



CONSENT AGENDA
ITEM # F

MEMORANDUM

TO: ROB FIX *JA* **Date:** May 7, 2019
FROM: SHIRLEY MCFEARIN *JA* **Copies:** TERRY ILAHI *Tu*
SUBJECT: Third Amendment to Option Agreement to Lease Real Property
between Fairhaven Workstudios, LLC and the Port of Bellingham

ACTION REQUESTED

Motion by the Port Commission to approve a Third Amendment to Option Agreement to Lease Real Property to Fairhaven Workstudios, LLC.

BACKGROUND

On October 6, 2016 the Port and Fairhaven Workstudios (FWS) entered into a one year option agreement, beginning January 1, 2017, to lease 1.5 acres of undeveloped property north of the Port's Fairhaven Marine Industrial Park. The option agreement allowed FWS time to perform its due diligence on the feasibility of developing the property for work/live studios that will primarily be work space with a residential component.

The agreement was amended on February 6, 2018 to modify the condition precedent provision and extend the agreement on a month to month basis through December 31, 2018. On October 2, 2018 the agreement was again amended, the second amendment, which extended the agreement on a month to month basis through June 30, 2019.

Due to geotechnical concerns the project has been reduced from three to two buildings. FWS has held a neighborhood meeting and agreed on a plan with the City to meet the Port's public trail overlook obligation. This amendment allows FWS to continue its due diligence on a month to month basis through December 31, 2019. Other terms of the agreement remain unchanged.

Should FWS exercise the option to lease they would enter into, at a later date, a thirty year lease with three ten year renewal options. The lease includes a construction no-rent period of one year. Following the construction period rates have been negotiated at fair market value of \$17.50 per square foot at a 9% rate of return for the first ten years. Rental rates will be adjusted every five years thereafter. The lease includes provisions addressing the property's proximity to the Fairhaven Industrial Park and associated nuisances. The lease including all updated exhibits would be brought forward for Commission approval at a later date.

FISCAL IMPACT

The Port will continue to receive \$2,000 per month through the term of the option agreement.

STRATEGIC PURPOSE

This agreement meets the Port's strategic goal of "asset management and development of the Port's real estate portfolio".

RECOMMENDATION

Approval of Third Amendment to Option Agreement to Lease Real Property.

**THIRD AMENDMENT TO
OPTION AGREEMENT TO LEASE REAL PROPERTY**

THIS THIRD AMENDMENT TO OPTION AGREEMENT is made this _____ day of _____, 2019, by and between the **PORT OF BELLINGHAM**, a Washington municipal corporation (the "Port") and **FAIRHAVEN WORKSTUDIOS LLC**, a Washington limited liability company (Fairhaven Workstudios").

WHEREAS, On December 6, 2016 the Port and Fairhaven Workstudios entered into an Option Agreement to Lease Real Property ("Option Agreement") located in Bellingham, Whatcom County, Washington, and

WHEREAS, On February 6, 2018 the Option Agreement was amended to modify the Condition Precedent to Exercising the Option and modify the Extension of Option Term on a month to month basis through December 31, 2018, and

WHEREAS, On October 2, 2018 the Option Agreement was again amended to extend the Option Term on a month to month basis through June 30, 2019, and

WHEREAS, both parties desire to amend the Option Agreement, and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the parties agree as follows:

1. Section 4.1 "Extension of Option Term" shall hereby be deleted and replaced by the following and by this reference made a part thereof:
 - 4.1 **Extension of Option Term:** The Option Agreement is hereby extended on a month to month term through December 31, 2019. Either party may terminate this Option Agreement by providing thirty (30) day written notification to the other party.
2. Section 6. "Option Payment" shall hereby be modified to reflect the new termination date of December 31, 2019. Fairhaven Workstudios agrees to pay the Option Payment of Two-Thousand dollars (\$2,000.00) per month through December 31, 2019 unless the Option is terminated or the Option exercised.
3. **Facsimile Transmission.** This Third Amendment to Option Agreement may be executed by the parties and transmitted by facsimile and, if so executed and transmitted, this Third Amendment to Option Agreement will be for all purposes as effective as if the parties had delivered an executed original agreement.
4. **Counterparts.** This Third Amendment to Option Agreement may be executed in any number of original counterparts, with the same effect as if all the parties had signed the same document, and will become effective when one or more counterparts have been signed by all of the parties and delivered to the Port's attorneys. All counterparts will be construed together and evidence only one Third Amendment to Option Agreement.

ALL OTHER TERMS AND CONDITIONS of the Option Agreement dated December 6, 2016, as amended, shall remain the same.

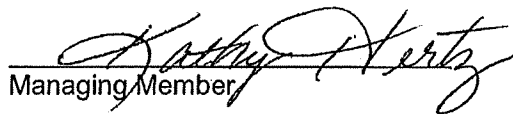
IN WITNESS WHEREOF, the parties have signed and sealed this Third Amendment to Option Agreement on the day and year first above written.

FAIRHAVEN WORKSTUDIOS LLC

PORT OF BELLINGHAM



Managing Member



Managing Member

STATE OF WASHINGTON:
ss
COUNTY OF WHATCOM :

ON THIS ___ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____, known to me to be the _____ and _____, respectively of the **PORT OF BELLINGHAM**, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Name (Print) _____

NOTARY PUBLIC, in and for the State of Washington, residing at Bellingham
My Commission expires: _____

STATE OF WASHINGTON:
ss
COUNTY OF WHATCOM:

ON THIS 24 day of April, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared before me Kenneth D. Hertz and Kathryn M. Hertz known to me to be the Managing Members of **FAIRHAVEN WORKSTUDIOS LLC**, a Limited Liability Company, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath verified that he/she was authorized to execute this document on behalf of the limited liability company for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Deborah Turk
Name (Print) Deborah Turk

NOTARY PUBLIC, in and for the State of Washington, residing at Bellingham
My Commission expires: 3/20/22