

1 August 13, 1997

Introduced by: GREG NICKELS

2  
3 8/19/97 clerk

4 Proposed No.: 97-499

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7  
8 ORDINANCE NO. **12886**

9  
10 AN ORDINANCE authorizing the King County  
11 executive to consent to the assignment of the  
12 leasehold and amendment of certain provisions  
13 of the lease for the South Lake Union Docksite  
14 property located in Council District Ten.

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16 PREAMBLE:

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18 In accordance with provisions of K.C.C. 4.56.075,  
19 4.56.180 and 4.56.190 the King County council may  
20 adopt an ordinance permitting the county to lease  
21 its real property for a term of years not to exceed  
22 fifty years for property used for commercial  
23 purposes requiring extensive improvements and which  
24 would substantially change the overall use of the  
25 leased property.

26  
27 STATEMENT OF FACTS:

28  
29 1. The South Lake Union Docksite is located on the  
30 Lake Union shoreline in Seattle at 1121 Fairview  
31 Avenue North. It consists of approximately  
32 103,000 square feet of both submerged and  
33 submerged and upland property.

34  
35 2. The property is held as investment property.  
36 The county first leased the property in 1984,  
37 through a proposal process to promote the  
38 development of small boat moorage and other  
39 services used by the public. Rusty Pelican  
40 Restaurants, Inc., was the successful proposer and  
41 its use of the property consisted of an open-  
42 moorage marina on the shoreline and a restaurant  
43 on the dry land.

44  
45 3. South Lake Union Limited Partnership (SLULP), a  
46 Washington limited partnership, is the successor in  
47 interest to Rusty Pelican, effective March 20,  
48 1990. SLULP in turn sub-leased the premises to  
49 Duke's restaurant. Both the original restaurant,

1 the Rusty Pelican, and the second restaurant,  
2 Duke's, closed after several years in operation on  
3 the property.  
4

5 4. SLULP has entered into an agreement with TRC-SLU  
6 Maritime Properties and Marina, Inc., subject to  
7 receiving the consent of King County to assign the  
8 leasehold and to amend the lease terms and modify  
9 the existing restricted uses.

10  
11 5. TRC-SLU, a Washington state corporation, is a  
12 wholly-owned subsidiary of Totem Resources  
13 Corporation (TRC). Located in Seattle, TRC is  
14 privately owned by six Washington investors. TRC  
15 has consolidated annual revenues of about \$300  
16 million with a net worth of over \$20 million. TRC  
17 is a holding company for Tote, a steamship company,  
18 and Foss, a tugboat company. TRC also controls  
19 leasing and ship management companies. TRC  
20 proposes to convert the existing restaurant to  
21 office space and banquet facilities and to  
22 construct an addition to the existing building for  
23 office and retail space. TRC will also enhance  
24 public use of the property by arranging for small  
25 boat launching for canoes and kayaks. It also  
26 intends to use a portion of the property to moor a  
27 historical tugboat vessel. It is believed that  
28 changes from the current restaurant use will  
29 increase the rent to the county. The exact amount  
30 will be determined during an upcoming rent  
31 adjustment process.  
32

33  
34 6. Because TRC is contemplating spending  
35 substantial sums of money both to acquire the  
36 leasehold and to improve the leased premises, it  
37 has requested the lease term to be extended up to  
38 fifty years to more fully amortize its investment.  
39 It has been agreed upon, subject to council  
40 approval, that the existing lease term would be  
41 extended eight more years to August 30, 2032. This  
42 extension is contingent on TRC spending no less  
43 than \$500,000 in capital improvements by the year  
44 2002. Secondly, TRC will have an option to extend  
45 the lease up to 2052, if it spends an additional  
46 minimum \$3.5 million in capital improvements by the  
47 year 2017. During the period 2002 through 2017 the  
48 perquisite capital improvements will adjust  
49 annually with inflation.

