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indexed for cost of living  
every year

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
JENNIFER M. BELCHER  
Commissioner of Public Lands

AQUATIC LANDS HOUSEBOAT LEASE  
LAKE UNION AND PORTAGE BAY  
20-A09681

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**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
JENNIFER M. BELCHER  
Commissioner of Public Lands  
Olympia, Washington 98504**

**AQUATIC LANDS HOUSEBOAT LEASE  
LAKE UNION AND PORTAGE BAY**

AQUATIC LANDS HOUSEBOAT LEASE NO. 20-A09681

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources (the "State"), and DOX COOPERATIVE MOORAGE ASSOCIATION, a Washington corporation (the "Tenant").

**BACKGROUND**

Tenant desires to lease aquatic lands commonly known as Lake Union, which are bedlands located in King County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

**1. PROPERTY**

1.1 Property Defined. State leases to Tenant and Tenant leases from State the real property described in Exhibit A, together with all the rights of State, if any, to improvements and easements benefiting the property (the "Property"), but subject to the exceptions and restrictions set forth in this Lease. This Lease is subject to all valid interests of third parties noted in the records of King County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or navigational servitude easements; and treaty rights of Indian Tribes. Not included in this Lease are any right to harvest, collect or damage any natural resource, including sea life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials. State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not unreasonably interfere with Tenant's Permitted Use.

1.2 Survey, Maps, and Plans. In executing this Lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, the availability of utility rights, the access to

the Property, or the existence of hazardous substances on the Property. Tenant has inspected the Property and accepts it "AS IS."

## **2. USE**

2.1 Permitted Use. Tenant shall use the Property for houseboat moorage and accessory uses (the "Permitted Use"), and for no other purpose. The Permitted Use and location of Improvements is described or shown in greater detail in Exhibit B.

2.2 Restrictions on Use. Tenant shall not cause or permit any damage to natural resources on the Property. Tenant also shall not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. If Tenant fails to remove any unapproved fill material, refuse, garbage, wastes, or other material that Tenant caused or permitted to be deposited on the Property, State may remove the material and charge Tenant for the cost of removal and disposal. Tenant shall neither commit nor allow waste to be committed on the Property.

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding the use of the Property.

2.4 Liens and Encumbrances. Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use of the Property. Tenant may, in good faith, contest any lien or encumbrance at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.

## **3. TERM**

3.1 Term Defined. The term of this Lease is three hundred sixty (360) months or thirty (30) years (the "Term"), beginning on the 18th day of April, 1996 (the "Commencement Date"), and ending on the 17th day of March, 2026, unless terminated sooner under the terms of this Lease (the "Termination Date").

3.2 Hold Over. If Tenant, without the written consent of State, remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term, but shall be subject to the provisions of this Lease. The occupancy shall be a month-to-month tenancy, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the hold over shall be equal to the monthly rent due as if the Lease were still in effect. If State provides a notice to vacate the Property and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe State all amounts due under RCW 79.01.760 or other applicable law.

3.3 Pre-existing Occupation of the Property. The parties acknowledge that Tenant has occupied all or a portion of the Property after the expiration of pre-existing lease No. 20-009681 for the period beginning on the 18th day of April, 1994, and ending on the Commencement Date of this Agreement (the "Pre-existing Holdover Period").

The parties agree that the rights and obligations of Tenant and State with respect to Tenant's use and occupation of the Property during the Pre-existing Holdover Period shall be governed by the terms of the pre-existing lease as if those terms had been in affect during the Holdover Period. From and after the Commencement Date of this Agreement, the rights and obligations of Tenant and State with regard to Tenant's use and occupation of the Property shall be governed by the terms of this Agreement without regard to the terms contained in the pre-existing lease.

