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<input type="checkbox"/> BOARD POLICY	<input type="checkbox"/> INFO ONLY, NO ACTION REQUIRED	

**AGENDA**  
**Idaho Park and Recreation Board Meeting**  
**May 20-21, 2014**  
**Lewiston, ID**

**AGENDA ITEM:** Hidden Lake Float Homes Lease

**ACTION REQUIRED:** Board Action Required

**PRESENTERS:** David White/Steven Strack

**PRESENTATION**

**BACKGROUND INFORMATION:**

A draft float home lease was presented to the Board for approval at its meeting of November 13, 2013. The Board directed Department staff to work with lessees to develop amended lease terms that addressed specific needs and issues arising from the lessee's commitment to build a trunk line connecting the float homes to the Heyburn State Park Central Sewage Treatment System. Additionally, the Board determined that the new lease should (1) allow the Chesnuts to retain their two existing float homes on a single moorage site with connection to their privately-owned drainfield outside the Park; and (2) allow the Eisenger float home to remain on shore as a non-floating unit unless destroyed, in which case it must be rebuilt as a float home. Those provisions specific to the Chesnuts and Eisengers are addressed by including a lease specific attachment (Attachment F) in each of their leases; copies of the Attachment accompany this memorandum.

**DISCUSSION**

Since the November Board meeting, Department staff and legal counsel have worked with the lessees and their attorney to reach agreement on a number of lease terms. The attached draft Lease incorporates the results of those discussions. Additionally, the lease has been amended to reflect several developments that have occurred since the November Board meeting, including the issuance of Temporary Permit to the Chesnuts for their sewer line, an agreement with Panhandle Health District on the terms of a revised Sewer Management Agreement, and verification from the Idaho Department of Lands that no encroachment permit will be required for the float home reconfiguration that has been approved by the Board. The lessees were also successful in obtaining an amendment to Idaho Code § 67-4201 that authorizes the Department to issue float home leases for terms up to 30 years in length.

**REMAINING ISSUES TO BE DECIDED BY THE BOARD**

During negotiations with the lessees, several policy issues arose that require deliberation and decision by the Board. Those issues are as follows:

1. **Lease section 2.** The lessees request that Tim Green be granted an exemption from the provision requiring moorage sites to be limited to a single float home, in recognition of Mr. Greene's conversion of his boat garage to sleeping quarters.
2. **Lease section 4.3.** The lessees request that the rent remain at 3.75% throughout the lease term.

3. **Lease section 8.2.2.** The lessees request that reasonable discretion and flexibility be applied to the determination of whether failure to achieve a construction milestone is a breach of the lease.
4. **Lease sections 4.2.1, 11.1, 12.1.** The lessees requested that decisions on whether a breach has been cured, and the time allowed for removal of a float home upon termination, be made by the Board rather than the Director. **This request has since been withdrawn.**
5. **Section 11.** The lessees request that the time allowed for curing a lease violation be increased to 60 days.
6. **Section 16.** The lessees request that mandatory liability insurance coverage be reduced to a policy limit of \$500,000.

A letter from the lessee's attorney, John Magnuson, has been distributed to the Board. Mr. Magnuson's letter explains the rationale for the changes requested by the lessees.

**STAFF RECOMMENDATIONS:**

**After consideration of the legal, administrative, and practical issues raised by the lessee's requested changes, the Department Staff and legal counsel recommend that the Board take the following actions:**

1. **Lease section 2.** Lessee Tim Green's unauthorized conversion of a boat garage into living quarters should not be confirmed.
 

Rationale: Mr. Green's conversion of the boat garage violated lease terms explicitly requiring IDPR approval for any reconstruction work and providing that "No new garage or storage building will be used for any type of living accommodations." Park staff never approved the conversion. Mr. Green's situation is distinguished from that of the Chestnuts, in that there is paperwork suggesting that Park staff approved the Chestnuts' placement of two float homes on a single lease.
2. **Lease section 4.3.** Maintain lease terms providing the Board the flexibility necessary for the Board to return rental rates to their historic rate of 5% in 2020 or some later date.
 

Rationale: The current rate of 3.75% was adopted as a temporary response to the extraordinary recessionary conditions that existed at the time the current lease was adopted in 2009.
3. **Lease section 8.2.2.** Retain the construction milestones without change.
 

Rationale: No change is necessary to retain Board discretion to amend construction milestones. Lease Attachment D provides that "[t]he milestones are based upon conservative time frames but some processes, which are controlled by other entities, may require considering adjustments and Board approval." This provision adequately preserves the Board's authority to adjust the milestones if future circumstances justify such adjustment.
4. **Lease sections 4.2.1, 11.1, 12.1.** Authority to decide whether the breach of a lease term has been cured should remain with the Director.
 

Rationale: Historically, the discretion to make such determinations for all Department leases (cottage sites, float homes, trail encroachments and concessions) has been vested in the Director, given the impracticality of convening a Board meeting to make lease administration determinations. **The Lessees have withdrawn this request.**

5. **Section 11.** Retain the thirty day period for resolving breaches of lease terms.  
Rationale: The thirty day "cure" period has been a standard feature of the leases for decades and has never proven to be a problem, and changing it would create an inconsistency with existing cottage site, encroachment, and concession leases. .
6. **Section 16.** Staff recommends that the Board not deviate from Division of Risk Management recommendations for policy limits of \$1 million for any lease of state property.  
Rationale: Deviation from state insurance guidelines should only be done after consultation with the Division of Risk Management.



**STANDARD FLOAT HOME LEASE**  
**Lease No. \_\_\_\_\_**

LESSOR Name and Address: Idaho Department of Parks and Recreation  
PO Box 83720  
Boise ID 83720-0065

Lessee Name and Address: Lessee Name  
Address 1  
Address 2  
City, State, Zip

Lease Term: Commencement: January 1, 2015  
Expiration: See section 3.1, Attachment A.

Moorage Space: Hidden Lake Moorage Site No. \_\_\_\_\_, Heyburn State Park.

Rent: Initial rent is \$ 1,406 per year, subject to annual adjustment.  
See section 4, Attachment A.

Agreement: **IDPR, in consideration of the rent paid and the covenants, conditions and restrictions hereinafter set forth, in this Lease (including all Attachments), does hereby lease and demise unto Lessee the right to moor Lessee's Float Home within the above-identified Moorage Site for the uses and purposes specified herein.**

Liability Insurance: See Section 16, Attachment A.

Lease Index: LEASE DATA PAGE  
SIGNATURE PAGE

- ATTACHMENT A – LEASE PROVISIONS
- ATTACHMENT B – SITE MAP
- ATTACHMENT C -- CONSTRUCTION & MAINTENANCE STANDARDS
- ATTACHMENT D – SEWER CONSTRUCTION MILESTONES
- ATTACHMENT E – CONDITIONAL FLOAT HOME RECONFIGURATION PLAN  
(APPROVED BY IDPR ON NOVEMBER 13, 2013)
- ATTACHMENT F – LEASE-SPECIFIC TERMS AND CONDITIONS  
(applicable only to Leases 702 and 704)

**Comment [SWS1]:** Lessees request that Board authorize specific lease terms allowing Lessee Tim Greene to retain boat house that was converted to sleeping quarters 15 or 20 years ago. See Section 2.2.