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BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized to execute the necessary documents to consent to the assignment of the leasehold and amendment of certain provisions of the lease for the South Lake Union Docksite property, in substantially the form with the terms and conditions attached.

INTRODUCED AND READ for the first time this 8<sup>th</sup> day of September, 1997.

PASSED by a vote of 12 to 0 this 29<sup>th</sup> day of September 1997.

KING COUNTY, COUNCIL

KING COUNTY, WASHINGTON

Jane Hague  
Chair

ATTEST:

Zivens  
Clerk of the Council

APPROVED this 9 day of October, 1997.

Michael Amis  
King County Executive

Attachments:

- A. Fifth Lease Amendment-South Lake Union Docksite Property
- B. Description Of Totem Resources Corporation
- C. Description of Lease Term Changes

12886

FIFTH LEASE AMENDMENT

This Fifth Lease Amendment is made as of this 30th day of August, 1997, with respect to the Lease originally dated as of November 1, 1984 between King County, a political subdivision of the State of Washington ("King County"), as Lessor, and Rusty Pelican Restaurants, Inc., as Lessee, for approximately 103,938 square feet of dry land and shorelands commonly known as 1111 Fairview Avenue North, Seattle, Washington (the "Lease").

WHEREAS, the Lease was previously amended by amendments dated as of April 29, 1988, June 2, 1988, July 10, 1990 and a Notice of Rent Adjustment & Acceptance signed by King County on May 25, 1994 and by South Lake Union Limited Partnership ("SLULP"), successor to the Lessee's interest in the Lease, on June 10, 1994; and

WHEREAS, the leased premises were originally intended to be used for a first class restaurant, however both the original restaurant occupant, the Rusty Pelican, and the second restaurant occupant, Duke's, failed in the premises; and

WHEREAS, SLULP has entered into an agreement with Totem Resources Corporation or its affiliate ("TRC") to sell its interest in the Lease, subject to receiving the consent of King County to the transfer of the leasehold and the amendment of certain provisions of the Lease; and

WHEREAS, in addition to continuing to maintain small boat moorage on the leased premises, TRC intends to use the property to moor a historic vessel (such as the Thea Foss or the Malibu, pictured on Exhibit A hereto), to operate a conference center with banquet facilities, for offices and for related uses, which uses are not all currently allowed under the terms of the Lease, and which uses the parties believe would presently be more valuable on the leased premises than the current permitted uses; and

WHEREAS, TRC contemplates investing substantial sums to improve the leased premises in addition to the price it will pay to acquire the present leasehold, and needs the lease term to be extended to allow it to more fully amortize its investment; and

WHEREAS, in light of the additional investment of TRC in the premises and the use to which the property will be put, King County is willing to amend the Lease on the terms and conditions contained herein;

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Amendment. On the condition that TRC acquires the interest of SLULP in the premises within the next sixty days, the Lease shall be amended as follows:

A. Consent to Assignment and Guaranty. King County hereby consents to the assignment of SLULP's interest in the Lease to TRC-SLU Maritime Properties and Marina, Inc., a Washington corporation ("Maritime Properties"), a wholly owned subsidiary of Totem Resources Corporation. As a condition to King County's consent to this Assignment, Totem Resources Corporation agrees to guaranty the performance of Maritime Properties under the Lease.

B. Permitted Use. Lease Section 7A is hereby amended to allow the Lessee to use the leased premises as follows: "Lessee shall use the shoreland subject to the Lease for a small boat marina, limited marine operations and moorage of one or more historic vessels. The land portion of the leased premises shall be used for activities related to such shoreland uses, public waterfront access, restaurant, banquet and/or conference facilities, offices, retail and/or related uses."

C. Lease Term. Lessee commits to pay for at least \$500,000.00 for improvements to the leased premises on or before August 30, 2002, and in light of this commitment, the Lease term shall be extended so that the Lease expires August 30, 2032.

