by operation of law or otherwise (collectively, an "Assignment"), without the prior written consent of Landlord, which Landlord may withhold in its absolute discretion. However, Landlord shall not withhold its consent if such assignee, transferee, subtenant or occupant (collectively, the "Assignee") is financially capable of satisfying its obligations under this Lease, and shall have previously and successfully sold seafood at retail. Any attempted Assignment shall be void and confer no rights upon any third party. If an Assignment is effected in violation of the terms of this Lease, Landlord may collect rent from the Assignee and apply the net amount collected to the rent herein reserved, but no such Assignment or collection shall be deemed a waiver of this covenant, acceptance of the Assignee as tenant, or release of Tenant hereunder. In addition, if Landlord



consents to an Assignment, Tenant shall pay Landlord One Thousand and No/100 Dollars (\$1,000.00) (the "Assignment Fee") as payment for legal fees and costs incurred in connection with the preparation of the documents to effectuate the Assignment. The Assignment Fee shall be paid to Landlord prior to the preparation of the Assignment documents. The following events shall also constitute an Assignment: (a) if Tenant is a corporation, the transfer of more than fifty percent (50%) of the voting stock of Tenant, or (b) if Tenant is a partnership, the transfer of more than fifty percent (50%) of the partnership interests of Tenant or the transfer of any general partnership interest of Tenant. This clause shall not be interpreted to preclude an Assignment to siblings and direct descendants of individuals owning, as of the Commencement Date, a majority of the voting stock of Tenant, or a transfer to a new entity as a result of a reorganization that does not result in a change in beneficial ownership.

B. If Landlord approves an assignment or subletting, Tenant shall pay to Landlord, as and when received by Tenant, an amount equal to 50% of the difference between (i) all sums paid to Tenant by or on behalf of such assignee or subtenant under the assignment or sublease, and (ii) the Rent paid by Tenant under this Lease and attributable to the portion of the Premises assigned or sublet.

C. In addition to the foregoing, if Tenant notifies Landlord that Tenant desires to assign a portion of this Lease or sublet a portion of the Premises (the "Proposed Sublet Space"), Landlord shall have the option to regain possession of the Proposed Sublet Space and amend this Lease to exclude the Proposed Sublet Space and effect a proportionate reduction in Minimum Rent and Tenant's Proportionate Share based upon the relative size of the Premises as so reduced. All other terms and conditions of this Lease shall remain in effect and applicable to the Premises as reduced, and Tenant shall execute documents to effect such amendment at Landlord's request. If Landlord does not exercise its right to regain possession of the Proposed Sublet Space, Tenant may seek an acceptable assignee or subtenant for a sublease term no longer than that set forth in Tenant's notice. If Tenant does not find an assignee or subtenant acceptable to Landlord within 120 days from the date of Tenant's most recent notice, Tenant may not enter into any assignment or sublease without first submitting a new notice to Landlord and affording Landlord an opportunity to amend or terminate this Lease as set forth above.

## **20. *[Intentionally Omitted]*.**

## **21. *Tenant's Defaults.***

Tenant shall be in default under this Lease if Tenant (a) fails to pay any rent or other sum required hereunder within twelve (12) days after its due date; or (b) fails to maintain any insurance required hereunder; or (c) abandons the Premises or fails to conduct business therein for a period of fifteen (15) or more consecutive days, absent a casualty and then only after allowing a period of as much as six (6) months in which to replace the affected Barge; or (d) assigns this Lease or sublets all or any portion of the Premises in violation of Section 19; or (e) fails to continue to operate its existing businesses on Barges 7, 8, and 9; or (f) files for relief under the United States Bankruptcy Code (the "Bankruptcy Code") or under any other state or federal bankruptcy or insolvency law, or Tenant files an assignment for the benefit of creditors, or if an involuntary proceeding under the Bankruptcy Code or under any other federal or state bankruptcy or insolvency



law is commenced against Tenant; or (g) defaults in any other obligation herein and such default is not remedied within thirty (30) days after written notice of the default from Landlord; provided, however, that Tenant's failure to perform any non-monetary obligation set forth in this Lease on its part to be performed three (3) or more times in any twelve (12) month period shall effect an immediate default, and Landlord thereupon may exercise any remedy set forth in Section 22 below without affording Tenant any opportunity to cure such default.