This lease agreement (Lease), including the Lease Data Page, Signature Page and all Attachments (which are incorporated herein in their entirety) is made and entered into by and between IDPR and Lessee.

**IDPR SIGNATURE**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

SIGNED: IDAHO DEPARTMENT OF PARKS AND RECREATION

\_\_\_\_\_  
BY: Nancy Merrill, its Director

State of Idaho        )  
                              ):s  
County of Ada        )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, a Notary Public in and for said State, personally appeared NANCY MERRILL, known to me to be the director of the Idaho Department of Parks and Recreation, that executed the within instrument, and acknowledged to me that the Idaho Department of Parks and Recreation executed the same.

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

\_\_\_\_\_  
Notary Public for the State of Idaho  
Commission expires:

**Lessee SIGNATURES**

By signing, Lessee(s) verify receipt, review, and acceptance of all attachments and terms and conditions.

X \_\_\_\_\_ X \_\_\_\_\_  
(Lessee) (Lessee)

STATE OF \_\_\_\_\_ )  
                              ):s  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_ known to me to be the person(s) who executed the instrument as Lessee, and acknowledged to me that such person(s) executed the same.

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

\_\_\_\_\_  
Notary Public  
Commission expires:

## **Attachment A Lease Provisions**

1. **Definitions.** As used in this Lease, the terms set forth below have the following definitions:
  - 1.1. **Assignee.** A person who assumes a valid lease from a Lessee.
  - 1.2. **Assignment.** The IDPR-approved transfer of a valid lease from a current Lessee to a new Lessee.
  - 1.3. **Board.** The Idaho Park and Recreation Board, as established by Idaho Code §§ 67-4221 through 67-4223.
  - 1.4. **Boat Garage.** A floating structure with roof and walls, intended primarily for the storage of boats and other watercraft, with no living quarters. Any structure with living quarters or overnight accommodations qualifies as a float home for purposes of this lease.
  - 1.5. **Director.** The director and chief administrator of the Department of Parks and Recreation, or the designee of the director.
  - 1.6. **Float Home.** A floating moveable structure designed and built to be moored for use as a waterborne, recreational residential dwelling, along with related Moveable Personal Property including docks, ramps, floating walkways, and boat garages. Structures that rest upon, or require support from, submerged lands at summer-normal lake levels do not qualify as float homes for purposes of this lease.
  - 1.7. **IDPR.** The Idaho Department of Parks and Recreation, owner and Lessor of the Moorage Site. The terms "IDPR" and "Lessor" shall be used interchangeably in this Lease
  - 1.8. **Lease.** The contract defining the rights and duties of the parties regarding a float home located within Heyburn State Park. The term "Lease" is used for the sake of convenience and shall not be used to interpret or modify the rights granted by this instrument.
  - 1.9. **Lessee.** An individual or married couple who hold a valid lease for a float home site within Heyburn State Park. The term "Lessee" shall not include anyone other than a natural person.
  - 1.10. **Lessee-Owned Improvements.** Structures affixed upon uplands in compliance with restrictions in Attachment C, or pilings or other structures installed upon submerged lands by Lessee or a predecessor in interest, but excluding Moveable Personal Property as defined herein.
  - 1.11. **Moorage Site.** A designated location designed to accommodate Lessee's improvements and Moveable Personal Property. The Moorage Site that is the subject of this Lease is as depicted on Attachment B and includes the right to maintain all improvements and Moveable Personal Property lying waterward of the ordinary high water mark, and shoreline improvements as provided in Attachment C..
  - 1.12. **Moveable Personal Property.** Float homes, related structures such as docks, ramps, floating walkways and boat garages, and other personal property such as household goods and furnishings belonging to Lessee.

**1.13 Remove.** As applied to improvements and Moveable Personal Property, the term "remove" means to either re-locate the improvements and Moveable Personal Property to a location outside Heyburn State Park, or to dismantle and dispose of the improvements and Moveable Personal Property in a manner consistent with public health, public safety, and preservation of park resources.

**2. Use and Occupation of Moorage Site.** Lessee is hereby granted a lease allowing Lessee to moor a single Float Home and associated Moveable Personal Property within the designated Moorage Site. A single boat garage, if existing at the beginning of the lease term, may remain on the Moorage Site, but no new boat garages may be constructed or placed on the Moorage Site. The mooring of an additional float home or boat garage within the moorage space shall be deemed grounds for termination of this lease. The construction of additional living space within an existing boat garage shall be deemed grounds for termination of this lease.

**Comment [SWS2]:** Lessees request that exception be made for Tim Green (boat garage converted to sleeping quarters).

**2.1 Site Condition As-Is.** This Agreement is for the rental of only those rights necessary for the Lessee's continued maintenance of Lessee's improvements and Moveable Personal Property upon the Moorage Site. Lessee accepts the Moorage Site in its present condition with all faults or hazards, whether patent or latent, and without warranties or covenants, express or implied, as to the condition of the Moorage Site and any improvements thereon. The Moorage Site is to be used at the sole risk of the Lessee, and Lessee shall be solely responsible for injuries to persons or property occurring thereon.

**2.2 Float Home Condition.** Float Homes must be maintained in accordance with the terms and conditions in Attachment C, "Float Home Construction and Maintenance Standards."

**2.3 Recreational Use Only.** The Moorage Site is leased for recreational residence use only. Occupancy may be intermittent or seasonal but in no event shall the float home be occupied in excess of 185 days in any 365 day cycle. Commercial use of the Moorage Site for any purpose, including, but not limited to, rental of the Float Home or any portion thereof to any person, is prohibited, except as provided in section 5 (subleasing).

**2.4 Use Limited to Site.** Lessees shall confine all improvements, moveable personal property, boats, watercraft, and pets to the Moorage Site. No encroachment onto adjacent property, whether park property or another moorage site, is permitted, except as provided in Attachment C or, where applicable, Attachment F.

**2.5 Duty of Care.** Lessee shall maintain the Moorage Site in a clean and sanitary manner at all times, and upon termination of this Agreement shall surrender the Moorage Site to IDPR in as good a condition as when received.

**2.6 Public Access.** Lessee's use of the Moorage Site shall not preclude the right of the public to access and use the shoreline and navigable waters of Hidden Lake for recreational purposes; provided, that Lessee may exclude the public from Lessee's improvements and Moveable Personal Property.

**2.7 Ingress and Egress.** There is no vehicular access to Hidden Lake. Lessee may access the Moorage Site via watercraft or pedestrian trail.