D. Lease Term Extension Options. In addition, Lessee shall have options to extend the lease term as follows:

(1). Until August 30, 2002, at such time as Lessee has either paid for or has applied for building permits for capital improvements to the leased premises with a cumulative total cost (including all hard and soft out-of-pocket costs) of at least \$4,000,000.00 (inclusive of the initial \$500,000.00 investment referred to in Section C above), Lessee shall have the option to extend the lease term to a date fifty years from the date of exercise of the option. The notice of exercise of the option must be delivered within said five year period, together with a list of the capital expenditures made or contemplated totalling at least \$4,000,000. As a condition subsequent to the validity of this option, Lessee must proceed with reasonable diligence towards the issuance of the permits and completion of the contemplated improvements. However, nothing in this paragraph shall prevent Lessee from varying its construction plans during the permit and construction process, so long as the total cumulative capital investment in the leased premises totals at least \$4,000,000.00.

(2). Between September 1, 2002 and August 30, 2017, Lessee shall have an option to extend the lease term to August 30, 2052, on the same conditions as set forth in Section D(1) above, except that Lessee must actually invest the full

\$4,000,000.00 total cumulative capital investment in order to exercise this option and give notice as required in Section D(1) to Lessor within said period. Also, after September 1, 2002, said \$4,000,000.00 threshold shall be adjusted with inflation. The same inflation index as is referred to in Section 1(E) shall be applied with 2002 as the base year.

All other terms and conditions of the Lease shall continue to apply during any lease term extension.

E. Rent Reappraisal. To facilitate greater stability and reduce administrative costs related to the Lease, Section 4 of the Lease is amended to permit rent readjustments every five rather than every three years. In addition, the standard for reappraisal shall be based on the fair market rental value of the land subject to its then existing use, density and applicable development restrictions, but excluding the value of the building and improvements.

In addition, there shall be an adjustment in the rent due under the Lease, effective two and a half years after each rent reappraisal. The rent shall be adjusted by multiplying the amount due times a fraction comprised of the monthly (or the most recent periodic) CPI-U at the time of the adjustment as the numerator, and the CPI-U which was reported closest to the time of the last rent reappraisal as the denominator. The CPI-U stands for the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics for the Seattle-Tacoma area. If this index is no longer in use, another comparable index shall be used. Notwithstanding the foregoing, the rent shall never increase more than nine and three quarters percent (9.75%) over the prior rent set pursuant to the most recent fair market rent adjustment.

However, if Lessee assigns its rights under the Lease to an unaffiliated party or enters into one or more subleases with an unaffiliated entity or such unaffiliated entity's affiliates for more than eighty percent (80%) of the land portion of the leased premises for a term of more than ten years, the Lessor shall have the right to request an immediate rent reappraisal upon such transfer, and the parties shall have the right to have a rent reappraisal every three years thereafter. In such case there shall be no C.P.I. adjustment to the rent between such reappraisals. For the purpose of this paragraph, an unaffiliated party shall be defined as any third party which is not Lessee's parent, subsidiary, a company controlled by Lessee's parent or subsidiaries, or otherwise under common ownership or control with Lessee.

F. Deletion of Percentage Rent. The Lease references to payment of percentage rent based on "gross restaurant receipts" from a restaurant on the leased premises are hereby

deleted, as are the related reporting and record-keeping requirements related to said receipts.

G. Improvements and Alterations. Lessee shall make no substantial alterations or improvements to or upon the leased premises without first obtaining Lessor's consent for such alterations or improvements, which consent shall not be unreasonably withheld.

H. Deletion. The parties agree to delete the third paragraph of Section 10 of the original Lease dated as of November 1, 1984, which required building renovations every five years.

2. Continued Application of Lease Terms. Except as expressly set forth herein to the contrary, the terms and conditions of the Lease, as amended, continue in full force and effect.

SOUTH LAKE UNION LIMITED PARTNERSHIP

By \_\_\_\_\_  
John Teutsch  
Managing General Partner

Date: \_\_\_\_\_

KING COUNTY

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Date: \_\_\_\_\_

TRC-SLU MARITIME PROPERTIES AND MARINA, INC.