## ***22. Landlord's Remedies in Case of Tenant's Default.***

A. At any time after Tenant's default under this Lease, Landlord may (i) terminate this Lease upon notice to Tenant or by any available judicial process; and/or (ii) re-enter the Premises (with or without terminating the Lease), remove all property, which may include towing the Barge or Barges and storing same, at Tenant's expense without being deemed guilty of trespass and without liability for any loss or damage, and/or relet or otherwise deal with the Premises in any manner which Landlord determines in its sole discretion.

B. Should Landlord terminate this Lease after Tenant's default, Landlord may recover from Tenant all costs (including attorneys' fees) and other damages incurred by Landlord as a result of such default, and, without limiting the generality of the foregoing, (i) all rent to the time of such termination shall be paid by Tenant immediately, together with all expenses (including attorneys' fees) of retaking possession of the Premises, as shall the cost of preparing the Premises for reletting and the costs (including brokerage fees and advertising) of actually reletting same; (ii) Landlord may take all steps, including repair or alteration of the Premises, to prepare the Premises for reletting; (iii) Landlord may relet all or any part of the Premises for such term, at such rental, and upon such conditions as Landlord deems advisable; and (iv) Tenant shall pay to Landlord, as liquidated damages, for each month during the balance of the Term (but for termination of the Lease by Landlord), any deficiency between (a) all rent and additional rent herein reserved for each such month, and (b) the net rent for each such month collected upon any reletting. Alternatively, if Landlord terminates this Lease at any time after Tenant's default, Landlord may elect, in addition to the damages described in clauses (i) - (iii) of the preceding sentence, and the damages due under clause (iv) up to the time of said election, to recover from Tenant the value at the time of said election of the excess, if any, of all rent and additional rent due under this Lease for the remainder of the Term (but for termination of the Lease by Landlord) over the then reasonable rental value of the Premises for that period.

C. If Landlord elects not to terminate this Lease after Tenant's default, Tenant shall continue to be liable for all rent and additional rent due hereunder, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.

D. If Tenant abandons the Premises, Landlord may re-enter the Premises without judicial process and relet them, and such re-entry or reletting shall not terminate this Lease, and Tenant shall continue to be liable for all rent and additional rent due under the Lease, in addition to all costs (including attorneys' fees) and other damages arising from Tenant's default.



**23. *Landlord's Right to Cure Tenant's Default.***

A. If Tenant shall default in the keeping, observance or performance of any provision or obligation of this Lease, Landlord, without thereby waiving such default, may perform the same for the account and at the expense of Tenant, without notice in a case of emergency and in any other case if such default continues after thirty (30) days from the date of the giving by Landlord to Tenant a notice of intention so to do. Bills for any reasonable expense incurred by Landlord in connection with any such performance by Landlord for the account of Tenant, and bills for all reasonable costs, expenses and disbursements of every kind and nature whatsoever, including attorneys' fees, involved in collecting or endeavoring to collect any sums due hereunder or enforcing or endeavoring to enforce any rights against Tenant, under or in connection with this Lease, or pursuant to law, including any such reasonable cost, expense and disbursement involved in instituting and prosecuting any action or proceeding (including any summary dispossession proceeding), may be sent by Landlord to be due and payable in accordance with the terms of said bills, and if not paid when due, the amounts thereof shall immediately become due and payable as Additional Rent under this Lease.

B. No entry in accordance with this Lease by Landlord or its employees, agents or representatives, or by any other party at the direction of Landlord, shall ever be construed or interpreted as an ouster of Tenant from possession or as a constructive eviction or to alter, diminish or abate Landlord's rights under this Lease.