#### 4. RENT

4.1 Annual Rent. The parties agree that the houseboat sites referenced in this lease are subject to treatment as a water-oriented use for purposes of determining rent. Until adjusted as set forth below, Tenant shall pay to State an annual rent of Eleven Thousand Six Hundred Forty Dollars and Thirteen Cents (\$11,640.13). This amount includes rent for existing improvements that are owned by State as identified in Section 7 below. The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), shall be paid as follows:

The full Annual Rent shall be paid in quarterly installments, each of which shall be equal to one-fourth (1/4) of the then-current Annual Rent. The first installment, in the amount of Two Thousand Nine Hundred Ten Dollars and Three Cents (\$2,910.03), shall be due and payable in full on or before the Commencement Date and subsequent installments shall be due and payable in full on or before the same day of each third month thereafter.

4.2 Payment Place. Payment is to be made to Financial Management Division, 1111 Washington Street SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Use. Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the rent shall be adjusted to reflect that use.

4.4 Rent Adjustments for Water-Dependent Rates.

(a) Inflation Adjustment. State shall adjust the rent annually pursuant to RCW 79.90.450 - .902, except in those years in which the rent is revalued under Subsection 4.4(b) below. This adjustment shall be made on the anniversary of the Commencement Date.

(b) Revaluation of Rent. State shall, at the end of the first four-year period of the Term, and at the end of each subsequent four-year period of the Term, revalue the annual rental in accordance with RCW 79.90.450 - .902.

(c) Rent Cap. After the initial year's rent is determined under Section 4.1, rent may increase by operation of Subsection 4.4(a) or 4.4(b). If application of the statutory formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year during the term of the Lease, the actual increase implemented in that year shall be limited to fifty percent (50%) of the then existing rent, in accordance with RCW 79.90.490. The balance of the increase determined by the formula shall be

deferred to subsequent years and added to the next and subsequent years' rental increases until the full amount of the increase is lawfully implemented.

4.5 Rent Adjustments for Nonwater-Dependent Rates. Any nonwater-dependent rents shall be adjusted in the same manner for water-dependent rents in Subsections 4.4(a) and (b), provided that the rental revaluation referenced in Subsection 4.4(b) shall be used to determine fair market rent in accordance with RCW 79.90.500.

4.6 Rent Adjustment Procedures.

(a) Notice of Rent Adjustment.

Notice of any adjustments to the Annual Rent that are allowed by Subsection 4.4 shall be provided to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.

(b) Procedures on Failure to make Timely Adjustment.

In the event the State fails to provide the notice required in Subsection 4.6(a), it shall be prohibited from collecting any adjustments to rent only for the year in which it failed to provide notice. No failure by State to adjust Annual Rent pursuant to Subsection 4.6(a) shall affect the State's right to establish Annual Rent for a subsequent lease year as if the missed or waived adjustment had been implemented. The State may adjust, bill, and collect Annual Rent prospectively as if any missed or waived adjustments had actually been implemented. This includes the implementation of any inflation adjustment and any rent revaluations that would have been authorized for previous lease years.

## 5. OTHER EXPENSES

5.1 Utilities. During the Term, Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including, but not limited to, electricity, water, gas, and telephone service.

5.2 Other Taxes and Assessments. Tenant, unless exempt, shall also pay all taxes, assessments, and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. Tenant may, in good faith, contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.

5.4 Proof of Payment. Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due.

## 6. LATE PAYMENTS

6.1 Late Charge. If any rental payment is not made within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the

payment, but not less than Fifty Dollars (\$50), to defray the overhead expenses of State as a result of the delay.

6.2 Interest Penalty for Past Due Rent and Other Sums Owed. If rent is not paid within thirty (30) days of the date due, Tenant shall, in addition to paying the late charges determined in accordance with Subsection 6.1, above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid. If State advances amounts or otherwise incurs costs for or on behalf of Tenant, including, but not limited to, leasehold taxes pursuant to Chapter 82.29A RCW, Tenant shall reimburse State for the amount paid and shall pay interest on the amount advanced at the rate of one percent (1%) per month from the date State notified Tenant of the payment.

6.3 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payments as it selects. In the absence of a selection, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to amounts advanced by State, then to accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, payment, or on any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

6.4 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, rent and all other sums payable by Tenant pursuant to this Lease shall be paid without the requirement that State provide prior notice or demand.

