

SHELTER BAY LEASE

Shelter Bay Lease
Swinomish Indian Reservation

Sublease # _____

Master Lease No. 5020 - Contract No. 14-20-0500-2949
Divisions 2, 3, and 5

Master Lease No. 5086 – Contract No. 14-20-0510-3031
Division 4

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SHELTER BAY LEASE

THIS INDENTURE, made this _____ day of _____, _____ between SHELTER BAY COMPANY, a Washington corporation, hereinafter called LESSOR, and _____, whose address is: _____ hereinafter called LESSEE:

WITNESSETH:

WHEREAS, Lessor is the owner of the leasehold estate of the real property of which the premises sublet hereunder are a part, under that certain Business Lease _____, Contract No. _____, approved by the Department of the Interior, United States Government, Bureau of Indian Affairs, Portland Area Office, Portland, Oregon, Filed therewith on July 31, 1969, 122-270 Branch of Realty, Titles and Records Section, which lease was recorded on the 11th day of August, 1969, in the official records of Skagit County, Washington, under Auditor’s File No. 729786, Volume 34, pages 821 to 879 inclusive.

NOW THEREFORE, Lessor does hereby lease to Lessee, and Lessee does hereby lease from the Lessor, the premises hereinafter described, subject to the following terms, conditions, reservations, exceptions and declarations:

Lot No. _____ in accordance with Survey of Shelter Bay, Division # __, located in Skagit County, Washington, as approved by the Department of Interior, Bureau of Indian Affairs, Portland Area Office, Portland, Oregon, on file therewith and recorded on the 8th day of July, 1970, in Volume 48, Pages 627 thru 631 under Auditor’s File No. 740962, Skagit County, Washington, by reference incorporated herein as though set forth in full, subject to Business Lease No. _____, and Shelter Bay Division # __, Declaration of Protective Covenants, dated the 19th day of June, 1970, on file with the Department of Interior, United States Government, Bureau of Indian Affairs, Portland Area Office, Portland, Oregon and recorded in the official records of Skagit County, Washington, under Auditor’s File No. 740963, Volume 48, Pages 632 to 642, inclusive, on the 8th day of July, 1970.

ARTICLE I. DEFINITIONS

The following terms, as used in this lease, shall have the meanings assigned below:

- a) “LEASE”. The term “lease” or “this lease” shall refer to this Shelter Bay Lease, and the term “leasehold” shall mean the subleasehold estate created hereby.
- b) “MASTER LEASE”. The term “master lease” shall refer to the “Business Lease” above described, and the term “Master Lessor” shall refer to the Swinomish Indian Tribal Community, et al, identified as the lessor in the master lease, and to their successors in interest.
- c) “DECLARATION OF PROTECTIVE COVENANTS”. The term “declaration” or “declaration” shall refer to the “Shelter Bay Division # __ Declaration of Protective Covenants”, dated the _____ day of _____, _____ on file with the Department of Interior, United States Government, Bureau of Indian Affairs, Portland Area Office, Portland, Oregon, and recorded in the official records of Skagit County, Washington, under Auditor’s File No. _____, Volume _____, Pages _____ to _____ inclusive, on the _____ day of _____, _____.

- d) "SECRETARY". The term "Secretary" shall mean the Secretary of the Interior, United States Government, or his authorized representative.
- e) "ARCHITECTURAL COMMITTEE". The term "Architectural Committee" shall mean the committee provided for in accordance with the Articles of Incorporation and By-Laws of Shelter Bay Community, Inc., a non-profit Washington corporation.
- f) "LESSOR". The term "Lessor" herein shall mean the Lessor herein, its successors, assigns, trustees or administrators.
- g) "LESSEE". The term "Lessee" herein shall mean the Lessee or Lessees of this lease, successors, assigns, administrators, executors or parties in interest of the Lessee herein of which the Lessor has received written notice of the name and address thereof as provided for in Article XV: "Assignment and Subletting" hereof.

ARTICLE II. TERM

The term of this lease shall commence on the date of execution of this lease and continue to June 30, 2044, inclusive.

ARTICLE III. RENEWALS AND EXTENSIONS

In the event the Lessor leases the premises from the Master Lessor for a term or terms beyond June 30, 2044, the Lessor of this Lease hereby covenants to extend the term of this Lease to the Lessee of this Lease for an equivalent term or terms, at the option of the Lessee, upon the following terms and conditions:

- a) The term of extension of this lease shall be equal to and not greater than the term or terms the master lease is extended.
- b) The annual rental charge during the term or terms of the extension of this lease shall be in the amount of annual rental charge for an additional term or terms negotiated for the property contained in the Master Lease between the Master Lessor and the Lessor of this lease, multiplied by _____ of one percent (____ of 1%), for the lot herein described, and an amount reasonably necessary for administration, accounting, collection and remittance of payments to the Master Lessor. The administration, accounting, collection and remittance costs shall not be in excess of the reasonable cost thereof plus ten percent (10%) of the total annual rental charge for the lot herein as computed in accordance with the percentage above stated, for the additional term or terms contracted for between the Master Lessor and the Lessor of this lease.
- c) The Lessor shall send notice in writing by registered mail to the Lessee of its right to extend this lease for an additional term or terms, the amount of annual rental charge as above stated, and the maintenance fee referred to in Article V hereof.

This lease shall be renewed for an additional term or terms in accordance with said notice and subject to all other terms, conditions, reservations, exceptions and the declaration stated in this lease, provided that within sixty (60) days after having received said notice from the Lessor, the Lessee in writing mails notice to the Lessor of acceptance by the Lessee of the additional term or terms.