**24. *[Intentionally Omitted].***

**25. *Holding Over.***

If Tenant lawfully remains in possession of the Premises after the expiration of the Term, Tenant shall be a tenant from month to month, upon all the terms hereof which are not inconsistent with such tenancy; provided, however, that Tenant covenants to pay to Landlord as Minimum Rent during such tenancy one hundred fifty percent (150%) of the Minimum Rent in effect immediately before expiration of the Term, in addition to all other rent and other charges due hereunder. Such tenancy may be terminated by Landlord or Tenant upon thirty (30) days notice.

**26. *Surrender of Premises.***

Upon termination of the Term for any reason, Tenant shall remove the Barges and any other property of Tenant, and surrender the Premises to Landlord in the same condition as they were in on the Commencement Date. If Tenant fails to remove the Barges or other property, it shall become Landlord's property or, at Landlord's option, shall be removed and stored at Tenant's expense, without Landlord being liable for trespass, conversion or negligence in respect of such property. If Tenant fails to surrender the Premises in the condition required by this Section, Landlord may restore the Premises to their condition as of the Commencement Date and Tenant shall reimburse Landlord for the cost of the restoration.



**27. *Limitation on Landlord's Liability.***

A. Notwithstanding anything to the contrary in this Lease, (i) Landlord shall not be liable to Tenant for any loss or damage to property which is either covered by insurance or which Tenant is required to insure under this Lease, and (ii) any liability of Landlord to Tenant under this Lease shall be limited to direct damages and shall not include indirect, consequential, incidental, or punitive damages, including any liability to Tenant for lost profits or interruption of business. Tenant shall look to its property damage or business interruption insurance policies, and not to Landlord, its agents or employees for any loss incurred as a result of damage to its property or interruption of its business.

B. Except for damages resulting from the gross negligence or willful misconduct of Landlord, Landlord shall not be liable to Tenant, its employees, agents or other invitees for any damage, compensation, claim or expense arising from (i) damage or loss to the property of Tenant or others located anywhere in the Project), or (ii) death, accident or injury to persons occurring anywhere in the Project). Landlord shall have no liability to Tenant for any delay in completing Landlord's Work.

**28. *Notices.***

All notices and other communications hereunder shall be in writing, and shall be hand delivered, delivered by a recognized overnight delivery service (e.g., Federal Express), or sent by certified or registered U.S. mail, postage prepaid, to Landlord or Tenant, as the case may be, at the address set forth below. All notices hereunder shall also be delivered to counsel for the party to receive such notice, at the address set forth below, in order to effectuate good and valid notice hereunder.

If to Landlord:

Director, District of Columbia Department of Housing  
and Community Development  
801 North Capitol Street, N.E.  
8<sup>th</sup> Floor  
Washington, D.C. 20002

A handwritten signature in black ink, appearing to be "BRW", is located in the bottom right corner of the page.



With a required copy to:

Andrew Ridley, Esquire  
Assistant Corporation Counsel  
801 North Capitol Street, N.E.  
Room 734  
Washington, D.C. 20002

If to Tenant:

BRW, Inc.  
t/a Capt. White Seafood City  
1100 Maine Avenue, S.W.  
Washington, D.C. 20024  
Attn: Billy White

With a required copy to:

Richard L. Aguglia, Esquire  
Hunton & Williams  
1900 K Street, N.W., Suite 1200  
Suite 1200  
Washington, D.C. 20006

Either party may designate in writing a change in its notice address, which shall be effective ten (10) days following receipt of such writing by the other party. Notices which are delivered in person shall be deemed given when received. Notices which are mailed shall be deemed given on the date they are mailed. Notices which are sent by overnight delivery service shall be deemed given on the date they are deposited with the delivery service.

**29. *Quiet Enjoyment.***

As long as it is not in default under this Lease, Tenant may peaceably and quietly enjoy the Premises for the Term without hindrance, ejection or molestation by Landlord or anyone claiming or acting by or through Landlord.

**30. *Security Deposit.***

Tenant has deposited with Landlord the sum set forth in Section 1.L (the "Security Deposit") as security for performance of Tenant's obligations hereunder. The Security Deposit shall be returned to Tenant, with interest, within forty-five (45) days after the expiration of the Term, provided that Tenant has discharged all such obligations. Landlord may apply the Security Deposit to cure any default of Tenant, and Tenant shall deposit with Landlord the amount applied within thirty (30) days after written demand.





