



200812150091

Skagit County Auditor

12/15/2008 Page 1 of 22 9:04AM

**AFTER RECORDING, RETURN TO:**

Town of LaConner  
P.O. Box 400  
LaConner, Washington 98257

Reference number of documents assigned or released: \_\_\_\_\_  
Partial Legal Description: Portion of Tract 23; S. 36, T. 34, R. 2  
Full Legal on Exhibit A \_\_\_\_\_  
Assessor's Parcel I.D.: P6240

**AGREEMENT AND LEASE OPTION**

On this 25<sup>th</sup> day of November 2008 (the "Effective Date"), Triton - America LLC ("Triton") and the Town of La Conner (the "Town"), a fourth class municipal corporation, enter into the following agreement;

**RECITALS**

**WHEREAS**, Triton is interested in leasing and subleasing certain real property, described in Exhibit 1, located in La Conner, Washington ("the Property"); and

**WHEREAS**, the Town has agreed to extend an exclusive lease option to Triton for said properties while Triton conducts a due diligence review to determine the feasibility of developing the property;

**NOW THEREFORE**, the parties hereby mutually agree to the following:

SKAGIT COUNTY - WASHINGTON  
Rea. Estab. Excise Tax  
Auditor

DEC 11 2008

Account Payable  
Skagit County Treasurer  
By: *Lp* Deputy

## AGREEMENT

**THE TOWN HEREBY GRANTS TO TRITON** an exclusive option to lease the Property on the following terms and conditions:

1. Triton will have a period not to exceed six months to complete the due diligence review, including construction feasibility and development capacity. The period will begin as of the Effective Date.
2. Triton will, within five (5) days of the Effective Date remit, a non-refundable sum of fifty thousand dollars (\$50,000) to the Town as a contribution towards the demolition of the Pacific Ocean Seafood cannery buildings located on the Property.
3. The Town will attempt to complete the demolition of the cannery buildings during the Triton due diligence period.
4. The Department of Natural Resources will require a public access component for the redevelopment of the Property. The Town and Triton will strive to reach a reasonable mutual agreement to the public access component. The agreed public access area will be deducted from the Lease Agreement in Exhibit 1.
5. On or before the end of the due diligence period, Triton will notify in writing the Town whether it intends to proceed with the lease and development of the Property.
6. If Triton decides not to proceed with the project and not enter into a lease agreement for the Property, the lease option will lapse and Triton will have no further obligation to the Town regarding this Property.
7. If Triton decides to proceed with the project, Triton will enter into a lease agreement with the Town as per the lease documents attached as Exhibit 1.
8. Once an overall development plan is received from Triton, the Town will consider a global lease for Tract 23 properties leased by Triton.
9. Triton will establish a sales office at the La Conner facility for sales of boats manufactured, completed or delivered in La Conner. Triton will guarantee that sales will be made from the La Conner office.
10. The Town agrees to work with Triton to develop a parking plan to meet the needs of the development plan. The Town will work to establish the space to develop a minimum of 80 parking spaces available to the site.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY. SIGNATURES FOLLOW.]

AGREEMENT AND LEASE OPTION  
TOWN OF LA CONNER  
TRITON - AMERICA LLC



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement and agree to the terms and conditions set forth herein.

TRITON - AMERICA LLC

Attest:

By: [Signature]  
THOMAS HSUEH, Member

By: Theodore A. Ginsburg  
THEODORE A. GINSBURG  
Print Name

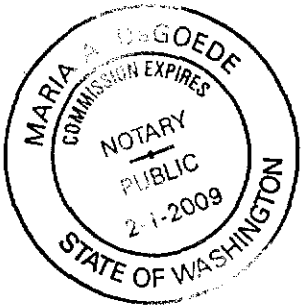
Date: 11 25 2008

Its: Manager

STATE OF WASHINGTON )  
) ss.  
COUNTY OF SKAGIT )

On this 25<sup>th</sup> day of November 2008 before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Thomas Hsueh and Theodore A. Ginsburg to me known to be the President and Manager, respectively of Triton - America LLC the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability, for the uses and purposes therein mentioned, and on oath stated that they/he/she is/are authorized to execute the said instrument,

Witness my hand and official seal hereto affixed the say and year first above written.



Maria A. DeLoe  
Notary Public in and for the state of Washington  
Residing at Bow, WA  
My commission expires 2-1-2009  
Printed Name: Maria A. DeLoe



TOWN OF LA CONNER

Attest:

By: [Signature]  
RAMON HAYES, Mayor

By: Lorraine Taylor  
Lorraine Taylor, Clerk/Treasurer

Date: 11/26/08

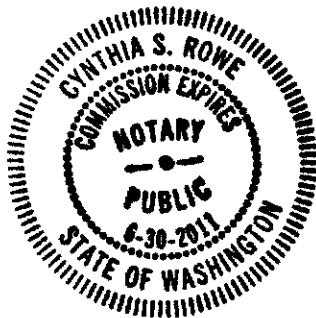
Approved as to form:

By: [Signature]  
Bradford E. Furlong, WSBA #12924  
Town Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

On this 26<sup>th</sup> day of November 2008 before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Ramon Hayes and Lorraine Taylor to me known to be the Mayor and Clerk/Treasurer, respectively, of the Town of La Conner, the municipal corporation that executed the foregoing instrument, 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 are authorized to execute the said instrument,

Witness my hand and official seal hereto affixed the say and year first above written.



