



# SQUAXIN ISLAND TRIBE

RESOLUTION NO. 21-32

of the

## SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, Port Blakely Tree Farms, a Washington limited partnership, has expressed its desire to charitably transfer certain tidelands in its possession to the Tribe; and

**WHEREAS**, those tidelands are near existing Tribal lands and within the usual and accustomed area of the Tribe; and

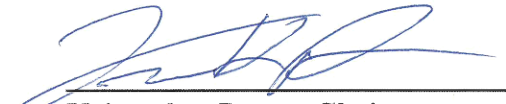
**WHEREAS**, Tribal and Port Blakely staff have reached a tentative agreement to the terms of a charitable transfer of the property.


**NOW THEREFORE BE IT RESOLVED**, that the Tribal Council approves and agrees to the attached Charitable Transfer Agreement between Port Blakely Tree Farms and the Squaxin Island Tribe, and authorizes and directs its Chair, Kristopher Peters, to execute the Agreement and all related documents on behalf of the Tribe, which documents include but are not limited to:

1. Charitable Transfer Agreement
2. Assignment and Assumption of Lease Agreement
3. Road Easement Agreement
4. Real Estate Excise Tax Affidavit.

**CERTIFICATION**

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 15 day of June, 2021, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 2 abstentions.

  
\_\_\_\_\_  
**Kristopher Peters, Chair**

Attested by:   
\_\_\_\_\_  
**Jeremie Walls, Secretary**

  
\_\_\_\_\_  
**Charlene Krise, Vice Chair**

## CHARITABLE TRANSFER AGREEMENT

This CHARITABLE TRANSFER AGREEMENT (this “**Agreement**”), dated as of June \_\_\_\_\_, 2021, is made between PORT BLAKELY TREE FARMS (LIMITED PARTNERSHIP), a Washington limited partnership, doing business as Port Blakely US Forestry (hereinafter referred to as “**Donor**”), and the SQUAXIN ISLAND TRIBE, a federally recognized tribe (hereinafter referred to as “**Donee**”).

### RECITALS

**A.** WHEREAS, Donor holds record title to the real property legally described in Exhibit A attached hereto, located in Mason County, Washington (the “**Tidelands**”), and desires to charitably transfer, quit claim and convey the Tidelands to Donee on the Effective Date (defined below) pursuant to a Quit Claim Deed in the form of the attached Exhibit B (the “**Quit Claim Deed**”);

**B.** WHEREAS, Donor holds the rights and interests of lessor under that certain Tidelands Lease between Donor, as lessor, and Little Skookum Shellfish Growers, Inc., as lessee, dated as of May 14, 2019, covering the portion of the Tidelands identified as Parcels 1 and 2 on the attached Exhibit A (the “**Tidelands Lease**”), a copy of which is attached hereto as Exhibit C, and desires to charitably transfer, quit claim and assign those rights and interests to Donee on the Effective Date pursuant to an assignment of the Tidelands Lease in the form of the attached Exhibit D (the “**Assignment of Tidelands Lease**”); and

**C.** WHEREAS, Donor holds record title to the real property legally described as Government Lot six (6), Section nine (9), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, excepting therefrom right-of-way for Kamilche Point Road, County Road No. 14880 (the “**Upland Parcel**”); and

**D.** WHEREAS, Donor desires to charitably transfer, quit claim and grant to Donee on the Effective Date a nonexclusive access easement over the existing road on the Upland Parcel that runs from Kamilche Point Road to the Tidelands in the form of the attached Exhibit E (the “**Access Easement**”); and

**E.** WHEREAS, the Tidelands, Donor’s rights and interests under the Tidelands Lease to be assigned pursuant to the Assignment of Tidelands Lease, and the Access Easement are herein collectively referred to as the “**Property**”; and

**F.** WHEREAS, Donee is a federally recognized tribe that includes the descendants of the maritime people that occupied the seven southernmost inlets of Puget Sound since time immemorial, who remain culturally very connected to this aquatic environment, and who maintain sovereign control over certain lands and shorelines in this region as their permanent homeland; and

**G.** WHEREAS, Donee is successor to the signatories of the Treaty of Medicine Creek, the first treaty in Washington Territory, which was negotiated in Chinook Jargon trade

language on December 25, 1865 and signed the following day (the “**Treaty**”), and retains Treaty-protected rights to take fish in waters adjacent to the Tidelands and elsewhere, and to hunt and gather on open and unclaimed lands subject to the Treaty; and

**H.** WHEREAS, Donee’s General Council of all members elects a seven-member council that oversees all branches of Tribal government and enterprise, and Donee’s Tribal headquarters are now located in Kamilche, between Little Skookum and Totten Inlets, where hundreds of acres of land have been purchased and a thriving community has been established; and

**I.** WHEREAS, Donee has significant interests in the protection and enhancement of natural and cultural resources in the vicinity of the Tidelands, including on lands currently owned by Donor, and a special interest in protecting unique tribal historical and cultural resources that may be present at the Tidelands, and in restoring native natural resources on that site; and

**J.** WHEREAS, Donor wishes to make amends for the fact that the Tidelands may have been unfairly acquired pursuant to the Treaty by donating the Property to Donee for Donee’s use exclusively for public purposes, and in recognition that Donee is a historic steward and conscientious manager and protector of natural resources, and in the hope that Donee will be able to steward and nurture the Tidelands for future generations; and

**K.** WHEREAS, Donee wishes to accept the Property for use exclusively for public purposes;

NOW, THEREFORE, in consideration of the parties’ mutual undertakings herein, the parties hereto hereby agree as follows:

**1. Charitable Transfer of Property.** Donor hereby pledges to donate Donor’s entire interest in the Property to Donee (the “**Donation**”), effective at **11:59 pm on June 18, 2021** (the “**Effective Date**”), which Donation shall be for use exclusively for public purposes. Donor makes no representations and warranties of any kind and shall not be held liable after closing for or with respect to: (i) the condition of the Tidelands or any buildings, structures or improvements thereon or the condition of the road over which the Access Easement is to be granted (the “**Road**”); (ii) the Property’s or the Road’s suitability for Donee’s intended use or for any use whatsoever; (iii) the condition of title to the Tidelands or the Access Easement, including access to the Tidelands and any matters, encumbrances, restrictions, and reservations affecting or pertaining to the Tidelands or the Access Easement; (iv) any applicable laws, ordinances, regulations orders of any governmental, quasi-governmental or other authority having jurisdiction over the Property, including tidelands, building, zoning or fire laws or regulations; (v) the Property’s value; (vi) the area or boundaries of the Tidelands; (vii) any rights or claims of rights to the use or possession of the Tidelands or Road by third parties; (viii) the presence of endangered or protected species or habitat for the such species within or affecting the Tidelands; (ix) the presence or absence of hazardous materials of any kind in, on, under or about the Tidelands or migrating to or from the Tidelands; (xii) the Tidelands Lease or the lessee under the Tidelands Lease; or (xiii) the Property or any aspect thereof. Donee acknowledges and agrees that the Tidelands will be conveyed to Donee subject to the Tidelands Lease.

2. **Tax Parcels.** Donee understands and acknowledges that Parcel 3 and Parcel 4 of the Tidelands (as such Parcels are identified on the attached Exhibit A) are each located within a tax parcel that includes other (non-Tidelands) real property owned by Donor. Donee understands and agrees that Donor shall have no obligation to establish any of the Parcels of the Tidelands as separate tax parcels or to request a tax parcel segregation prior to the Effective Date. After the Tidelands are conveyed to Donee, the parties shall cooperate in good faith as reasonably required to cause Parcel 3 and Parcel 4 of the Tidelands to each be established as a separate legal tax parcel.

3. **Donee's Acceptance.** Donee hereby agrees to accept the Property "AS-IS", effective at the Effective Date, and to accept the risks of all defects and conditions on the Property, including without limitation any defect or condition that cannot be observed by casual physical inspection or survey of the Tidelands or Road or review of the Tidelands Lease or title report covering the Tidelands. Donee acknowledges that it has had or will have the opportunity to inspect the Tidelands, the Road, and the Tidelands Lease, and will rely entirely on its own inspection thereof and on any consultant or consultants Donee may choose to retain. Donee further acknowledges its sole responsibility for determining the existence or nonexistence of any fact material to Donee's decision to acquire the Property as set forth herein. Except as otherwise expressly set forth in this Agreement, the Donation is an "as-is, where-is" transfer, and Donor makes no representations or warranties whatsoever concerning the Property.

4. **Release of Deed of Trust; REETA.** On or prior to the Effective Date, Donor shall cause the Tidelands and Tidelands Lease to be released from the deed of trust in favor of Metropolitan Life Insurance Company. Prior to the Effective Date, Donor and Donee shall complete and sign the Washington Real Estate Excise Tax Affidavit for the transfer of the Tidelands to Donee (the "REETA") and a Real Estate Excise Tax Supplemental Statement to confirm that the Tidelands are being conveyed to Donee as a charitable transfer for no consideration and that there is no underlying debt on the Tidelands.

5. **Washington State Disclosure.** Donee irrevocably waives its rights, if any, to receive, review or approve any seller disclosure statement as to the Tidelands to the full extent permitted under Washington law and chapter 64.06 of the revised code of Washington.

#### **Charitable Transfer Agreement**

6. **No Consideration for Charitable Transfer.** The Donation shall be effected by Donor's execution and delivery to Donee of (i) the Quitclaim Deed of the Tidelands, (ii) the Assignment of Tidelands Lease, and (iii) the Access Easement. The parties acknowledge and agree that Donor's Donation of the Property to Donee is a charitable transfer of real property and not a sale. In return for granting its interest in the Property to Donee, Donor is receiving no consideration of any kind. For purposes of this clause, "consideration" shall mean money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property.

7. **Donee's Representations and Warranties.** Donee represents, warrants and covenants to Donor that: (i) Donee, and the person signing on its behalf, has full right, power, and authority to enter into and perform this Agreement; (ii) the execution and performance of this

Agreement have been duly authorized by all necessary action on the part of Donee; (iii) the execution and performance of this Agreement by Donee does not require the consent of any other person, court or entity, and does not conflict with or breach any agreement, order, judgment, or decree that is binding on Donee; and (iv) Donee is a federally recognized tribe and sovereign nation, is therefore governed by an “Indian tribal government” as described in Section 7701(a)(40) of the Internal Revenue Code of 1986, as amended (the “Code”), and is a State under Code Section 7871(a)(1)(A) for purposes of receiving deductible charitable contributions under Code Section 170(c).

**8. Donee’s Written Acknowledgement.** Donee agrees to provide Donor in a timely fashion, but in no event later than December 31, 2021, with written acknowledgement of the Donation and to cooperate with Donor in producing all other documentation reasonably necessary for Donor to claim a charitable contribution deduction for the Donation under Section 170 of the Code, including but not limited to executing IRS Form 8283.

**9. Tidelands Lease; Access Easement.** Donee acknowledges and represents that it has reviewed the Tidelands Lease and understands the restrictions and obligations imposed by the Tidelands Lease and has had the opportunity to discuss the terms and status of Tidelands Lease with the lessee thereunder. Donee acknowledges that as the owner of the Property it will be bound by the terms and conditions of the Tidelands Lease. Donee hereby agrees, effective as of the Effective Date, (i) to accept the assignment of the Tidelands Lease made by Donor pursuant to the Assignment of Tidelands Lease, (ii) to assume all obligations and liabilities of Donor under the Tidelands Lease arising or accruing thereunder from and after the Effective Date and (iii) to defend, indemnify and hold Donor harmless from and against any and all claims, obligations, liabilities and expenses arising or accruing under the Tidelands Lease from and after the Effective Date or arising from the failure of Donee to perform any obligations or liabilities arising or accruing under the Tidelands Lease from and after the Effective Date. Donee acknowledges that as the grantee under the Access Easement it will be bound by the terms and conditions of the Access Easement. Donee hereby agrees, effective as of the Effective Date, (i) to accept the grant of the Access Easement made by Donor, (ii) to be bound by and perform the obligations of grantee under the Access Easement, and (iii) to defend, indemnify and hold Donor harmless from and against any and all obligations and liabilities of grantee under the Access Easement. The obligations of Donee under this paragraph shall survive the Donation of the Property and shall not merge in the Quit Claim Deed conveyance to Donee. On or before the Effective Date, and as a condition to Donor’s making the Donation, Donee shall execute and acknowledge the Assignment of Tidelands Lease and the Access Easement and deliver the originals thereof into escrow. The effective date of the Assignment of Tidelands Lease and Access Easement shall be the Effective Date.

**10. Personalty.** Donee acknowledges that any personal property of Donor currently located on the Tidelands shall be deemed quit claimed to Donee as a part of the Donation.

**11. Notices.** All notices and other communications under this Agreement shall be in writing and shall be either) delivered personally to the party to whom notice is to be given (in which case such notice shall be deemed to have been duly given on the date of delivery), (b) sent by Federal Express (or other overnight courier service) (in which event notice shall be deemed to

have been given on the day of delivery or refusal of delivery), (c) mailed to the party to whom notice is to be given, by United States first class mail, registered or certified, return receipt requested, postage prepaid (in which case such notice shall be deemed to have been duly given on the day of delivery or refusal of delivery), or (d) delivered by electronic mail (in which case such notice shall be deemed to have been duly given on the date of delivery). Such communications shall be addressed as set forth below under the respective signature blocks of the parties.

**12. Costs and Prorations.** All normal and customarily pro ratable items, including without limitation real estate and personal property taxes for the current year, shall be prorated as of the Effective Date; provided, however, that since rent under the Tidelands Lease is payable in arrears based on the prior month's stumpage earnings, rent payable for the month in which closing occurs shall not be prorated but shall belong entirely to Donor and rent that will be payable in the following month will be prorated based on the parties' good faith estimate of the stumpage earnings that will be achieved in the month in which closing occurs; provided, further, that once stumpage earnings for the month in which closing occurs is actually determined to the good faith satisfaction of the parties, there shall be a true up to the extent the actual stumpage earnings for that month varies from the estimated stumpage earnings used for the proration of rent at closing, and within thirty (30) days after such determination (i) to the extent the estimated stumpage earnings exceeded the actual stumpage earnings, then Donor will pay Donee an amount equal to the overpayment it received for prorated rent and (ii) to the extent the estimated stumpage earnings was less than the actual stumpage earnings, then Donee will pay Donor an amount equal to the underpayment made to Donor for such prorated rent . Donee shall pay the cost of any owner's policy of title insurance that Donee may wish to obtain on the Tidelands. Donor shall pay any recording and escrow costs.