**31. *[Intentionally Omitted].***

**32. *Rules and Regulations.***

Tenant will comply with the Rules and Regulations set forth on Exhibit E, and with any other reasonable rules and regulations as Landlord adopts for the Premises. Such rules and regulations shall not unreasonably interfere with the conduct of Tenant's business. In particular instances, where in Landlord's reasonable judgment such rules and regulations may be infeasible, Landlord shall have the right to modify or waive such rules and regulations as they apply to particular other tenants. Any failure by Tenant to comply with any rule or regulation established pursuant to this Lease shall be a default under this Lease subject to Section 21. Landlord shall exercise its rights in respect of the promulgation, revision, and enforcement of Rules and Regulations in a non-discriminatory manner.

**33. *Waiver of Jury Trial.***

Landlord and Tenant hereby waive all right to trial by jury in any claim, action, proceeding or counterclaim by either Landlord or Tenant against the other pertaining to any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use of the Premises.

**34. *Covenant Against Contingent Fees***

Tenant warrants that it has not employed any person to solicit or secure this Lease upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give Landlord the right to terminate this Lease, or, in its discretion, to add to the rental or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by Tenant upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by Tenant for the purposes of securing business, or to Tenant's attorneys' fees. Landlord shall pay any and all commissions and other compensation due to any broker, finder or other person with whom Landlord has dealt with regard to this Lease.

**35. *Facilities Nondiscrimination.***

A. As used in this section, the term "facility" means the entire Premises.

B. Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, sexual orientation, physical disability, marital status or national origin, in furnishing, or by refusing to furnish, to any person or persons the use of any facility, including any and all service, privileges, accommodations and activities provided thereby.

C. It is agreed that Tenant's noncompliance with the provisions of this Article, as determined by a final, unappealable judgment by a court of competent jurisdiction,



shall constitute material breach of this lease Agreement. In the event of such a determination of noncompliance, and Tenant's failure to cure such non-compliance within ten (10) days after such determination becomes final, Landlord may take appropriate action to enforce compliance, and may pursue remedies as may be provided by law or in equity.

D. Tenant agrees to include, or to require the inclusion of, the foregoing provisions of this section (with terms "The District" and "Tenant" appropriately modified) in every agreement or concession pursuant to which any person other than Tenant operates or has the right to operate the facility. Tenant also agrees that it will also comply with any final, unappealable court order directing Tenant to take any action with respect to any such agreement in order to enforce the provisions of this section, including but not limited to termination of the agreement or concession in question; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a person as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **36. *Nondiscrimination in Employment.***

A. In connection with the conduct of business on the Premises, Tenant agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sexual orientation, physical disability, marital status, or national origin. Tenant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex orientation, physical disability, marital status or national origin. Such action shall include, but not limited to the following: employment, upgrading demotion or transfer, recruitment or recruitment advertising, layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, as required by applicable law. Tenant agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by Landlord setting forth the provisions of this nondiscrimination clause.

B. Tenant will, in all solicitations for advertisements for employees placed by or on behalf of the Tenant, state that qualified applicants will receive consideration for employment without regard to race, creed, color, sexual orientation, physical disability, marital status or national origin.

C. Tenant will send to each union or representative of workers with which it has collective bargaining agreement(s) or other contracts of understandings a notice to be provided by Landlord in advising the said labor union or worker's representative of Tenant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. Tenant will permit Landlord access to their books, records, and accounts, or their agents, for purposes of investigation to ascertain compliance with such rules, regulations and orders, as provided by applicable law.

E. In the event of any final, unappealable determination by any court or administrative body, of noncompliance of Tenant with the nondiscrimination clauses of this



Lease Agreement, and Tenant's failure to cure such discrimination within ten (10) days after such determination becomes final, this Lease Agreement may be canceled in whole or in part and Tenant may be declared ineligible for further leases with the District of Columbia.