ARTICLE IV. RENTAL

Receipt is hereby acknowledged of the sum of \$ _____ in payment of Lessee's rental to July 1, 19 _____. Lessee further agrees to pay the sum of \$ _____ annual rental charge for the full term of this lease by making advance payments annually to the Lessor in the sum of \$ _____ on the 1st day of June 19 ____, and a like sum on the 1st day of June of each and every year thereafter for the full term of this lease. The annual rental charge commencing on July 1, 1993, July 1, 2003, July 1, 2013, July 1, 2023, July 1, 2033, and July 1, 2043, shall be subject to review and adjustment 90 days before said dates of adjustment, at the option of the Lessor, to reflect the percentage of increase from the nearest date published in the Consumer Price Index for the City of Seattle as published by the Bureau of Labor Statistics, Department of Labor, United States Government, to July 1, 1969, to the nearest date to said date of adjustment, in said Index or, if said Index is no longer existing, in a similar guide generally recognized and accepted in the Seattle areas; that is the annual rental each year for the succeeding period, July 1, 1993 to July 1, 2003, and from July 1, 2003 to July 1, 2013, and from July 1, 2013 to July 1, 2023, and from July 1, 2023 to July 1, 2033,

and from July 1, 2033 to July 1, 2043, and from July 1, 2043 to July 1, 2044, shall be increased as compared with the annual rental as set forth above by the same percentage as the increase in said Consumer Price Index differs from said Index for the nearest date, 90 days prior to the date of adjustment.

The annual rental charge unpaid thirty (30) days after the due date shall bear interest at twelve percent (12%) per annum from the date it becomes due until paid, but this provision shall not be construed to relieve the Lessee from any default in making any rental payment at the time and in the manner herein specified. The rents called for herein shall be paid without prior notice or demand.

ARTICLE V. MAINTENANCE FEE

Receipt is hereby acknowledged of the sum of \$_____ for annual maintenance fee payable to July 1, 19___, and the Lessee further agrees to pay said annual maintenance fee or fees by making advance payment annually to the Lessor on the 1st day of June, 19___, and on the 1st day of June of each and every year thereafter for the full term of this lease. The annual maintenance fee to be held in trust by the Lessor at a national bank or savings and loan association, which funds, together with similar funds paid in by other members of Shelter Bay Community, Inc., shall be held subject to and paid over upon call of Shelter Bay Community, Inc., a non-profit Washington corporation, to apply against the cost of maintenance and repair, including any new construction authorized by said corporation, of community facilities and improvements of Shelter Bay Community, Inc.

The failure of Lessee to pay the maintenance fee and authorized assessments as the same shall become due shall constitute a breach of a material covenant of this lease, and shall constitute ground for termination thereof as hereinafter provided. In the event Shelter Bay Community, Inc., or its successor shall become legally unable to use such funds for such purpose, any unused portion thereof shall be returned to each member of Shelter Bay Community, Inc., in proportion to the total amount each such member's predecessors in interest, have paid in.

The maintenance fee and authorized assessments unpaid thirty (30) days after the due date shall bear interest at twelve percent (12%) per annum from the date it becomes due until paid, but this provision shall not be construed to relieve the Lessee from any default in making any maintenance fee and/or authorized assessment payment at the time and in the manner herein specified. The maintenance fee and authorized assessments called for herein shall be paid without prior notice or demand.

ARTICLE VI. COMPLIANCE WITH DECLARATIONS AND USE OF PROPERTY

This lease and the interests of the parties hereto are subject to the declaration, and to all of the covenants, conditions, restrictions, reservations, easements, liens and provisions therein contained, and the Lessee does hereby covenant and agree to comply with the provisions of said declaration and to pay maintenance fee payments and authorized assessments when due, and faithfully to perform all of the other obligations of Lessee as a member of Shelter Bay Community, Inc., and a Lessee of "Shelter Bay, Division #___", as established by said declaration. Reference is made to the declaration for particulars, and the same is incorporated as a part of this lease as is set forth at length herein.

ARTICLE VII. UNINTERRUPTED POSSESSION

So long as Lessee will perform the Lessee's covenants herein contained and pay the rent and maintenance fees and authorized assessments promptly when due, Lessees shall peaceably hold and enjoy said premises for the term of this lease and any extensions thereof, without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through or under it as herein expressly provided.

The use of the property is subject to the declaration and to restrictions and reservations set forth on the Survey of Shelter Bay, Division #___, by reference incorporated herein.

ARTICLE VIII. ROADS, PARKS, TRAILS, COMMUNITY BEACHES, PERMANENT ACCESS AND USE TO WATERS, AND COMMUNITY FACILITIES

Lessor has a master lease, above stated, and/or is the owner or lessee of all lands designated within the area known as Shelter Bay, comprising approximately 420 acres, of which the Survey of Shelter Bay, Division #___ is a part. The Lessor by way of having a master lease on the lands above stated, and/or as a lessee or owner of lands known as Shelter Bay, is subdividing or has subdivided said lands into divisions, and is developing or has developed roads, parks, trails, community beaches, community tracts, permanent access and use to waters and community facilities, for the exclusive common use and enjoyment of the lessees or owners of lots designated on the Survey of Shelter Bay, Division #___ and/or the lessees or owners of further lots in further subdivisions of the lands to be known as Shelter Bay. Upon the completion of said roads, parks, trails, community beaches, community tracts, permanent access and use to waters and community facilities, as part of the purchase price of this lease and subsequent purchases of leases or lots or tracts of Shelter Bay, the Lessor shall sublease, quit claim and assign its rights therein to Shelter Bay Community, Inc.

Each Lessee of a lot of Shelter Bay, Division #___, as set forth on the Survey of Shelter Bay, Division #4, by reference incorporated herein, and as a member of Shelter Bay Community, Inc., of all the roads, parks, trails, community beaches, community tracts, permanent access and use to waters and community facilities of lands of Shelter Bay, Division #___ and subsequent subdivisions of lands known as Shelter Bay, subject to the declarations set forth on said Survey and further subdivisions; Shelter Bay Declaration of Protective Covenants, Division #___ and subsequent Declaration of Protective Covenants controlling other subdivisions, now or in the future, and the Articles of Incorporation and By-Laws and the rules and regulations of Shelter Bay Community, Inc.