## 7. IMPROVEMENTS

7.1 Existing Improvements. On the Commencement Date, the following improvements are located on the Property: 33 pilings, 6 dolphins and 2 six foot wide piers. These improvements are the property of Tenant.

7.2 Tenant-Owned Improvements. So long as this Lease remains in effect, Tenant shall retain ownership of all Existing Improvements, and all improvements and trade fixtures it may place on the Property (collectively "Tenant-Owned Improvements"). Houseboats are the personal property of Tenants or subtenants, not Improvements as that term may be used in this section.

7.3 Construction. Houseboats are not Improvements for purposes of this section, and no state approval is required for remodeling or any other modification to the Houseboats moored on the Property. Prior to any construction, alteration, replacement, removal, or major repair of any Improvements (whether State-Owned or Tenant-Owned) that exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00) in cost, Tenant shall submit to State plans and specifications which describe the proposed activity. Construction shall not commence until State has either approved those plans and specifications or held them without action for ninety (90) days, and Tenant has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved unless State notifies Tenant otherwise within the sixty



(60) days. Upon completion of construction, Tenant shall promptly provide State with as-built plans and specifications.

**7.4 Removal.** Tenant-Owned Improvements and all Houseboats shall be removed by Tenant by the Termination Date unless an approved holdover occurs under the terms of this agreement or unless State notifies Tenant that the Tenant-Owned Improvements and Houseboats may remain. If the Tenant-Owned Improvements remain on the Property after the Termination Date, they shall become the property of State without payment by State (if the provisions of RCW 79.94.320 or RCW 79.95.040 apply, Tenant shall be entitled to the rights provided in the statute). The terms of this lease shall not work to transfer any title to the Houseboats moored on the Property. Tenant shall notify State at least 180 days before the Termination Date if it intends to leave the Tenant-Owned Improvements on the Property. State shall then have ninety (90) days in which to notify Tenant that it wishes to have the Tenant-Owned Improvements removed. Failure to notify Tenant shall be consent that the Tenant-Owned Improvements may remain on the Property. If the Tenant-Owned Improvements remain on the Property after the Termination Date without State's consent, they still will become the property of the State but the State may remove them and Tenant shall pay the costs of removal and disposal upon State's demand. Any Houseboats that remain on the Property after the Termination Date, unless there is an approved holdover, without State's express written consent shall be considered a trespass, and State may charge Tenant for any costs associated with abating this trespass.

**7.5 Unauthorized Improvements.** Improvements made on the Property without State's prior written consent or which are not in conformance with the plans submitted to and approved by State ("Unauthorized Improvements") shall immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove, and dispose of them, charge Tenant rent for the use of them, or both. If Tenant fails to remove an Unauthorized Improvement upon request, State may remove it and charge Tenant for the cost of removal and disposal.

## **8. ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definition.** "Hazardous Substance" means any substance which now or in the future becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

**8.2 Use of Hazardous Substances.** Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of on, in, under, or above the Property, except in accordance and compliance with all applicable laws.

**8.3 Current Conditions.** State makes no representation about the condition of the Property. Hazardous Substances may exist on, in, under, or above the Property. If there are any Hazardous Substances as of the Commencement Date on, in, under, or above the Property, Tenant agrees that it will take no action that would add to such Hazardous Substance or exacerbate contamination arising from such Hazardous Substance, or that would increase any

liability the State may have for such Hazardous Substance. Tenant will exercise the appropriate degree of care imposed upon a person in such circumstances by CERCLA or MTCA with respect to any existing Hazardous Substances, the foreseeable acts or omissions of third parties affecting such Hazardous Substances, and the foreseeable consequences of those acts or omissions. It shall be Tenant's obligation to gather sufficient information concerning the Property and any existing Hazardous Substances in order to meet its obligations under this subsection.

8.4 Notification. Tenant shall immediately notify State if Tenant becomes aware of any release or threatened release of Hazardous Substances on the Property or on any adjoining property, any Hazardous Substance problem or liability with respect to the Property or adjoining property, any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property or adjoining property, or any lien or action with respect to any of the foregoing.