F. Tenant further agrees to insert the foregoing provisions of nondiscrimination in employment in all subcontracts hereunder, unless exempted by rules and regulations or orders of Landlord so that such provisions will be binding and regulations or orders of Landlord so that such provisions will be binding upon each subcontractor or vendor. Tenant will take such action with respect to any subcontract as required by any final, unappealable order of a court or governmental agency of competent jurisdiction in order to enforce such provisions, including sanctions for noncompliance; provided, however, that in the event the Tenant becomes involved in or is threatened with litigation with a subcontractor or vendor as a result thereof, Tenant may request Landlord to enter into such litigation to protect the interest of Landlord.

### **37. *Environment Protection.***

Tenant shall not pollute the air, ground or water in, on or under the premises. Tenant shall comply promptly with any laws, regulations, conditions or instructions applicable to the Tenant's business(es) at the Premises, if and when issued by the Environmental Protection Agency, or any Federal, state, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous material within the Premises in violation of applicable laws or codes is specifically prohibited. Tenant shall require the owners/operators of boats moored at the Premises, including rental boats, to seal all sanitation facilities or such boats against any discharge into the Washington Channel. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Tenant as reasonably appropriate. Tenant shall not discharge waste or effluent from the Premises, including Barges, in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

A. If damage to the environment or natural resources is proximately caused by Tenant's activities at the premises, Tenant shall be liable to restore the damaged resources.

### **38. *Miscellaneous.***

A. **Entire Agreement; Joint and Several Liability; Successors and Assigns.** This Lease constitutes the entire agreement between the parties concerning the matters set forth herein. If Tenant shall include more than one person, the obligations hereunder of all such persons shall be joint and several. This Lease shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs and legal representatives.

B. **Interpretation.** The named Exhibits are part of this Lease. Section and subsection headings are for convenience only, and not for use in interpreting this Lease. If a court finds any provision of this Lease unenforceable, all other provisions remain enforceable.



C. **Costs; Include; Shall; May.** Except as expressly provided otherwise in this Lease, the party obligated or permitted to perform an obligation is also obligated, as between Landlord and Tenant, to pay the cost of performance. "Include," "includes," and "including" mean considered as part of a larger group, and not limited to the items recited. "Shall" means is obligated to. "May" means "is permitted to."

D. **Waiver.** No provision of this Lease is waived by Landlord or Tenant unless waived by them in writing. Landlord's acceptance of rent is not a waiver of any default of Tenant, regardless of Landlord's knowledge of a default when it accepts the rent. No waiver by Landlord or Tenant of any default is a waiver of any other default of the same or any other provision of this Lease.

E. **Rule Against Perpetuities.** Notwithstanding any provision in this Lease to the contrary, if the Lease Term has not commenced within three (3) years after the date of this Lease, this Lease shall automatically terminate on the third (3rd) anniversary of the date hereof. The sole purpose of this provision is to avoid any possible interpretation that this Lease violates the Rule Against Perpetuities or other rule of law against restraints on alienation.

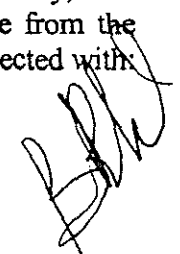
F. **Remedies.** The rights and remedies mentioned in this Lease are in addition to, and do not deprive a party of any other rights at law or in equity.

G. **No Option.** The submission of this Lease for examination does not constitute a reservation of or option for the Premises, and this Lease becomes effective only upon execution and delivery of it by Landlord.

H. **Additional Rent.** All sums owed by Tenant to Landlord in connection with this Lease which are not otherwise designated as rent shall be deemed to be additional rent.

I. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the District of Columbia.