**13. Continuance Request; Compensating Tax.** Donee acknowledges that the Tidelands or some portion thereof are or may be designated or classified as open space, agricultural, forest land, timberland or other non-ad valorem classification ("**Non-Ad Valorem Classification**") for property tax purposes. Prior to the Effective Date, Donee shall request a continuance of any such Non-Ad Valorem Classification by submitting to the Mason County Assessor's Office a request for continuance thereof on the REETA and such other documentation as may be required to obtain such continuance. Donor agrees to cooperate in good faith with Donee in its effort to obtain such continuance, including signing the REETA as grantor prior to the Effective Date, as reasonably requested by Donee; provided, however, Donor shall not be required to incur any expense, obligation or liability in so cooperating. Donee shall be responsible for payment of all fees and submittal of all documents necessary for such request for continuance. Notwithstanding the foregoing, if Donee's request for continuance is disapproved or the Tidelands or any portion thereof or any other property owned by Donor is removed or withdrawn from its Non-Ad Valorem Classification or such classification is changed due to the transfer of the Tidelands (or any portion thereof) to Donee or due to any act of Donee before or after the Effective Date, Donee shall be obligated to pay on the Effective Date or otherwise when due all compensating or "roll-back" taxes, penalties, interest, and fees that become due or assessable on account of such removal, withdrawal or change. Donee shall defend, indemnify, and hold Donor harmless from and against all compensating or "roll-back" taxes, penalties, interest, claims, costs, fees (including attorneys' fees and costs), damages, assessments,

(including ad valorem real property tax assessments or reassessments), lawsuits, and liabilities of any kind whatsoever if Donee's acquisition of the Tidelands (or any portion thereof) or any act by Donee before or after the Effective Date results in a change in or removal or withdrawal from the Non-Ad Valorem Classification applicable to the Tidelands (or any portion thereof) or any other property owned by Donor. This indemnity and defense obligation shall survive the Effective Date and Quit Claim Deed conveyance of the Tidelands to Donee and shall not be limited by any other provision of this Agreement.

**14. Escrow Closing.** The closing of this Donation transaction shall be effected through escrow with Aegis Land Title Group in its Shelton, Washington office. The Quit Claim Deed and the Access Easement shall be recorded in the real property records of Mason County, Washington, at the closing of this Donation transaction. The Assignment of Tidelands Lease shall not be recorded, and each party shall be entitled to receive a copy of thereof at closing.

**15. Tribal Provisions.**

**15.1 Limitation of Waiver.** Nothing in this Agreement shall be construed as or deemed a waiver of the Donee's sovereign immunity except as specifically provided in this Section 15. Nothing in this Section 15 shall be construed as or deemed a waiver of the Donee's sovereign immunity with respect to any person, entity or organization other than the Donor, even if such other person, entity or organization is a party to any action covered by this Section 15.

**15.2 Limited Waiver of Sovereign Immunity; Consent to be Sued.** Donee waives and shall not have tribal and/or sovereign immunity from suit or action to interpret or enforce the terms of this Agreement or the Quit Claim Deed, the Assignment of the Tidelands Lease or the Access Easement (collectively, the "**Transaction Documents**"), or determine any disputes relating to this Agreement, any of the Transaction Documents, or the transaction described in this Agreement. As to such subject matters, Donee consents to be sued and to have such matters determined and enforced in the Washington State superior or appellate court or US District Court for the Western District of Washington having jurisdiction. Such waiver and consent (1) apply to all proceedings in whatever court has or is exercising or is preparing or required to exercise jurisdiction; (2) extend to all enterprises, instrumentalities, agencies, officers, and agents of Donee; and (3) are irrevocable and may not be rescinded, revoked or amended without the prior written consent of Donor in its sole discretion.

**15.3 Choice of Law.** This Agreement shall create the rights and remedies that would apply and shall be governed by and construed in accordance with the laws of the State of Washington (without regard to principles of conflict of laws).

**15.4 Waiver of Exhaustion of Tribe Remedies; Tribal Court Jurisdiction.** Donee consents and agrees that it shall not be necessary in any litigation or dispute resolution proceedings pertaining to this Agreement, or any of the Transaction Documents, or the transaction described in this Agreement, that there first be any deferral to or exhaustion of remedies in the Tribal Court of the Squaxin Island Tribe or any other tribal court or dispute resolution tribunal, or the Tribal Council of the Squaxin Island Tribe. Donee agrees not to assert that the Tribal Court of the Squaxin Island Tribe or any other courts or dispute resolution



tribunals created by Donee, including but not limited to the Tribal Council, shall have jurisdiction as an adjudicative tribunal over any case, controversy, or proceeding pertaining to said transaction or this Agreement or any of the Transaction Documents. Donee expressly waives any claim or requirement that either party must enforce this Agreement or any of the Transaction Documents in the courts of the Squaxin Island Tribe or first exhaust use of such courts as a condition for enforcement of this Agreement or any of the Transaction Documents.

**15.5 Court Jurisdiction.** Donee and Donor agree and consent to the jurisdiction of the Washington State Superior Court for King County, the Washington State Superior Court for Mason County, and Washington State appellate courts for the enforcement of this Agreement and the Transaction Documents; provided, however, as between King County Superior Court and Mason County Superior Court, Donor shall have the right to determine, in its sole discretion, where suit be brought. If it is determined that no such court enjoys proper jurisdiction, then Donee and Donor agree and consent to suit in the U.S. District Court for the Western District of Washington and federal appellate courts, or, at Donor's option in its sole discretion, the Tribal Court of the Squaxin Island Tribe. This consent of the Donee will not extend to any other transactions or subjects.

**15.6 Approval of Tribal Council.** Donee's execution of this Agreement and the limited waiver of sovereign immunity shall be approved by resolution of the Tribal Council of the Squaxin Island Tribe (the "**Authorizing Resolution**") in accordance with the Constitution and all other applicable laws of Donee prior to the execution of this Agreement. Evidence of the approval of this Agreement by the Tribal Council of the Squaxin Island Tribe and the Authorizing Resolution shall be provided to Donor by Donee prior to Donor's execution of this Agreement. This Agreement shall not be binding upon either party until Donee has executed this Agreement in accordance with the Authorizing Resolution and Donor has executed this Agreement.

**16. Exculpated Parties.** Notwithstanding anything to the contrary contained in this Agreement, none of the councilmembers, elders, directors, officers, shareholders, members, managers, partners, employees, contractors or agents of Donor or Donee, nor any other person, partnership, corporation, company, or trust, as principal of the Donor, whether disclosed or undisclosed (collectively, the "**Exculpated Parties**") shall have any personal obligation or liability hereunder, and the Donor and Donee, as the case may be, shall not seek to assert any claim or enforce any of its rights hereunder against any Exculpated Party. The provisions of this Section shall survive the termination or expiration of this Agreement.

**17. Entire Agreement.** This Agreement supersedes all prior discussions and agreements between the parties with respect to the Donation and any other matter addressed in this Agreement, and constitutes the sole and entire agreement and understanding between Donor and Donee with respect to the Donation. This Agreement shall not be modified or amended except by an instrument in writing signed by Donor and Donee.

**18. Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be for any reason

unenforceable, the balance shall remain in full force and effect, but without giving effect to such unenforceable provision.

**19. Counterparts.** This Agreement may be executed in two or more counterparts, as well as through electronic signatures, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument.

**20. Construction of Agreement.** Donor and Donee have each been advised to seek their own counsel in the drafting and negotiation of this Agreement, and accordingly hereby agree that in the event a dispute arises between them, the terms of this Agreement shall not be construed against or in favor of either party as the drafter.

**21. Survival.** The parties intend that the covenants and agreements herein shall survive the conveyance of the real property, and not merge into the deed at the time of transfer.

*Remainder of page left blank intentionally. Signatures follow.*

This Agreement is hereby executed by the Donor as of this \_\_\_\_\_ day of June, 2021

**Port Blakely Tree Farms (Limited Partnership),**  
a Washington limited partnership

By: The Port Blakely Company, a Washington  
corporation, its General Partner

Signature: \_\_\_\_\_

Name: Mike Warjone  
Title: President, US Forestry

Address: PORT BLAKELY US FORESTRY  
8133 River Drive SE  
Tumwater, Washington 98501  
Phone: Office: (360) 596-9417 | Cell (360) 280-4383  
E-mail: [mwarjone@portblakely.com](mailto:mwarjone@portblakely.com)

*With copies to:*

Attn: Gareth Waugh  
Phone: Office (360) 596-9452 | Cell (360) 790-1349  
E-mail: [gwaugh@portblakely.com](mailto:gwaugh@portblakely.com)

*And to:*

Cathrin Weis  
Phone: Office: (360) 596-9419 | Cell: (360) 280-6826  
E-mail: [cweis@portblakely.com](mailto:cweis@portblakely.com)

*And to Donor's Counsel:*

Davis Wright Tremaine LLP  
Attn: Warren Koons  
Address: 929 108th Avenue NE, Suite 1500  
Bellevue, WA 98004  
Phone: Office: (425) 646-6117 | Cell: (425) 985-9196  
E-mail: [warrenkoons@dwt.com](mailto:warrenkoons@dwt.com)

This Agreement is hereby executed by the Donee this \_\_\_\_\_ day of June, 2021

**Squaxin Island Tribe,**  
a federally recognized tribe

Signature: \_\_\_\_\_

Name: Kris Peters

Title: Chairman

Address: 200 SE Billy Frank Jr. Way  
Shelton, Washington 98584

Attn: Ray Peters  
Phone: (360) 432-3818  
E-mail: rpeters@squaxin.us

With copy to:  
Attn: Nathan Schreiner  
Phone: (360) 462-7102  
E-mail: nschreiner@squaxin.us

**Exhibits**

- Exhibit A Legal Description of Tidelands
- Exhibit B Form of Quit Claim Deed
- Exhibit C Tidelands Lease
- Exhibit D Form of Assignment of Tidelands Lease
- Exhibit E Form of Access Easement

**EXHIBIT A**  
**LEGAL DESCRIPTION OF TIDELANDS**

All land, including tidelands and oyster beds, that lie north of the mean high water mark in Sections 9, 10 and 16 all located in Township 19 North, Range 3 West, including the following described parcels, located in the county of Mason, State of Washington:

Parcel 1:

A tract of tidelands conveyed by the State of Washington as tidelands suitable for the cultivation of oysters in deed recorded in Volume 1 of Deeds, page 117, Auditor's File No. 8153, and being particularly described as follows:

COMMENCING at the section corner common to Sections nine (9), ten (10), fifteen (15) and sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington; thence West 27.89 chains to the meander corner on the South line of said Section nine (9), and the POINT OF BEGINNING of the tract of tidelands hereby described; thence North 71°22' East, 2.858 chains; thence North 45°36' East, 2.598 chains; thence North 28°57' East, 3.196 chains; thence North 35°25' East, 2.80 chains; thence North 60°01' East, 1.88 chains; thence North 50°17' East, 3.047 chains; thence North 37°04' East, 6.112 chains; thence North 56°59' East, 3.965 chains; thence North 4°45' West, 4.870 chains; thence North 8°40' East, 2.26 chains; thence North 33°07' West, 2.415 chains; thence North 33°23' East, 3.70 chains; thence North 62°48' East, 3.97 chains; thence North 6°06' East, 4.995 chains; thence North 2°29' East, 4.202 chains; thence North 35°26' East, 1.855 chains; thence North 47°36' East, 2.247 chains; thence North 37°47' East, 2.50 chains, to the meander corner on the section line between said Sections nine (9) and ten (10); thence North 1.176 chains; thence South 62°51' West, 3.361 chains; thence South 35°27' West, 3.755 chains; thence South 13°41' West, 1.856 chains; thence South 41°41' West, 8.70 chains; thence South 21°11' West, 12.90 chains; thence South 75°25' West, 3.03 chains; thence South 36°20' West, 8.44 chains; thence South 66°20' West, 3.35 chains; thence South 52°07' West, 21.598 chains; thence East, 16.303 chains, to the POINT OF BEGINNING.

Parcel No. 31909-00-83810

Parcel 2:

All tidelands of the second-class, formerly owned by the State of Washington, lying in front of Government Lots five (5) and six (6), Section nine (9), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, and between the line of mean low tide and the line of extreme low tide; excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Parcel No. 31909-00-73380

Parcel 3:

All that portion, if any, of Government Lot five (5), Section ten (10), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, which lies below the line of ordinary high tide.

ALSO, all tidelands of the second-class, formerly owned by the State of Washington, lying in front of, adjacent to and abutting upon said Government Lot five (5), excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Portion of Parcel No. 31910-23-00000

Parcel 4:

A) All that portion, if any, of Government Lots two (2), three (3) and four (4), Section sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, which lies below the line of ordinary high tide; excepting therefrom right-of-way for Kamilche Point Road, County Road No. 14880;

B) A tract of tidelands of the second-class, formerly owned by the State of Washington, and conveyed as tidelands suitable for the cultivation of oysters in deed recorded in Volume 1 of Deeds, page 117, Auditor's File No. 8153, and being particularly described as follows:

COMMENCING at the corner common to Sections sixteen (16), seventeen (17), twenty (20) and twenty-one (21), Township nineteen (19) North, Range three (3) West, W.M., Mason County, Washington; thence North (Var.  $24^{\circ}18'$  East), 29.17 chains to the government meander corner, and the POINT OF BEGINNING of the tract of tidelands hereby described; thence North  $14^{\circ}52'$  East, 11.60 chains; thence North  $38^{\circ}52'$  East, 9.30 chains; thence South  $74^{\circ}08'$  East, 8.87 chains; thence North  $47^{\circ}35'$  East, 13.56 chains; thence North  $11^{\circ}27'$  East, 8.164 chains; thence North  $89^{\circ}35'$  East, 6.10 chains; thence North  $48^{\circ}43'$  East, 14.022 chains; thence North  $32^{\circ}11'$  East, 1.28 chains; thence North  $46^{\circ}59'$  East, 1.965 chains; thence North  $70^{\circ}13'$  East, 1.838 chains; thence North  $78^{\circ}30'$  East, 0.942 chains, to the government meander corner on the Section line between Sections nine (9) and sixteen (16), Township nineteen (19) North, Range three (3) West, W.M.; thence West 16.303 chains; thence South  $52^{\circ}07'$  West, 12.402 chains; thence South  $51^{\circ}28'$  West, 31.00 chains; thence South 18.83 chains, to the POINT OF BEGINNING;

C) All tidelands of the second-class, formerly owned by the State of Washington, lying in front of Government Lots two (2), three (3), and four (4), Section sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, and between the line of mean low tide and the line of extreme low tide; excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Portion of Parcel No. 31916-00-00000

**EXHIBIT B**

**FORM OF QUITCLAIM DEED**

After Filing Return To:  
Squaxin Island Tribe  
Attention: Ray Peters  
200 SE Billy Frank Jr. Way  
Shelton, Washington 98584

**QUITCLAIM DEED**

**Grantor:** PORT BLAKELY TREE FARMS (LIMITED PARTNERSHIP),  
a Washington limited partnership

**Grantees:** SQUAXIN ISLAND TRIBE,  
A federally recognized tribe

**Abbreviated Legal Description** (lot, block and plat name, or section-township-range):

Ptn TL in front of: 9-19-3, Gov't Lot 5 10-19-3 & 16-19-3

Additional legal description is on Exhibit A of document

**Assessor's Property Tax Parcel Account Numbers:**

31909-00-83810; 31909-00-73380; 31910-23-00000 (ptn of); and 31916-00-00000 (ptn of)

**Reference Numbers of Documents Assigned or Released (if applicable):** N/A

**QUITCLAIM DEED**

The Grantor, PORT BLAKELY TREE FARMS (LIMITED PARTNERSHIP), a Washington limited partnership, as a return of real property to a federally recognized tribe and for no consideration, conveys and quitclaims to SQUAXIN ISLAND TRIBE, a federally recognized tribe, the Grantee, all the Grantor’s right, title and interest in the real estate legally described in Exhibit A hereto, situated in the County of Mason, State of Washington, together with any after-acquired title of the Grantor therein.