8.5 Indemnification.

(a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys fees and disbursements), that arise out of or are in any way related to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substances by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, above, or under the Property or any adjoining property during the term of this Lease or during any time when Tenant occupies or occupied the Property or any adjoining property;

(2) The release or threatened release of any Hazardous Substances in, on, above, or under the Property or any adjoining property that occurs or occurred during the term of this Lease or during any time when Tenant occupies or occupied the Property or adjoining property as a result of any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,

(3) Tenant's breach of the obligations of Subsection 8.3, above.

8.6 Sampling. State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, adjacent property, or natural resources. If such Tests establish the existence, release or threatened release of Hazardous Substances on, in, above, or under the Property, all costs associated with such Tests shall be treated as response costs under Subsection 8.5.

8.7 Reservation of Rights. Any rights, claims, or defenses either party may have against third parties are not affected by this Lease and the parties expressly reserve such rights, claims, or defenses. The allocation of risks, liabilities, and responsibilities set forth above do not release Tenant from or affect Tenant's liability for claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

## **9. ASSIGNMENT AND SUBLETTING**

Tenant shall not mortgage, assign, sublet, or otherwise transfer Tenant's interest in this Lease without State's prior written consent, which shall not be unreasonably withheld. If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease. If Tenant is the owner of an individual houseboat, Tenant or subtenant may sell, sublet or mortgage Tenant's or subtenant's interest in the houseboat without State approval. State approval of subleases by Tenant to individual houseboat owners for moorage is hereby granted provided that in all cases the approval is expressly conditioned on inclusion of all of the following requirements in the sublease:

- (a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;
- (b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;
- (c) The sublease shall provide that it terminates if this Lease terminates, whether upon expiration of the Term including approved holdovers, failure to exercise an option to renew, cancellation by State, surrender, or for any other reason;
- (d) The subtenant shall receive and acknowledge receipt of a copy of this Lease;
- (e) The sublease shall confirm that there is no privity of contract between the subtenant and State;
- (f) The sublease shall require removal of the subtenant's improvements and trade fixtures and any houseboats upon termination of this lease;
- (g) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease; and,
- (h) Upon request by the State, copies of executed subleases shall be provided to the State.

## **10. INDEMNITY, FINANCIAL SECURITY, INSURANCE**

**10.1 Indemnity.** Tenant shall indemnify, defend, and hold State harmless from any and all liability or damages (including personal injury and damages to land, aquatic life, and other natural resources), of any nature whatsoever, arising out of the use, occupation, or control of the Property by Tenant, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Tenant shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. This provision shall not in any way limit Tenant's liability under Section 8, above.

### **10.2 Financial Security.**

(a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Twenty-Two Thousand Six Hundred Sixty Dollars (\$22,660.00), which shall secure Tenant's full performance of its obligations under this Lease. The Bond shall remain in force until at least

three (3) months after termination of this Lease. The Bond shall be in a form and issued by a surety company acceptable to State. State may require a change in the amount of the Bond:

- (1) At the same time as revaluation of the rent;
- (2) As a condition of approval of assignment or sublease of this Lease;
- (3) Upon any breach of Section 8 above;
- (4) Upon a material change in the condition of any improvements; or,
- (5) Upon a change in the Permitted Use.

A new or modified Bond shall be delivered to State within thirty (30) calendar days after a change in the amount of the Bond is required by State.

(b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

10.3 Insurance. At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance described in Subsections 10.3(a) and (b) below. This insurance shall be issued by an insurance company or companies licensed to do business in the State of Washington with a B+ or better rating in "Best's Insurance Reports," or a comparable rating by another rating company acceptable to State.

(a) Types of Required Insurance.

(1) Liability Insurance. Public liability insurance, and, unless Tenant demonstrates to State's satisfaction that either or both are not necessary in these circumstances, Marina liability insurance and Commercial general liability insurance, covering all claims for personal injury, for damage to the Property or any improvements thereon, or for any other damage arising out of Tenant's operations. Limits of liability shall be not less than \$1,000,000 for each occurrence and not less than \$2,000,000 annual aggregate. Such limits may be achieved through the use of umbrella liability insurance. State may require changes in the limits of liability:

- (I) At the same time as revaluation of the rent;
- (ii) As a condition of approval of assignment or sublease of this Lease;
- (iii) Upon any breach of Section 8 above;
- (iv) Upon a material change in the condition of any improvements; or,
- (v) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) calendar days after changes in the limits of liability are required by State. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to the Tenant and to State.