**2.8 Boats and Watercraft.** No Lessee may keep more than two (2) boats or other motorized watercraft upon the Moorage Site.

**2.9 No IDPR Liability.** It is agreed that no bailment is created by this Agreement, and that IDPR shall not be liable or responsible for the care or protection of the Float Home or any

associated vessels, gear, equipment or contents, or for any loss or damage thereto, whatever the cause or nature; nor shall IDPR be liable for any injuries to person or property proximately caused by the use, presence, or condition of the Float Home within the Moorage Site. The provisions herein are intended solely to ensure the placement and use of the float homes is consistent with the general recreational purposes of Heyburn State Park; the health and safety of float home residents and visitors is the sole responsibility of the Lessee.

- 2.10 Other Permits.** The rights leased to Lessee include only the rights that IDPR possesses in the designated Moorage Site. IDPR is responsible for obtaining any necessary permits or leases required by the Idaho Department of Lands, Idaho Panhandle Health District, or local governments for the use and occupation of the Moorage Site.
- 2.11 Rules.** Lessees shall comply with all rules of the Idaho Department of Parks and Recreation. Nothing in this Lease shall be construed to exempt Lessee from compliance with all rules and regulations adopted by the Park and Recreation Board and applicable to other visitors of Heyburn State Park.
- 2.12 Reconfiguration of Moorage Sites.** On November 13, 2013, IDPR approved a Conceptual Relocation Plan that would modify the Moorage Sites of various Lessees, which may include the Moorage Site of Lessee as identified in Attachment B to this Lease. IDPR may require the Lessee to relocate to a new or different moorage site as necessary to achieve the configuration in the Conceptual Relocation Plan. Upon final reconfiguration or consolidation of the Moorage Sites in a manner consistent with the Conceptual Relocation Plan, no further reconfiguration of float homes will be required. The direct expense of relocating to a new or different moorage site shall be borne solely by Lessee. A diagram of the Conceptual Reconfiguration Plan of November 13, 2013, as referred to in this Section, is attached hereto as Attachment E.
- 2.13 No Additional Living Space.** All living space is to be confined to the single float home authorized to occupy the Moorage Site, subject to the exceptions in Attachment F, if applicable. No portion of a boat garage may be used for living space or sleeping quarters.
- 2.14 Destruction of Lessee-Owned Improvements.** In the event of the destruction of any Lessee-Owned Improvements or Moveable Personal Property by fire, natural disaster, or otherwise, Lessee shall be afforded a reasonable period of time within which to complete reconstruction of the same. Said reconstruction shall be at Lessee's sole cost and shall comply with the terms and conditions in Attachment C and the requirements of all applicable permitting authorities. Further, said reconstruction shall not expand or alter in any way the size, footprint, or lay-out of the Lessee's float home or boat garage.<sup>3</sup> **Lease Term.** The commencement and ending dates for the initial lease term are as designated in the Lease Data Page.
- 3.1 Term.** The term of this Lease shall expire on December 31 of the year in which the loan obtained by the Hidden Lake Float Home Owners Association for construction of the trunk line connecting the float homes to the Heyburn State Park Central Sewage Treatment System is either paid-off, forgiven, or otherwise retired; provided, that in the event such loan is not paid-off, forgiven, or otherwise retired earlier, this Lease will expire on December 31, 2034.
- 3.2 Renewal.** No right of renewal is implied or granted as part of this lease. The decision to offer to Lessee a new lease at the expiration of this lease is expressly reserved to the sole discretion of IDPR, upon terms to be decided by IDPR.

**3.3 Occupation after End of Lease Term.** If Lessee holds over after the end of the designated lease term without a new lease but with the express or implied consent of IDPR, such holding over shall be deemed to be a month-to-month tenancy otherwise subject to the terms of this Lease. Such month-to-month tenancy may not exceed a period of one (1) year.

**3.3.1** During any such month to month tenancy following the expiration of the lease term, Lessee shall remit to Lessor, by or on the tenth day of each month, rental in the amount of one-twelfth (1/12) the annual rent paid or due in the twelve months immediately preceding expiration of the term. IDPR may terminate the Lessee's month-to-month occupancy upon sixty (60) days' prior written notice to the Lessee.

**4. Payment.** In consideration of the rights granted herein, Lessee shall pay to IDPR the sum designated on the Data Page of this Agreement.

**4.1. Payment Schedule.**

**4.1.1 Annual Billing.** The annual billing shall be mailed to Lessee at Lessee's last known address on or before November 15 each year.

**4.1.2 Full Payment.** The Lessee may make payment in full on or before the first day of January of each year for the coming year.

**4.1.3 Optional Split Payment.** The Lessee may make a payment of one-half the amount due, plus a one-time \$200 split payment fee, on or before the first day of January of each year. The second one-half of the payment will be made on or before the first day of April of each year.

**4.2 Late Payment.** If for any reason annual rent is not paid in full by January 1 (or by April 1, if the first half of a split payment is received), IDPR may cause a Notice of Violation to be issued. Any such Notice of Violation shall be served upon Lessee by certified mail, return receipt requested and first class mail in conformity with the notice provisions of Section 23. Such Notice is deemed to be effective three (3) days after the date of mailing or as otherwise designated in the Notice.

**4.2.1 Opportunity to Cure.** Lessee shall have thirty (30) days from service of a Notice of Violation under Section 4.2 within which to cure or resolve the violation as noticed. The determination of whether or not a violation has been cured or resolved shall rest solely in the discretion of the Director. To cure or resolve a late payment that is thirty days late or less, Lessee must, in addition to paying the annual rent, pay a late payment fee of one-twentieth the annual rent, or fifty dollars, whichever is greater. The parties acknowledge and agree that the late payment fee is a reasonable attempt to estimate and to compensate IDPR for additional costs incurred by IDPR in administering such late payments and is not intended as a penalty. For each subsequent calendar month in which payment is not made, Lessee shall pay an additional late payment fee of one-twentieth the annual rent or fifty dollars, whichever is greater.

**4.2.2 Notice of Termination.** In the event Lessee fails to timely cure defaults noticed under Section 4.2 by a Notice of Violation, IDPR may issue a Notice of Termination to Lessee in conformity with the provisions of Section 11.

**4.3 Base Rate.** The base rate Lease payment for calendar years 2015-2019 was calculated as 3.75% of the established fair market value of the Moorage Site as if the property were held in

fee simple estate. The fair market value of the Site was determined by a certified appraiser prior to the execution of this Lease.

**4.4 Annual Adjustment.** On or around October 15 of each year, IDPR shall recalculate the annual rent by multiplying the previous year's rent by the unadjusted "Consumer Price Index, Urban, U.S. City Average, All Items," as published by the United States Bureau of Labor Statistics at [www.bls.gov/cpi/](http://www.bls.gov/cpi/) for the preceding twelve months. The annual billing prepared by IDPR shall reflect the re-calculated rent. Notwithstanding the foregoing, no annual base rate adjustment shall exceed five percent (5%) in any one year.