J. **Waiver and Release of Claims.** In consideration of the execution and delivery of this Lease by the parties hereto, each of such parties hereto (each, a "Releasing Party") hereby unconditionally releases, remises, acquits, and forever discharges the other party hereto (at such time as such other party shall have executed and delivered this Lease), as well as each of the other tenants of the Project (at such time as each such tenant shall have executed and delivered a Lease containing waiver and release provisions identical to the provisions of this Section 38.J, and provided such tenant shall not have instituted litigation against such Releasing Party after the date hereof and before the date of such Lease) (collectively, the "Released Parties"), from any and all claims, demands, liabilities, damages, losses, costs, expenses, causes of action, covenants, contracts, torts, controversies, agreements, promises, representations, breaches of contract or of obligations to perform, and any other type of conduct or misconduct, whether negligent, intentional or otherwise, whether at law or in equity, whether matured or unmatured, and whether known or unknown, that the Releasing Party, or any person or entity claiming by, through or under the Releasing Party, ever had, now has, or hereafter may have, against any of the Released Parties at any time from the beginning of the world to the date hereof related to, arising out of, or in any manner connected with





(1) the Project, the operations of the businesses within the Project, or the conduct of any of the Released Parties that relates in any manner to the Project; or (2) this Lease or other lease agreements entered into at any time before the date hereof or simultaneously herewith relating to the Project (collectively, the "Project Leases"), the procurement or negotiation of any of the Project Leases or the terms thereof, or the performance or non-performance by any party under any of such Project Leases.

IN WITNESS WHEREOF, the District of Columbia has caused this Lease to be executed in its corporate name by Anthony Williams, its Mayor, and attested by Beverly Rivers, its Secretary of D.C., and its seal to be hereunto affixed and does hereby constitute and appoint Anthony Williams its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

**LANDLORD:**

WITNESS:

**THE DISTRICT OF COLUMBIA, as agent for  
THE UNITED STATES OF AMERICA**

Beverly R. Rivers

By Anthony A. Williams  
Name: Anthony A. Williams  
Title: Mayor of the District of Columbia

Approved for Legal Sufficiency:

Andrew Earl Ridley  
Name: Andrew Earl Ridley  
Title: Assistant Corporation Counsel

Date: 2-21-01

IN WITNESS WHEREOF, BRW, Inc., has caused this Lease to be executed in its corporate name by Billy R. White, its President, and attested by Billy R. White, its Secretary, and its seal to be hereunto affixed and does hereby constitute and appoint Billy R. White its true and lawful Attorney-in Fact for it and in its name to acknowledge and deliver this Lease as its act and deed.

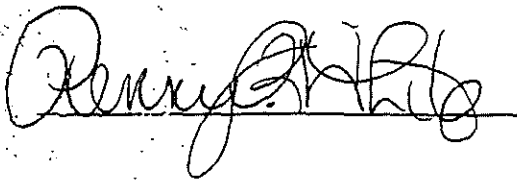
**TENANT:**

**ATTEST:**

**BRW, INC., a District of Columbia corporation**

Billy R. White





By:

Name:

Title:

Billy Ray White  
BILLY RAY WHITE  
PRES.

(Seal)

DISTRICT OF COLUMBIA, SS.

I, Gladys Herring, a Notary Public in and for the District of Columbia, do hereby certify that Anthony A. Williams, who is personally well known (or satisfactorily proven) to me to be the person named as Mayor of the District of Columbia, a municipal corporation, in the foregoing Lease, bearing date as of July 12, 2000, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of the District of Columbia, for the purposes therein contained.

WITNESS my hand and seal this 21<sup>st</sup> day of February, 2001.

Gladys W. Herring  
Notary Public

My commission expires: June 30, 2004

DISTRICT OF COLUMBIA, SS.

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that Billy R. White, who is personally well known (or satisfactorily proven) to me to be the person named as PRESIDENT of BRW, Inc., a District of Columbia corporation, in the foregoing Lease, bearing date as of July 12, 2000, and hereto annexed, personally appeared before me in the said District of Columbia and acknowledged the same to be the act and deed of BRW, Inc., for the purposes therein contained.

WITNESS my hand and seal this 12<sup>th</sup> day of July, 2000.