(2) Physical Property Damage Insurance. Physical property damage insurance covering all real and personal property located on or constituting a part of the Property in an amount equal to at least ninety percent (90%) of the replacement value of all such property. Such insurance may have commercially reasonable deductibles. Any co-insurance provisions of the policy will be endorsed to be eliminated or waived.

(b) Terms of Insurance. The policies required under Subsection 10.3 shall name State as an additional insured. Tenant shall provide certificates of insurance and, if requested, copies of policies to State. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Further, all policies of insurance described in Subsection 10.3 shall:

(1) Be written as primary policies not contributing with and not in excess of coverage that State may carry;

(2) Expressly provide that such insurance may not be materially changed, amended, or canceled with respect to State except upon forty-five (45) calendar days prior written notice from the insurance company to State;

(3) In regard to physical property damage coverage, have an endorsement containing an express waiver of any right of subrogation by the insurance company against State and State's elected officials, employees, or agents;

(4) In regard to physical property damage coverage, expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Tenant which might otherwise result in a forfeiture of said insurance;

(5) Expressly provide that State shall not be required to give notice of accidents or claims for which State shall have no liability for premiums; and,

(6) In regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to State and Tenant.

(c) It is expressly agreed that nothing in this section is intended to require Tenant or its sublessees to provide property damage insurance for State with respect to houseboats or other property which does not constitute an Improvement to the leasehold as defined in Section 7, above.

10.4 State's Acquisition of Insurance. If Tenant fails to procure and maintain the insurance described above, State shall have the right to procure and maintain substitute insurance and to pay the premiums. Tenant shall pay to State upon demand the full amount paid by State, together with interest thereon at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

## 11. MAINTENANCE AND REPAIR

Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

## 12. DAMAGE OR DESTRUCTION

In the event of any damage to or destruction of the Property or any improvements, Tenant shall promptly give written notice to State. Tenant shall promptly reconstruct, repair, or replace the Property as nearly as possible to its condition immediately prior to such damage or destruction.

### 13. CONDEMNATION

#### 13.1 Definitions.

(a) Total Taking. The term "taking," as used in this Lease, means the taking of all or any portion of the Property and any improvements under the power of eminent domain either by judgment or settlement in lieu of judgment. Taking also means the taking of all or any portion of the Property and improvements to the extent that the Permitted Use is prevented or, in the judgment of State, the Property is rendered impractical for the Permitted Use. A "total taking" occurs when the entire Property is taken. A "partial taking" is when the taking does not constitute a total taking as defined above.

(b) Voluntary Conveyance. The terms "total taking" and "partial taking" shall include a voluntary conveyance, in lieu of formal court proceedings, to any agency, authority, public utility, person, or corporate entity empowered to condemn property.

(c) Date of Taking. The term "date of taking" shall mean the date upon which title to the Property or a portion of the Property passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

13.2 Effect of Taking. If during the Term there shall be a total taking under the power of eminent domain, then the leasehold estate of Tenant in the Property shall terminate as of the date of taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by Tenant to State and attributable to the Property taken shall be paid by Tenant up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking. In the event of a partial taking, there shall be a partial abatement of rent from the date of taking in a percentage equal to the percentage of Property taken.

13.3 Allocation of Award. State and Tenant agree that in the event of any condemnation, the award shall be allocated between State and Tenant based upon the ratio of the Fair Market Value of Tenant's Leasehold Estate and Tenant-Owned Improvements on the Property and State's interest (a) in the Property, (b) in State's landlord interest in the reversionary interest in Tenant-Owned Improvements, and (c) in State-owned Improvements. In the event of a partial taking, this ratio will be computed on the basis of the portion of Property or improvements taken. If Tenant and State are unable to agree on the allocation, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

### 14. DEFAULT AND REMEDIES

(a) Tenant shall be in default of this Lease on the occurrence of any of the following:

- (1) Failure to pay rent or other expenses when due;
- (2) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (3) Proceedings commenced by or against Tenant under a bankruptcy act or for the appointment of a trustee or receiver of Tenant's property; or,
- (4) Failure to comply with any other provision of this Lease.