By \_\_\_\_\_  
Jim Gauntt  
President

Date: \_\_\_\_\_

The undersigned agrees to guaranty the performance of TRC-SLU MARITIME PROPERTIES AND MARINA, INC. under the Lease.

TOTEM RESOURCES CORPORATION

By \_\_\_\_\_  
Fred Goldberg  
Title \_\_\_\_\_

Date: \_\_\_\_\_

12886

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, to me known or proved on the basis of satisfactory evidence to be the \_\_\_\_\_ of the limited partnership that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said partnership, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument on behalf of said partnership.

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

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, to me known or proved on the basis of satisfactory evidence to be the \_\_\_\_\_ of King County, Washington, the political subdivision that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said county, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument on behalf of said county.

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

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
Commission expires: \_\_\_\_\_



12886

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, to me known or proved on the basis of satisfactory evidence to be the \_\_\_\_\_ of the corporation that executed the within and foregoing instrument, and acknowledged 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 he/she was authorized to execute said instrument on behalf of said corporation.

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

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

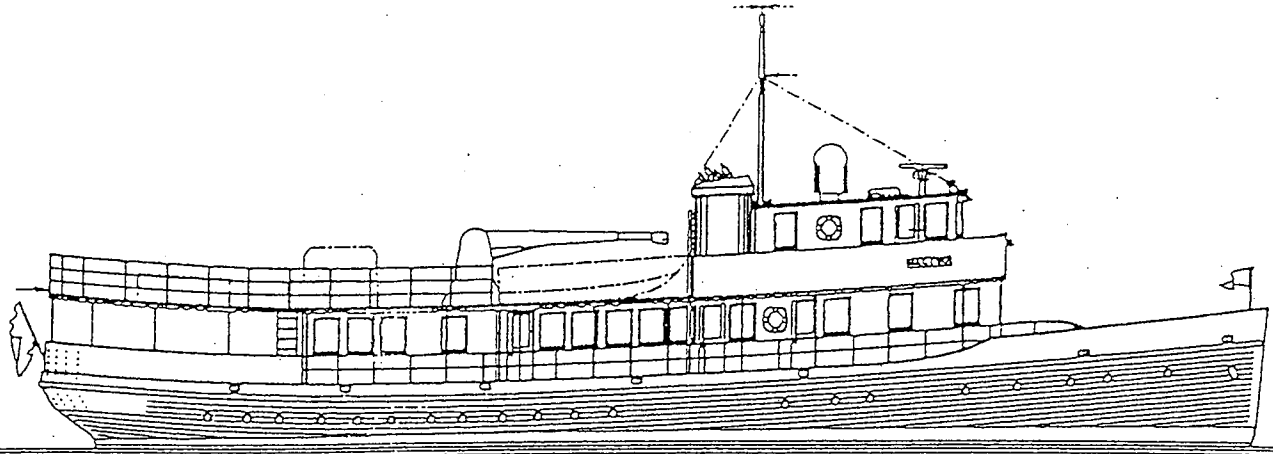
STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, to me known or proved on the basis of satisfactory evidence to be the \_\_\_\_\_ of the corporation that executed the within and foregoing instrument, and acknowledged 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 he/she was authorized to execute said instrument on behalf of said corporation.