The conveyance effected in this instrument is made without covenant or warranty of any kind, express or implied.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021

PORT BLAKELY TREE FARMS (LIMITED PARTNERSHIP), a Washington limited partnership

By: The Port Blakely Company, a Washington corporation, its General Partner

---

By: Mike Warjone  
Its: President, US Forestry



STATE OF Washington )  
 ) ss.  
COUNTY OF Thurston )

I certify that I know or have satisfactory evidence that Mike Warjone is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledge it as the President, US Forestry of The Port Blakely Company, a Washington corporation, the General Partner of PORT BLAKELY TREE FARMS (LIMITED PARTNERSHIP), a Washington limited partnership, to be the free and voluntary act of said entity for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary name printed or typed: \_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My appointment expires: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

All land, including tidelands and oyster beds, that lie north of the mean high water mark in Sections 9, 10 and 16 all located in Township 19 North, Range 3 West, including the following described parcels, located in the county of Mason, State of Washington:

#### Parcel 1:

A tract of tidelands conveyed by the State of Washington as tidelands suitable for the cultivation of oysters in deed recorded in Volume 1 of Deeds, page 117, Auditor's File No. 8153, and being particularly described as follows:

COMMENCING at the section corner common to Sections nine (9), ten (10), fifteen (15) and sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington; thence West 27.89 chains to the meander corner on the South line of said Section nine (9), and the POINT OF BEGINNING of the tract of tidelands hereby described; thence North  $71^{\circ}22'$  East, 2.858 chains; thence North  $45^{\circ}36'$  East, 2.598 chains; thence North  $28^{\circ}57'$  East, 3.196 chains; thence North  $35^{\circ}25'$  East, 2.80 chains; thence North  $60^{\circ}01'$  East, 1.88 chains; thence North  $50^{\circ}17'$  East, 3.047 chains; thence North  $37^{\circ}04'$  East, 6.112 chains; thence North  $56^{\circ}59'$  East, 3.965 chains; thence North  $4^{\circ}45'$  West, 4.870 chains; thence North  $8^{\circ}40'$  East, 2.26 chains; thence North  $33^{\circ}07'$  West, 2.415 chains; thence North  $33^{\circ}23'$  East, 3.70 chains; thence North  $62^{\circ}48'$  East, 3.97 chains; thence North  $6^{\circ}06'$  East, 4.995 chains; thence North  $2^{\circ}29'$  East, 4.202 chains; thence North  $35^{\circ}26'$  East, 1.855 chains; thence North  $47^{\circ}36'$  East, 2.247 chains; thence North  $37^{\circ}47'$  East, 2.50 chains, to the meander corner on the section line between said Sections nine (9) and ten (10); thence North 1.176 chains; thence South  $62^{\circ}51'$  West, 3.361 chains; thence South  $35^{\circ}27'$  West, 3.755 chains; thence South  $13^{\circ}41'$  West, 1.856 chains; thence South  $41^{\circ}41'$  West, 8.70 chains; thence South  $21^{\circ}11'$  West, 12.90 chains; thence South  $75^{\circ}25'$  West, 3.03 chains; thence South  $36^{\circ}20'$  West, 8.44 chains; thence South  $66^{\circ}20'$  West, 3.35 chains; thence South  $52^{\circ}07'$  West, 21.598 chains; thence East, 16.303 chains, to the POINT OF BEGINNING.

Parcel No. 31909-00-83810

#### Parcel 2:

All tidelands of the second-class, formerly owned by the State of Washington, lying in front of Government Lots five (5) and six (6), Section nine (9), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, and between the line of mean low tide and the line of extreme low tide; excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Parcel No. 31909-00-73380

Parcel 3:

All that portion, if any, of Government Lot five (5), Section ten (10), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, which lies below the line of ordinary high tide.

ALSO, all tidelands of the second-class, formerly owned by the State of Washington, lying in front of, adjacent to and abutting upon said Government Lot five (5), excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Portion of Parcel No. 31910-23-00000

Parcel 4:

- A) All that portion, if any, of Government Lots two (2), three (3) and four (4), Section sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, which lies below the line of ordinary high tide; excepting therefrom right-of-way for Kamilche Point Road, County Road No. 14880;
- B) A tract of tidelands of the second-class, formerly owned by the State of Washington, and conveyed as tidelands suitable for the cultivation of oysters in deed recorded in Volume 1 of Deeds, page 117, Auditor's File No. 8153, and being particularly described as follows:  
COMMENCING at the corner common to Sections sixteen (16), seventeen (17), twenty (20) and twenty-one (21), Township nineteen (19) North, Range three (3) West, W.M., Mason County, Washington; thence North (Var. 24°18' East), 29.17 chains to the government meander corner, and the POINT OF BEGINNING of the tract of tidelands hereby described; thence North 14°52' East, 11.60 chains; thence North 38°52' East, 9.30 chains; thence South 74°08' East, 8.87 chains; thence North 47°35' East, 13.56 chains; thence North 11°27' East, 8.164 chains; thence North 89°35' East, 6.10 chains; thence North 48°43' East, 14.022 chains; thence North 32°11' East, 1.28 chains; thence North 46°59' East, 1.965 chains; thence North 70°13' East, 1.838 chains; thence North 78°30' East, 0.942 chains, to the government meander corner on the Section line between Sections nine (9) and sixteen (16), Township nineteen (19) North, Range three (3) West, W.M.; thence West 16.303 chains; thence South 52°07' West, 12.402 chains; thence South 51°28' West, 31.00 chains; thence South 18.83 chains, to the POINT OF BEGINNING;
- C) All tidelands of the second-class, formerly owned by the State of Washington, lying in front of Government Lots two (2), three (3), and four (4), Section sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, and between the line of mean low tide and the line of extreme low tide; excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Portion of Parcel No. 31916-00-00000

**EXHIBIT C  
TIDELANDS LEASE**

Document No: 20191253

**TIDELANDS LEASE**

THIS TIDELANDS LEASE (this "Lease") is made and entered into as of May 14, 2019 (the "Effective Date"), by and between by and between Port Blakely Tree Farms (Limited Partnership), a Washington limited partnership, ("Port Blakely") and Little Skookum Shellfish Growers, Inc., a Washington corporation, ("Little Skookum"). Port Blakely and Little Skookum are herein collectively referred to as the "Parties".

**RECITALS**

- A. Port Blakely owns the following real property in Mason County, Washington:

All tidelands suitable for the planting, cultivation and harvest of shellfish fronting Government Lot 5 in Section 10, fronting Government Lots 5 and 6 in Section 9 and fronting Government Lot 2 in Section 16, all in Township 19N, Range 3W W.M., Mason County, Washington (the "Tidelands");

A 200 foot by 200 foot uplands parcel of land abutting the Tidelands and located at the terminus of the access road on the point in Government Lot 6, Section 9, Township 19N, Range 3W, W.M., Mason County, Washington, as shown on the attached drawing (the "Uplands Pad"); and

The uplands parcel(s) of real property within which the Uplands Pad is located (the "Port Blakely Land") and the access road over the Port Blakely Land that connects the Uplands Pad to the Kamilche Point County Road (the "Access Road").

- B. Pursuant to one or more prior tidelands leases, Little Skookum and/or its predecessor-in-interest Little Skookum Shellfish Growers, a Washington general partnership, leased the Tidelands and had nonexclusive right to use the Uplands Pad and Access Road from May 15, 1988 until May 14, 2019, when the last such tidelands lease (the "Prior Lease") expired. Since May 14, 2019, Little Skookum has continued to exercise its rights and perform its obligations on the terms of the Prior Lease on a month-to-month holdover basis with Port Blakely's consent and with the expectation that such month-to-month tenancy would be replaced by this Lease. Any Rent paid by Little Skookum for the holdover period, if any, shall be credited to its Rent obligation under this Lease.
- C. Little Skookum desires to lease the Tidelands and obtain the nonexclusive right to use the Uplands Pad and Access Road as set forth in this Lease on the terms and conditions set forth in this Lease, and Port Blakely desires to lease the Tidelands to Little Skookum and grant it the nonexclusive right to use the Uplands Pad and Access Road on the terms and conditions of this Lease.

Page: 1

4824-1533-2811v.2 0022688-000283

## AGREEMENT

NOW THEREFORE, in consideration of the Recitals set forth above and the mutual covenants, conditions, and promises contained in this Lease, the Parties agree as follows:

Port Blakely leases the Tidelands to Little Skookum, and Little Skookum leases the Tidelands from Port Blakely, and Port Blakely grants Little Skookum the nonexclusive right to use the Uplands Pad and Access Road on the terms and conditions as hereinafter set forth. The term "Premises" as used herein shall mean the Tidelands, the Uplands Pad and the Access Road. The rights granted herein to Little Skookum with respect to the Premises are subject to all matters of record and to all treaty and tribal rights and claims of Native American tribes. Little Skookum accepts the Premises in their "AS IS, WHERE IS" condition and Port Blakely shall have no obligation to maintain, repair, replace or improve the Premises, except to repair the Access Road as expressly set forth below.

This Lease supersedes and replaces the Prior Lease, and Little Skookum acknowledges and agrees that it has no rights or interests in or to the Premises or the Port Blakely Land except for those that granted in this Lease. Little Skookum agrees that as of the Effective Date it has no claims against Port Blakely or any rights or interests in or to the Premises or the Port Blakely Land (other than its rights and interests under this Lease), and Little Skookum hereby disclaims and releases any and all such claims, rights and interests, whether known or unknown. Little Skookum shall defend, indemnify and hold Port Blakely harmless from and against any and all claims, liens, damages, losses, penalties, expenses (including attorneys' fees), and liabilities arising from or in connection with Little Skookum's use of or operations on the Premises prior to the Effective Date, except to the extent such damages and liabilities arose from Port Blakely's negligence. Such indemnity and defense obligation shall survive the expiration or termination of this Lease.

### **1. Term:**

This Lease and the rights granted to Little Skookum hereunder shall commence on the Effective Date and, unless sooner terminated as hereinafter provided, shall continue to the 31st day of January, 2025 (the "Term"). Little Skookum shall on the expiration or other termination of this Lease surrender the Tidelands to Port Blakely in good condition and surrender the Uplands Pad and Access Road in a condition free of any damage caused by Little Skookum.

Beginning February 1, 2023, Little Skookum shall have the option to add an additional one year extension to the term of the lease to maintain a three year growing cycle and shall have the option to extend the term an additional year, each year thereafter ("Extension Term"), with the final extension on or before February 1, 2027, and a termination date of January 31, 2030. Each Extension Term may be exercised automatically provided that (1) Little Skookum is not in default under this Lease at the time the right to extend is exercised and (2) Little Skookum occupies and is operating its business on the Premises for the permitted purposes. If Little Skookum does not intend to exercise their right to extend, Little Skookum shall provide written notice to Port Blakely, given not more than one hundred eighty (180) days prior to the expiration of the then-current Extension Term. No extensions will be allowed after January 31, 2030 without the written consent of Port Blakely. Once an Extension Term is exercised, it is not revocable or subject to withdrawal by Little Skookum. If Little Skookum is in default under this Lease after it exercises any Extension Term and prior to the commencement of the next Extension Term, Little Skookum's exercise of such Extension Term is voidable at Port Blakely's election in

its sole discretion. During an Extension Term this Lease shall continue on the same terms and conditions, except that Rent for an Extension Term shall be at the Market Rent, but in no event less than the Rent in effect immediately prior to the commencement of the applicable Extension Period.

If Port Blakely terminates this Lease prior to the expiration of the Term, Port Blakely shall reimburse Little Skookum for the amortized portion of its reasonable, verified out-of-pocket capital expenditures incurred after the Effective Date for gravel and shellfish seeding/planting within the Tidelands less the sum of any unpaid amounts owed by Little Skookum under this Lease and Port Blakely's expenses, including reasonable attorneys' fees, incurred in enforcing its rights under this Lease. The amortization applied to determine this reimbursement amount shall be based on a 5-year amortization schedule. Port Blakely may engage a third party professional acceptable to both Port Blakely and Little Skookum, to verify amortization value.

**2. Use of Premises:**

Little Skookum shall use the Premises for the purposes of shellfish seeding/planting, cultivation and harvest and for uses necessary and incidental thereto, and for no other purpose whatsoever without the written consent of Port Blakely; provided, however, Little Skookum's use of the Access Road shall be solely for the purpose of road access to the Uplands Pad, and Little Skookum's use of the Access Road shall be limited to road access purposes, and Little Skookum's use of the Access Road and Uplands Pad shall be exercised in manner that does not interfere with the reasonable use of such areas by Port Blakely and its invitees and permittees. Little Skookum agrees to seed/plant, cultivate and harvest said shellfish at its sole expense in accordance with all applicable laws, ordinances, permits, rules and regulations. Little Skookum shall obtain and maintain all required permits and licenses for its operations on the Premises. Little Skookum shall defend and hold Port Blakely harmless from any liability or expense in connection therewith, subject to the provisions of Section 5.3 herein, and such defense and hold harmless obligation shall survive the expiration or termination of this Lease.