ARTICLE IX. LEASE SUBJECT TO MASTER LEASE

This lease is subject to the terms of the master lease. Reference is made to the master lease for particulars, and the same is incorporated as part of this lease as if set forth at length herein. The form of this lease has been approved by the Secretary on the ___ day of _____, 19___. Termination of the master lease, by cancellation or otherwise, shall not serve to cancel this lease, but shall operate as a substitution of the Master Lessor as Lessor of this lease.

ARTICLE X. IMPROVEMENTS BY LESSEE AND REMOVAL

All buildings and improvements placed on the leased land by the Lessee shall, upon construction, be and remain the property of the Lessee, except as provided herein. The Lessee shall have the right to remove all buildings and improvements within sixty (60) days after the expiration date, June 30, 2044, of this lease, or the expiration date of any renewal or extension hereof, whichever is latest, subject to the requirements set forth in Article XXII: "Surrender of Premises" and Article XXI: "Holding Over" herein.

The Lessee may not remove any of the buildings and improvements, excluding removable personal property, placed on the land by the Lessee, in the event that the Lessee is in default of any of the covenants, terms, conditions or declarations of this lease unless the prior written consent of the Lessor is secured. Said buildings and improvements shall remain on said land subject to the rights of the Lessor set forth in Article XX: "Default", and on termination of this lease as set forth therein for default or defaults of the Lessee, shall remain on said property after the termination and shall thereupon become the property of the Lessor subject to the rights of mortgagees or encumbrances, as set forth in Article XVI: "Consent to Mortgage", Article XVII: "Protection of Mortgagee", Article XVIII: "Applicability of Deed of Trust, Assignment in Trust in Security, Pledge, or Assignment for Security", and Article XIX: "Lessor's Subordination of Lease to Approved Encumbrance by Lessee" of this lease.

The term "removable personal property" as used in this Article shall not include property which normally would be attached or affixed to the buildings, improvements or land in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed or attached to the buildings, improvements or land in such a way as to legally retain the characteristics of personal property.

ARTICLE XI. LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES

Lessee shall not permit to be enforced by way of sale, foreclosure or otherwise against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, mortgages or encumbrances made, or obligations incurred by Lessee. The Lessee shall either discharge all such liens before any action is brought to enforce the same or post bond against all such liens before any action is brought to enforce same. Lessee shall pay, when as the same become due and payable, all taxes, assessments, licenses, fees and other like charges levied during the term of this lease or extension thereof upon or against the leased land, or portion thereof, all interest therein, and property and improvements thereon, whether made by governmental authority, private or public enterprise or community service organization for which either the Lessee or Lessor may become liable. Lessee shall have the right to contest any claim, lien, tax, license or assessment by posting bond to prevent enforcement of any lien resulting therefrom and Lessee agrees to protect and hold harmless the Lessor herein from any lien therefor or sale or other proceedings to enforce payment thereof, and all costs and reasonable attorney's fees incurred in connection therewith.

In addition, Lessee shall hold Lessor herein harmless for all charges for water, sewage, gas electricity, telephone and other utility services supplied to said premises. Upon written request, the Lessee shall furnish to the Secretary or Lessor herein written evidence, duly certified, that any and all taxes have been paid, satisfied, or otherwise discharged.

ARTICLE XII. LESSOR PAYING CLAIMS

Lessor herein shall have the option to pay any lien or charge payable by Lessee under this lease, or settle any action therefor, if the Lessee, after written notice from Lessor, fails to pay or to post bond against enforcement. All costs, reasonable attorney's fees and other expenses incurred by Lessor or assigns, in so doing, shall be paid to said parties by Lessee upon demand, with interest at the rate of 12% per annum from date of payment until repaid. Default in such repayment shall constitute a breach of the material covenants of this lease.

ARTICLE XIII. LESSOR'S NON-LIABILITY AND INDEMNITY

Lessor and the Master Lessor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the leased premises or any part thereof, or caused by or arising from any act or omission of Lessee or any of its agents, employees, subtenants, licensees or invitees or by or from any accident on the leased premises or any fire or other casualty thereon or occasioned by the failure of Lessee or any of its subtenants to maintain said premises or to cause the same to be maintained in safe condition or by any nuisance made or suffered thereon, or arising from any other cause whatsoever; and Lessee, as a material part of the consideration of this lease, hereby waives on its behalf all claims and demands against the Lessor and the Master Lessor and hereby indemnifies and agrees to hold Lessor and the Master Lessor entirely free and harmless from all liability for claims of other persons for any such loss, damage or injury, together with all costs, reasonable attorney's fees and expenses arising therefrom.

ARTICLE XIV. MAINTENANCE OF MEMBERSHIP BY LESSEES

Each Lessee of a lot must, after acquiring the leasehold interest herein, whether by sublease, assignment or other transfers of any kind, become a member of Shelter Bay Community, Inc., the organization of lessees and/or owners of lots of Shelter Bay, which is to be responsible for control of the community parks, trails, community beaches, roads and enforcement of declarations, and each such Lessee covenants that he will maintain his membership therein during the term of this lease and any extension thereof, by timely payment of dues and authorized assessments properly and lawfully established by members, and by compliance with its properly and lawfully established by-laws, articles of incorporation, rules and regulations that govern themselves.

ARTICLE XV. ASSIGNMENT AND SUBLETTING

Lessee shall not, voluntarily or involuntarily, by receivership, in bankruptcy, under legal process or other operation of law (except by descent or devise, in which case all the terms of this lease, including those of this paragraph, shall be binding on Lessee’s heirs, devisees, and personal representatives), assign, rent, sublease or part with possession or control of the premises for a period of more than one year, except as provided in Article XVI: “Consent to Mortgage”, without Lessor’s consent in writing. Lessor will not unreasonably withhold its consent if Lessee mails a copy of such assignment, rental agreement or sublease to Lessor and notifies the Lessor of the name and address of said party to whom such transfer is made. The Lessor may withhold its consent, if Lessee is then in default and/or until the transferee shall covenant in writing to the Lessor to be bound to the covenants and conditions herein. Lessor will not require the payment of any money for the giving of such consent except a reasonable service charge not exceeding the sum of Fifteen Dollars (\$15.00).