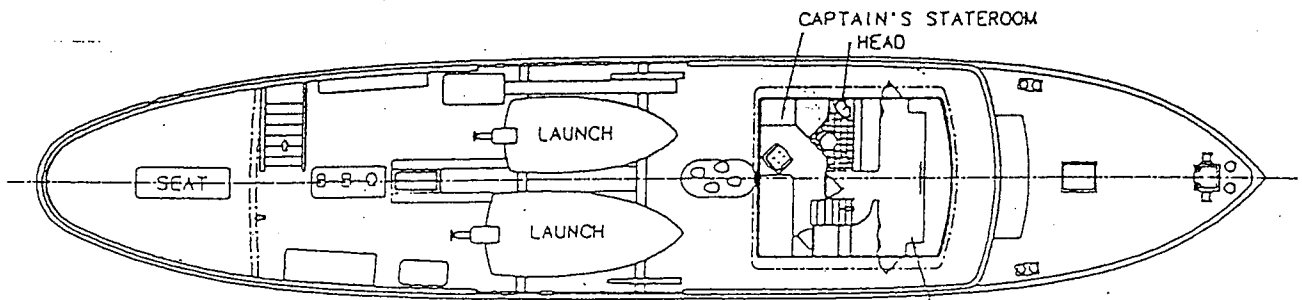
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

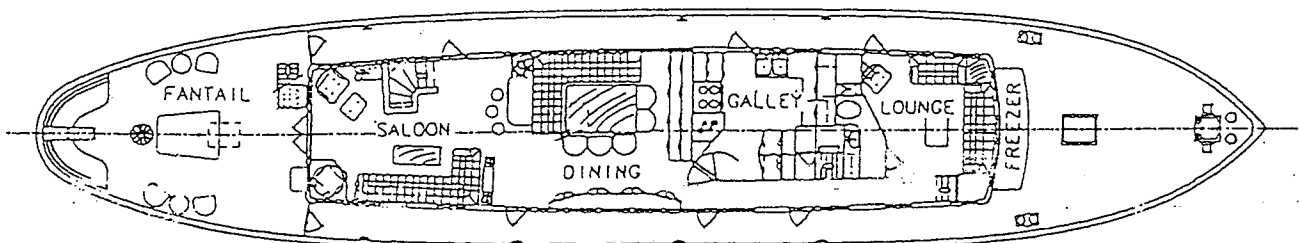
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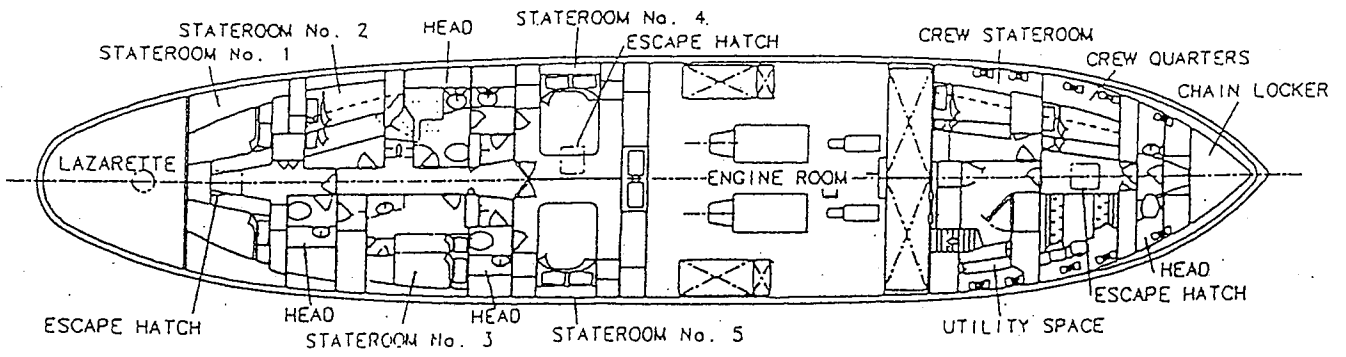
PROFILE



UPPER DECK



MAIN DECK



LOWER DECK

DWG NO. 307-5  
DRAWN: R. EISELL, N.A.

M/V MALIBU

DATE: 5-9-95  
SCALE: 1/16" = 1'-0"

EXHIBIT A

## TOTEM RESOURCES CORPORATION ("TRC")

TRC is a holding company, owning all of the shares of Totem Ocean Trailer Express, Inc. ("TOTE"), 673 Leasing Company, 675 Leasing Company, and Foss Maritime Company and approximately a 50% interest in Interocean Uglund Management Corporation. TRC's offices are located in the Metropolitan Park West Tower in Seattle, Washington. The company's consolidated annual revenues approximate \$300 million.