**3. Rental:**

3.1 Rent: During the Term of this Lease Little Skookum shall pay monthly, the actual harvest stumpage of thirty-four and one half percent (34½%) of the market price revenue of the clam harvest and seventeen and one quarter percent (17¼%) of the market price revenue of the oyster harvest from Little Skookum's operations on the Premises during that month, less sales taxes and freight charges applicable thereto ("**Shellfish Revenues**"), within thirty (30) days after the last day of each calendar month. In no event shall rent be less than a minimum of \$100,000.00 per calendar year (the "**Rent**"). The payment of Rent is to be made to the following address or to such other address as Port Blakely may hereafter notify Little Skookum:

Port Blakely  
PO Box 84321  
Seattle, WA 98124-5621.

3.2 Interest Penalty for Past Due Rent Balances: A two and one-half percent (2.5%) charge, per month, shall be due Port Blakely from Little Skookum on any Rent payment which is more than thirty (30) days past due.

3.3 Records and Reports: Little Skookum shall maintain records, books and reports pertaining to Little Skookum's operations on the Premises, which shall be available for inspection by Port Blakely upon reasonable notification. Little Skookum shall submit a monthly harvest and enhancement report to Port Blakely with each monthly payment of Rent (the "**Monthly Report**"). The Monthly Report will provide a summary of the harvest activities for that period, which may include without limitation, the amount and species of shellfish harvested, planted and sold, and the prices obtained for such sales by species, during the reporting period.- Little Skookum is not required to provide general ledger or sales-type reports which the Parties acknowledge will be commingled with Little Skookum's operations not on the Premises, but those books and records shall also be open for inspection by Port Blakely upon reasonable notification. Failure by Little Skookum to timely provide the Monthly Report as required herein shall constitute a material breach of this Lease.

3.4 Force Majeure: For purposes of this Section 3.4, a "one-year period" and a "year" means the one-year period from the Effective Date or any anniversary of the Effective Date. If the shellfish population on the Premises or Little Skookum's ability to harvest and sell shellfish from the Premises is damaged by Force Majeure, such that (i) the Shellfish Revenues over a one-year period ("**Year Two**") are reduced by fifty percent (50%) or more as compared to the Shellfish Revenues for the immediately preceding one-year period ("**Year One**"), and (ii) no Rent based on Shellfish Revenue is payable for Year Two, then the minimum quarterly Rent for the next year ("**Year Three**") shall be reduced in the same proportion that the Shellfish Revenues have been reduced from Year One to Year Two. Little Skookum shall give written notice to Port Blakely within ten (10) days after providing the harvest figures for Year Two of Little Skookum's option to elect such reduced minimum quarterly Rent for Year Three. This reduction must be provided for any year in which the above requirements are met and Little Skookum elects said option, but is not to be construed as requiring Port Blakely to lower the minimum quarterly Rent except for that year, and once that year is over the minimum quarterly Rent shall revert to \$25,000. The following shall constitute "**Force Majeure**": shellfish closure required by law, Indian claims, adverse possession claims, harmful algal blooms, acts of God or other matters substantially beyond the control of Little Skookum. If due to Force Majeure, minimum quarterly Rent would be reduced, as set forth above, either Little Skookum or Port Blakely may terminate this Lease by notifying the other Party of its election to terminate within sixty (60) days after the figures for the Shellfish Revenues are available that would establish Little Skookum's right to reduced minimum quarterly Rent, but if neither Party gives such notice within such 60-day period, the right to terminate this Lease based on such basis shall be waived as to such circumstances, but such right shall retained for any future year where the minimum quarterly Rent is subject to such reduction. Notwithstanding the foregoing, if the Shellfish Revenues in Year Two are reduced by more than fifty percent (50%) as compared to the Shellfish Revenues for Year One due, in whole or in part, due to the negligence, fault or breach of this Lease by Little Skookum, Little Skookum shall not be entitled to a reduction of quarterly minimum Rent or to terminate this Lease on account thereof and Port Blakely shall be entitled to its contract, actual and incidental damages to the extent caused by such negligence, fault or breach by Little Skookum, as well as the right to terminate this Lease, so long as notice to terminate is given to Little Skookum within

sixty (60) days after the figures for the Shellfish Revenues of Year Two are available. Notwithstanding the foregoing, if the Shellfish Revenues in Year Two are reduced by more than fifty percent (50%) as compared to the Shellfish Revenues for Year One due, in whole or in part, to the negligence, fault or breach of this Lease by Port Blakely, Port Blakely shall not have the right to terminate this Lease on account thereof and Little Skookum shall be entitled to its contract, actual and incidental damages arising therefrom to the extent caused by such negligence, fault or breach by Port Blakely, as well as the right to terminate this Lease, so long as notice to terminate is given to Port Blakely within sixty (60) days after the figures for the Shellfish Revenues of Year Two are available.

3.5 **Condemnation:** If a material portion of the Premises is condemned or becomes the subject of an eminent domain or condemnation proceeding, then this Lease may be terminated upon thirty (30) days written notice given by either Party. All condemnation awards and payments in lieu thereof shall be paid to and owned by Port Blakely, except that Little Skookum shall be entitled to a portion of such award as may fairly be allocated to the then existing fair value of all capital expenditures made by Little Skookum on the Premises, including for gravel and seeding. Except as to such portion, Little Skookum hereby assigns to Port Blakely any award made in such taking or condemnation, together with all rights of Little Skookum hereafter arising in or to any part thereof; provided, however, that if there is a specific award of damages to Little Skookum for its relocation expenses and/or the interruption of or damage to Little Skookum's business, then Little Skookum shall also be entitled to such portion of the award notwithstanding the foregoing assignment, and Port Blakely agrees to fully cooperate with Little Skookum in the making of Little Skookum's claim therefore. Unless otherwise agreed by the Parties, the proportionate interest of Port Blakely and Little Skookum in such awards based upon the foregoing allocation of the awards shall be determined by a neutral appraiser mutually acceptable to the Parties whose principal offices are located in Mason County, Washington. The fees and costs of such appraiser shall be split equally between the Parties. If a Party disputes the first appraiser's findings, that Party may retain its own appraiser with principal offices in Mason or Thurston County, Washington, at that Party's sole cost, and if both appraisers cannot reach agreement on the proportionate share of each Party's interest, then the two appraisers shall select a third whose opinion shall be binding on all Parties, and whose fees and costs shall be split equally between the Parties.

#### 4. **Reservations and Conditions of Use:**

4.1 **Enhancements, Improvements:** Little Skookum has, prior to the Effective Date, made the improvements to the Tidelands described on the attached Exhibit A ("**Existing Improvements**") which the Parties agree are owned by Port Blakely and the Existing Improvements shall not be altered or removed by Little Skookum without Port Blakely's consent or unless required by Port Blakely. As used herein, the term "**improvements**" shall mean all improvements, **additions within, upon, or attached to the land, including without limitation, fill, structures, bulkheads, docks, pilings, and other durable fixtures**, changes or modifications on or to the Tidelands. No additional improvements, other than seed and those improvements allowed under this Lease for continued cultivation of the aquaculture, shall be placed upon the Premises without the prior written consent of Port Blakely. Such additional improvements constructed or placed on the Premises by Little Skookum, unless otherwise specified by Port Blakely at the time it grants such consent, will be the property of Little Skookum. If Little Skookum is in default hereunder, Little Skookum shall not remove any improvements from the Premises without Port Blakely's consent. Upon the termination or expiration of this Lease, Little Skookum shall sever, remove and dispose of those improvements on the Premises designated by Port Blakely within thirty



(30) days from date of termination or expiration. In removing such improvements, Little Skookum shall use all due care necessary to avoid damaging the Premises and shellfish population thereon or the Port Blakely Land. Little Skookum shall repair any damage and indemnify Port Blakely for any loss arising from Little Skookum's removal of any improvements from the Premises. In those cases where Port Blakely requires removal of improvements and such action is not timely taken by Little Skookum, Port Blakely may remove such improvements and charge Little Skookum for the cost of removal and disposal. All improvements remaining on the Premises thirty (30) days after the termination or expiration of this Lease shall become the property of Port Blakely, but such fact shall not relieve Little Skookum of its obligation to reimburse Port Blakely if Little Skookum has failed to timely remove them as required. Notwithstanding the foregoing, on the expiration or termination of this Lease, all seedbeds, shellfish seed, shellfish (bagged or otherwise), and immature shellfish and all sand, gravel, or other natural materials on the Premises (whether installed or placed therein by Little Skookum) shall be the property of Port Blakely and shall not be removed by Little Skookum from the Premises. Little Skookum shall not place any dock, seawall, breakwater or other improvement of any kind on the Premises without Port Blakely's prior written consent.

In addition, Little Skookum shall, on the expiration or other termination of this Lease, surrender the Tidelands to Port Blakely in good condition and repair and shall surrender the Uplands Pad and Access Road in a condition free of any damage caused by Little Skookum or Little Skookum's Responsible Parties. Prior to the expiration or termination of this Lease, Little Skookum shall, at its sole cost and expense, remove from the Premises any aquaculture gear and other equipment of any kind installed or placed thereon by Little Skookum.

Little Skookum's obligations under this Section 4.1 shall survive the expiration or termination of this Lease.

**4.2 Unauthorized Improvements:** All improvements made on or to the Premises without the written consent of Port Blakely shall immediately, at Port Blakely's option, become the property of Port Blakely. Port Blakely may, at its option, require Little Skookum to remove and dispose of any or all such improvements, upon reasonable terms and conditions, and in those instances where such action is not taken by Little Skookum, Port Blakely may remove such improvements, charging Little Skookum for the cost of the removal and disposal, plus interest thereon at the rate of 12% per annum, and Port Blakely may, at its option, terminate this Lease.

**4.3 Little Skookum's Operations and Performance Obligations:** Little Skookum shall continuously, without interruption, operate a shellfish cultivation and harvesting operation on the Premises, and shall use its best efforts and abilities to produce and harvest the maximum potential value of commercial scale shellfish from the Premises over the Term of this Lease. Little Skookum agrees to use at least equal efforts in the production and harvesting of the commercial shellfish on the Premises as it will expend on its own properties. Little Skookum's use of the Premises shall promote a healthy Aquaculture through Substantial Shellfish Aquaculture Activity and maintain a healthy ecosystem for the continued growth of the aquaculture within the Tidelands. Commencing in January, 2020, and at least annually thereafter, on such dates as Port Blakely may specify, Little Skookum agrees to participate in periodic shellfish leasehold and aquaculture review meetings with Port Blakely and one or more third-party aquaculture consultants engaged by Port Blakely (the "**Shellfish/Aquaculture Meetings**"). The Shellfish/Aquaculture Meetings shall be for the purpose, among other things, of determining recovery, sustainability, and expansion, and review of Little Skookum's plan and Grow-out projections for the

Tidelands. Port Blakely may hire one or more third party consultants to perform annual plot analysis of shellfish beds in the Tidelands. At the Shellfish/Aquaculture Meetings Port Blakely, Little Skookum, and if desired the third-party consultant, will develop and the Parties shall agree on a Performance Metrics system for Little Skookum that will be used to determine Tidelands production status and identify 1) areas for improvement and 2) shellfish population, age, and survival rate. Substantial Shellfish Aquaculture Activity shall be measured based on comparison of current year performance with previous years, and provide evidence of the recovery, sustainability, and expansion of Aquaculture activity within the Tidelands. The Substantial Shellfish Aquaculture Activity will be based on best available science and historical evidence for the area. Environmental natural influences affecting the mortality rate of shellfish shall be considered in the yearly analysis. If within three (3) years after the Effective Date, there is no material recovery or material progress made within the Tidelands to improve Substantial Shellfish Aquaculture Activity, Port Blakely and Little Skookum will negotiate and agree to an orderly, reasonable exit strategy for Little Skookum and early termination of this Lease.

As used herein, the following terms have the following respective meanings:

- **“Aquaculture”** means the culture or farming of marine shellfish and maintaining the proper flora or fauna to meet the nutritional needs of the shellfish for commercial shellfish harvest purposes.
- **“Aquaculture Practices”** means the farming on tidelands to cultivate commercial shellfish for harvest including without limitation seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops, and processing for commercial sale.
- **“Grow-out”** means the rate of growth of marine shellfish.
- **“Performance Metrics”** means Little Skookum’s behavior, activities and overall performance of its leasehold obligations, and supports a range of actions, requirements, costs, resources and value for Little Skookum and Port Blakely, respectively.
- **“Substantial Shellfish Aquaculture Activity”** means a good faith effort to develop, manage and protect saltwater habitat along the Tidelands and related aquaculture site, acquire financing, equipment, shellfish seed, to cultivate shellfish and tidelands, harvest cultivated product, or show other shellfish aquaculture–related activity.

4.4 **Taxes and Assessments:** Little Skookum agrees to pay when due all personal property taxes and assessments on all of Little Skookum's equipment and other items of Little Skookum's property used in or located on the Premises, and all other taxes and assessments relating to Little Skookum's use of the Premises. Port Blakely shall pay all real property taxes and assessments on the Premises and all other taxes and assessments related to Port Blakely's ownership of the Premises. Port Blakely shall pay taxes on all capital improvements, if any, which are approved as permanent improvements by Port Blakely and owned by Port Blakely.

4.5 **Entry, Access:** Port Blakely reserves the right of entry and access to and across the Premises for all purposes at any time and further reserves the right to grant easements and other land uses on the Premises to others when such will not interfere with Little Skookum's operations on the Premises, except that all such easements or differing land uses on the Tidelands portion of the Premises shall be

subject to the prior written approval of Little Skookum, which shall not be unreasonably withheld or delayed.