ARTICLE XVI. CONSENT TO MORTGAGE

The Lessee may from time to time without further consent assign this lease by way of mortgage to any bank, insurance company, or other established lending institution as mortgagee, provided that upon the execution thereof, Lessee or the mortgagee or assignee, shall deliver a true copy of such mortgage and any assignment thereof to Lessor, and shall notify Lessor of the address of the mortgagee to which notice may be sent, and the mortgagee, or its assigns, may cause the lease and the mortgage or either of them to be recorded in the office of the Auditor of Skagit County, Washington, and may enforce such mortgage and acquire title in any lawful way to the leasehold and any of the mortgaged improvements placed thereon, and rent said property pending foreclosure and acquisition and disposal of title to the leasehold and improvements; and the mortgagee, if it shall become the assignee, having so acquired title to this leasehold, may sell and assign the same and the improvements thereon, or may sublet said premises in whole, but no other or further assignment shall be made without the written consent of Lessor.

Any party acquiring the leasehold estate in consideration of the extinguishment of the debt or through foreclosure sale, or any party claiming by, through or under any such party, shall be liable to perform the obligations imposed upon Lessee by this lease only during the period such party has possession or ownership of the leasehold estate.

ARTICLE XVII. PROTECTION OF MORTGAGEE

During the existence of any mortgage above stated of this lease, Lessor will not terminate this lease because of any default by Lessee hereunder if the mortgagee, or its assigns, within one hundred and twenty (120) days after Lessor has mailed to the mortgagee or its assigns, at its last known address, a duplicate written Notice of Default, mailed to the Lessee as required by Article XX: “Default”, shall either cure such default, if the same can be cured by the payment of money or, if such is not the case, shall undertake in writing to perform all the covenants of this lease capable of performance by pursuant to such mortgage, or if the mortgage is assigned, until this lease shall have been sold by said assignee. Anything elsewhere herein contained to the contrary notwithstanding, so long as there is upon Lessee’s leasehold estate a mortgage above-stated, Lessor shall not without written permission from said mortgagee and its successors or assigns, exercise Lessor’s right to terminate this lease for any cause whatsoever within a period of 120 days from the giving to said mortgagee, its successors and assigns, of said duplicate written Notice of Default by Lessee under this lease and within such period of 120 days the mortgagee, its successors or assigns, may reinstate this lease by causing all existing defaults to be cured. Lessor shall not exercise its right to terminate this lease for any reason whatsoever during the time required by the owner and holder of any authorized mortgage of Lessee’s leasehold estate to complete its remedies under such mortgage, provided (i) that such owner and holder proceeds promptly with its remedies under such mortgage and thereafter prosecutes and completes the same with due diligence and (ii) that payment is made to Lessors of all rent and other charges and items of payment required to be paid by Lessee hereunder which have accrued and as they shall become due and payable during said period of time.

If, after the expiration of 120 days from the time the mortgagee and its successors or assigns has received the duplicate written Notice of Default of the Lessee from the Lessor and the Mortgagee has not complied with this Article, then and thereupon the Lessor shall be released from the covenants of forbearance herein contained and this lease may be terminated for the default or defaults of the Lessee set forth in said duplicate Notice of Default above stated. Upon said termination, this leasehold shall be extinguished. All encumbered improvements placed thereon by Lessee shall become the property of Lessor as provided for in Article X: "Improvements by Lessee and Removal", subject to the lien of the mortgage.

It is understood and agreed that any default by the Lessor herein on the Master Lease shall not terminate, change or affect this lease or any rights above stated of the Mortgagee, its successors and assignees, but that Master Lessor shall be entitled on termination of the master lease to succeed to all the rights of the Lessor herein, upon notice received by the parties herein.

ARTICLE XVIII. APPLICABILITY TO DEED OF TRUST, ASSIGNMENT IN TRUST IN SECURITY, PLEDGE, OR ASSIGNMENT FOR SECURITY

The provisions of Article XVI and XVII above, regarding mortgages and mortgagees, shall be equally applicable to any method of taking security by way of a Deed of Trust, Assignment in Trust in Security, Pledge, or Assignment for Security and lenders thereunder, whenever any such method is used or combination thereof, and by whatever name as a security device in lieu of a mortgage.

ARTICLE XIX. LESSOR'S SUBORDINATION OF LEASE TO APPROVED ENCUMBRANCE BY LESSEE

The Lessor herein may approve encumbrances made by the Lessee on the leasehold estate herein where the Lessee is the Obligor and with such approval shall hereby subordinate any claims of the rights of the Lessor for default by the lessee to prior recoupment by the Encumbrancer of the approved encumbrance indebtedness as set forth in this Article; provided, however, any provisions contained herein as to subordination of this lease or the rental due hereunder in favor of an approved encumbrancer shall not be applicable as to the master lessor in the event the Master Lease is terminated and the Master Lessor acquires the rights of the Lessor herein as provided in subsection 10 (a) of this Article, except that the Master Lessor shall be required to protect the Encumbrancer in the same manner as provided in Article XVII.

1. Definitions:

"Approved encumbrance" shall mean an encumbrance by way of either a mortgage, pledge, trust deed and/or assignment of this lease for security, given by the Lessee or successors in interest of the Lessee to Encumbrancer for the purpose of borrowing capital for the development, improvement, sale or resale, or refinancing of the leasehold and improvements placed thereon, and which has received the prior written approval of the Lessor, to the Lessee and Encumbrancer.

"Encumbrancer" shall mean the owner and holder of an approved encumbrance, or its successors in interest.

"Obligor" shall mean the Lessee or successors in interest of the Lessee in the leasehold estate created herein making and incurring the obligation to repay the approved encumbrance to the Encumbrancer.