**4.5 2020 Rate Adjustment.** After January 1, 2020, the base rent shall be 5% of the fee simple value of the Moorage Site, unless the Park and Recreation Board determines to charge a lesser percentage; in no case shall the percentage charged be higher than the percentage charged to upland recreational residence sites within Heyburn State Park.

**Comment [SWS3]:** Lessees request that the 3.75% rate remain in place throughout the lease term.

**4.6 Five Year Appraisal.** On or before July 1, 2019, and every five years thereafter, the Lessor shall cause the market value of the Moorage Site to be determined by an Idaho-certified general appraiser. The market value shall be determined as if the Moorage Site were being offered for sale at fee simple value.

**4.6.1 Appeal Rights With Respect to Appraisal.** If, after correction of any factual or calculation errors in the appraisal report, the Lessee disagrees with the appraised value, Lessee may obtain an independent appraisal of Lessee's Moorage Site from an Idaho-certified general appraiser. Lessee shall be responsible for paying the costs of such appraisal. The appraiser shall prepare the appraisal using the same Scope of Work and Appraisal Instructions provided to the first appraiser by IDPR. If the difference in value between the two appraisals is 10% or less, the difference shall be split, and that value will be the final appraised value for the purpose of calculating rent. If the difference between the two appraised values is greater than 10%, then the two appraisals will be referred to a third appraiser for review under Standard 3 of the Uniform Standards of Professional Appraisal Practice. The third appraiser shall be requested to reconcile the two values using the data and analysis in the first two appraisals. The value determined by the third appraiser shall be final and cannot be appealed to, or reviewed by, the Park and Recreation Board. The third appraiser shall be selected by Lessor, and the cost of the third appraiser shall be split between Lessor and Lessee, with Lessee required to deposit Lessee's share of the cost with the Lessor prior to engaging the third appraiser.

**5. Subleasing.** Lessee may sublease the Moorage Site with the written consent of IDPR. A sublease does not transfer to the sublessee the Lessee's responsibilities for compliance with the terms and conditions of this Lease; Lessee remains responsible for all terms of this lease agreement. Any attempt to sublease a Moorage Site without the written consent of IDPR shall be void, and shall constitute a breach of this lease.

**5.1. No rental.** Subleasing shall be the sole means of authorizing use of the Moorage Site by anyone other than Lessee and immediate family members. Short term rental of the Moorage Site or any use of the Moorage Site by persons other than Lessee in return for monetary or other payment to Lessee is specifically prohibited and shall be cause for immediate termination of this Lease.

**5.2** Sublease of the Moorage Site is limited to one time per calendar year. The term of any sublease shall be twelve months or less.

- 5.3 Moorage Sites and Float Homes are not commercial enterprises and subleasing rates shall not reflect a profit to Lessee. In any calendar year lessee cannot sublease for more than the total annual lease payment (including utilities) plus five percent (5%) of the appraised value of Lessee's improvements and moveable personal property as established by the Benewah County Assessor.
- 5.4 Sublessees are subject to all the terms of this Lease. Sublease agreements shall include provisions requiring the sublessee to abide by all terms in this Lease.
- 5.5 The Director may impose additional requirements as a condition of approving the sublease agreement.
- 5.6 Applications to sublease a Moorage Site must be submitted to IDPR at least two weeks in advance of any sublease.

## 6. Assignment.

- 6.1 **Approval Required.** Lessee shall not assign this Lease without first having obtained the written consent of IDPR. Any assignment of this Lease without the written consent of IDPR shall be void and shall be a breach of this Lease, resulting in termination. If Lessee purports to assign this Lease without the written consent of IDPR, Lessee shall retain all of the rights, duties, and responsibilities imposed by the terms of this Lease.
- 6.2 **Required Documentation.** The following items shall be provided to IDPR by a Lessee seeking to assign this Lease:
  - 6.2.1 **Application for Assignment.** Application for assignment of a Lease shall be made on forms available from IDPR. Applications shall be complete and contain all information requested on the form.
  - 6.2.2 **Assignment Fee.** Any Application for Assignment of Lease shall be accompanied by a processing fee of ten percent (10%) of the latest annual rental, or \$25.00, whichever is greater.
- 6.3 **Deficiencies.** All rental payments and other charges owed to IDPR shall be paid and all deficiencies shall be cured before IDPR will approve an application for assignment.
- 6.4 **Action on Application.** IDPR shall approve or deny an application for assignment of this Lease within thirty (30) days of receipt of a completed application. Approval of any such assignment shall not be unreasonably withheld or conditioned.
- 6.5 **Conditions.** Assignees are subject to all the terms of the Lease and such other conditions as the Director may impose as a condition of approving the application for assignment.
- 6.6 **Board Approval.** Final Board approval of an assignment is deemed to occur after the application for assignment has been approved by the Director or the Director's designee.

## 7. Utilities.

- 7.1 **Trash.** Domestic trash, excluding toxic and hazardous materials, landscape and construction materials, may be placed in the trash receptacles provided at designated locations in Heyburn State Park. All other trash shall be removed from the park and disposed of in conformity with all applicable federal, state and local laws and regulations.

- 7.2 **Fees.** A fee of \$73.50 per year shall be assessed against each float home lease to cover the costs of trash collection. A fee of \$59.56 per year shall be assessed against each float home lease for off-site access to the water system in Heyburn State Park. Changes in the trash collection and water access fee will be reflected in the annual billing.
- 7.3 **Other Utilities.** Lessee will arrange with utility providers for electricity and all other utilities and services supplied to Moorage Site or to Lessee. Lessee is responsible for all payments to utility providers.

**8. Sewage and Waste Water.**

- 8.1 **Interim Provisions.** Pending connection of the float homes to the Heyburn State Park Central Sewage Treatment System, Lessee shall dispose of all sewage in conformity with the requirements of the Panhandle Health District as set forth in the Sewer Management Agreement dated March 3, 2009.

**Comment [SoI4]:** Date will be updated once new SMA is completed.

- 8.2 **Connection to Central Sewage Treatment System.** The continued occupation of the float homes requires a permanent connection of the float homes to the Heyburn State Park Central Sewage Treatment System, including, but not limited to, (1) construction and maintenance of a trunk line from Hidden Lake to the connection point at Chatcolet and (2) connection of each float home to the trunk line. IDPR and Lessee acknowledge that collective efforts on behalf of the Float Home Lessees are underway to finance and construct the trunk line, at the cost of the Lessees, in a manner that complies with the requirements of IDPR and IDEQ. Said trunk line and related sewer facilities, excluding connections and lateral lines servicing individual float homes, shall be transferred to IDPR upon completion, certification, inspection, and acceptance by IDPR. All costs associated with construction of the trunk line and individual connections shall be borne by the lessees. Proof of lessees' ability to construct the trunk line and all associated facilities and equipment is a condition precedent to this Lease. Failure to maintain the trunk line and all associated equipment in good working order prior to the transfer and conveyance of the same to IDPR, and IDPR's acceptance of said transfer and conveyance, shall constitute grounds for the issuance of a Notice of Violation hereunder.