[Signature]  
Notary Public

MY COMMISSION EXPIRES

My commission expires:

SEPTEMBER 14, 2000





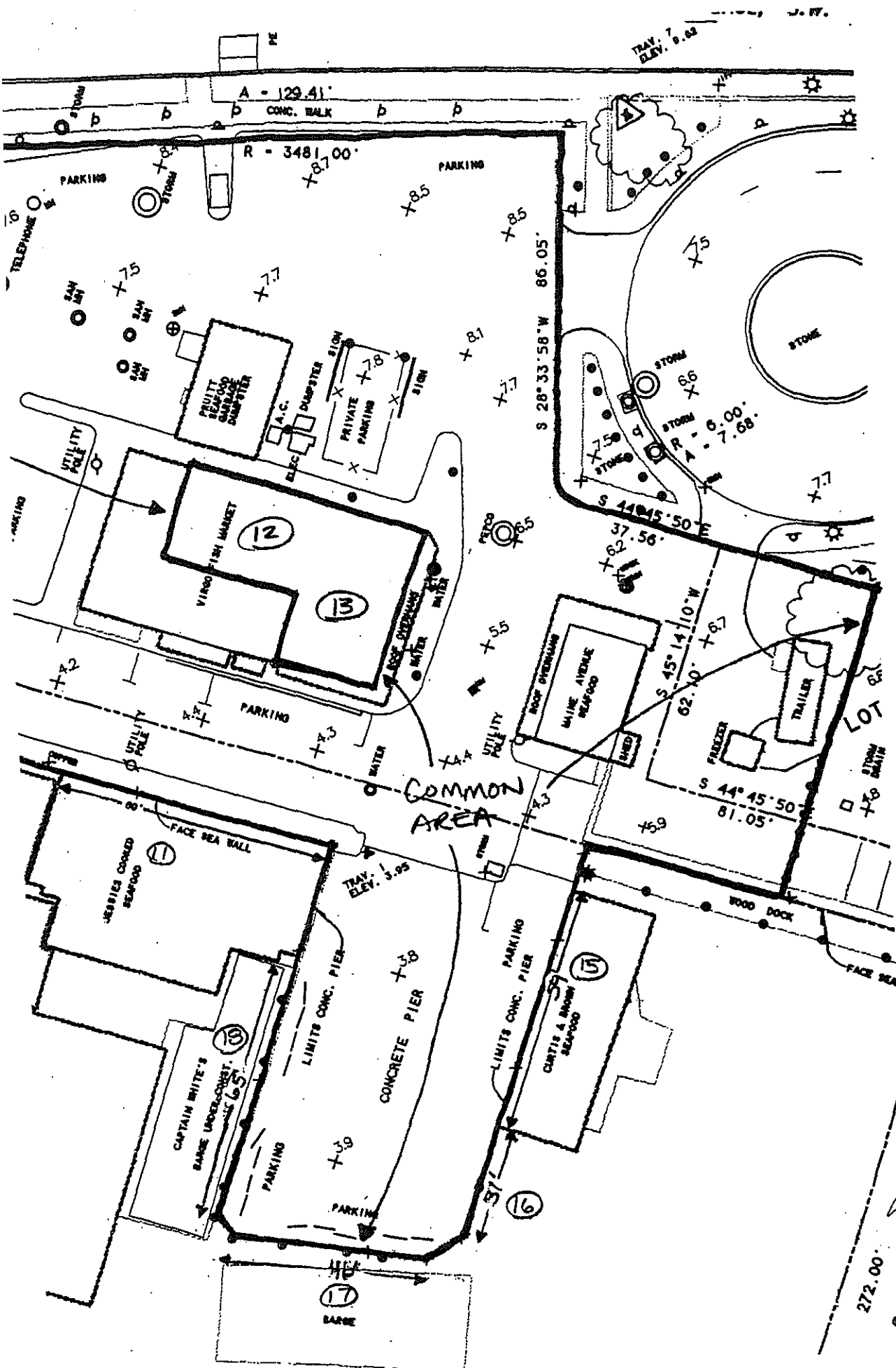
**EXHIBIT A**

[Outline of Premises -- to be initialed by the parties and attached upon completion of design and engineering for Landlord's Work.]