**Totem Ocean Trailer Express, Inc. ("TOTE"):**

TOTE is a steamship company that operates three roll-on-off ("ro-ro") trailerships in the Alaska Trade. They are: the Great Land (owned by 673 Leasing Company), the Westward Venture (owned by 675 Leasing Company), and the Northern Lights (owned by TOTE). TOTE sails these ships between Tacoma, Washington, and Anchorage, Alaska, and leases terminal facilities in each port. TOTE owns a large trailer fleet to carry cargo and also accepts customer's trailers, vehicles and odd-sized equipment aboard its ships. TOTE's ships are 790' in length and each has the capacity to carry 410 forty foot trailer equivalents of cargo. The ships cruise at 23 knots, about 2 knots faster than ships run by its major competitor. This faster cruising speed, combined with the inherently faster loading and unloading of ro-ro ships, make TOTE the fastest way to move cargo by sea between the "Lower 48" and Alaska. TOTE, headquartered in Seattle, Washington, began operations in 1975.

**Foss Maritime Company ("Foss"):**

Foss has been a prominent tugboat company in the Northwest for more than 100 years, starting with Thea Foss' rowboat rental business on the Tacoma waterfront in 1888. Over the years, Foss has steadily expanded, until today it is a multi-line marine services organization. Foss' principal business lines are ship escort and docking assistance, fuel barging, ocean towing, regional towing, ship repair, line handling, and environmental services. Foss has a well maintained fleet of over 200 tugs, barges and oil skimmers. Foss is headquartered in Seattle, Washington with operations in all major Puget Sound ports; the Columbia and Snake River system, Los Angeles/Long Beach, San Francisco and San Diego; Anchorage, Alaska; and Mobile Alabama.

**Interocean Uglund Management Corporation ("IUM"):**

IUM is a ship management company headquartered in Voorhees, New Jersey with a Subsidiary, Interocean Uglund Management A/S located in Norway. IUM and its subsidiary manage over 40 vessels which include TOTE's ro-ros, car carriers, shuttle and long haul tankers, bulk carriers and reeferships. Services routinely provided by IUM include vessel crewing, provisioning, maintenance and operation.

673 Leasing Company and 675 Leasing Company ("673" and "675")

673 and 675 are companies that were created to own and lease ships to TOTE. 673 is the owner of the Great Land and 675 is the owner of the Westward Venture. Neither company has any employees nor any activities unrelated to leasing.

Totem Resources Corporation is privately owned by 6 Washington investors. Three serve jointly as Co:Chairmen/CEO. They are Michael D. Garvey, Stanley H. Barer and Robert B. McMillen. The company's mailing address is:

Totem Resources Corporation  
The Metropolitan Park Building, Suite 1050  
1100 Olive Way  
PO Box 24908  
Seattle, WA 98124

## Attachment "C"

### South Lake Union Docksite Property Description of Lease Terms Changes For Totem Resources Corporation

#### Existing Lease Term

Existing Lease Term Expiration Date	October 31, 2024
Time Remaining On Lease Term	27 years

#### Proposed Lease Term with Capital Expenditures of \$500,000

Proposed Lease Term Extension Contingent on TRC Spending A Minimum of \$500,000 in Capital Improvements by the Year 2002	August 30, 2032
Additional Years Added To Existing Lease	8 years
Time Remaining On Lease Term	35 years

#### Proposed Lease Term With Capital Expenditures of \$3.5 Million

Proposed Lease Term Extension Contingent on TRC Spending An Additional \$3.5 million in Capital Improvements Between the Years 2002 and 2017	August 30, 2052
Additional Years Added To Existing Lease	23 years
Time Remaining On Lease Term At 2002	50 years
Time Remaining On Lease Term At 2017 ( When This Option Would Expire)	35 years