- 8.2.1 **Resolution of Notice of Violation.** Any Notice of Violation given under Section 8.2 shall be noticed to the Lessee's designated representative (the Hidden Lake Float Home Association, Inc.) and to Lessee. Any such Notice of Violation shall be subject to the notice provisions of Section 23 and the Lessee's opportunity to dispute or cure the violation as set forth in Section 11.

- 8.2.2 **Construction Timeline.** The Float Home Lessees must comply with the construction milestones set forth in Attachment D, which by this reference is incorporated into this Lease as if expressly set forth herein. Failure to achieve a construction milestone is deemed to be a breach of this Lease and shall be cause for issuance of a Notice of Violation, unless such breach is waived by Lessor. Any such Notice of Violation shall be subject to the notice provisions of Section 23 and the Lessee's opportunity to dispute or cure the violation as set forth in Section 11.

**Comment [SWS5]:** Lessees request flexibility in deadlines. Board direction is that any failure to comply with the timeline shall be deemed a breach, but Attachment D allows for Board modification of milestones if circumstances so require.

- 8.3 **Operations and Maintenance.** Upon acceptance by IDPR, IDPR shall be responsible for operating and maintaining the trunk line and related sewer facilities. Lessee shall own the lateral sewage disposal line from Lessee's float home to the trunk line and any associated connections, and shall be responsible for all costs associated with the maintenance and repair of the lateral trunk line and associated connections. Maintenance of the connection

and lateral sewage disposal line shall comply with all applicable laws and regulations, including but not limited to Panhandle Health District and Idaho Department of Lands rules governing float home sewage connections.

**8.4 Annual Sewage Fee.** Pending completion of the trunk line connecting the float homes to the Heyburn State Park Central Sewage Treatment System, Lessee shall pay a sewage treatment fee of \$307.00 per year to cover the costs of treating grey water disposed by the float home Lessees. Said fee shall be calculated as one-half the fee charged to the land based cabins in Heyburn State Park. Upon completion of the trunk line, and full connection to the Heyburn State Park Central Sewage Treatment System, an annual sewage treatment fee shall be assessed against each Float Home Lessee. Said fee shall be the same fee charged to the land based cabin Lessees at Heyburn State Park. The sewage fee is subject to annual adjustments at the discretion of IDPR. Changes in the sewage fee will be reflected in the annual billing. Sewage fees may also be adjusted by IDPR in the event the sewage disposal system is expanded, improved, or upgraded. Lessee acknowledges and agrees that such adjustments may include a one-time fee reflecting Lessee's fair share of sewage system construction or reconstruction costs.

**9. Burning Prohibited.** Lessee may not burn material of any type or nature outside of a stove or fireplace without the prior written consent of IDPR. Barbecue devices, designed for use outdoors, are permitted.

**10. Relocation and Consolidation.**

**10.1 Relocation and Consolidation.** All Float Home Lessees must comply with the float home configuration plan adopted by the Board on November 13, 2013 (a copy of which is attached hereto as Attachment E). If Lessee's Moorage Site is not the same as assigned to Lessee in previous leases, Lessee shall have until December 31, 2016, to relocate Lessee's improvements and moveable personal property to the Moorage Site assigned in this Lease. Lessee shall pay the costs of such relocation. Notwithstanding the foregoing provision or any other term or provision herein, Lessee shall not be required to relocate Lessee's improvements and Moveable Personal Property in a manner compliant with the Float Home Configuration Plan described herein until the sewage trunk line and related improvements described in Section 8.2 are completed and accepted by IDPR. In the event of a delay between the completion and acceptance of said improvements, so as to cause the inability of Lessee to relocate his or her Improvements and Moveable Personal Property by December 31, 2016, Lessee shall request a definite and discreet extension of time of the IDPR Board, at least one hundred twenty (120) days in advance of December 31, 2016. IDPR's Board may grant an extension of time within which to relocate the Float Homes in a manner compliant with the Float Home Configuration Plan (Attachment E) based upon the then-existing progress of the Float Home Lessees in constructing the sewage trunk line and related improvements and further given the recommendation and position of the Idaho Department of Environmental Quality.

**10.2 Relocation and Consolidation During Lease Term.** In the event that some Lessees voluntarily terminate their leases during the Lease term described herein, and in the further event that Lessee has not already relocated with IDPR's approval in a manner compliant with the Float Home Configuration Plan (Attachment E), IDPR retains the right to re-assign Lessee to another Moorage Site in order to meet IDPR's goal of consolidating the float homes within Hidden Lake to maximize recreational opportunities for park users. Lessee shall pay the costs of such relocation under said circumstances.

## 11. Breach and Termination.

**11.1 Violations.** Any material violation by Lessee or any agent of Lessee (including sub-lessees) of any term of this Lease, or any violation of any rule or regulation now in force or hereafter adopted by the Board, shall be grounds for issuance of a Notice of Violation. Failure of the Float Home Lessees collectively to achieve any action or objective described herein as a "condition precedent" by the date stated shall be considered a material violation of this Lease, whether or not such failure is due to the action or inaction of the individual Lessee executing this Lease. The determination of whether a violation constitutes a material violation subjecting this Lease to termination shall rest solely in the discretion of IDPR. Notwithstanding the foregoing, any decision of IDPR that a violation constitutes a material violation subjecting the Lease to termination shall be subject to Lessee's right to dispute or cure said violation under Section 11.2. Further, IDPR's exercise of discretion shall take into account such information as is provided by Lessee and, where applicable, such information as may be provided by the Idaho Department of Environmental Quality.

**11.2 Notice of Violation.** IDPR shall provide written notice to Lessee of any lease or rule violation and shall allow Lessee thirty (30) days from service of the notice to cure the violation. Alternatively, Lessee may dispute the Notice of Violation by setting forth facts supporting Lessee's assertion that no violation of the Lease has occurred. IDPR shall take such facts into consideration in determining, in its discretion, whether a violation constitutes a material violation subjecting this Lease to termination.

**Comment [SWS6]:** Lessees request that they be given 60 days to cure violations other than non-payment of rent.

11.2.1 Simultaneous with notice to the Lessee, a Notice of Violation shall be sent to the Hidden Lake Float Home Association, Inc.

**11.3 Notice of Termination.** In the event Lessee fails to timely cure defaults identified in a Notice of Violation, IDPR may give a Notice of Termination to Lessee in conformity with the notice provisions of Section 23. Such notice shall be deemed effective three (3) days after the date of mailing or as otherwise designated in the Notice.