Cynthia S. Rowe  
Notary Public in and for the state of Washington  
Residing at La Conner  
My commission expires 6-30-2011

Printed Name: CYNTHIA S. ROWE



## LEASE AGREEMENT

**THIS LEASE** is entered into this \_\_\_ day of \_\_\_, 2009 between the TOWN OF LA CONNER, a Washington municipal corporation (“Lessor”) and TRITON AMERICA, LLC (“Lessee”). All previous leases on the premises are hereby terminated.

1. **Premises.** The Lessor does hereby lease to Lessee, upon the terms and conditions herein set forth, that certain real property situated in Skagit County, Washington, more particularly described in Exhibit “A” attached.
2. **Purpose.** Lessee shall use the premises for the purpose of operating a marine boat manufacturing, sales and industrial oriented business activities.
3. **Term/Commencement.**
  - a. Term: This Lease shall commence when signed by both parties. The term of this Lease shall be for \_\_\_\_\_ ( ) years, after \_\_\_\_\_, 2009 or the date a certificate of occupancy for Lessee’s building constructed pursuant to the Section entitled “Construction of Improvements”, whichever is sooner, and ending \_\_\_\_\_, 20\_\_\_, unless sooner terminated pursuant to any provision of this Lease.
  - b. Lessee is granted the right to extend this Lease for two (2) consecutive Fifteen (15) year option periods by giving written notice of said intention to Lessor not less than one hundred twenty (120) days prior to the expiration of the initial term or any extended term, conditioned upon the fact that all terms, covenants and conditions of the initial or extended term have been fully met and fulfilled, and conditions set forth in the Section entitled “Repair and Maintenance,” have been met, and the Premises are deemed structurally safe. All terms and conditions of the initial term shall continue with the exception that the rental shall be determined in accordance with the Section 6 entitled “Base Monthly Rent.”

This Lease shall terminate immediately with no action on the part of either party if Lessee does not, no later than \_\_\_\_\_, 2009; provide to Lessor the complete plans required for “Conceptual Approval” pursuant to sub-section (a) of Paragraph 11, “Lessee Improvements.”
4. **Leasehold Excise Tax Adjustment.** Lessor and Lessee recognize that the monthly rent paid by Lessee pursuant to paragraph 6 includes Washington State leasehold excise tax of two hundred and sixty and 58/100 dollars (\$260.58) per month, calculated on a rate of 12.84%. At any time that the base monthly rent is changed pursuant to this Lease Agreement, the Lessee agrees to pay an increase in leasehold excise tax resulting therefrom. Additionally, should the state of Washington change or modify the leasehold excise tax rate, the base rent will be adjusted accordingly effective on the date that such change by the state of Washington goes into effect.



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5. **Rental Adjustments.** The real property rent shall be automatically adjusted annually to reflect any changes in the tax assessed valuation of land for tax purposes. Excise tax shall also be automatically adjusted to reflect any change in this rate.
6. **Base Monthly Rent.** Lessee shall begin paying rent on the premises on the commencement of this agreement date of two thousand two hundred and eighty-nine and 98/100 dollars (\$2,289.98) ("Lessor Base Monthly Rent"), including Leasehold excise tax. Rent shall be paid, without notice from Lessor, in monthly installments by the tenth (10<sup>th</sup>) day of each calendar month. Base Monthly Rent for any fractional calendar month at the beginning or end of the term shall be prorated for the applicable portion of the month. All payments of rent and other sums due under this Lease shall be paid to Lessor in lawful money of the United States at La Conner Town Hall, Finance Director, 204 Douglas Street/P.O. Box 400, La Conner, Washington 98257, or such other address as Lessor may specify in writing. Initial Base Monthly Rent is determined from an annual rent calculated at 3.5% of the assessed valuation in 2008; 4% of the assessed valuation in 2009; 4.5% of the assessed valuation in 2010 and 5% of the assessed valuation each year thereafter as the assessed valuation of land for tax purposes is established by the Skagit County Assessors Office, plus leasehold excise tax of 12.84%. The Lessor shall notify the Lessee of any change in the assessed valuation and change in Base Monthly Rent after publication of the change in assessed valuation by the Skagit Assessor. The new Base Monthly Rent shall be payable commencing the next time rent is due within thirty (30) after the date of such notice.

The initial monthly rent due and the approved land valuation percentage split methodology is calculated and reflected on Exhibit "B" attached hereto. Lessee may not prepay more than one month's rent.

In the event Lessee should fail to pay any installment of rent or any other sum due hereunder within ten (10) business days of the date the amount is due, Lessee shall pay to Lessor a late charge equal to two (2) percent of the unpaid amount.

7. **Rent for DNR Sublease.** As additional rent, the Lessee agrees to pay the amount charged by the Washington Department of Natural Resources (DNR) to the Lessor for the leases or portions thereof, as described in Exhibit "C" attached hereto, plus five (5) percent, plus leasehold excise tax of 12.84%. Rent for the DNR sublease shall be paid monthly together with the Base Monthly Rent as described in Section 6 above. The initial DNR sublease monthly rent due is calculated and reflected on Exhibit "D" attached hereto.