4.6 Review of Books and Records: Port Blakely shall be entitled, with reasonable notice and during business hours, to examine Little Skookum's books and records for the purpose of verifying compliance with the terms of this Lease. If Port Blakely's examination of Little Skookum's books and records reveals that Little Skookum's Monthly Reports to Port Blakely have understated Little Skookum's gross sales, then Little Skookum shall promptly pay Port Blakely all Rent owing as a result of such understated harvest figures, together with interest thereon at the rate of twelve percent (12%) per annum. In the event the understatement exceeded five percent (5%) and was unintentional, clerical or made in good faith, then Little Skookum shall additionally pay Port Blakely liquidated damages in the sum of twenty-five percent (25%) of the Rent which was omitted. In the event the understatement was intentional, or made in bad faith, Little Skookum shall pay as liquidated damages an additional one-hundred percent (100%) of the Rent omitted, and Port Blakely may, in its sole discretion, elect to terminate this Lease.

4.7 Restrictions on Use: In connection with use of the Premises, Little Skookum shall:

(a) Conform to applicable laws, regulations, rules, ordinances, permits, or order of any governmental or public authority affecting the Premises and the use thereof, and correct at Little Skookum's own expense any failure of compliance created through Little Skookum's fault or by reason of Little Skookum's use. Little Skookum represents and warrants to Port Blakely that Little Skookum has all necessary licenses and permits required to operate the contemplated shellfish farming operation on the Premises, and Little Skookum covenants to maintain those licenses and permits during the Term of this Lease.

(b) With the exception of harvestable shellfish, remove no valuable material from the Tidelands or the Port Blakely Land, without prior written consent of Port Blakely.

(c) Not make, or suffer to be made, any filling in, or deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other hazardous or toxic wastes, or hazardous waste or materials (as defined in Section 6.12 below), or other matter whatsoever on the Premises or the Port Blakely Land except as approved in advance and in writing by Port Blakely.

**5. Requirements:**

5.1 Assignment and Sublease: Neither the Premises nor any portion thereof shall be sublet nor shall Little Skookum allow any third party to occupy any portion of the Premises without the prior written consent of Port Blakely. Neither this Lease, nor any portion thereof, shall be assigned, mortgaged, or otherwise transferred without the prior written consent of Port Blakely. In granting such consent Port Blakely reserves the right to change the terms and conditions of this Lease as it may affect the assignee. Further, if at any time during the Term of this Lease the ownership or control of Little Skookum shall be changed by sale, assignment, bequest, inheritance, operation of law, or other disposition so as to result in a change in the present ownership and control of the corporation, the same shall constitute an assignment of this Lease and as such shall require prior written consent of Port Blakely. Notwithstanding Port Blakely's consent to any assignment of this Lease, Little Skookum shall continue to remain liable hereunder.

5.2 Maintenance: Little Skookum, at its sole cost and expense, shall at all times keep, or cause the Uplands Pad, Tidelands and all shellfish beds and improvements to be kept in as good condition and repair as existed at the commencement of this Lease or as hereafter improved, except for reasonable use as permitted by this Lease. Little Skookum shall not permit or cause any waste to the Premises. Little Skookum shall return the Premises to Port Blakely at the expiration or termination of this Lease in as good condition as it is at the commencement of this Lease or as it may be improved. Little Skookum shall not allow debris or refuse to accumulate on the Premises or the Port Blakely Land, whether caused by itself or any of Little Skookum's Responsible Parties. Failure to comply with this provision shall be cause to permit Port Blakely to remove the debris and refuse and collect the cost of such removal from Little Skookum and/or terminate this Lease. Provided, however, that on-site, native marine biological debris shall be exempted if so allowed by the Washington State Department of Fisheries and if it does not violate any applicable law, code or regulation or damage the present or future shellfish growing capacity of the Tidelands.

5.3 Indemnity and Liability: Little Skookum agrees to comply with all environmental, aquaculture practices, as defined above, and clean water laws, codes and regulations and the Mason County Shoreline Master Plan, as amended, applicable to the Premises or its operations on the Premises. Little Skookum will defend, indemnify, and hold harmless Port Blakely, its partners, authorized agents, and employees, from all claims, costs (including environmental cleanup and remediation costs), damages, liabilities, losses, and expenses of any nature whatsoever (including, without limitation, reasonable attorneys' fees) arising out of or in connection with Little Skookum's use of the Premises or any act or omission of Little Skookum or its employees, agents, contractors, subcontractors, invitees, permittees, successors, assigns, visitors, and any other person or entity for whose act Little Skookum may otherwise be liable in connection with this Lease (collectively, "**Little Skookum's Responsible Parties**"). Further, Little Skookum will be responsible for the payment of any fines or penalties charged against Port Blakely or the Premises as a result of Little Skookum's action (or failure to act) in violating or failing to comply with laws or regulations applicable to the Premises or Little Skookum's operations hereunder. Provided, however, that for any claim or injury arising from activities to which RCW 4.24.115 is held to be applicable (i) Little Skookum shall have no liability hereunder with respect thereto if such injuries or claims are caused by or result from the sole negligence of Port Blakely or its agents or employees, and (ii) if such claim or injury arises out of the concurrent negligence of Port Blakely or its agents or employees and Little Skookum or its agents or employees, then Little Skookum shall be liable hereunder only to the extent of the negligence of Little Skookum or its agents or employees.

Little Skookum assumes potential liability for actions brought by Little Skookum's Responsible Parties.

Little Skookum's defense and indemnity obligations hereunder shall survive the expiration or termination of this Lease and shall not be limited by any worker's compensation, benefits or disability laws and Little Skookum waives any immunity that Little Skookum may have under the Industrial Insurance Act, Title 51 RCW, or similar workers' compensation, benefits or disability laws. Little Skookum hereby releases and waives all claims against Port Blakely with respect to injuries arising from Little Skookum's operations under this Lease, except to the extent they arise from Port Blakely's negligence.

5.4 Insurance: Little Skookum shall carry and maintain in full force at all times during the operations hereunder, at Little Skookum's sole expense, the following insurance coverage in forms and

with insurers satisfactory to Port Blakely, insuring against all liability for loss or damage for injury to persons or property during use of the Premises by Little Skookum and Little Skookum's Responsible Parties.

Little Skookum hereby releases Port Blakely from and waives all rights against Port Blakely and its agents, officers, directors, partners and employees for recovery of damages to the extent these damages are covered, or would have been covered, by any of the required insurances described below, including any first party property damage insurance, or automobile physical damage insurance, and including the deductible and/or uninsured portion thereof.

Little Skookum shall furnish to Port Blakely, on the date this Lease is signed, a certificate of insurance executed by a duly authorized representative of each insurer evidencing required coverage. New certificates of insurance shall be provided to Port Blakely at least 30 days prior to the expiration date of the then-current insurance policies and prior to the cancellation of any such insurance policies. All certificates shall provide at least 30 days written notice of cancellation to Port Blakely and shall name Port Blakely as an additional insured. A copy of the policy's (ies') specific additional insured wording or a satisfactory additional insured endorsement shall be submitted along with the certificate of insurance.

All insurance coverage carried by Little Skookum, whether required herein or not, shall provide a waiver of subrogation in favor of Port Blakely.

Little Skookum shall maintain Commercial General Liability (CGL) and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than the amounts indicated in this Section 5.4.

CGL insurance shall cover liability arising from premises, operations, independent contractors, liability assumed under this Lease (including, without limitation, Little Skookum's indemnity obligations under Section 5.3 above) and personal injury and advertising injury.

This insurance, including insurance provided under the commercial umbrella, if any, shall apply as primary and non-contributing insurance with respect to any other insurance or self-insurance programs maintained by Port Blakely.

Little Skookum shall maintain commercial automobile liability (CAL) and, if reasonably required by Port Blakely, commercial umbrella liability insurance with a limit of not less than the amounts indicated in this Section 5.4.

Minimum insurance limits required herein:

General Liability

Bodily Injury and Property Damage Combined Single Limit

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

Personal and Advertising Injury

\$1,000,000 Each Occurrence

Automobile Liability

\$1,000,000 Each Occurrence

Page: 10

4824-1533-2811v.2 0022688-000283

5.5 Assessments: Little Skookum shall pay all the annual payments on all assessments that are legally charged against Little Skookum's operations on the Premises. Port Blakely shall pay all annual payments on other assessments that are charged against the Premises. Little Skookum shall pay all fees, expenses and costs related to Little Skookum's operations, including all permits, license fees and other governmental charges levied on Little Skookum's operations on the Premises.

5.6 Insolvency: If Little Skookum becomes insolvent or a petition is filed by or against it to have Little Skookum adjudged a bankrupt or a petition is filed for its reorganization or arrangement under any law relating to bankruptcy, or a receiver or trustee is appointed to take possession of substantially all of its assets located at the Premises or of its interest in this Lease, or it makes a general assignment for the benefit of creditors, or the attachment, execution or other judicial seizure of substantially all of its assets located at the Premises or its interest in this Lease, or its interest in this Lease is transferred by operation of law, Port Blakely may terminate this Lease at its option. Insolvency as used herein will mean the inability of Little Skookum to meet obligations as they become due.

#### 6. Miscellaneous:

6.1 No Partnership: Port Blakely is not an employer of, a partner of or a joint venturer with Little Skookum in connection with the business carried on by Little Skookum under this Lease and Port Blakely shall have no obligation whatsoever with respect to Little Skookum's debts or other liabilities. The relationship between Port Blakely and Little Skookum is only that of landlord and tenant.

6.2 Non-Waiver: Waiver by either Party of strict performance of any provisions of this Lease shall not be a waiver of, nor prejudice the Party's right to require strict performance of the same provision or of any other provision in the future.

6.3 Attorneys' Fees: In the event that this Lease or any obligation owing hereunder is referred to an attorney for enforcement, the defaulting Party agrees to pay the non-defaulting Party's (or in the event of a court action, the prevailing Party's) expenses and reasonable attorneys' fees, including fees incurred in both trial and appeal preparation and in both trial and appellate courts, any fees incurred without suit, the expense of any title searches, and all court costs.

6.4 Succession: Subject to the limitations as stated in Section 5.1 on transfer of Little Skookum's interest, this Lease shall be binding upon, and inure to the benefit of the Parties and their respective successors and assigns.

6.5 Notices: Any notice required or permitted under this Lease shall be in writing by a Party hereto and shall be deemed given when actually delivered or when mailed by certified mail, return receipt requested, and deposited in the United States mail, postage prepaid to the other Party's address as set forth below and concurrently given to the other Party's email address(es) as set forth below. Either Party may change its address and/or email address(es) for notices by giving ten (10) days' written notice to the other Party.

#### 6.6 Liens:

(a) Neither Little Skookum nor any other person or entity acting by, through or under Little Skookum shall have the right to create, file or place any lien of any kind or character upon the land or improvements within the Premises or upon the Port Blakely Land without the prior written consent of

the Port Blakely. Before commencing any work relating to alterations, additions and improvements affecting the Premises, Little Skookum shall notify Port Blakely in writing describing such work in reasonable detail and the expected dates of commencement and completion thereof. Port Blakely shall then have the right at any time and from time to time to post and maintain on the Premises such notices as it reasonably deems necessary to protect the Premises from mechanics' liens, materialmen's liens or any other liens. Little Skookum shall pay when due the cost of all labor and materials furnished to or for Little Skookum at or for use in the Premises. Little Skookum shall not permit any mechanics' or materialmen's liens or claims of lien to be filed or levied against the Premises for any labor or material furnished to or for Little Skookum or its agents, contractors or subcontractors.

(b) In the event unauthorized liens or other charges are placed on the Premises or Port Blakely Land, including land or improvements, arising out of Little Skookum's actions directly or indirectly, Little Skookum shall immediately cause such liens or charges to be discharged by payment thereof or if it contests the validity of such lien or charge diligently and in good faith, by posting an appropriate bond or taking other action to stay enforcement thereof, and in such latter event, Little Skookum shall not be in default by reason thereof unless it thereafter fails to satisfy such lien or claim by the earlier of (i) ten (10) days after final judgment has been rendered to the effect that the lien or claim is valid and (ii) ten (10) days prior to the foreclosure date. Port Blakely, at its option, may pay amounts necessary to remove such liens or charges upon giving ten (10) days' notice to Little Skookum, if Little Skookum has failed to immediately (i) pay or (ii) contest in good faith, stay enforcement of and diligently pursue the setting aside of such lien or charge; provided, however, Port Blakely may pay any such lien or charge without notice to Little Skookum if the Premises is faced with imminent foreclosure sale. Little Skookum shall promptly repay and indemnify Port Blakely for all costs, damages or charges of whatsoever nature, including reasonable attorneys' fees, necessary to discharge such liens or charges.

(c) This Lease shall be subject and subordinate to any mortgage or deed of trust now or hereafter placed on the Premises by Port Blakely, and Little Skookum shall promptly sign such subordination, non-disturbance and attornment agreement as Port Blakely's lender may require, and Little Skookum shall attorn to such lien holder or purchaser after a foreclosure or deed in lieu thereof; notwithstanding the foregoing, Little Skookum shall be entitled to its rights under this Lease so long as it fully complies with its obligations hereunder.

(d) Subject to the terms of this Lease, Port Blakely agrees to provide Little Skookum with the quiet enjoyment of the Tidelands during the Term hereof or until this Lease is terminated.

6.7 Default: If Little Skookum shall violate or default in any of the covenants and agreements contained herein, including, without limitation, the obligation to pay Rent, then, after Port Blakely has given Little Skookum thirty (30) days' written notice of such default and Little Skookum has failed to cure the default within said period, Port Blakely may (i) terminate Little Skookum's right to possession by any lawful means, in which case this Lease shall terminate, Little Skookum shall immediately surrender possession of the Premises, and Port Blakely may enter upon and re-take possession of the Premises, and/or (ii) recover from Little Skookum all unpaid Rent, all damages incurred by Port Blakely by reason of Little Skookum's violation or default, including, without limitation, the cost of recovering possession of the Premises, expenses of reletting and reasonable attorneys' fees in enforcing its rights hereunder, and/or (iii) recover from Little Skookum the excess of the value of all its obligations under this Lease from the date of default to the end of the Term over the reasonable rental value of the Premises for the same period, the net result to be discounted to the date of default at a reasonable rate not to exceed

Page: 12

4824-1533-2811v.2 0022688-000283

five percent (5%) per annum. In addition, Port Blakely and Little Skookum may pursue any other remedy now or hereafter available at law or in equity to either Party. Both Parties must use commercially reasonable efforts to mitigate their damages and deal at all times in good faith with the other. Notwithstanding anything herein to the contrary, neither Party shall be entitled to recover lost profits, consequential damages or punitive damages, and each Party waives all rights to claim or recover the same.