"Balance of encumbrance" herein shall mean to bring in good standing the amount of principal without acceleration remaining unpaid on a note secured by an approved encumbrance of the interest of the Lessee in this lease; provided that to such principal shall be added for adjustment accrued interest thereon past due (but without acceleration); expenses incurred by the lender in connection with foreclosure or sale of an approved encumbrance and note, together with all necessary expenditures made by the lender to maintain said leasehold valid and in good standing during the process thereof and additional expenditures paid by the lender on additions, betterments and rehabilitation of improvements in marketable condition; such adjustment to principal to be amortized over the remaining term of the note and to be paid in accordance with the schedule set forth in said note, the interest rate on the unpaid adjusted balance to be as set forth in said note.

2. **Terms and Conditions for Obtaining Approval:**

The Lessor may approve encumbrances under this Article for the development, improvement, sale, resale or refinancing of the leasehold and improvements placed thereon upon the Lessee having submitted drawings and descriptions of the proposed development or improvement, cost thereof, financial statements, encumbrance forms, Encumbrancer's name and address, amount of encumbrance and other information the Lessor may deem necessary to justify the amount and terms of said encumbrance.

3. **Terms and Conditions of Subordination:**

Upon written approval of the Lessor of an approved encumbrance, the rights of the Lessor to terminate this lease for any default against the Lessee shall be subordinated to the approved encumbrance subject to the following:

- (a) "Default of Approved Encumbrance". Any default of an approved encumbrance enforceable by power of sale or foreclosure thereunder shall be a breach of a material covenant of this lease, entitling the Lessor to proceed in accordance with this Article and Article XX: "Default".
- (b) "Notice to Encumbrancer". The Encumbrancer shall furnish the Lessor herein copies of any Notice of Default sent the Obligor, and Encumbrancer may exercise any rights provided in such encumbrance provided that before any sale of the leasehold estate and encumbered property, whether under power of sale or foreclosure, the Encumbrancer shall give to the Lessor notice of the same character and duration as is required to be given to the Obligor by either or both such encumbrance or the laws of the State of Washington.
- (c) "Default by Lessee". The approved encumbrance shall contain a provision that any default of this lease by the Lessee Obligor of this Lease shall be a default of said encumbrance.
- (d) "Notice by Lessor to Encumbrancer". The Lessor shall not exercise any of its rights as called for in Article XX: "Default" of this lease, where there is an approved encumbrance, until it has mailed to the Encumbrancer a duplicate of Notice of Default mailed to Lessee as set forth therein.

4. **Subordination of Rights of Lessor to Approved Encumbrance:**

- (a) **Notice of Intent to Terminate:** At least forty-five (45) days after the Lessor having mailed a duplicate copy to the Encumbrancer of the Notice of Default by Lessee as provided for in Article XX: "Default" of this lease and of this Article, and said default remains uncured, the Lessor prior to termination of this lease, shall mail written Notice of Intention to Terminate this lease to the Encumbrancer. The Notice of Intention to Terminate shall describe the claim of default or defaults as set forth in Notice of Default, but need not name a date of termination. If within 30 days after the Encumbrancer has received said notice of Intention to Terminate, and the default or defaults continue, the Encumbrancer does either or both of the following, this lease shall not be terminated as to Encumbrancer for said default or defaults:
 - (i) Cures the default or defaults by payment of money, or
 - (ii) Initiate within the 30 days above-stated and thereafter diligently pursues to completion, proceedings for sale or foreclosure of the leasehold estate and improvements thereon under and pursuant to the terms of the encumbrance. Said proceedings shall include the claim of default or defaults of Lessor against the Lessee as being a default under the approved encumbrance in accordance with the Notice of Intention to Terminate received by the Encumbrancer from the Lessor.
- (b) **Termination:** If the approved Encumbrancer does not perform either (a) (i) or (ii) above-stated, then and thereupon the Lessor shall be released from the covenants of forbearance herein contained and this lease may be terminated. Upon said termination this leasehold shall be extinguished. All encumbered improvements placed thereon by Lessee shall become the property of Lessor as provided for in Article X: "Improvements by Lessee and Removal", subject to the lien of the approved encumbrance.
- (c) **Subordination to Sale:** The Encumbrancer shall neither be obligated to pay any past or accruing payments as required in this lease, nor cure any other default of the Lessee, and this lease shall not be terminated by the Lessor during the period the Encumbrancer is proceeding to foreclose or sell the leasehold pursuant to the terms of the encumbrance where either Notice of Default and Notice of Intent to Terminate has not been received from the Lessor, or has been received and the

Encumbrancer has complied with the terms and conditions herein stated, and diligently continues with said proceedings.

While the Encumbrancer proceeds as above-stated with foreclosure or power of sale under the trust deed, all payments, charges and interest set forth in this lease in default by the Lessee and accruing and owing and/or rights of termination of Lessor for default or defaults by the Lessee, shall be tolled to Encumbrancer until the sale of the encumbered leasehold and improvements placed thereon by Lessee is made in said proceedings.