**11.4 Effect of Termination.** Lessee acknowledges that Lessee's right to use and occupy the Moorage Site is fully defined by this Lease and that it has no right of use and occupation, or any other property interest in the Moorage Site, either explicit or implied, except as expressly set forth in this Lease. In the event of the giving of a Notice of Termination under this Section, any Float Home moored after the effective date of such notice will be considered to be in trespass and Lessee shall immediately remove the Float Home, improvements, and Moveable Personal Property from Heyburn State Park. If Lessee fails to remove the Float Home, improvements, and Moveable Personal Property within twenty-one (21) days of receiving a Notice of Termination, IDPR shall cause such Float Home, improvements, and other Moveable Personal Property to be removed from the Moorage Site at Lessee's risk and expense and retake possession of the Moorage Site. Lessee covenants to reimburse IDPR for all costs associated with storage of the Float Home, improvements, and Moveable Personal Property after removal by IDPR, and acknowledges that such covenant shall survive the termination of this Lease.

**11.5 Administrative Fees.** Prior to the termination, Lessee may elect to pay IDPR's administrative costs associated with enforcing the terms of this lease, and IDPR may agree to accept payment of such costs in lieu of termination for each day that such violation went uncorrected over and beyond the thirty day grace period provided in section 11.2 of this Lease. IDPR and Lessee agree that such administrative costs are fixed at fifty dollars (\$50)

for each day that the violation goes uncorrected, up to a maximum of one thousand, five hundred dollars (\$1,500).

- 11.6 Reinstatement of Lease.** Not later than thirty (30) days following the termination of this Lease for cause, the Lessee may submit to IDPR a written request for reinstatement setting forth good cause why the lease should be reinstated. At the Director's discretion, a terminated lease may be reinstated upon the payment of a reinstatement fee of four hundred dollars (\$400), and upon such other terms and conditions as the Director deems appropriate.
- 11.7 Voluntary Termination.** Lessee may elect to terminate this Lease at any time. Such termination is effective upon notice to IDPR.
- 11.7 Sewage Trunk Line.** In the event of termination of this Lease for cause, nothing in this Lease shall be construed to obligate IDPR to assume or pay any outstanding loan obligation of Lessee relating to construction of the sewage trunk line described in section 8.2.
- 12. Removal of Improvements Upon Termination.** In the event of termination of this Lease for any reason, including but not limited to expiration of its term, voluntary termination by Lessee, or termination by IDPR for cause pursuant to other provisions of this Lease, Lessee shall dispose of all Lessee-Owned improvements and Moveable Personal Property as follows, unless IDPR offers a new lease that is accepted by Lessee:
- 12.1 Removal.** Lessee shall remove all Moveable Personal Property and Lessee-Owned Improvements (if any) from the Moorage Site within ninety (90) days of termination, with Lessee paying all costs of removal. For good cause shown, Lessee may obtain an additional ninety (90) days within which to accomplish the removal required hereunder. Said determination shall be made by the Director of IDPR in her or his discretion.
- 12.2 Restoration.** Lessee shall restore the Moorage Site as nearly as reasonably practical to its natural condition, with Lessee paying all costs of restoration.
- 12.3 Failure to Remove or Restore.** If Lessee fails to remove all Lessee-Owned Improvements and Moveable Personal Property, or to restore the Moorage Site within ninety (90) days of termination or such later date as may be approved by IDPR's Director, IDPR retains the right to do so and to bill Lessee for all expenses occurred in such removal and restoration. Lessee covenants to reimburse IDPR for all such expenses, and acknowledges that such covenant shall survive the termination of this Lease.
- 12.4** The above provisions shall apply to all Lessee-Owned Improvements and Moveable Personal Property, regardless of whether such improvements or Moveable Personal Property were constructed or placed with the approval of IDPR.
- 13. Taxes, Assessments and Fees.** Unless otherwise provided, Lessee shall pay all taxes, assessments and fees of whatsoever nature that may be legally levied or assessed against all Lessee-owned Improvements and Moveable Personal Property.
- 14. Liens and Mortgages.**
- 14.1. Liens.** Lessee shall not permit or suffer any liens of any kind to be effected on or enforced against the Moorage Site, including but not limited to, any mechanics' liens or material suppliers' liens for any work done or materials furnished on the Moorage Site at Lessee's instance or request. Lessee shall ensure that full payment is made for any and all materials

joined or affixed to the Moorage Site pursuant to this Lease and for any and all persons who perform labor on the Moorage Site.

**14.2. Leasehold Mortgage.** Lessee shall not allow any mortgage, deed of trust or security interest, lien, encumbrance or other similar instrument or transaction ("Leasehold Mortgage"), to be filed or recorded without first obtaining IDPR's prior written consent therefor, which consent shall not be unreasonably withheld or conditioned. Any Leasehold Mortgage may only encumber Lessee's leasehold interest in this Lease and/or Lessee's interest in any improvements or moveable personal property owned by Lessee. The Leasehold Mortgage shall terminate upon the termination of this Lease for any reason, and such Leasehold Mortgage shall not encumber or require subordination of IDPR's title or rights to the Moorage Site. In the event Lessee breaches its obligations under this Lease, Lessee agrees to provide the holder of such Leasehold Mortgage ("Lienholder") with a copy of any Notice of Breach and/or Notice of Termination provided by IDPR to Lessee. Lienholder shall have the right to cure any default or breach specified in the Notice of Breach or Notice of Termination during the same time allowed to Lessee or within thirty (30) days after the receipt of said notice by the Lienholder, whichever is greater. Upon the termination of this Lease for any reason, the Leasehold Mortgage shall terminate and Lessee shall immediately acquire the written release in recordable form (and record and/or file the same in any office as may be required) to effect the release of any Leasehold Mortgage or lien of any kind affecting any interest of Lessee in the Lease, the Moorage Site, and/or in any Lessee-owned improvements or Moveable Personal Property thereon. Lienholder shall acknowledge this requirement in the Leasehold Mortgage, and shall, upon the execution of a Leasehold Mortgage involving Lessee or this Lease, agree to, and shall, immediately release any Leasehold Mortgage upon the termination of this Lease.

**14.3 Acknowledgment of Security Rights of Hidden Lake Float Home Association, Inc.** Lessee acknowledges that the Hidden Lake Float Home Association, Inc. ("the Association") is the applicant for financing and approval from DEQ with respect to the sewer and trunk line improvements described in Section 8 herein. Lessee and IDPR acknowledge that the Association, as a condition of any agreement with Lessee and DEQ, will require the right to lien Lessee's Moveable Personal Property and Lessee's interest under this Lease. Said lien rights shall be exercisable only on a failure on the part of Lessee to make payments towards any assessments, costs, or fees proratably due from Lessee to DEQ or any financing arranged by or through DEQ with respect to said sewer improvements. IDPR acknowledges that in the event the Association claims a lien in the Lessee's interests under this Lease or in Lessee's Moveable Personal Property, that the Association shall promptly notify IDPR of the same and that the Association shall have the same rights and remedies as an approved Leasehold Mortgage Holder (as defined in Section 14.2 above).