6.8 Port Blakely's Right to Cure Defaults:

(a) If Little Skookum fails to perform any requirements or obligations under this Lease, Port Blakely shall have the option to correct any such default after giving thirty (30) days' written notice to Little Skookum. All of Port Blakely's reasonable expenditures to cure the default expended after the expiration of the 30-day period shall be reimbursed by Little Skookum with interest at the rate of one percent (1%) per month accrued from the date of expenditure by Port Blakely, no later than the earlier of (i) the expiration of the Term, (ii) the termination of this Lease, and (iii) the due date for the next regular monthly Rent payment.

(b) In the event any violation or breach of the provisions of this Lease is causing damage to the Premises or liability to Port Blakely, or Little Skookum is utilizing the Premises in a manner not permitted by the provisions of this Lease, or in any case where an emergency exists or damages are occurring to the Premises, Port Blakely may immediately enter upon the Premises and take such action as is necessary to cease such damages or use. Little Skookum shall be liable for all reasonable costs incurred by Port Blakely if Port Blakely acts to cure such violations or prevent such damages, together with interest thereon at the rate of one percent (1%) per month accrued from the date of expenditure by Port Blakely, which amount shall be payable on demand by Port Blakely. Port Blakely, at its option, may send notice to Little Skookum of such violations and Little Skookum shall immediately cease such use or violation and correct and remedy such violations caused by Little Skookum.

6.9 Litigation: In the event this Lease, its terms, Little Skookum's use of the Premises, or Little Skookum's occupancy of the Tidelands in any way becomes a matter subject to litigation or a written threat of litigation, the Party with information about such litigation or threatened litigation shall promptly notify the other Party of such litigation or such written threat.

6.10 Gate: Little Skookum shall keep the gate erected on the Access Road locked at all times, except when in actual use. Little Skookum shall not change the lock on the gate without Port Blakely's prior consent and providing Port Blakely with a key to (or the combination of) said lock.

6.11 Access Premises: Little Skookum agrees to accept the Access Road in its present condition, which Little Skookum agrees is in reasonable condition. Port Blakely agrees to maintain the Access Road in a reasonable condition; provided, however, Little Skookum shall repair (or pay for the cost to repair) any damage to the Access Road caused by Little Skookum or its agents, contractors, suppliers, invitees or permittees, and Port Blakely may elect whether to effect such repair at Little Skookum's cost or to require Little Skookum to effect such repair. In the event Little Skookum notifies Port Blakely in writing of unacceptable damage to the Access Road which has not been caused by Little Skookum or its agents, contractors, suppliers, invitees or permittees and is not consistent with the Access Road being in reasonable condition, Port Blakely shall, subject to delay caused by Force Majeure, commence repairs of such damage to the road within thirty (30) days after receipt of such notice and thereafter shall use diligent to complete such repairs as soon as reasonably possible, but in any event within sixty (60) days



after such notice; if Port Blakely has not repaired said damage to the road within said 60-day period, then Little Skookum may, provided it complies with all permit, code and other legal requirements, repair that damage and charge Port Blakely for the reasonable, verified cost of repair thereof.

6.12 Covenant of No Hazardous Waste: Little Skookum shall bring onto or store on the Premises or dispose of or otherwise allow the release of any hazardous waste or materials in, on or under the Premises or any adjacent property. As used herein, the term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect, including, without limitation, any petroleum or petroleum products. Little Skookum shall promptly comply with all laws, statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Premises or adjacent property caused by Little Skookum's operations hereunder. Little Skookum has no knowledge that its proposed operation on or use of the Premises fails or will fail to comply with any such laws or orders. Little Skookum shall immediately notify Port Blakely if Little Skookum observes any oil sheen on any waters on or near the Tidelands or any adjacent property or otherwise becomes aware of the release of any hazardous waste or materials on the Premises or adjacent property or becomes aware of any other environmental problem on the Premises or adjacent property. Little Skookum shall be responsible for all costs and expenses relating to the cleanup and remediation of hazardous waste or materials from the Premises or adjacent property for any contamination or release of any hazardous waste or materials arising out of its use of the Premises or any other act or omission of Little Skookum or Little Skookum's Responsible Parties. Port Blakely reserves the right, with Little Skookum's written consent, which will not be unreasonably withheld or delayed, to apply herbicides and pesticides on the Port Blakely Land as required by its forestry operations and as approved by the State of Washington so long as Little Skookum's operations will not be adversely affected thereby.

6.13 Entire Agreement; Counterparts; Electronic Delivery: This Lease contains the entire understanding and agreement of the Parties hereto relating to the subject matter, and this Lease supersedes all prior negotiations, representations and agreements with respect to the subject matter. This Lease may be signed and acknowledged in multiple counterparts, which together shall constitute a single agreement, and a Party's delivery of this Lease may be accomplished by the electronic transmission (e.g., email of a PDF) of a signed and acknowledged counterpart hereof to the other Party.

6.14 Amendment: This Lease may be amended or modified only in writing signed by the Parties hereto.

6.15 Applicable Law: This Lease shall be governed by the laws of the State of Washington.

6.16 Holding Over: If Little Skookum remains in possession of the Premises or any part thereof after the expiration or earlier termination of this Lease with the written consent of Port Blakely, such occupancy shall be a tenancy from month-to-month at a rental in the amount equal to one hundred ten percent (110%) of the last monthly Rent amount due hereunder and upon the remaining terms hereof on a month-to-month tenancy. If Little Skookum remains in possession of the Premises or any part thereof after the expiration or earlier termination of this Lease without Port Blakely's written consent, it shall be construed to be a month-to-month tenancy at sufferance on all of the terms and conditions set

forth herein; provided, that the rental for each calendar month of the holdover period shall be an amount equal to one hundred twenty percent (120%) of the last monthly Rent amount due hereunder.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument in duplicate, as of the day and year first above written.

PORT BLAKELY TREE FARMS (LIMITED PARTNERSHIP), a Washington limited partnership

LITTLE SKOOKUM SHELLFISH GROWERS, INC., a Washington corporation

By: The Port Blakely Company, a Washington corporation, its General Partner

Signature: \_\_\_\_\_

By: Mike Warjone

Title: President, Forestry Division

Signature: 

By: Lisa A. Bishop

Title: President

Port Blakely's Address:

Port Blakely Tree Farms  
Attn: Contracts Manager  
8133 River Drive SE  
Tumwater, WA 98501

Email: cweis@portblakely.com; and  
dmuller@portblakely.com

Little Skookum's Address:

Little Skookum Shellfish Growers, Inc.  
Attn: Lisa A. Bishop, President  
2262 SE Lynch Road  
Shelton, WA 98584-1157

Email: lisa@skookumshellfish.com


forth herein; provided, that the rental for each calendar month of the holdover period shall be an amount equal to one hundred twenty percent (120%) of the last monthly Rent amount due hereunder.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument in duplicate, as of the day and year first above written.

PORT BLAKELY TREE FARMS (LIMITED PARTNERSHIP), a Washington limited partnership

LITTLE SKOOKUM SHELLFISH GROWERS, INC., a Washington corporation

By: The Port Blakely Company, a Washington corporation, its General Partner

Signature:		Signature:	_____
By:	Mike Warjone	By:	Lisa A. Bishop
Title	President, Forestry Division	Title	President

**Port Blakely's Address:**

Port Blakely Tree Farms  
Attn: Contracts Manager  
8133 River Drive SE  
Tumwater, WA 98501

Email: [cweis@portblakely.com](mailto:cweis@portblakely.com); and  
[dmuller@portblakely.com](mailto:dmuller@portblakely.com)

**Little Skookum's Address:**

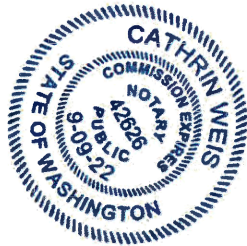
Little Skookum Shellfish Growers, Inc.  
Attn: Lisa A. Bishop, President  
2262 SE Lynch Road  
Shelton, WA 98584-1157

Email: [lisa@skookumshellfish.com](mailto:lisa@skookumshellfish.com)

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Thurston )

On this 17<sup>th</sup> day of December, 2020, before me, a Notary Public in and for the State of Washington, personally appeared Mike Warjone, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed this instrument; on oath stated that he was authorized to execute this instrument as President, US Forestry of The Port Blakely Company, a Washington corporation, the General Partner of Port Blakely Tree Farms (Limited Partnership), a Washington limited partnership; and acknowledged instrument to be the true and voluntary act and deed of said corporation and said limited partnership for the uses and purposes therein mentioned.

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



*Cathrin Weis*

CATHRIN WEIS

(Print Name)

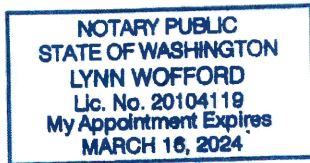
NOTARY PUBLIC in and for the State of Washington,  
residing at Port, WA 98051

My appointment expires September 9, 2022

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Mason )

On this 17 day of December, 2020, before me, a Notary Public in and for the State of Washington, personally appeared Lisa A. Bishop, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed this instrument; on oath stated that she was authorized to execute this instrument as President of Little Skookum Shellfish Growers, Inc., a Washington corporation; and acknowledged instrument to be the true and voluntary act and deed of said corporation for the uses and purposes therein mentioned.

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



Lynn Wofford  
Lynn Wofford  
(Print Name)  
NOTARY PUBLIC in and for the State of Washington,  
residing at Olympia Wa  
My appointment expires 3-16-2024

**EXHIBIT D**  
**Form of Assignment of Tidelands Lease**

**ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT**

This ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT dated as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (this "**Assignment Agreement**"), is by and between Port Blakely Tree Farms (Limited Partnership), a Washington limited partnership ("**Grantor**") and the Squaxin Island Tribe, a federally recognized tribe ("**Grantee**").

R E C I T A L S

WHEREAS, Grantor and Grantee have concurrently herewith consummated the quit claim transfer, for no consideration, from Grantor to Grantee of certain property and assets, such transaction being pursuant to the terms and conditions of that certain Charitable Transfer Agreement between Grantor and Grantee, dated as of April \_\_\_, 2021 (the "**Charitable Transfer Agreement**"); and

WHEREAS, pursuant to the Charitable Transfer Agreement, Grantor has agreed to assign and quit claim to Grantee all right, title and interest of Grantor under that certain Tidelands Lease between Grantor, as lessor, and Little Skookum Shellfish Growers, Inc., as lessee, dated as of May 14, 2019 (the "**Tidelands Lease**"), a copy of which is attached Exhibit A hereto.

WHEREAS, pursuant to the Charitable Transfer Agreement, Grantee has agreed to accept such assignment of the Tidelands Lease and assume the obligations and liabilities of Grantor under the Tidelands Lease arising or accruing thereunder from and after the date of this Assignment Agreement.

NOW, THEREFORE, in consideration of the foregoing and for the consideration as provided in the Charitable Transfer Agreement, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee, Grantor and Grantee hereby agree as follows:

Effective as of the date of this Assignment Agreement, Grantor hereby grants, assigns, transfers and quit claims to Grantee, without warranty, all of Grantor's right, title, and interest in, to and under the Tidelands Lease.

Effective as of the date of this Assignment Agreement, Grantee hereby accepts the assignment of the Tidelands Lease and assumes all obligations and liabilities of Grantor arising or accruing under the Tidelands Lease from and after the date of this Assignment Agreement.

Grantee shall forever indemnify, defend and hold harmless Grantor from and against any and all claims, losses, obligations, liabilities and expenses, including without limitation

reasonable attorneys' fees, arising or accruing under the Tidelands Lease from and after the date of this Assignment Agreement or arising from the failure of Grantee to perform any obligations or liabilities arising or accruing under the Tidelands Lease from and after the date of this Assignment Agreement.

This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If either party fails to perform its obligations under this Assignment Agreement, or if a dispute arises concerning the meaning or interpretation of this Assignment Agreement, and an action is filed, then the prevailing party in such action shall be entitled to recover from the other party, in addition to any other relief, its court costs and reasonable attorneys' fees and disbursements, including on any appeal. The provisions of Section 15 of the Charitable Transfer Agreement shall apply to the enforcement and interpretation of this Assignment Agreement and any dispute with respect to this Assignment Agreement. In the event of any conflict or inconsistency between the provisions of this Assignment Agreement and the provisions of Section 15 of the Charitable Transfer Agreement, the provisions of Section 15 of the Charitable Transfer Agreement shall govern.

This Assignment Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original and all of which together shall constitute one and the same instrument. Executed counterparts hereof may be delivered electronically.

This Assignment Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder. This Assignment Agreement is binding on and shall inure to the benefits of the parties hereto, and their successors and assigns.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Assignment Agreement to be duly executed as of the day and year first above written.

PORT BLAKELY TREE FARMS  
(LIMITED PARTNERSHIP)

SQUAXIN ISLAND TRIBE

By: \_\_\_\_\_  
Name: Mike Warjone  
Its: President, Forestry Division

By: \_\_\_\_\_  
Name:  
Its:





STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF MASON )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledge it as the \_\_\_\_\_ of the Squaxin Island Tribe, a federally recognized tribe, to be the free and voluntary act of said entity for the uses and purposes mentioned in this instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EXHIBIT A**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**Copy of Tidelands Lease**

**EXHIBIT E**  
**Form of Access Easement**

After Filing Return To:

Squaxin Island Tribe  
Attention: Ray Peters  
200 SE Billy Frank Jr. Way  
Shelton, Washington 98584

**ROAD EASEMENT AGREEMENT**

***Grantor:***

Port Blakely Tree Farms (Limited Partnership), a Washington limited partnership

***Grantee:***

Squaxin Island Tribe, a federally recognized tribe

***ABBREVIATED LEGAL DESCRIPTION (LOT, BLOCK AND PLAT NAME, OR S-T-R):***

**Burdened Property: Gov't Lots 5 and 6, 9-19-3; and Gov't Lot 2, 16-19-3**

**Benefitted Property: Ptn TL in front of: 9-19-3, Gov't Lot 5, 10-19-3 & 16-19-3**

**[Need to double check these abbreviated legals]**

Additional legal description is on Exhibits A and B of document

***ASSESSOR'S PROPERTY TAX ACCOUNT NUMBER(S):***

BURDENED PROPERTY: 31909-40-00000; and 31916-00-00000 (ptn of)

BENEFITTED PROPERTY: 31909-00-83810; 31909-00-73380; 31910-23-00000 (ptn of); and 31916-00-00000 (ptn of)

***REFERENCE NUMBERS OF DOCUMENTS ASSIGNED OR RELEASED (IF APPLICABLE): N/A***

## ROAD EASEMENT AGREEMENT

THIS ROAD EASEMENT AGREEMENT (this "**Easement Agreement**") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Port Blakely Tree Farms (Limited Partnership), a Washington limited partnership, doing business as PORT BLAKELY US FORESTRY, ("**Grantor**"), whose address is 8133 River Drive S.E., Tumwater, Washington 98501 and the Squaxin Island Tribe, a federally recognized tribe ("**Grantee**"), whose address is 10 SE Squaxin Lane, Shelton, Washington 98584.