- (d) **Purchaser on Sale:** The Purchaser on sale of foreclosure or sale under an approved encumbrance of the leasehold and encumbered property shall, within ten (10) days after acquiring title of the leasehold and encumbered property, pay over to the Lessor all payments, charges and interest accruing and owing to the Lessor under this lease, and the Lessee's rights herein shall be terminated and the Purchaser shall succeed to all of the right, title and interest of the Lessee herein, as though said termination had not taken place, and shall be bound to the Lessor to all the terms, covenants, conditions and declarations set forth in this lease, except where the Encumbrancer is Purchaser as hereinafter provided.
5. **Encumbrancer as Purchaser:** Acquisition of the interest of Lessee herein by the Encumbrancer by assignment in lieu of foreclosure sale or sale under power of sale or any other lawful method, shall confer upon Encumbrancer the same rights as if the Encumbrancer had acquired as Purchaser said interest on foreclosure sale or sale under power of sale as above stated in subsection 4 (d) of this Article.
6. **Encumbrancer – Purchaser's Rights and Obligations:** The Encumbrancer at any time after acquiring title as Purchaser to the leasehold and improvements placed thereon by Lessee, and having made all payments, charges and interest accruing and owing to the Lessor, shall have the following rights:
- (a) **“Assignment and Relief from Obligation”:** The Encumbrancer may assign the leasehold at any time after the Lessor has received sixty (60) days notice in writing from the Encumbrancer of Notice of Intent to Assign said leasehold and giving the name and address of said Assignee, subject to the prior rights of the Lessor as provided in section 9 of this Article, and provided that the Lessor has received all payments required under this lease and all charges, taxes and assessments required herein have been paid. Said Assignee shall be entitled to all the right, title and interest of the Lessee in this lease as though it was not terminated and shall be bound to the Lessor to all the terms, covenants, conditions and declarations set forth in this lease.
- (b) **“Elect to operate as Trustee with Subordination”:** The encumbrancer may elect within sixty (60) days after acquiring the leasehold and encumbered property of the Lessee as Purchaser as stated in Paragraph 5 of this Article, to act as Trustee as hereinafter stated; provided, that the Lessor has received from the encumbrancer within said 60 days, Notice of the Intent of Encumbrancer to Operate as Trustee, under Section 7 of this Article.
7. **Operation as Trustee with Right to Subordinate:**
- (a) **“Collection and Payments”:** As Trustee, the Encumbrancer shall rent and collect all rents, maintenance fees and charges due from subleasing of the leasehold estate and improvements thereon, and after deducting any reasonable costs of renting and collecting the same shall hold such rents in trust to pay in the following order:
- First: Taxes upon said property;
- Second: Premiums for insurance policies required by the approved encumbrance;
- Third: Utility charges and costs of maintenance of said property, including charges for maintenance of roads, common areas and buildings as provided for in Article V: “Maintenance Fee” of this lease;
- Fourth: To the encumbrancer the amount of payments which would have been due upon the “balance of encumbrance” as defined herein, had such sale or foreclosure not occurred, which shall include adjustments defined therein, to bring the note current and payments due upon the “balance of encumbrance” as they subsequently accrue from time to time in accordance with the schedule of note payments of said “balance of encumbrance”;

Fifth: Rental payments due the Lessor under this lease;

Sixth: To the Encumbrancer until the Encumbrancer has received a sum equal to the full unpaid balance; and thereupon the leasehold interest and improvements thereon shall be surrendered to the Lessor free and clear of all liens or claims created or suffered or permitted to be created by the acts or omissions of the said Trustee.

- (b) **Accounting to Lessor:** The Encumbrancer shall furnish the Lessor within twenty-one (21) days after the end of each month of its operation of the leased premises and improvements thereon, a report on the receipts, purchases, expenses and financial results of such month's operation. Payments made by Trustee to Lessor in any period as provided for above shall be deemed to constitute the entire amount of rental owed for such period by the Trustee.
- (c) **Rental & Maintenance:** Trustee shall maintain the leasehold premises and improvements thereon in a marketable position for subleasing and execute subleases on the leasehold not to extend beyond the unexpired term or extension of term of this lease, and not for a greater period than is required to pay and satisfy the encumbrances in full. Any sublease entered into by Encumbrancer shall call for payments not inconsistent with payments earned by comparable properties in the vicinity.
- (d) **Credit of Payments of Sublessee:** Payment of rent by a Sublessee to the Trustee shall be considered payment of rent to the Lessor.

8. **Lessors Rights to Purchase Rights of Encumbrancer of Approved Encumbrance in Default and Terminate lease Prior to Sale Under Power of Sale or Foreclosure.** The Lessor after having mailed Notice of Default and Notice of Intention to Terminate this lease to the Encumbrancer, and after having received Notice of Default from the Encumbrancer as provided for in this Article, and prior to sale of the encumbered property under power of sale or foreclosure the default or defaults continue, shall have the right to purchase the note and approved encumbrance in default from the Encumbrancer; terminate this lease as provided for in Article XX: "Default", and on termination become the owner of the leasehold interest and encumbered property as provided in Article X "Improvements by Lessee and Removal" of this lease, subject to the following terms and conditions:

- (a) **"Notice and Purchase":** The Lessor shall prior to termination of this lease, mail to Encumbrancer, Notice of Intent to Purchase, and shall either: (i) pay to the Encumbrancer the entire principal balance (with acceleration) and accrued interest which remains unpaid on the note and approved mortgage, together with costs and reasonable attorney's fees incurred by Encumbrancer in proceedings for sale, and payments, if any, made by Encumbrancer to keep this lease in good standing, or: (ii) subject to approval by Encumbrancer, execute a new note for the "balance of encumbrance" (without acceleration as defined herein) plus the entire amount of principal unpaid on the approved encumbrance payable upon the same terms and conditions as originally provided by the approved encumbrance, such new note to be secured by a new encumbrance to the Encumbrancer of the same form as the approved encumbrance on the buildings and improvements and on all right, title and interest of the Lessor in this lease and the leased land described herein, then owned or thereafter acquired, subject to the rights of Lessee in this lease and of the Master Lease.

Thereafter, on termination of this lease by the Lessor as provided in Article XX: "Default", the Lessor shall deliver in the amount of the new note above-stated, a policy of title insurance from a reputable title insurance company, insuring that the new encumbrance is a first encumbrance on the buildings and improvements and on all right, title and interest of the Lessor and Lessee in this lease, subject to the master lease, and the approved encumbrance of record and subject only to current taxes, conditions, restrictions, reservations, declarations of record at the time of recording the approved encumbrance, and subject further to any agreements, easements of record for utility lines and rights of way granted by the Lessor at the time of recording the approved encumbrance.

