

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment") dated as of January , 2016, is made by and between the Surplus Property Authority of the City of Richmond, a public body corporate and politic ("Landlord"), and Foss Maritime, a Washington corporation ("Tenant"). Landlord and Tenant are sometimes collectively referred to as the "Parties".

RECITALS

A. Landlord and Tenant entered into that certain lease dated October 1, 2012 (the "Lease").

B. Pursuant to the Lease, Landlord leased to Tenant certain Premises, therein described and otherwise used by Tenant, located at Finger Pier No. 2 and Basin No. 5, at the Pt Potrero Marine Terminal (the "Premises").

C. The Parties desire to amend the Lease pursuant to this First Amendment to relocate a portion of the Premises from Basin No. 5 to Basin No. 1 at the Pt Potrero Marine Terminal, modify the use limitations, extend the Lease Term for Basin No. 1, modify the extension option for Basin No. 1 and reduce monthly rent for Basin No. 1 as set forth below.

D. Defined terms used herein shall have the meaning set forth in the Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to amend the Lease as follows:

1. Demised Leased Area. The demised leased area, consisting of Finger Pier No. 2 and adjacent parking area and Basin No. 1 and appurtenant dock space, is shown on Attachment 1 to this First Amendment. Tenant shall occupy the Premises shown in Attachment 1 in its AS IS condition. Tenant acknowledges and agrees that neither Landlord nor any of Landlord's agents has agreed to undertake any alterations or additions or to perform any maintenance or repair of the Premises whatsoever or to pay the cost of relocating any of Tenant's personal property, fixtures or belongings from Basin No. 5 to Basin No. 1, all of which shall be at Tenant's sole cost and expense.
2. Lease Term Extension – Basin No. 1. The Term for Basin No. 1 is extended to December 31, 2021 ("**Basin No. 1 Expiration Date**"), unless sooner terminated or extended pursuant to the terms of the Lease or this First Amendment.
3. Amendments to Lease.
 - a. Sections 2.01(b) through (d) are hereby deleted and replaced with the following Sections 2.01(b) through (d):

“(b) Tenant shall have the right to extend the Term of the Lease for Basin No. 1 for one (1) additional five (5) year period commencing when the prior term expires upon prior written notice ("**Tenant's Election Notice**") to Landlord given not later

than one hundred and eighty (180) days prior to the expiration of the Term; provided, however, Landlord shall not be obligated to extend this Lease if the Port of Richmond has provided written notice of its election to use and occupy the Premises to Tenant's exclusion ("Port's Use Notice"), which notice shall be given at least sixty (60) days prior to the expiration of Term. Alternatively, the Port in its sole discretion may limit Tenant's right to extend this Lease on a month-to-month basis, which determination shall be stated in the Port's Use Notice. Should the Port so limit Tenant's right to extend this Lease, Tenant shall be obligated to provide Landlord with Tenant's Election Notice not later than five (5) business days prior to the expiration of the then current lease term. During each extended term, the provisions of this Lease, as it may be amended in writing prior to the date of the commencement of such extended term, shall continue in effect except that Tenant shall occupy the Premises in its then AS IS condition and shall pay Base Rent as provided in Section 2.b. of the First Amendment. Notwithstanding the foregoing, Tenant shall not be permitted to extend the term of this Lease beyond December 31, 2026.

(c) Base Rent for Finger Pier No. 2 and Basin No. 1 shall be increased annually (the "CPI Increase") equal to the sum of (i) the Base Rent for Finger Pier No. 2 and Basin No. 1 for the year immediately preceding such year, plus (ii) the product obtained by multiplying such amount by the percentage increase in the Consumer Price Index measured from the measuring month which is two months preceding the commencement of such extension option to the measuring month fourteen months preceding the commencement of the extension option in question; provided, however, that in no event shall the annual CPI Increase be less than three percent (3%) nor more than five percent (5%) of Base Rent for Finger Pier No. 2 and Basin No. 1 for the immediately preceding Lease Year. As used herein, the term "Consumer Price Index" ("Consumer Price Index") shall mean the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, California (1982-84 equals 100), or the successor of such index. Tenant shall continue paying the current Base Rent for Finger Pier No. 2 and Basin No. 1 until the increased Base Rent has been calculated. Upon such calculation, Landlord shall give notice to Tenant of the amount of the new Base Rent for Finger Pier No. 2 and Basin No. 1 which shall be due and payable effective as of January 1 of each year and Tenant shall, upon the giving of such notice, pay Landlord any shortage in Base Rent for Finger Pier No. 2 and Basin No. 1 accruing between January 1 of each year and the date of the notice.