### Recitals

A. Whereas Grantor owns the real property in Mason County Washington, legally described on the attached Exhibit A (the "**Grantor Property**"), and the easement contemplated under this Easement Agreement will be granted by Grantor with respect to a 20-foot wide easement, 10 feet on each side of the centerline of the existing road over the Grantor Property and located approximately as shown on the map attached hereto as Exhibit C (the "**Road**"); and

B. Whereas as of the date of this Easement Agreement Grantor conveyed to Grantee and Grantee now owns certain tidelands in Mason County Washington, adjacent to the Grantor Property and legally described on the attached Exhibit B (the "**Grantee Property**"); and

C. Whereas, the Grantee Property was transferred by Grantor to Grantee for no consideration pursuant to the charitable transfer contemplated in that certain Charitable Transfer Agreement between Grantor and Grantee, dated as of April \_\_, 2021 (the "**Charitable Transfer Agreement**") and;

D. Whereas, pursuant to the Charitable Transfer Agreement, Grantor and Grantee agreed to enter into this Easement Agreement concurrently on the transfer of the Grantee Property to Grantee; and

E. Whereas, subject to the terms and conditions of this Easement Agreement, Grantor desires to grant Grantee a permanent non-exclusive appurtenant easement over the Road to provide access to the Grantee Property and Grantee desires to accept such grant subject to such terms and conditions;

NOW, THEREFORE, Grantor and Grantee agree as follows:

### 1. GRANT OF EASEMENT:

Grantor does hereby grant and quit claim to Grantee, without warranty, for the benefit of the Grantee Property, a perpetual, twenty (20) foot wide non-exclusive easement, centered on the centerline of the Road, with said 20-foot width being ten (10) feet on each side of said centerline, on, over, and across the Road for the purpose of providing ingress to and egress from the Grantee Property.

## **2. COMPLIANCE:**

Grantee understands and agrees that the use of the Road by Grantee or Grantee's employees, agents, contractors, subcontractors, tribe members, invitees, permittees, permitted successors and assigns, visitors and any other person or entity for whose act any Grantee may otherwise be liable in connection with this Easement Agreement (collectively, "**Grantee's Responsible Parties**") shall be conducted in compliance with all the laws of the United States, the State of Washington and other applicable laws, regulations, permits, and approvals, including, without limitation, fire, and environmental regulations. Use of the Road by Grantee and Grantee's Responsible Parties shall be in compliance with such reasonable traffic signs, rules, regulations, and restrictions as Grantor may impose from time to time and shall not be exercised so as to unreasonably interfere with the use of the Road by Grantor or its permittees or any third party having the right to use the Road.

## **3. INSPECTION OF ROAD**

Grantee acknowledges that it has inspected the Road, knows its condition, and is entering into this Easement Agreement with full knowledge of the state and condition of the Road, and accepts the Road "AS IS" with all inherent risks. Grantee acknowledges that the Road may include primitive unsigned areas and/or be subject to slides and unstable soil conditions on or in its vicinity. Grantee is solely responsible for the safety of the Road with respect to the use of the Road by Grantee and Grantee's Responsible Parties.

## **4. MAINTENANCE:**

Grantor and Grantee agree that Grantor will maintain and repair the Road. Grantee shall be responsible for its Pro Rata Share of the cost of maintaining and repairing the Road at all times in as good or better condition than it is in as of the date of this Easement Agreement. As used herein, the term "Pro Rata Share" shall mean the applicable percentage share allocable to Grantee based on Grantee's relative use of the Road over a given period as compared to Grantor's relative use of the Road over the same period. Notwithstanding the foregoing, Grantee shall repair or be solely responsible for the cost of repairing any damage to the Road arising from the use of the Road by Grantee or Grantee's Responsible Parties. Grantee agrees to meet with Grantor and a maintainer selected by Grantor prior to the commencement of any such maintenance or repair and prior to any construction, resurfacing, or widening, if such construction, resurfacing, or widening is permitted in writing by Grantor. No maintenance, repair, construction, resurfacing, or widening of the Road shall be permitted without Grantor's prior written consent, which consent with regard to construction, resurfacing, or widening may be withheld in Grantor's sole discretion. Grantee shall not have the right to relocate the Road or use any other portion of the Grantor Property. Grantee shall not have the right to gate the Road or otherwise block the Road no shall Grantee have the right to impair or impede the use of the Road by Grantor or any other person having the right to use the Road.

## **5. RESERVATIONS:**

Grantor reserves, for itself, its permittees, contractors, invitees, visitors, assigns and successors, the right to go upon, to use, and to cross, re-cross, patrol and repair or relocate the Road at any

time and at any place for all purposes deemed necessary or desirable to Grantor, provided that it does not unreasonably interfere with the rights herein granted. Notwithstanding anything in this Easement Agreement to the contrary, Grantor shall be entitled to gate the Road, lock any gates and otherwise limit access to or along the Road as it deems necessary or appropriate to protect the Road and/or the Grantor Property, provided, that it does not unreasonably interfere with the rights herein granted.

#### **6. COVENANT OF NO REGULATED WASTE:**

Grantee shall not dispose of or otherwise allow, nor permit Grantee's Responsible Parties to dispose of or otherwise allow, the release of any regulated waste or materials in, on, or under the Road, the Grantor Property, or any adjacent property. As used herein, the term "regulated waste or materials" includes any substance, waste or material defined or designated as deleterious, hazardous, toxic or dangerous, or as a pollutant (or any similar term) by any federal, state, or local statute, regulation, rule or ordinance now or hereafter in effect, including, without limitation, any petroleum or petroleum products, and chemicals used to make illegal drugs such as methamphetamine. Grantee shall promptly comply with all laws, statutes, regulations, and ordinances, and with all orders, decrees, or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, remediation, removal, or cleanup of regulated waste or materials in, on or under the Road or adjacent property. Grantee represents that Grantee has no knowledge that the proposed use of the Road for accessing the Grantee Property in connection with use of the Grantee Property fails or will fail to comply with any such laws or orders.

Grantee shall immediately notify Grantor if Grantee observes any oil sheen on any waters on the Road, the Grantor Property or any adjacent property or otherwise becomes aware of the release of any regulated waste or materials on the Road, the Grantor Property or any adjacent property or becomes aware of any other environmental problem on the Road, the Grantor Property or adjacent property, or of any violation or suspected violation of any statute, regulation, rule or ordinance. Grantee shall be responsible for all costs and expenses relating to the remediation, cleanup, removal, and disposal of regulated waste or materials from the Road, the Grantor Property, or adjacent property for any contamination or release of any regulated waste or materials arising out of its use, or any other act or omission of Grantee or any of Grantee's Responsible Parties. The obligations of Grantee under this Paragraph 6 shall survive the termination of this Easement Agreement.

#### **7. INDEMNITY AND LIABILITY:**

Grantor makes no warranty or representation as to the current or future condition of the Road or its adequacy for Grantee's use. Grantee assumes the risk of the use thereof and agrees that any use of the Road by Grantee or Grantee's Responsible Parties shall be at their sole risk. Grantee agrees to defend, indemnify and hold harmless Grantor and its partners, officers, employees, agents, representatives, licensees, permittees, contractors, successors, and assigns from and against any and all claims, costs, damages (including, without limitation, actual, incidental, and consequential damages), losses, obligations, demands, injuries, fines, penalties, liens, expenses and liabilities (including, without limitation, employee time and expense and attorneys' fees expended in defending against such claims) attributable to bodily injury, sickness, disease or death, or to damage to or destruction of property and the loss of use thereof arising out of or

occurring in connection with (i) the use of the Road by Grantee or any of Grantee's Responsible Parties, (ii) any maintenance or repair of the Road by Grantee, (iv) entry onto any other portion of the Grantor Property (other than the easement area on the Road) by Grantee or any of Grantee's Responsible Parties, or (v) any breach, violation or failure to comply with the requirements of this Easement Agreement. In any such suit, action, or proceeding, Grantee shall defend Grantor with legal counsel acceptable to Grantor or Grantor may elect to defend itself against any such claim, at Grantee's expense. Notwithstanding the foregoing, if RCW 4. 24. 115 would otherwise apply, (i) Grantee's indemnity obligation shall not apply to any injury or damage caused by or resulting from the sole negligence of Grantor or its agents or employees and (ii) if any injury or damage is caused by or results from the concurrent negligence of Grantor or its agents or employees and Grantee or its agents or employees, Grantee's indemnity with respect thereto shall be enforceable only to the extent of Grantee's negligence.

As between Grantee and Grantor, Grantee hereby expressly waives its immunity under the Industrial Insurance Act, Title 51 RCW and similar worker's compensation laws.

With respect to the above covenants, Grantee and Grantee's Responsible Parties shall carry and maintain in full force at all times during the use of the Road, at the sole expense of Grantee and Grantee's Responsible Parties, the insurance coverage, insuring against all liability for loss or damage for injury to persons or property for all uses in connection with the Road by or at the direction of Grantee. Grantee further releases Grantor from and waives all rights against Grantor and its agents, officers, directors, partners, and employees for recovery of damages to the extent such damages are covered or would have been covered, by the following insurance, including any first party property damage insurance, inland marine insurance or automobile physical damage insurance, and including the deductible and/or uninsured portion thereof:

For all vehicles

General Liability with:

Bodily Injury and Property Damage Combined Single Limit

\$1,000,000 Each Occurrence  
 \$2,000,000 General Aggregate

Personal and Advertising Injury

\$1,000,000 Each Occurrence

Products/Completed Operations Liability

\$1,000,000 Each Occurrence  
 \$2,000,000 Aggregate

Vehicle Liability coverage

\$1,000,000 Each Occurrence

Grantor may impose any other such limits from time to time for uses consistent with the terms of this Easement Agreement.

## **8. ASSIGNMENT:**

The rights granted to the Grantee hereunder are appurtenant to the Grantee Property and shall not be divisible or separately assigned or assignable apart from ownership of the Grantee Property. Any division of rights or partial assignment of rights by Grantee shall be void.

## **9. Subordination and Nondisturbance; Estoppel Certificate.**

This Easement Agreement shall automatically be subordinate to any mortgages or deeds of trust that currently affect the Grantor Property and all renewals, modifications, consolidations, replacements, or extensions thereof. Notwithstanding the foregoing, (A) Grantee shall, within ten (10) days of presentation, execute and deliver to Grantor any subordination agreement that Grantor or any holder of any existing or future mortgage or deed of trust on the Grantor Property ("**Lender**") may request or require subordinating this Easement Agreement to such mortgage or deed of trust, provided that such subordination agreement shall contain Lender's agreement that so long as Grantee is not in breach of any of its obligations under this Easement Agreement, the rights of Grantee hereunder shall be recognized by the Lender and shall not be disturbed by the Lender or its successors in interest under such mortgage or deed of trust, and (B) any Lender may at its sole election subordinate or cause to be subordinated any such mortgage or deed of trust to this Easement Agreement. In the event of the foreclosure of any mortgage or deed of trust on the Grantor Property or the grant of a deed in lieu thereof, Grantee will attorn to and recognize the Lender or any purchaser in such foreclosure as the party to whom Grantee is obligated under this Easement Agreement. Upon request by the Lender or its successor in interest, Grantee will execute and deliver a reasonable instrument confirming such attornment. Grantee shall, within ten (10) days of presentation, execute and deliver to Grantor any estoppel certificate as may be requested by Grantor from time to time.

## **10. MISCELLANEOUS:**

This Easement Agreement contains the entire understanding of the parties hereto relating to the subject matter herein contained; provided, however, the provisions of Section 15 of the Charitable Transfer Agreement shall apply to the enforcement and interpretation of this Easement Agreement and any dispute with respect to this Easement Agreement. No waiver or change of any of the provisions of this Easement Agreement shall be binding upon any party unless in writing and signed by the party to be charged thereby. The waiver by one party hereto of a breach of any provision of this Easement Agreement shall not operate or be construed as a waiver of any subsequent breach.

If any term or provision of this Easement Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby and shall remain in full force and effect.

If any payment obligation required hereunder is not made when due, such amount shall accrue interest at the rate of twelve percent (12%) per annum from the date such amount is due until paid. In addition to any other rights and remedies specified herein or otherwise available at law or



in equity, each party shall have the right to obtain a court decree or order specifically enforcing the provisions of this Easement Agreement and/or injunctive relief.

This Easement Agreement shall be governed by the laws of the State of Washington. Venue of any action with respect to the enforcement of this Easement Agreement shall be in the Superior Court in the county in which the land is located. The parties hereby irrevocably agree to submit to the jurisdiction thereof.

Subject to the restriction against the assignment of any Grantee's rights hereunder, this Easement Agreement and the terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their successors, heirs, and assigns.

In the event of any conflict or inconsistency between the provisions of this Easement Agreement and the provisions of Section 15 of the Charitable Transfer Agreement, the provisions of Section 15 of the Charitable Transfer Agreement shall govern.

**11. ATTORNEYS' FEES:**

In the event that this Easement Agreement or any obligation owing hereunder is referred to an attorney for enforcement, the defaulting party agrees to pay the non-defaulting party's (or in the event of a court action, the substantially prevailing party's) costs, expenses, and reasonable attorneys' fees, including fees incurred both in trial and on appeal, and in any bankruptcy proceeding to obtain relief from stay or take other action to protect or enforce its rights and remedies hereunder, any fees incurred without suit, the expense of any title searches, and all court costs.