- (b) **Transfer by Encumbrancer:** The Encumbrancer on having been paid either in cash or upon having received a new note, encumbrance and title policy above-stated, subsection 8 (a) , shall sell, assign, transfer, execute and deliver to the Lessor by necessary instruments, all right, title and interest to the note and approved encumbrance previously signed by the Lessee.

9. **Lessor's Rights to Purchase Rights of Encumbrancer Under Approved Encumbrance After Encumbrancer has Acquired Lessee's Rights in Default:** At any time after the Lessor has complied with mailing Notice of Default and Notice of Intention to Terminate this Lease to the Encumbrancer and the Encumbrancer has acquired as Purchaser the interest of the lessee in this Lease and encumbered property by foreclosure sale or otherwise, in accordance with the law, or even though the Encumbrancer has elected to operate the property as Trustee as provided in this Article, the Lessor shall have the right to purchase from the Encumbrancer all the right, title and interest of the Encumbrancer, thus acquired, and terminate any rights of the Lessee and Encumbrancer therein, subject to the following terms and conditions:
- (a) **Notice:** The Lessor shall mail to the Encumbrancer notice of Intent to Purchase the leasehold and encumbered property, provided that if the Lessor has received from the Encumbrancer Notice of Intent to Assign the leasehold and encumbered property as provided in 5 (a) of this Article, the Lessor shall mail and the Encumbrancer shall receive said notice within thirty (30) days after the Lessor has received said Notice of Intent to Assign from the Encumbrancer.
 - (b) **Payment:** The Lessor after having complied with (a) above-stated shall promptly thereafter either: (i) pay in cash to the Encumbrancer the entire principal balance (with acceleration) and accrued interest owing upon the approved encumbrance at the time the Encumbrancer acquired the leasehold interest and encumbered property; costs and reasonable attorney's fees incurred by the Encumbrancer in acquiring said property; payments made, if any, to keep this lease in good standing, and any payments for operating the property as Trustee under this Article for which the Encumbrancer has not been reimbursed from rentals thereof, or: (ii) subject to approval of Encumbrancer, execute a new note for the "balance of encumbrance" (without acceleration as defined herein) plus the entire amount of principal unpaid on the approved encumbrance, payable upon the same terms and conditions as originally provided by the approved encumbrance, the principal to be adjusted as provided for in said definition of "balance of encumbrance" and to include in adjustment any payments made by the Encumbrancer as Trustee under this Article for which the Encumbrancer has not been reimbursed from rentals, payments on said adjusted principal to be amortized over the remaining term of the note at the time of acquisition of property by Encumbrancer, with interest thereon in accordance with the previous approved encumbrance and to be paid in accordance with the schedule of payments as provided in the previous note. Such note shall be secured by a new encumbrance of the same form as the approved encumbrance on the buildings and improvements acquired by the Encumbrancer and on the land described in this lease, subject to the master lease, and subject only to current taxes, conditions, restrictions, reservations, declarations of record at the time of recording the approved encumbrance. The Lessor shall deliver to the Encumbrancer a policy of title insurance from a reputable title insurance company insuring in the amount of the note stated that the new encumbrance is a first encumbrance on the buildings and improvements acquired by the Encumbrancer and upon the land described herein, subject only to the matters above-stated.
 - (c) **Transfer by Encumbrancer:** The Encumbrancer on being paid in cash or upon accepting the note and new encumbrance shall sell, assign and transfer all of its right, title and interest to the leasehold and encumbered property to the Lessor free and clear of any claims of the Lessee therein and shall satisfy the previous note and approved encumbrance of record.

10. **Miscellaneous Provisions:**

- (a) **Termination of Lessor's Interest:** In the event of termination of the Master Lease due to a default of the Lessor herein, this lease shall not be terminated, and the rights of any approved Encumbrancer, Purchaser on sale under foreclosure or power of sale of an approved encumbrance, successors in interest thereof by way of assignment, sublease or otherwise as provided in this Article, except for the rights of subordination in favor of an encumbrancer as excepted at the beginning of this Article, shall not be changed or affected, but the rights of the Lessor herein upon notice to said parties given by the Secretary shall become the rights of the Master Lessor and any and all payments required herein shall be paid to Bureau of Indian Affairs in accordance with said notice, for deposit to the account of Master Lessor, except maintenance fees, which shall be paid to Shelter bay Community, Inc., or its assigns.

- (b) **Time of Notice:** Any time as set forth in this Article for mailing of notices, the time shall not begin until after notice is received by the party to whom notice is mailed. Mailing shall be by registered and/or certified mail.
- (c) **Merger, Conflict, Amendment:** In the event of termination of the rights of the Lessee of this lease by the Lessor for default by the Lessee, this lease shall be deemed not to have merged with the rights of the Lessor, but shall continue and be subject to the provisions of this Article. In the event of any amendment or extension of this lease, the rights of an approved encumbrancer herein shall not be changed or affected without the written consent of the Encumbrancer. In the event there is a conflict between the provisions of this encumbrance clause and any other provision of this lease, this encumbrance clause shall control as to the rights of the encumbrancer or purchasers at any sale on foreclosure or power of sale.