8. **Rent Adjustment for DNR Sublease.** The DNR sublease rent shall be automatically adjusted in the month following any adjustment in the amount charged by DNR to the Town. Excise tax shall also be automatically adjusted to reflect any change in this rate.
9. **DNR Lease Compliance.** Lessor and Lessee agree to comply with the terms and conditions as set forth in the DNR lease now or as amended or renewed with the Lessor. Lessee shall indemnify and hold harmless Lessor for any damages, claims or penalties imposed on Lessor due to Lessee's failure to comply with the term of any DNR lease. Lessor agrees to maintain a lease with DNR throughout the term of this Lease, subject to agreement of DNR. A copy of the DNR lease is included as Exhibit "E" attached hereto. Lessee shall pay its share, as determined by Lessor, of the cost of any property or improvements survey required by DNR.
10. **Utilities and Fees.** Lessee agrees to directly pay all charges for light, heat, water, sewer, garbage, drainage, and all other utilities and services to the premises during the full term of this Lease. All other items including all license fees and other governmental charges levied on the operation of Lessee's business on the premises will be paid directly by Lessee.
11. **Lessee Improvements.**

Lessee is responsible for all initial leasehold improvement costs associated with Lessee's contemplated use of the property as set forth in paragraph 2 herein. Lessee shall plan, build, furnish and equip the premises pursuant to the provisions of this Lease and in compliance with all applicable governmental regulations, laws and rules.

- a. **Schematic Drawing Review.** Lessee shall, no later than (Fill-In Date) provide to the Lessor completed development of schematic drawings of any Improvement(s) it intends to construct. Lessor shall thereafter have thirty (30) days to review said drawing(s) and to notify Lessee of any disapproval and the specific grounds therefore. Failure to notify Lessee of Lessor's disapproval shall be deemed approval of the schematic drawing(s). Lessor's disapproval must be reasonably based on the failure of the proposed Improvements, as designed, to (i) allow for the Base Line Activity; (ii) comply with applicable land use/shoreline/environmental regulations; or (iii) provide for the construction in a manner (and the utilization of materials) that will assure that the Improvements will, with normal maintenance, remain useful for the Base Line Activity for the duration of the Lease Term.
- b. **Final Drawing Review.** No later than (Fill-In Date) and prior to applying for any building permit for construction of its Improvements, Lessee shall submit to Lessor all plans and specifications relating to such construction thereof. Lessor shall thereafter have fourteen (14) days to review said drawing(s) and to notify Lessee of any disapproval and the specific grounds therefore. Failure to notify Lessee of Lessor's disapproval shall be deemed approval of the final construction drawing(s).



Lessor's disapproval must be reasonably based on the failure of the proposed Improvements, as designed, to substantially comply with the approved schematic drawings.

- c. **Completion of Improvements.** Lessee shall obtain a certificate of occupancy for the Improvements no later than (fill Inn) months after final drawing approval.
- d. Until the expiration or sooner termination of this Lease, and subject to the provisions of the SECTION entitled "DISPOSITION OF IMPROVEMENTS AT END OF LEASE" hereof, title to any Improvements situated and constructed by Lessee on the Premises and any alteration, change or addition thereto, as well as title to fixtures and articles of personal property attached to or used in connection with the Premises by Lessee, shall remain solely in Lessee.
12. **Additions and Alterations.** Once construction of the Improvements is complete and after prior written consent of Lessor, Lessee may make alterations, additions and improvements to said premises, at Lessee's sole cost and expense. In the performance of such work, Lessee agrees to comply with all laws, ordinances, rules and regulations of any proper public authority, and to save Lessor harmless from damages, loss or expense. Upon termination of this Lease and upon Lessor's request, or Lessor's approval, Lessee shall remove such improvements and restore the premises to its original condition not later than the termination date, at Lessee's sole cost and expense. Any improvements not so removed shall be removed at Lessee's sole expense, provided that Lessee shall pay for any damage caused by such removal.
13. **Liens and Insolvency.** Lessee shall keep the premises free from any liens arising out of any work performed for, material(s) furnished to, or obligations incurred by Lessee and shall indemnify and hold Lessor harmless against the same. Lessee shall defend any claims upon which a lien has been or could be asserted and fully indemnify and hold harmless Lessor for the cost, expense or attorneys' fees incurred by Lessor to satisfy or remove any lien placed against the premises during or resulting from Lessee's tenancy. In the event Lessee becomes insolvent, bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the lessee, Lessor may cancel this Lease at its option.
14. **Repairs and Maintenance.** Lessee shall, at its sole expense and at all times, keep the Premises neat, clean, and in a sanitary condition; and keep and use the Premises in accordance with applicable laws, ordinances, rules, regulations, and requirements of governmental authorities. Lessee shall permit no waste, damage, or injury to the Premises; keep all drain pipes free and open; protect water, heating, gas and other pipes to prevent freezing or clogging; repair all leaks and damage caused by leaks; replace all glass in windows and doors of the Premises which may become cracked or broken; and remove ice and snow from sidewalks adjoining the Premises. Lessee shall promptly repair and replace all components of the "Mechanical and Building Systems" (meaning without limitation: HVAC, electrical, plumbing, fire suppression, security and telecommunications, interior and exterior painting, roof, exterior walls, gutters,





landscaping and foundation). Lessee will schedule and coordinate annual maintenance of all Mechanical and Building Systems at Lessee's cost. Lessee shall complete and maintain accurate records of all Mechanical and Building System maintenance, replacement and repairs and shall allow Lessor to inspect such records at reasonable times.