**12. NOTICES:**

Except as otherwise expressly provided in this Easement Agreement, all notices or requests for consent required or permitted under this Easement Agreement shall be in writing and shall be delivered personally, sent by nationally recognized overnight courier service, or mailed via certified U.S. Mail, return receipt requested, to the respective addresses set forth in the preamble above (or to such other address as an addressee party hereafter directs by notice to the other party). Notice will be deemed given upon delivery or refusal of delivery, or, if mailed or sent by overnight courier service, the earlier of three (3) business days after being deposited in the mail or with such courier service or actual receipt (or refusal of delivery), whichever is earlier. This Easement Agreement shall be recorded in the real property records of Mason County, Washington.

The Grantor executed this Easement Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

GRANTOR:

PORT BLAKELY TREE FARMS (Limited Partnership), a Washington limited partnership

By: The Port Blakely Company, a Washington corporation, its General Partner

Signature: \_\_\_\_\_  
Print Name: Mike Warjone  
Title: President, Forestry Division

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF THURSTON        )

I certify that I know or have satisfactory evidence that Mike Warjone is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the President, Forestry Division of The Port Blakely Company, a Washington corporation, the General Partner of PORT BLAKELY TREE FARMS (Limited Partnership), a Washington limited partnership, to be the free and voluntary act of such entity for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_

Notary name printed or typed: \_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

The Grantee executed this Easement Agreement on the \_\_\_ day of \_\_\_\_\_, 2021.

GRANTEE: Squaxin Island Tribe, a federally recognized tribe

Signature: \_\_\_\_\_  
Print Name: Kristopher Peters  
Title: Chairman

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF MASON )

I certify that I know or have satisfactory evidence that Kristopher Peters is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Chairman of the Squaxin Island Tribe, a federally recognized tribe to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Notary name printed or typed: \_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

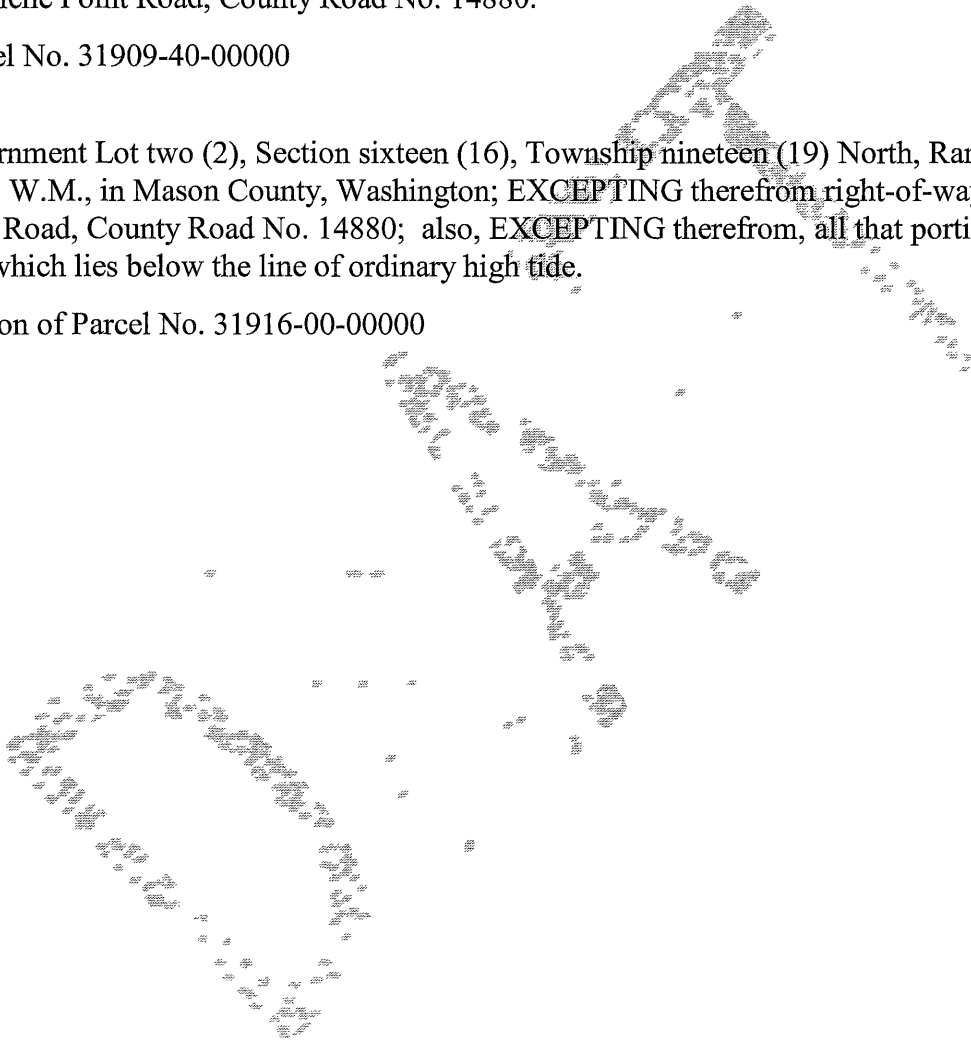
EXHIBIT A  
**Grantor Property**

Government Lot five (5) and six (6), Section nine (9), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington; excepting therefrom right-of-way for Kamilche Point Road, County Road No. 14880.

Parcel No. 31909-40-00000

Government Lot two (2), Section sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington; EXCEPTING therefrom right-of-way for Kamilche Point Road, County Road No. 14880; also, EXCEPTING therefrom, all that portion thereof, if any, which lies below the line of ordinary high tide.

Portion of Parcel No. 31916-00-00000



## EXHIBIT B

### Grantee Property

All land, including tidelands and oyster beds, that lie north of the mean high water mark in Sections 9, 10 and 16 all located in Township 19 North, Range 3 West, including the following described parcels, located in the county of Mason, State of Washington:

#### Parcel 1:

A tract of tidelands conveyed by the State of Washington as tidelands suitable for the cultivation of oysters in deed recorded in Volume 1 of Deeds, page 117, Auditor's File No. 8153, and being particularly described as follows:

COMMENCING at the section corner common to Sections nine (9), ten (10), fifteen (15) and sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington; thence West 27.89 chains to the meander corner on the South line of said Section nine (9), and the POINT OF BEGINNING of the tract of tidelands hereby described; thence North  $71^{\circ}22'$  East, 2.858 chains; thence North  $45^{\circ}36'$  East, 2.598 chains; thence North  $28^{\circ}57'$  East, 3.196 chains; thence North  $35^{\circ}25'$  East, 2.80 chains; thence North  $60^{\circ}01'$  East, 1.88 chains; thence North  $50^{\circ}17'$  East, 3.047 chains; thence North  $37^{\circ}04'$  East, 6.112 chains; thence North  $56^{\circ}59'$  East, 3.965 chains; thence North  $4^{\circ}45'$  West, 4.870 chains; thence North  $8^{\circ}40'$  East, 2.26 chains; thence North  $33^{\circ}07'$  West, 2.415 chains; thence North  $33^{\circ}23'$  East, 3.70 chains; thence North  $62^{\circ}48'$  East, 3.97 chains; thence North  $6^{\circ}06'$  East, 4.995 chains; thence North  $2^{\circ}29'$  East, 4.202 chains; thence North  $35^{\circ}26'$  East, 1.855 chains; thence North  $47^{\circ}36'$  East, 2.247 chains; thence North  $37^{\circ}47'$  East, 2.50 chains, to the meander corner on the section line between said Sections nine (9) and ten (10); thence North 1.176 chains; thence South  $62^{\circ}51'$  West, 3.361 chains; thence South  $35^{\circ}27'$  West, 3.755 chains; thence South  $13^{\circ}41'$  West, 1.856 chains; thence South  $41^{\circ}41'$  West, 8.70 chains; thence South  $21^{\circ}11'$  West, 12.90 chains; thence South  $75^{\circ}25'$  West, 3.03 chains; thence South  $36^{\circ}20'$  West, 8.44 chains; thence South  $66^{\circ}20'$  West, 3.35 chains; thence South  $52^{\circ}07'$  West, 21.598 chains; thence East, 16.303 chains, to the POINT OF BEGINNING.

Parcel No. 31909-00-83810

#### Parcel 2:

All tidelands of the second-class, formerly owned by the State of Washington, lying in front of Government Lots five (5) and six (6), Section nine (9), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, and between the line of mean low tide and the line of extreme low tide; excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Parcel No. 31909-00-73380

Parcel 3:

All that portion, if any, of Government Lot five (5), Section ten (10), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, which lies below the line of ordinary high tide.

ALSO, all tidelands of the second-class, formerly owned by the State of Washington, lying in front of, adjacent to and abutting upon said Government Lot five (5), excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Portion of Parcel No. 31910-23-00000

Parcel 4:

A) All that portion, if any, of Government Lots two (2), three (3) and four (4), Section sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, which lies below the line of ordinary high tide; excepting therefrom right-of-way for Kamilche Point Road, County Road No. 14880;

B) A tract of tidelands of the second-class, formerly owned by the State of Washington, and conveyed as tidelands suitable for the cultivation of oysters in deed recorded in Volume 1 of Deeds, page 117, Auditor's File No. 8153, and being particularly described as follows:

COMMENCING at the corner common to Sections sixteen (16), seventeen (17), twenty (20) and twenty-one (21), Township nineteen (19) North, Range three (3) West, W.M., Mason County, Washington; thence North (Var. 24°18' East), 29.17 chains to the government meander corner, and the POINT OF BEGINNING of the tract of tidelands hereby described; thence North 14°52' East, 11.60 chains; thence North 38°52' East, 9.30 chains; thence South 74°08' East, 8.87 chains; thence North 47°35' East, 13.56 chains; thence North 11°27' East, 8.164 chains; thence North 89°35' East, 6.10 chains; thence North 48°43' East, 14.022 chains; thence North 32°11' East, 1.28 chains; thence North 46°59' East, 1.965 chains; thence North 70°13' East, 1.838 chains; thence North 78°30' East, 0.942 chains, to the government meander corner on the Section line between Sections nine (9) and sixteen (16), Township nineteen (19) North, Range three (3) West, W.M.; thence West 16.303 chains; thence South 52°07' West, 12.402 chains; thence South 51°28' West, 31.00 chains; thence South 18.83 chains, to the POINT OF BEGINNING;

C) All tidelands of the second-class, formerly owned by the State of Washington, lying in front of Government Lots two (2), three (3), and four (4), Section sixteen (16), Township nineteen (19) North, Range three (3) West, W.M., in Mason County, Washington, and between the line of mean low tide and the line of extreme low tide; excepting therefrom, all those portions thereof conveyed by the State of Washington as tidelands suitable for the cultivation of oysters.

Portion of Parcel No. 31916-00-00000

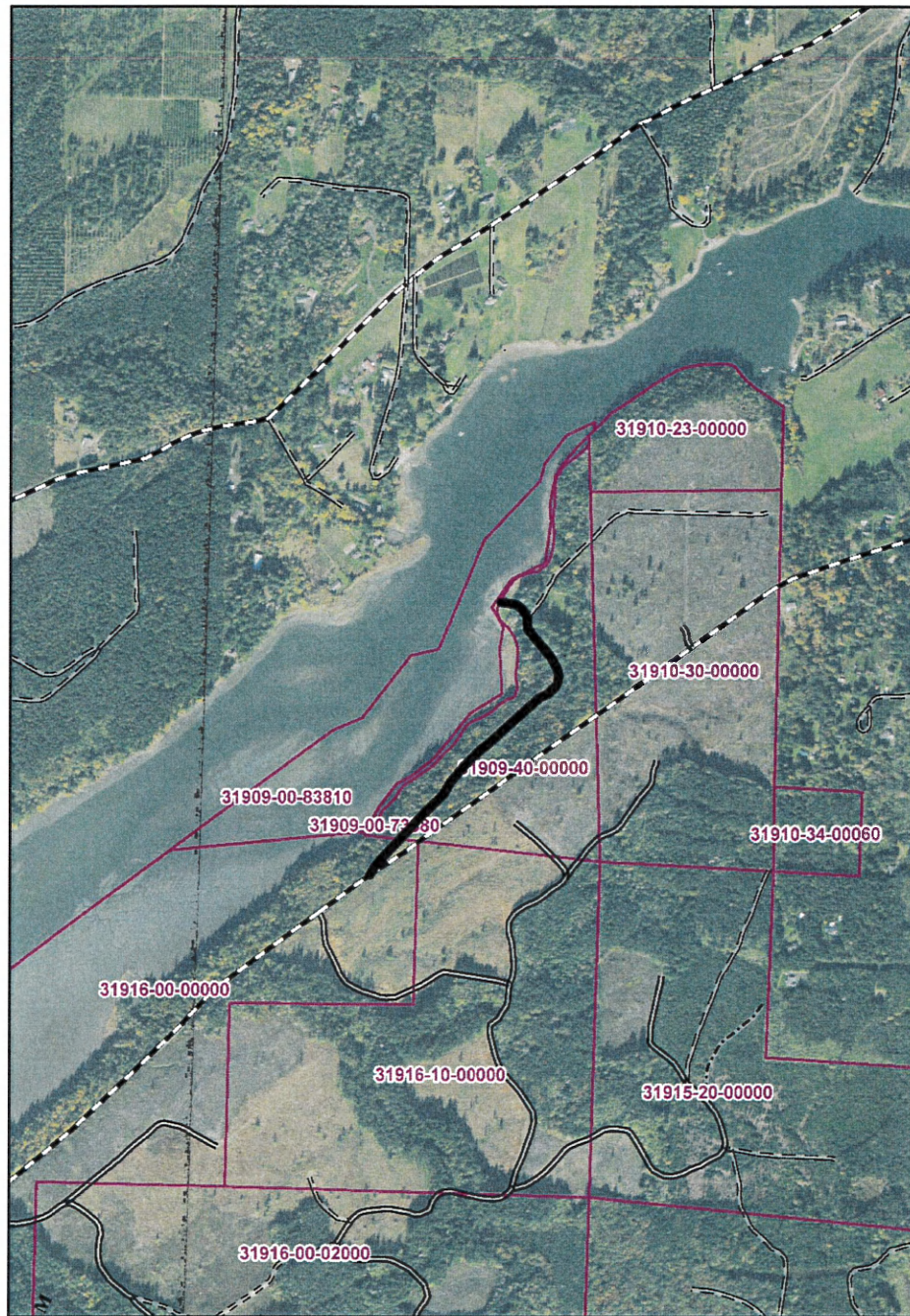


# EXHIBIT C

## Road

A 20 foot strip of land located on the Grantor Property and approximately as shown on the following drawing:

Not to Scale



0 0.1 0.2 0.4 Miles



— Easement Road