(b) A default shall become an event of default ("Event of Default") if Tenant fails to cure the default within the applicable cure period after State gives written notice of default

to Tenant, which specifies the nature of the default. For failure to pay rent or other monetary defaults, the cure period shall be ten (10) days. For other defaults, the cure period shall be thirty (30) days.

(c) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise. State may also, without terminating this Lease, relet the Property on any terms and conditions as State in its sole discretion may decide is appropriate.

**15. ENTRY BY STATE**

State shall have the right to enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease.

**16. DISCLAIMER OF QUIET ENJOYMENT**

State expressly disclaims and Tenant expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. This disclaimer includes, but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or in or under the water column including rights under the Public Trust Doctrine; rights held by Indian tribes; and the general power and authority of State and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands, and shorelines. In the event Tenant is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations shall abate as of the date of the partial eviction in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

**17. NOTICE**

Any notices required or permitted under this Lease may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or at such other place as the parties may direct in writing from time to time:

To State: DEPARTMENT OF NATURAL RESOURCES  
Aquatic Resources Division  
1111 Washington St SE  
PO Box 47027  
Olympia, WA 98504-7027

To Tenant: DOX COOPERATIVE MOORAGE ASSOCIATION  
2235 Fairview Ave. E  
Seattle, WA 98102

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

**18. TIME IS OF THE ESSENCE**

TIME IS OF THE ESSENCE as to each and every provision of this Lease.

**19. RECORDATION**

Tenant shall record this Lease in the county in which the Property is located at Tenant's sole expense. Tenant shall provide State with recording information, including the date of recordation and file number. Tenant shall have thirty (30) days from the Commencement Date to comply with the requirements of this section. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

**20. STATUTORY REFERENCES**

Any reference to a statute enacted by the State of Washington shall mean that statute as presently enacted or hereafter amended or superseded, unless the reference specifically provides otherwise.

**21. VENUE**

Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.



22. **MODIFICATION**

Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by an oral representations or statements.

THIS LEASE is executed on the [ ] day of [ ], 19 [ ].

STATE:

TENANT:

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL  
RESOURCES

DOX COOPERATIVE MOORAGE  
ASSOCIATION

By: \_\_\_\_\_  
JENNIFER M. BELCHER

By: \_\_\_\_\_  
BARBARA WALKOVER

Its: Commissioner of Public Lands

Its: President

Dated: [ ]

Dated: [ ]

db/Price/sps3/20A09681.hlu

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

County of Thurston )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me JENNIFER M. BELCHER, to me known to be the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the state of Washington, the department that executed the within and foregoing instrument on behalf of the state of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the state of Washington for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the state of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

SEAL

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
state of Washington

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

STATE OF WASHINGTON)

) ss.

COUNTY OF ( )

I certify that I know or have satisfactory evidence that Barbara Walkover is the person who appeared before me, and is the President of Dox Cooperative Moorage Association ("Tenant"). I further certify that said person acknowledged the foregoing instrument to be the free and voluntary act of the Tenant for the uses and purposes mentioned in the instrument, and on oath state that she is duly authorized to execute and acknowledge said instrument.

DATED: [ ]

[ ]  
(Type/Print Name)

Notary Public in and for the State of Washington  
residing at \_\_\_\_\_

My Commission Expires \_\_\_\_\_

EXHIBIT A

BUSH, ROED & HITCHINGS, INC.