(d) Upon the occurrence of the Expiration Date for Finger Pier No. 2 as set forth in the Basic Lease Information sheet or the Basin No. 1 Expiration Date, as the case may be, or any earlier termination of this Lease, Landlord and Tenant shall each be released and discharged from any claims or liabilities thereafter arising; provided, however, that nothing herein shall be deemed to release or discharge either party from those obligations that expressly survive the termination of this Lease, including those claims made by a third party for which Landlord has a claim of defense and indemnity against Tenant."

b. Section 2.02(d) is hereby deleted and replaced with the following:

“(d) Tenant shall not engage in activities (including, without limitation, spray painting, sandblasting, blowing of stacks, funnels or exhaust pipes, or other releases of particulate matter) on land or at sea within the jurisdiction of the Port of Richmond that creates a significant risk of injury or damage to the premises or property owned or possessed by any tenant or its customers or which otherwise may materially interfere with the tenant’s or customer’s operations in the Port of Richmond; provided, however, that Tenant may weld, cut, and grind metal in an enclosed shop or behind barricades so long as such work does not spread particulate matter or create a significant risk of injury or damage to the premises or property owned or possessed by any tenant or its customers or which otherwise may materially interfere with the tenant’s or customer’s operations in the Port of Richmond. Tenant shall conduct its operations in such a manner that it does not create a significant risk of injury or damage to the auto processing facility operated by Auto Warehousing Co. (AWC) at the Pt. Potrero Marine Terminal (Auto Processing Facility) or adversely impact AWC’s or AWC’s customers’ use of the Auto Processing Facility or its operations. This Section 2.02(d) is intended to benefit (and may be enforced by) AWC and AWC’s customers.”

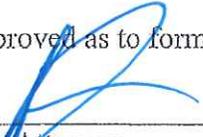
4. Rental Payment. The Parties agree that effective January 1, 2016, the monthly Base Rent for Basin No. 1 shall be \$10,000.00, as fair market consideration for rental of Basin No. 1. Base Rent for Finger Pier No. 2 shall be paid as provided in the Basic Lease Information sheet and in Section 3.a. of this First Amendment.
5. Attorney's Fees. If any lawsuit is commenced to enforce any of the terms of this First Amendment, the prevailing party will have the right to recover its reasonable attorney's fees and costs of suite from the other party.
6. Effective Date. This First Amendment shall be effective as of the date first set forth above.
7. Effect of First Amendment. Except as provided in this First Amendment, all other terms of the Lease are unamended and shall remain in full force and effect. The terms and provisions of this First Amendment shall have the same meaning as like terms in the Lease. In case of any inconsistencies between the terms and conditions contained in the Lease and the terms and conditions contained herein, the terms and conditions herein shall control.
8. Counterparts. This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their properly authorized representatives as of the date and year first above written.

LANDLORD: Surplus Property Authority of the City of Richmond, a public body corporate and politic

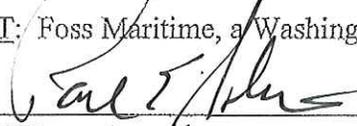
By: 
Name: _____
Title: Mayor
Date: _____

Approved as to form:

City Attorney

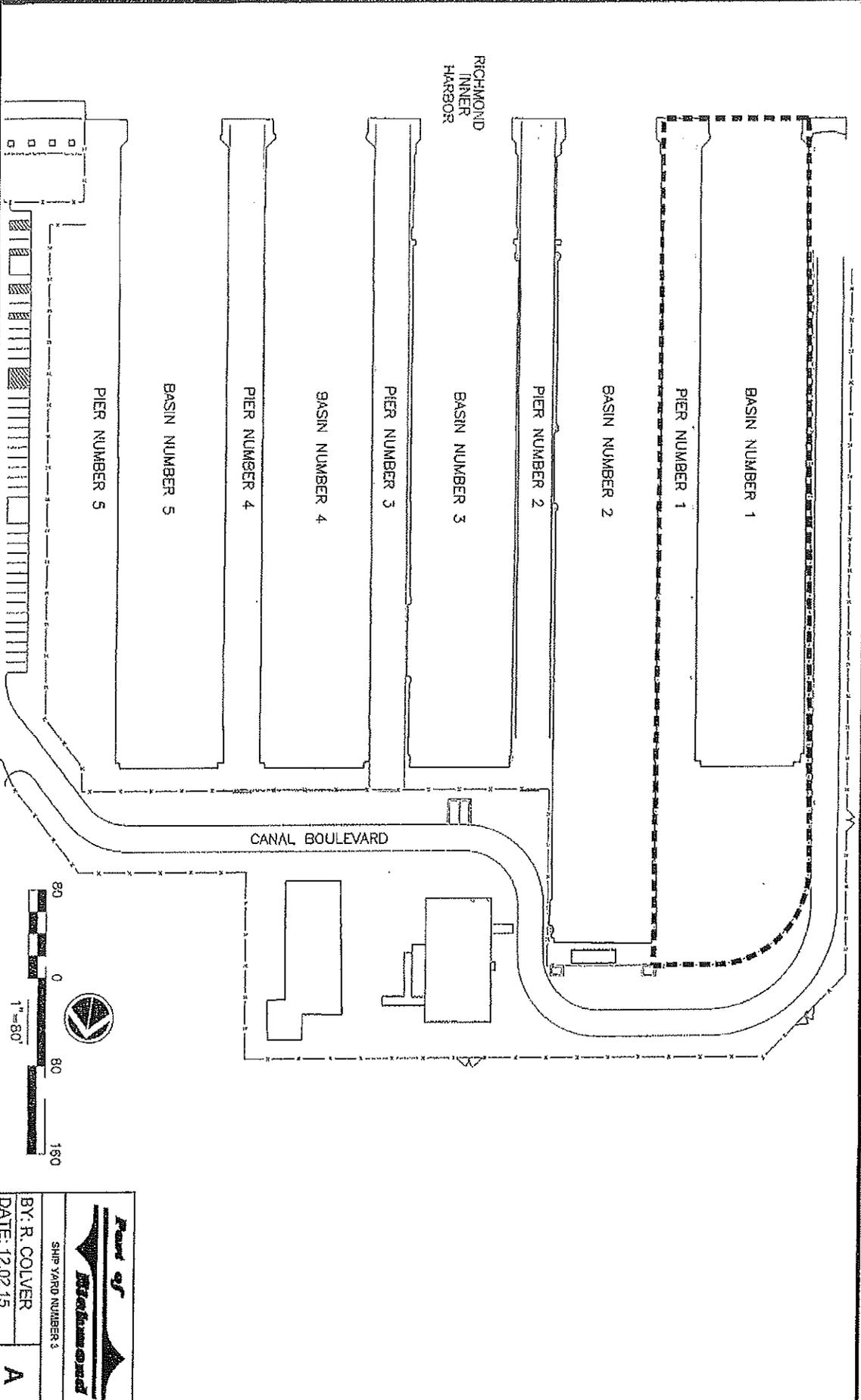
Attest:

City Clerk

TENANT: Foss Maritime, a Washington corporation

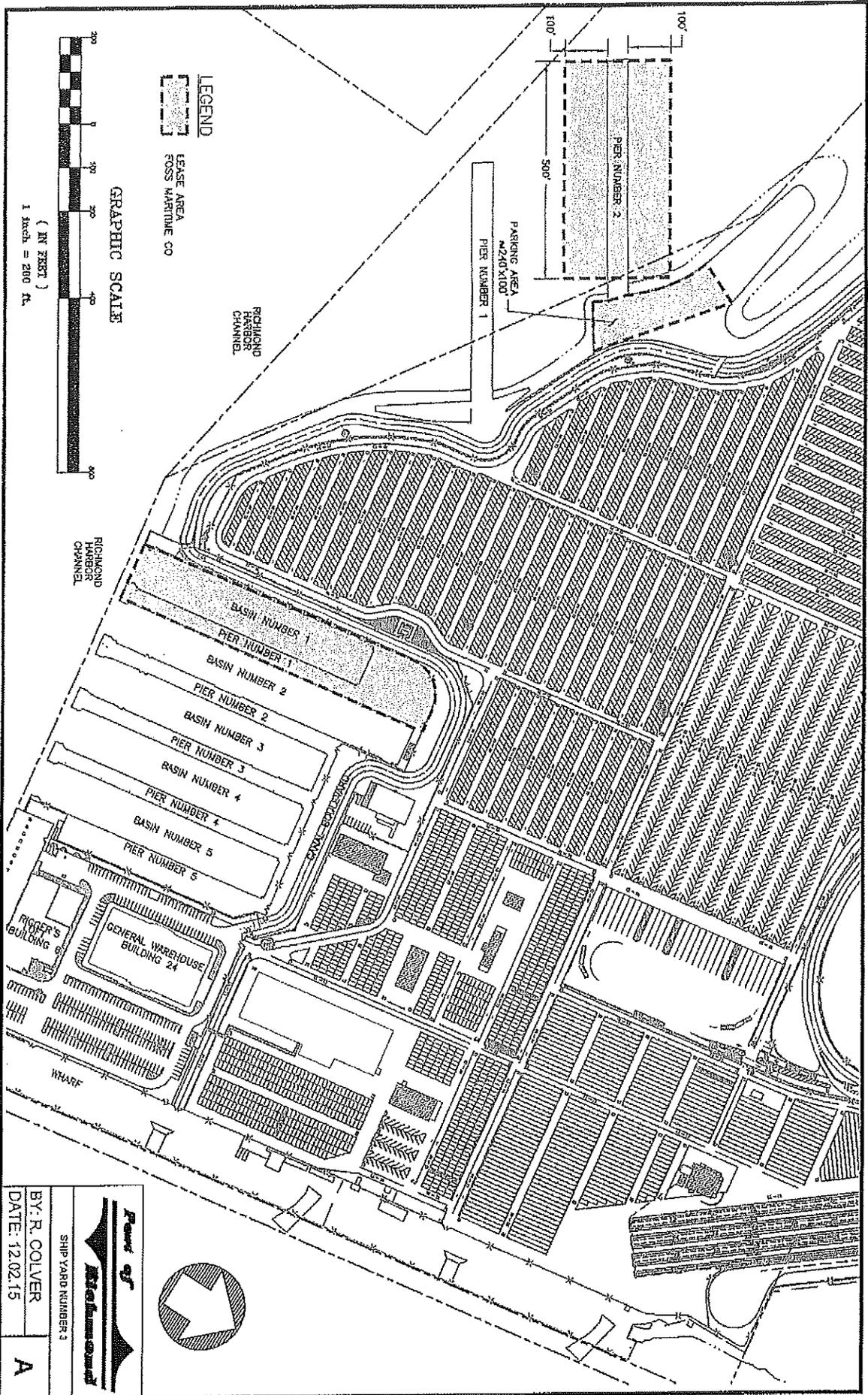
By: 
Name: PAUL STEVENS
Title: President
Date: 1/6/15

Attachment 1
Premises
(To be attached)



FOSS MARITIME

SHIP YARD NUMBER 3	
BY: R. COLVER	A
DATE: 12.02.15	



LEGEND
 [Hatched Box] LEASE AREA
 [Dashed Box] FOSS MARITIME CO

GRAPHIC SCALE
 (IN FEET)
 1 Inch = 200 Ft.

Port of Richmond
 SHIP YARD NUMBER 3

BY: R. COLVER
 DATE: 12.02.15

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