15. **Accidents and Liability.** Lessor, its employees, insurers or agents shall not be liable for any injury or damage to persons or property sustained by Lessee or other, in and about the premises. Lessee agrees to defend and hold Lessor, its employees, insurers or agents harmless from any claim, action and/or judgment for damages to property or injury to persons suffered or alleged to be suffered on the premises by any person, firm, or corporation unless caused by Lessor's intentional act or omission. Lessee agrees to maintain public general liability insurance on the premises with broad form property damage and contractual liability endorsements, and shall name Lessor as an additional insured. Lessee shall furnish Lessor a certificate indicating that the insurance policy is in full force and effect, the Lessor has been named as an additional insured, and the policy may not be canceled unless ten (10) days prior to written notice of the proposed cancellation has been given to Lessor. Such policy(ies) shall have minimum liability limits of two million dollars (\$2,000,000) bodily injury or death and one million dollars (\$1,000,000) property damage per occurrence. Lessee shall provide to the Lessor, initially after signing this Lease and at renewal dates thereafter, reasonable evidence of such insurance and shall inform each other of any proposed materially adverse changes in such coverage at least thirty (30) days prior to such proposed changes becoming effective. In no event shall the limits of any insurance policy required under this section be considered as limiting the liability of Lessee under this Lease.

16. **Hazardous Waste.**

a. **Compliance.** Lessee will at all times and in all respects comply with all federal, state, and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal, or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, including, without limitation, any "hazardous materials" or "toxic substances" under any such laws, ordinances, or regulations (collectively, "Hazardous Materials"). Lessee will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Lessee's use of the leased premises, including, without limitation, discharge of appropriately treated materials or wastes into or through a sanitary sewer serving the leased premises or property. Except as discharged into the sanitary sewer in strict accordance and conformity with all applicable Hazardous Materials Laws, Lessee will cause any and all Hazardous Materials removed from the leased premises or property to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Lessee will in all respects handle, treat, deal with and manage any and all Hazardous Materials in, on,

under, or about the leased premises or property in total conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. Upon expiration of earlier termination of the Lease, Lessee will cause all Hazardous Materials placed on, under, or about the leased premise or property by Lessee or at Lessee's direction, to be removed and transported for use, storage, or disposal in accordance and compliance with all applicable Hazardous Materials Laws. Lessee will not take any remedial action in response to the presence of any Hazardous Materials in or about the leased premises, property or building(s), nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the leased premises or property, without first notifying Lessor of Lessee's intention to do so and affording Lessor ample opportunity to appear, intervene, or otherwise appropriately assert and protect Lessor's interest with respect thereto.

- b. **Indemnity.** Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), protect, and hold Lessor and each of Lessor's employees, agents, attorneys, successors, predecessors and assigns, free and harmless from any against any and all claims, liabilities, penalties, forfeitures, losses, or expenses (including attorneys' fees, in-house or otherwise and expenses incurred on appeal), or death and/or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part directly or indirectly, by (i) the discharge in or from the property of any "Hazardous materials" placed in, under, or about the property by Lessee or at Lessee's direction; (ii) Lessee's use, analysis, storage, transportation, disposal, release, threatened release, discharge, or generation of Hazardous Materials to, in, on, under, about, or from the property; or (iii) Lessee's failure to comply with any Hazardous Materials Law. The indemnity obligation includes without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean-up or remedial action, or other required plans in connection therewith, and will survive the expiration or earlier termination of this term of the Lease. For purposes of this release and indemnity provision, any acts or omissions of Lessee or by employees, agents, assignees, contractors, or subcontractors of Lessee or others acting for or on behalf of Lessee (whether or not they are negligent, intentional, willful or unlawful) will be strictly attributable to the Lessee. These rights shall survive the termination of this Lease.

17. **Personal Property.** All personal property located on the premises shall be placed there at the sole risk of the Lessee. Lessor or Lessor's agents or representatives shall not be liable for any damage, either to person or property, sustained by Lessee or others, caused by any defects now in the said premises or hereafter existing or occurring therein or thereon, or due to any accident of any kind in and about the said premises.
18. **Casualty.** In the event of either the premises or the building(s) are substantially destroyed or damaged by fire, earthquake, or other casualty in whole or in part, then Lessor shall have no obligation to make repairs; Lessee shall, however, be required to



diligently pursue and apply to needed repairs any insurance proceeds available due to such destruction or damage. No rents shall abate due to such destruction or damage. Lessee agrees to keep in full force and effect throughout the term of this Lease and any extensions a full replacement value fire and casualty insurance policy evidence which shall be subject to the notice provisions of paragraph 20 hereof. Lessor shall be deemed to have an insurable interest in the premises under such policy.