**15. Indemnification.** Lessee shall indemnify, defend, and save harmless IDPR, its officers, agents and employees from and against any and all liability, claims, actions, damage, costs, expenses and losses caused by or arising out of the performance, acts or omissions of the Lessee, including Lessee's agents, contractors, employees, licenses and invitees, or otherwise arising out of Lessee's use of the Moorage Site, or arising from the failure of Lessee to comply with any applicable state, federal or local statutes, rules or regulations. Nothing contained herein shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby expressly reserved.

**16. Insurance.** Lessee shall obtain and maintain either general liability or homeowner's insurance, as applicable, and, if necessary, umbrella liability insurance with a combined limit of not less than one million dollars (\$1,000,000.00) to cover liability for bodily injury, property damage and personal injury, arising from Lessee's use of the Moorage Site.

**Comment [SW57]:** Lessees request that the liability coverage be reduced to \$500,000. Risk Management guidelines require \$1,000,000 general liability coverage for the lease of state facilities. Deviation from Risk Management guidelines requires Board approval.

- 16.1 Evidence of Insurance.** All insurance required under this Lease shall be with companies licensed and admitted in Idaho. Within 15 days of signing this Lease, Lessee shall furnish IDPR with a certificate of insurance executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth above and naming the Idaho Department of Parks and Recreation and the State of Idaho as additional insureds. A copy of the additional insured endorsement will be attached to the Certificate.
- 16.2** Failure of IDPR to demand such certificate or other evidence of full compliance with these insurance requirements shall not be construed as a waiver of Lessee's obligation to maintain such insurance.
- 16.3** Failure to maintain the required insurance may result in termination of this Lease. Any such termination shall be preceded by the issuance of a Notice of Violation and shall be subject to the timelines set forth in Section 11.
- 16.4** Lessee shall pay all policy premiums annually in advance, for each of the insurance policies required under the terms of this Lease. Lessee shall deliver to IDPR evidence of such payment in conjunction with each annual payment of this Lease, before the payment of any insurance premiums become in default.
- 17. Officials, Agents and Employees of Lessee Not Personally Liable.** It is agreed by and between the Parties that in no event shall any official, officer, employee or agent of the State of Idaho be in any way liable or responsible for any covenant or agreement contained in this Lease, express or implied, nor for any statement, representation or warranty made in or in any way connected with this Lease or the Premises. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of the State of Idaho shall have any personal liability or responsibility under this Lease, and the sole responsibility and liability for the performance of this Lease and all of the provisions and covenants contained in this Lease shall rest in and be vested with the State of Idaho.
- 18. Heirs and Assigns.** The terms of this Lease shall apply to the heirs, executors, administrators, successors and assigns of both IDPR and the Lessee in like manner as to the original parties.
- 19. Severability.** If any term or provision of this Lease is held by the courts to be illegal or in conflict with any existing law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be continued and enforced as if the invalid term or provision were not contained in this Lease.
- 20. Complete Statement of Terms.** No other understanding, whether oral or written, whether made prior to or contemporaneously with this Lease, shall be deemed to enlarge, limit or otherwise affect the operation of this Lease. All rights of Lessee and the legal relations of IDPR and Lessee are defined herein and no rights not specifically identified herein are intended.
- 21. Written Modification.** No modification, release, discharge, change, or waiver of any provision hereof shall be of any force, effect, or value unless it is in writing and signed by both parties to this Lease. Any such modification shall be attached hereto as an addendum and incorporated by herein reference.
- 22. Title.** IDPR makes no representation or warranty whatsoever with respect to its title to said leased Premises, and in the event Lessee is divested of its leasehold or otherwise suffers harm as a result of deficiency or loss of IDPR's title, no liability shall be incurred by virtue of this Lease for any loss

or damage to Lessee, nor shall any claim for refund of rent theretofore paid be made by Lessee, its successors or assigns.

23. **Notices.** Any notice given under the terms of this Lease shall be deemed given and delivered when personally delivered or if mailed, the date same is deposited in the United States Mail, and mailed by regular or certified mail, postage prepaid and properly addressed to the appropriate party. Notices to Lessee shall be addressed to Lessee at the address designated in Section 1 of this Lease. Lessee is responsible for notifying IDPR of any change of address. Notices to IDPR shall be addressed to IDPR at:

Heyburn State Park  
57 Chatcolet Road  
Plummer, ID 83851

or

Idaho Department of Parks and Recreation  
North Region Office  
2750 Kathleen Avenue, Suite 1  
Coeur d'Alene, ID 83815

24. **IDPR Consent.** Whenever any action by Lessee requires IDPR's consent pursuant to a provision in this Lease, IDPR's consent to such action shall be strictly construed to apply to the specific action to which such consent applied, and not to imply consent to any similar or subsequent actions by Lessee. Consent of IDPR to any action of Lessee must be explicit; no provision in this Lease shall be construed to allow consent by omission.
25. **Waiver.** The waiver by IDPR of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of any past, present or future breach of the same or any other term, covenant or condition of this Lease. The acceptance of rent by IDPR hereunder shall not be construed to be a waiver of any violation of the term(s) of this Lease. No payment by the Lessee of a lesser amount than shall be due according to the terms of this Lease shall be deemed or construed to be other than a part payment on account of the most recent rent due, nor shall any endorsement or statement of any check or letter accompanying any payment be deemed to create an accord and satisfaction.
26. **Compliance with Laws and IDPR Rules.** Lessee shall comply with all applicable federal, state and local laws, regulations, orders and agreements that govern activities within Heyburn State Park and upon the navigable waters of the State of Idaho. .
27. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Idaho.
28. **Non-Discrimination.** Lessee shall not discriminate against any person because of race, creed, religion, color, sex, national origin or disability.
29. **Authority to Sign.** Lessee and IDPR each warrant and represent to the other that the persons signing this Lease have full authority and right to bind their respective parties to the terms of this Lease and that such person is acting within the scope of such person's authority and agency.