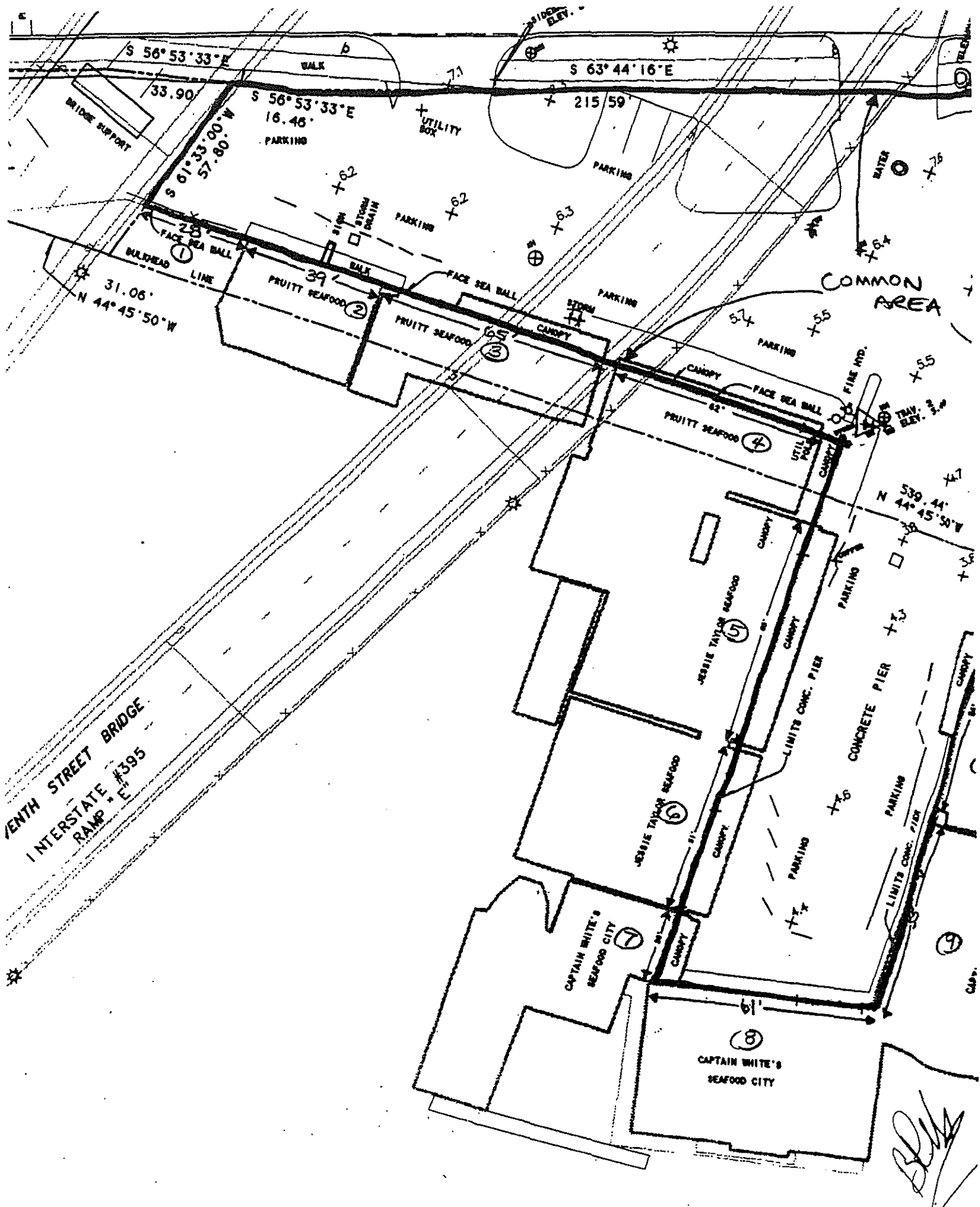
A handwritten signature or set of initials, possibly reading 'BAC', is located in the lower right quadrant of the page.



Exhibit A









**EXHIBIT B**

[Site Plan of the Project]

A handwritten signature in black ink, appearing to be 'BMC' or similar, located in the bottom right corner of the page.