ARTICLE XX. DEFAULT

Time is declared too be the essence of this lease. Should Lessee (i) use the leased premises or suffer the same to be used for any purpose other than authorized in this lease and in accordance with the Survey of Shelter Bay, Division No. ____ and Declaration of Protective Covenants, by reference incorporated herein; or (ii) default in any payment of monies or fail to post bond, as required by the term of this lease; or (iii) fail to pay or cause to be paid any tax, assessment, lien or claim or demand on any encumbrance made by Lessee on the leasehold and/or improvements by way of assignment, mortgage or trust deed, judgment or other charge, or (iv) should any right or interest of Lessee in this lease be attached, levied upon or seized under legal process and the same not be released therefrom, or should a receiver or liquidator be appointed to take possession of the leased premises, or should the Lessee be adjudged bankrupt or insolvent and such appointment or adjudication shall not have been discharged, and if such default or defaults shall continue uncured for a period of 30 days after written Notice of Default has been mailed to the Lessee by the Lessor, during which 30-day period the Lessee shall have the privilege of curing such default, or should Lessee breach any other covenant of this lease, and if such breach shall continue uncured for a period of 60 (60) days after written Notice of Default has been mailed by Lessor to Lessee, during which 60-day period the Lessee may cure said default or defaults, said Notice of Default 930 or 60 days) shall specify the nature of the claimed default or defaults, then in any such event Lessor may either:

- 1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with any other provision of this Lease, or
- 2) Re-enter the premises and remove all persons and removable personal property therefrom, excluding encumbered property as provided in Article XVI: "Consent to Mortgage", Article XVII: "Protection of Mortgage", and Article XIX "Lessors Subordination of Lease to Approved Encumbrancer by Lessee", and either (i) re-let the premises and encumbered property without terminating this lease, as the agent and for the account of the Lessee, but without prejudice to the right to terminate the lease thereafter, and without invalidating any right of Lessor or any obligation of the Lessee hereunder. Terms and conditions of such re-letting shall be at the discretion of Lessor, who shall have the right to alter and repair the premises and improvements thereon, as it deems advisable, and to re-let the same. Rents from any such re-letting shall be applied first to the expenses of re-letting, collecting, altering and repairing, including attorney's fees and any real estate commission actually paid, and thereafter toward the payment of all amounts due to Lessor and if a sufficient sum is not thus realized to liquidate the total due, Lessee shall pay to Lessor monthly, when due, any deficiency, and Lessor may sue thereafter as each monthly deficiency shall arise; or (ii) terminate the rights of the Lessee at any time and even though Lessor has exercised rights as outlined in 2 (i) above. Such termination shall not effect a merger of the leasehold into the estate of Lessor so as to prevent a purchaser on sale under foreclosure or power of sale under a trust deed, or acquisition by Encumbrancer in lieu of foreclosure or power of sale, or assignee thereof from acquiring or preserving this leasehold and the rights of said parties under Article XVI: "Consent to Mortgage", Article XVII: "Protection of Mortgage", Article XVIII:

“Applicability to Deed of Trust, Assignment in Trust in Security, Pledge, or Assignment for Security” and Article XIX: “Lessor’s Subordination of Lease to Approved Encumbrance by Lessee”. Upon termination of the rights of the Lessee in this lease for default or defaults by the Lessee, the leasehold created herein and all buildings and improvements placed thereon by Lessee in accordance with Article X: “Improvements by Lessee and Removal” shall thereupon become the property of the Lessor, subject to the rights of other parties as provided in Article XVI: “Consent to Mortgage”, Article XVII: “Protection of Mortgagee”, Article XVIII: “Applicability to Deed of Trust, Assignment in Trust in Security, Pledge, or Assignment for Security” and Article XIX: “Lessor’s Subordination of Lease to Approved Encumbrance by Lessee”. No waiver of default or breach of any of the covenants of this lease shall be construed to be a waiver of any succeeding default or breach of the same or other covenant. Notice of Default as provided for herein shall be sent to the named Lessee herein or to any successors in interest, including encumbrancers, of the Lessee of which it has been notified at the last known address of which it has been notified.

ARTICLE XXI. HOLDING OVER

Holding over by the Lessee after the expiration of this lease on June 30, 2044, or the expiration of any extended term or terms, if any, created under Article III: “Renewals and Extensions”, hereof, shall not constitute a renewal or extension thereof or five the Lessee any rights hereunder or in or to the leased premises.

ARTICLE XXII. SURRENDER OF PREMISES

Lessee agrees to remove all property removable under the terms of Article X: “Improvements by Lessee and Removal” within 60 days after expiration of lease above-stated, or pay a daily rental computed at the rate of double the daily rental charge during the year immediately preceding expiration of this lease, from the day following the expiration date of the lease until said property is removed.

The Lessee shall surrender possession of the premises on the expiration date above-stated and, if required by the Lessor shall, within 60 days thereafter, or within such additional time as may be mutually agreed upon, return the premises in as good condition as that existing at the time of entering upon the same under this lease, provided that if the Lessor requires the return of the premises in such condition, the Lessor shall give written notice thereof to the Lessee at least 30 days before the expiration of the lease.

ARTICLE XXIII. ATTORNEY’S FEES

If action be brought by either party in unlawful detainer for rent or any other sums of money due under this lease, or to enforce performance of any of the covenants and conditions of this lease, the losing party shall pay reasonable attorney’s fees of the prevailing party, to be fixed by the Court as a part of the costs in any such action.

ARTICLE XXIV. EMINENT DOMAIN

If, at any time during the term of this lease, the leased premises or any part thereof is taken or condemned under the laws of Eminent Domain, then and in every such case, the leasehold estate and interest of the Lessee in said premises or part thereof taken, shall forthwith cease and terminate. All compensation awarded by reason of the taking of the leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee, the Lessor herein, and the Master Lessor as their interests appear at the time of such taking. The rental thereafter payable hereunder for the remainder of the term of this lease shall be reduced in the proportion that the value of the entire premises is reduced by such taking or condemnation.

In the event of condemnation of the leased premises or any part thereof, the compensation or award insofar only as it is awarded for damages to the improvements on the leased property, to the extent of the unpaid balance of any encumbrance, shall be paid to the encumbrancer.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Lease the day and year first above written, and whereby the Lessee does hereby acknowledge a receipt of the following:

1. A signed copy of this Lease;
2. A copy of the Survey of Shelter Bay Division # _____;
3. A copy of Declaration of Protective Covenants of Shelter Bay, Division # _____; and
4. A copy of the Articles of Incorporation and By-Laws of Shelter Bay Community, Inc.

SIGNATURES

LESSOR:

LESSEE:

SHELTER BAY COMPANY

BY: _____

BY: _____
Authorized Agent

BY: _____