19. **Quiet Enjoyment.** So long as Lessee pays the rent and performs the covenants contained in this Lease, Lessee shall hold and enjoy the premises peacefully and quietly.
20. **Subletting or Assignment.** Lessee will use and occupy the leased premises throughout the entire term hereof for the purpose or purposes herein above specified, and for no other purpose, in the manner and to substantially the extent now intended. Lessee will not assign this Lease or sublet said premises, or any part thereof, without the prior written consent of Lessor, which consent shall be granted in Lessor's sole discretion. This Lease shall not be assignable by operation of law. If consent is once given by Lessor to the assignment of this Lease, or any interest therein, Lessor shall not be barred from afterwards refusing to any further assignment. Any violation of this provision by Lessee or any assigns or subtenants shall be considered a default under this Lease Agreement.
21. **Successors.** Subject to the provisions of paragraph 17, this Lease shall apply to and be binding upon Lessor and Lessee and their respective heirs, executors, administrators, successors, and assigns.
22. **Access.** Lessor shall have the right to enter the premises at all reasonable times for the purpose of inspection or of making repairs, additions, or alterations, and to show the premises to prospective tenants for one hundred eighty (180) days prior to the expiration of the Lease term.
23. **Notices.** Any notice required to be given by either party to the other shall be sent by certified mail, addressed to the Lessor at P.O. Box 400, La Conner, Washington 98257, or may be served personally as in the case of a summons. A facsimile transmission will suffice in lieu of mail if receipt is confirmed as to date and time.
24. **Default and Re-entry.** If Lessee shall fail to keep and perform any of the covenants and agreements herein contained other than the payment of rent, and such failure continues after the deadline provided by any lawful written notice from Lessor, unless appropriate action has been taken by Lessee in good faith to cure such failure, Lessor may terminate the Lease and re-enter the premises, or Lessor may, without terminating this Lease, re-enter said premises, and sublet the whole or any part thereof for the account of the Lessee on as favorable terms and conditions as the market will allow for the balance of the term of this Lease and Lessee covenants and agrees to pay Lessor any deficiency arising from a re-letting of the premises at a lesser amount than herein agreed to. Lessee shall pay such deficiency each month as the amount thereof is ascertained by Lessor. However, the ability of Lessor to re-enter and sublet shall not impose upon the

TIDELAND AND HARBOR  
LEASE and SUBLEASE  
LESSOR: TOWN OF La CONNER,  
LESSEE: TRITON AMERICA, LLC



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Lessor the obligation to do so. If any rent above reserved or any part thereof shall be and remain unpaid the same shall become due, then the Lessor may cancel this Lease upon giving notice as required by law, and may re-enter said premises. Notwithstanding such re-entry, the liability of the Lessee for the rent owed shall continue for the balance of the term of this Lease, but shall be diminished by any amount received by the Lessor upon re-letting during the term of said Lease.

25. **Failure to use Premises – Default.** It is stipulated and agreed to between the parties that the Lessor leases and the Lessee takes the Lease on the assumption and understanding that an industry will be operated on the premises and will provide employment within the community of La Conner. Should the Lessee fail to operate the premises as a business or leave the building vacant and unused or in disrepair for a period of three (3) consecutive years, or fail to employ at least twelve to fifteen (12-15) full-time employees (FTE) for at least six (6) months of any calendar year (FTE equals forty (40) hours per week or one hundred sixty (160) hours per month), the Lessor shall have the right, at its option, to cancel and terminate this Lease upon giving the Lessee written notice of the intention so to cancel at least thirty (30) days prior to the date of cancellation stated in said notice. In the event conditions as described in the notice as provided in this paragraph have not been complied with within said thirty (30) day period, Lessor may consider the Lease in default.
26. **Liens and Encumbrances.** Lessee shall not grant any mortgage, indenture, hypothecation, assignment, deed of trust, security agreement, financing statement or other document or instrument to secure the payment of any sum or the performance of any obligation where such document or instrument includes the legal description or street address of the premises, building or any part thereof without the prior written approval of the Lessor.
27. **Costs and Attorneys' Fees.** If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Lease, attorneys are employed to enforce the Lease or to commence or defend a legal action, the defaulting or losing party agrees to pay all reasonable costs and attorneys' fees in connection therewith, including the cost and fees to collect any judgment. No default shall be considered cured unless and until any attorneys' fees and costs incurred to cure the default are paid.
28. **No Waiver of Covenants.** No conduct of a party shall constitute accord and satisfaction unless contained in writing to such effect and signed by the parties. Any waiver by either party of any breach hereof by the other shall not be considered a waiver of any future similar breach. This Lease contains all the agreements between the parties, and there shall be no modification to the agreements contained herein except by written instrument.
29. **Holding Over.** If Lessee, with the implied or express consent of Lessor, shall hold over after the expiration of the term of this Lease, Lessee shall remain bound by all the covenants and agreements herein, except that the tenancy shall be from month to month.



and shall be for a monthly rate of one hundred ten percent (110%) of the last rental rate under the Lease.

30. **Removal of Property.** If Lessee shall fail to remove any of its property of any nature whatsoever from the premises or the building at the termination of this Lease or when Lessor has the right of re-entry, Lessor may, at its option, remove and store said property without liability for loss thereof or damage thereto, such storage to be for the account and at the expense of the Lessee. In the event that Lessee shall not pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Lessor may, at its option, sell or permit to be sold, any or all of such property at public or private sale, in such manner and at such times and places as Lessor in its sole discretion may deem proper, without notice to Lessee, and shall apply the proceeds of such sale, first to the cost and expense of such sale, including reasonable attorneys' fees actually incurred, second, to the payment of the cost or charges for storing any such property, third, to the payment of any other sums of money which may then be or thereafter become due to Lessor from Lessee under any of the terms hereof, and, fourth, the balance, if any, to the Lessee.
31. **Memorandum of Lease.** The Lessee, may, at its own cost, record a memorandum of this Lease Agreement with the Skagit County Auditor.

If Lessee is a corporation or limited liability company, each individual executing this Lease on behalf of said corporation signs and assumes all duties and liabilities personally represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation or limited liability company or in accordance with a duly adopted resolution of the Board of Directors of said corporation or limited liability company or in accordance with the by-laws of said corporation or limited liability company, and that this lease is binding upon said corporation or limited liability company in accordance with its terms. If Lessee is a corporation, Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.



IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

LESSOR(S):

Attestation:

TOWN OF LA CONNER

\_\_\_\_\_  
Ramon Hayes, Mayor

\_\_\_\_\_  
Lorraine Taylor, Town Clerk/Treasurer

Approved as to form:

\_\_\_\_\_  
Bradford E. Furlong, Town Attorney

STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF SKAGIT   )

I hereby certify that I know or have satisfactory evidence that Ramon Hayes is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath and stated that he is authorized, as Mayor of the Town of La Conner, to execute the instrument and acknowledged it to be the free and voluntary act of such entity for the uses and purposes mentioned in this instrument.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

NOTARY SEAL:

\_\_\_\_\_  
Notary Public in and for the  
State of Washington, residing at:  
\_\_\_\_\_  
\_\_\_\_\_  
(Printed Name)

LESSEE:

TRITON AMERICA, LLC

\_\_\_\_\_  
\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF WASHINGTON )

) ss.

COUNTY OF \_\_\_\_\_ )

I hereby certify that I know or have satisfactory evidence that Theodore A. Ginsburg is the person who appeared before me, and said person(s) acknowledged that he/she signed this instrument, on oath and stated that he/she is authorized, as Member of Triton America, LLC, to execute the instrument and acknowledged it to be the free and voluntary act of such entity for the uses and purposes mentioned in this instrument.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_  
200\_\_\_\_\_.

NOTARY SEAL:

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

\_\_\_\_\_  
(Printed Name)



## EXHIBIT A

### Property Description

Lessor and Lessee agree that the current parcel of land (hereinafter referred to as the "Cannery parcel") is separately leased by the Town of La Conner in two parcels that share a property line. The northern portion of the cannery parcel is the new lease area and the southern portion of the cannery parcel is currently leased by the Town to Triton America, LLC (lessee 2) under a separate lease agreement. The lease area plat map is recorded with the Skagit County Auditor, under Auditor File No. 200710240031.

### Triton America, LLC Property Description

#### LEGAL DESCRIPTION – TOWN OF LACONNER TRACT A, TIDELAND LEASE AREA

That portion of Tract 23, La Conner Tidelands, Corrected Plate 18, lying in front of Section 36, Township 34 North, Range 2 East, W.M., as shown on the "2003 Supplemental Map of La Conner Harbor", recorded under Auditor's File Number 200302060018, records of Skagit County, Washington, being more particularly described as follows:

Commencing at the South 1/4 corner of said Section 36, as shown on said "2003 Supplemental Map of La Conner Harbor"; **thence** North 89°07'56" West, along the South line of said Section 36, a distance of 1629.52' to the Inner Harbor Line as shown on that certain Record of Survey recorded in Book 5 of Surveys, page 176, records of said county and state, said point lying North 17°10'33" East (North 15°40'00" East per said Record of Survey) a distance of 4.53 feet from the Southwest corner of Schenk Lease "D" as shown on said Record of Survey; **thence** continuing North 89°07'56" West a distance of 9.34 feet to the Inner Harbor Line as shown on said "2003 Supplemental Map of La Conner"; **thence** North 16°59'17" East, along said Inner Harbor Line, a distance of 254.99 feet; **thence** North 65°29'17" East, along said Inner Harbor line, a distance of 633.21 feet to the projection of the Northeasterly line of the Valdez Lease "B" as shown on said Record of Survey, said point lying on the Northwesterly extension of the Southwesterly line of that certain tract described as Moorage Parcel in that certain Lease Agreement between the Town of La Conner and Olympic Fish Company as executed by the Town of La Conner on June 22, 1999, said point being also the **TRUE POINT OF BEGINNING**; **thence** continuing North 65°29'17" East a distance of 299.30 feet; **thence** South 46°10'30" East a distance of 13.51 feet to the Northerly right-of-way of Conner Way as described in Ordinance no. 496, dated June 8, 1982; **thence** South 46°17'45" West along said right-of-way line a distance of 282.38 feet to the Westerly line of said Moorage parcel; **thence** North 44°08'51" West along its Southwesterly line a distance of 111.89 feet to the **TRUE POINT OF BEGINNING**;

Situate in the Town of La Conner, Skagit County, Washington.

Lease Area: 17,675 Sq. Ft.

TIDELAND AND HARBOR  
LEASE and SUBLEASE  
LESSOR: TOWN OF La CONNER,  
LESSEE: TRITON AMERICA, LLC



200812150091  
Skagit County Auditor



**EXHIBIT A - Continued**

**LEGAL DESCRIPTION – TOWN OF LA CONNER  
TRACT B, TIDELAND LEASE AREA**

That portion of Tract 23, La Conner Tidelands, Corrected Plate 18, lying in Section 36, Township 34 North, Range 2 East, W.M., as shown on the “2003 Supplemental Map of La Conner Harbor”, recorded under Auditor’s File Number 200302060018, records of Skagit County, Washington, being more particularly described as follows:

Commencing at the South 1/4 corner of said Section 36, as shown on said “2003 Supplemental Map of La Conner Harbor”; **thence** North 89°07’56” West, along the South line of said Section 36, a distance of 1629.52’ to the Inner Harbor Line as shown on that certain Record of Survey recorded in Book 5 of Surveys, page 176, records of said county and state, said point lying North 17°10’33” East (North 15°40’00” East per said Record of Survey) a distance of 4.53 feet from the Southwest corner of Schenk Lease “D” as shown on said Record of Survey; **thence** continuing North 89°07’56” West a distance of 9.34 feet to the Inner Harbor Line as shown on said “2003 Supplemental Map of La Conner”; **thence** North 16°59’17” East, along said Inner Harbor Line, a distance of 254.99 feet; **thence** North 65°29’17” East, along said Inner Harbor line, a distance of 633.21 feet to the projection of the Northeasterly line of the Valdez Lease “B” as shown on said Record of Survey, said point lying on the Northwesterly extension of the Northeasterly line of that certain tract described as Cannery Parcel in that certain Lease Agreement between the Town of La Conner and Olympic Fish Company as executed by the Town of La Conner on June 22, 1999, said point being also the **TRUE POINT OF BEGINNING**; **thence** South 44°08’51” East along said extension and along said Northeasterly line, a distance of 111.89 feet to the northerly right-of way of “Conner Way” as described in Town of La Conner ordinance no. 496, dated June 8, 1982; **thence** South 46°17’45” West along said right-of-way line a distance of 97.56 feet; **thence** South 42°54’33” West along said right-of-way line a distance of 185.05 feet to the Westerly line of said Cannery parcel; **thence** North 43°49’27” West along its Southwesterly line a distance of 112.98 feet to an angle point thereon; **thence** South 46°26’13” West, along said Southwesterly line, a distance of 41.49 feet to an angle point thereon; **thence** North 43°53’41” West, along said Southwesterly line, a distance of 122.36 feet to said Inner Harbor line; **thence** North 65°29’17” East, along said Inner Harbor line, a distance of 342.59 feet to the **TRUE POINT OF BEGINNING**.

Situate in the Town of La Conner, Skagit County, Washington.

Lease Area: 51,165 Sq. Ft.

**TIDELAND AND HARBOR  
LEASE and SUBLEASE  
LESSOR: TOWN OF La CONNER,  
LESSEE: TRITON AMERICA, LLC**



200812150091

Skagit County Auditor

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**EXHIBIT B**

**Rent for Town Tidal Real Property**

2008 Land Value for Parcel P74477: \$ 1,380,000.00

Name	Feet of Shoreline	% of Shoreline	% of DNR Lease	Share of Assessed Value
Southern Parcel Triton America, LLC	400	33.61%	0.00%	\$ 463,818.00
Northern Parcel Triton America, LLC	600	50.42%	100.00%	695,796.00
Town of La Conner	190	15.97%	0.00%	220,386.00
<b>TOTAL</b>	<b>1,190</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$ 1,380,000.00</b>

	Northern Parcel Triton America, LLC (3.5% of assessed land value-2008)	Northern Parcel Triton America, LLC (4% of assessed land value-2009)	Northern Parcel Triton America, LLC (4.5% of assessed land value-2010)	Northern Parcel Triton America, LLC (5% of assessed land value-2011)
<b>Tideland Base Rent</b>				
Base rent \$	24,352.86	\$	\$	\$
excise tax (12.84%) \$	3,126.91	\$	\$	\$
<b>Total Annual Rent \$</b>	<b>27,479.77</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Monthly Rent \$	2,289.98	\$	\$	\$

<b>Tideland and DNR Sublease<sup>1</sup> Rent Totals (Base Year)</b>	<b>Annual Rent</b>	<b>Monthly Rent</b>
<b>Tidelands Lease</b>	\$27,479.77	\$2,029.41
<b>DNR Sublease</b>	\$3,318.60	\$276.55
<b>Excise Tax (Tideland and DNR Sublease)</b>	\$3,553.35	\$296.11
<b>Total Rent</b>	<b>\$34,351.72</b>	<b>\$2,602.07</b>

<sup>1</sup> DNR values from Exhibit D

TIDELAND AND HARBOR  
 LEASE and SUBLEASE  
 LESSOR: TOWN OF La CONNER,  
 LESSEE: TRITON AMERICA, LLC



200812150091  
 Skagit County Auditor

## EXHIBIT C

### DNR Harbor Area Legal Description

#### LEGAL DESCRIPTION TOWN OF LACONNER TRACT A, HARBOR LEASE AREA

That portion of the La Conner Harbor area lying in Section 36, Township 34 North, Range 2 East, W.M., and lying Northerly of Tract 23, La Conner Tidelands, Corrected Plate 18, as shown on the "2003 Supplemental Map of La Conner Harbor", recorded under Auditor's File Number 200302060018, records of Skagit County, Washington, being more particularly described as follows:

Commencing at the South 1/4 corner of said Section 36, as shown on said "2003 Supplemental Map of La Conner Harbor"; **thence** North 89°07'56" West, along the South line of said Section 36, a distance of 1629.52' to the Inner Harbor Line as shown on that certain Record of Survey recorded in Book 5 of Surveys, page 176, records of said county and state, said point lying North 17°10'33" East (North 15°40'00" East per said Record of Survey) a distance of 4.53 feet from the Southwest corner of Schenk Lease "D" as shown on said Record of Survey; **thence** continuing North 89°07'56" West a distance of 9.34 feet to the Inner Harbor Line as shown on said "2003 Supplemental Map of La Conner"; **thence** North 16°59'17" East, along said Inner Harbor Line, a distance of 254.99 feet; **thence** North 65°29'17" East, along said Inner Harbor line, a distance of 633.21 feet to the projection of the Northeasterly line of the Valdez Lease "B" as shown on said Record of Survey, said point lying on the Northwesterly extension of the Southwesterly line of that certain tract described as Moorage Parcel in that certain lease agreement between the Town of La Conner and Olympic Fish Company as executed by the Town of La Conner on June 22, 1999, said point being also the **TRUE POINT OF BEGINNING**; **thence** continuing North 65°29'17" East a distance of 299.30 feet; **thence** North 46°10'30" West a distance of 95.60 to the Outer Harbor Line as shown on said "2003 Supplemental Map of La Conner"; **thence** South 63°04'08" West along said Outer Harbor Line, a distance of 291.58 feet to a point on the projection of the Northeasterly line of said Valdez Lease "B", said point lying on said Northwesterly extension of the Southwesterly line of said Moorage parcel; **thence** South 44°08'51" East a distance of 81.26 feet to the **TRUE POINT OF BEGINNING**;

Situate in the Town of La Conner, Skagit County, Washington.

Lease Area: 24,612 Sq. Ft.

TIDELAND AND HARBOR  
LEASE and SUBLEASE  
LESSOR: TOWN OF La CONNER,  
LESSEE: TRITON AMERICA, LLC



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Skagit County Auditor

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**EXHIBIT C - Continued**

**LEGAL DESCRIPTION – TOWN OF LACONNER  
TRACT B, HARBOR LEASE AREA**

That portion of the La Conner Harbor Area lying in Section 36, Township 34 North, Range 2 East, W.M., and lying Northerly of Tract 23, La Conner Tidelands, Corrected Plate 18, as shown on the “2003 Supplemental Map of La Conner Harbor”, recorded under Auditor’s File Number 200302060018, records of Skagit County, Washington, being more particularly described as follows:

Commencing at the South 1/4 corner of said Section 36, as shown on said “2003 Supplemental Map of La Conner Harbor”; **thence** North 89°07’56” West, along the South line of said Section 36, a distance of 1629.52’ to the Inner Harbor Line as shown on that certain Record of Survey recorded in Book 5 of Surveys, page 176, records of said county and state, said point lying North 17°10’33” East (North 15°40’00” East per said Record of Survey) a distance of 4.53 feet from the Southwest corner of Schenk Lease “D” as shown on said Record of Survey; **thence** continuing North 89°07’56” West a distance of 9.34 feet to the Inner Harbor Line as shown on said “2003 Supplemental Map of La Conner”; **thence** North 16°59’17” East, along said Inner Harbor Line, a distance of 254.99 feet; **thence** North 65°29’17” East, along said Inner Harbor line, a distance of 633.21 feet to the projection of the Northeasterly line of the Valdez Lease “B” as shown on said Record of Survey, said point lying on the Northwesterly extension of the Northeasterly line of that certain tract described as Cannery Parcel in that certain Lease Agreement between the Town of La Conner and Olympic Fish Company as executed by the Town of La Conner on June 22, 1999, said point being also the **TRUE POINT OF BEGINNING**; **thence** North 44°08’51” West a distance of 81.26 feet to the Outer Harbor Line as shown on said “2003 Supplemental Map of La Conner”; **thence** South 63°04’08” West along said Outer Harbor Line, a distance of 337.50 feet to a point on the Northwesterly extension of the Southwesterly line of said Cannery Parcel; **thence** South 43°53’41” East along said extension a distance of 66.03 feet to said Inner Harbor line; **thence** South 65°29’17” West, along said Inner Harbor line, a distance of 342.59 feet to the **TRUE POINT OF BEGINNING**.

Situate in the Town of La Conner, Skagit County, Washington.

Lease Area: 23,769 Sq. Ft.

**TIDELAND AND HARBOR  
LEASE and SUBLEASE  
LESSOR: TOWN OF La CONNER,  
LESSEE: TRITON AMERICA, LLC**



200812150091

Skagit County Auditor

**EXHIBIT D**

**Base Year 2009**

**Rent for DNR Harbor Sublease**

<i>DNR Tracts</i>	<i>Square Footage</i>	<i>Town Lease Cost<sup>2</sup></i>	<i>Base Year Annual Sublease Rent</i>	<i>Base Year Monthly Sublease Rent</i>
Tract A	24,612	\$1,607.82	\$1,688.21	\$140.68
Tract B	23,769	\$1,552.75	\$1,630.39	\$135.87
Totals	48,381	\$3,160.57	\$3,318.60	\$276.55

<i>Base Year Excise Tax Rate</i>	<i>DNR Sublease Rent</i>	<i>Sublease Annual Excise Tax</i>	<i>Sublease Monthly Excise Tax</i>
0.1285	\$3,318.60	\$426.44	\$35.54

<sup>2</sup> DNR Lease Value Assessment June 2008

**TIDELAND AND HARBOR  
LEASE and SUBLEASE  
LESSOR: TOWN OF La CONNER,  
LESSEE: TRITON AMERICA, LLC**



200812150091  
Skagit County Auditor

**EXHIBIT E**

**Town DNR Lease**

UNOFFICIAL DOCUMENT

**TIDELAND AND HARBOR  
LEASE and SUBLEASE  
LESSOR: TOWN OF La CONNER,  
LESSEE: TRITON AMERICA, LLC**



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