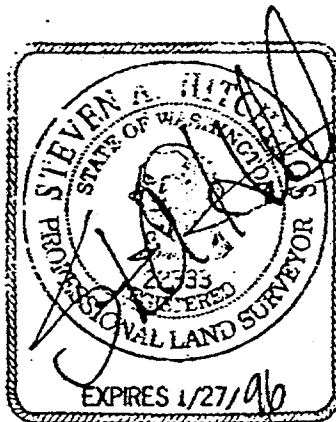
LEASE DESCRIPTION (DNR LEASE NO. 9681)

BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, BLOCK 55 OF LAKE UNION SHORELANDS, SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON;

THENCE SOUTH  $89^{\circ}56'08''$  WEST ALONG THE PROJECTED SOUTH LINE OF SAID LOT 4 A DISTANCE OF 150.00 FEET TO THE SEATTLE CONSTRUCTION LIMIT LINE, AS ESTABLISHED PER CITY OF SEATTLE ORDINANCE NO. 92887; THENCE NORTH  $0^{\circ}00'00''$  EAST ALONG SAID CONSTRUCTION LIMIT LINE 179.85 FEET TO THE PROJECTED NORTH LINE OF LOT 6, BLOCK 55 OF LAKE UNION SHORELANDS; THENCE NORTH  $89^{\circ}56'08''$  EAST ALONG SAID PROJECTED LINE 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 6; THENCE SOUTH  $0^{\circ}00'00''$  EAST ALONG THE WEST LINE OF LOTS 6, 5 & 4 OF SAID BLOCK 55 A DISTANCE OF 179.85 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 26,978 SQUARE FEET OR 0.62 ACRES.

94139/DOC.1/SJH

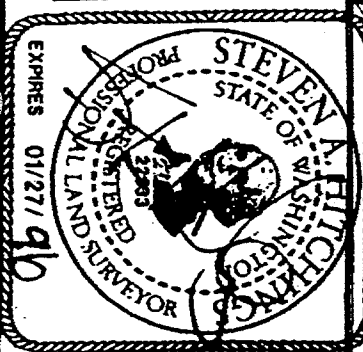


8-17-94

20A09681

NOTE: DRAWING REDUCED TO 50% OF TRUE SCALE.

SEATTLE CONSTRUCTION LIMIT LINE, ORD. NO. 52887  
NORTH 179.85



- EXISTING DOWLING
- EXISTING PILING
- WOOD
- IN-PIPE (CONCRETE FILLED)
- PVC PIPE (CONCRETE FILLED)
- RAILROAD TIE
- CONCRETE
- CAP PIPE (CONCRETE FILLED)
- EXISTING MONUMENT IN CASE
- FLOATING HOME - UNIT NUMBER
- INDICATES NUMBER OF STORIES

COMBINED BUL  
HEAD & PIER HE  
LINE PER L.U.S

**EXHIBIT A**  
SUBJECT: DNR AQUATIC LEASE SURVEY  
SITUATE IN: NW 1/4, SW 1/4, SEC. 20, T.25 N. R. 4 E. W.M.

LOT 7

N 89°56'08"E 312.50

162.50

UNION

6' WIDE WOOD PIER

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AREA OF LEASE: 26,978 SQ. FT. OR 0.62 AC.

LOT 3

DESCRIPTION:  
LOTS 4, 5 AND 6 IN BLOCK 55 OF LAKE UNION  
SHORELANDS, SITUATE IN THE CITY OF SEATTLE,  
COUNTY OF KING, STATE OF WASHINGTON.

SURVEYOR'S CERTIFICATE

The map correctly represents a survey made by me or under  
my direction in accordance with the requirements of the  
Surveying Act of the State of Washington, July 19, 84.  
DOX COOPERATIVE

Certificate No. 22333

BUSH, ROED & HITCHINGS, INC.  
CIVIL ENGINEERS & LAND SURVEYORS  
SEATTLE, WASHINGTON 323-4114

SURVEY FOR:

**DOX COOPERATIVE**

Drawn by N.M. Date JULY 25 1994 Job No. 94139  
Checked by S.A.H. Scale 1" = 40'

SOUTH 179.85

2' WIDE BLOCK BULKHEAD

WOOD TRELLIS & 4"x4" SUPPORTS AT ENTRANCES

PARKING & LANDSCAPING AREA

ORIGINAL LINE OF ORDINARY HIGH WATER

EDGE OF PAVEMENT

EAST

E. LYNN ST