**Lease Attachment B**  
**SITE MAP**

Map: (see attachment)

## **Lease Attachment C**

### **FLOAT HOME CONSTRUCTION AND MAINTENANCE STANDARDS**

1. **Construction and Reconstruction.** Lessee must obtain a Heyburn State Park Float Home Construction Permit prior to any construction or reconstruction of improvements, float homes, or any related moveable personal property including docks, ramps, walkways, and boat garages. Applications for Construction Permits may be obtained from the park manager. Applications should be submitted at least thirty (30) days before the anticipated start of construction. No construction shall occur prior to issuance of a Construction Permit by the park manager.
  - 1.1 **Plans.** Detailed plans are required for construction or reconstruction of float homes, docks, walkways, ramps and boat garages. Licensed architectural or detailed construction drawings will be required for major construction or reconstruction.
  - 1.2 **Additions.** No requests for construction of additional stories for a float home or boat garage will be considered. No requests that result in expansion of the exterior dimensions of a float home or boat garage will be considered. No requests to construct living quarters within a boat garage will be considered.
  - 1.3 **Ramps, Docks and Boat Garages.** No requests for construction of new boat garages will be considered. Existing boat garages may be retained so long as they are maintained in good condition. Ramps, docks, and boat garages may not extend beyond the boundaries of the float home moorage site. Docks will be maintained at the minimum length necessary for mooring of boats or other watercraft.
  - 1.4 **Outbuildings.** No requests for construction of new outbuildings on adjacent upland property will be considered except as provided in section 2.5 of this Attachment C..
  - 1.5 **Reconstruction.** In the event that a float home is destroyed, and Lessee does not reconstruct said Float Home, the Lessee is responsible for salvage, clean up, and restoration of the float home moorage site. Following restoration of the site, the Lessee will receive a pro-rata refund of the annual lease payment, calculated from the date of destruction.
  - 1.6 **Time for Completion.** All exterior building construction is to be completed within twelve (12) months of the issuance of the construction permit.
  - 1.7 **Unauthorized Improvements.** The construction, placement, or erection of any structures, improvements, or other alterations without the prior written consent of IDPR shall constitute a breach of this Lease. At its discretion, the Board may terminate the Lease or require removal of the structure, improvement, or alteration.
  - 1.8 **Building Permits.** In addition to the Heyburn State Park Float Home Construction Permit, Lessee is responsible for obtaining all necessary state and local building permits before engaging in any construction or reconstruction.
2. **Maintenance of Float Homes.** Lessee shall maintain float homes, boat garages, docks, ramps, and floating walkways to minimize fire and safety hazards, protect park resources, and to provide a natural, but managed appearance. Lessees must maintain float homes with sensitivity to the fact that their float homes are located in a public park with historical, cultural, and natural amenities which are valued by visitors and residents alike. Visual impacts of float homes must be minimized by the use of muted natural colors and maintenance of the float home in ways that minimize the intrusiveness of the structure.
  - 2.1 **Roofing Material.** Any new or replacement roof shall be constructed of baked-on enamel metal. Baked-on enamel roofing should be of an earth-tone color, preferably dark brown or dark green. A palate of acceptable colors is available at the park office; other colors will require the prior written approval of IDPR.

- 2.2 Exterior Colors.** The exterior color of float homes, boat garages, and outbuildings should harmonize with the surrounding landscape. Strong contrasts between the trim and exterior color should be avoided. Earth-tones and forest colors which blend in with the surroundings are ideal. Browns, greens, whites and grays are recommended. A palate of acceptable colors is available at the park office; other colors will require the prior written approval of IDPR.
- 2.3 Satellite and TV Antennas.** Satellite antenna receiver dishes three (3) feet or less in diameter are permitted. To the extent possible, they should be located so as to minimize their visibility from public areas. Other external television aerial antennas are not permitted.
- 2.4 Buoyancy.** Float homes shall be maintained to ensure sufficient buoyancy to allow relocation of the float home to another moorage site should IDPR require relocation pursuant to the terms of this agreement. Float homes and docks must be maintained to keep all decking at least six inches above the water during normal use.
- 2.5 Upland Improvements.** Adjacent upland property will be left in its natural state; provided, that Lessee may have sewage and utility connections, including any utility service connections, meters, or other facilities on or above the shoreline of Hidden Lake, and one on-shore storage structure no larger than the following dimensions; eight feet wide by eight feet long by six feet in height or less. Storage sheds shall have either natural wood siding or wooden siding stained in an earth-tone color consistent with the natural surroundings. Existing improvements that do not conform to the above dimensions must be removed by December 31, 2016 with the exception of on-shore gray-water holding tanks, which shall be removed within sixty (60) days of the completion of the trunk line connecting the float homes to the Heyburn State Park Central Sewage Treatment System. Lessee shall not remove vegetation, including trees, from uplands without the prior written consent of Lessor.
- 3. Moorage Site Conditions.** Float homes moorage sites shall be kept at all times in a clean and sanitary condition, free of trash, garbage, litter and unused or discarded household items. Firewood storage should be confined to one location, away from the float home. Roofs should be kept clear of all debris and needles on a regular basis to minimize fire hazard.

**Lease Attachment D**  
**FINANCIAL, PERMITTING, RELOCATION AND WASTEWATER**  
**COLLECTION SYSTEM CONSTRUCTION MILESTONES**

<u>Completion Dates</u>	<u>Milestones</u>
5-1-14	<p>DRAFT SEWER PLAN DEVELOPED; IDAHO DEPARTMENT OF LANDS (IDL) PERMIT OBTAINED; PANHANDLE HEALTH DISTRICT (PHD) SEWER MANAGEMENT AGREEMENT AMENDED</p> <ul style="list-style-type: none"> <li>✓ Draft facility/connection plan developed.</li> <li>✓ Submission to and approval of marina encroachment permit by IDL (costs paid by lessees).</li> <li>✓ Amendment of Sewer Management Agreement with PHD</li> </ul> <p>Note: Agreement requires float homes to be removed by 12-31-16 if not connected to central system.</p>
12-31-14	<p>NEW LEASE DEVELOPED AND SIGNED</p> <ul style="list-style-type: none"> <li>✓ Development and issuance of new lease addressing Board approved requirements and milestones.</li> <li>✓ Signed leases returned to Heyburn State Park.</li> </ul>
7-31-15	<p>FINANCIAL COMMITMENTS FOR SEWER DEVELOPMENT &amp; IDL PERMIT REQUIREMENTS</p> <ul style="list-style-type: none"> <li>✓ Proof of financial commitment by Float Home Association to pay for any improvements required by IDL.</li> <li>✓ Acquisition of DEQ grant, loan, or other financing to construct sewer connection.</li> <li>✓ Proof of financial commitment/capability by Float Home Association to construct, operate, and maintain connection.</li> </ul> <p>Note: IDAPA 58.01.12.101 requires applicant for water pollution control loan to demonstrate and certify "that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan."</p>
12-31-15	<p>SEWER PLAN FINALIZED; IDPR, DEQ, PHD APPROVED; PERMITS ACQUIRED</p> <ul style="list-style-type: none"> <li>✓ Final facility/connection plan with cost estimate completed.</li> <li>✓ Approval of facility/connection plan by DEQ PHD and IDPR.</li> <li>✓ All associated sewer system permits obtained.</li> </ul>
12-31-16	<p>ALL CONSTRUCTION, FLOAT HOME RELOCATION/RE-FLOATATION, SHORELINE IMPROVEMENT REMOVALS COMPLETED</p> <ul style="list-style-type: none"> <li>✓ Construction of trunk line and float home connections.</li> <li>✓ Construction of marina improvements required by IDL encroachment permit.</li> <li>✓ Relocation of float homes.</li> <li>✓ Removal of all shoreline improvements other than electrical and utility service connections.</li> </ul>
2017-2047	<p>ANNUAL PAYMENT OF LOAN PRINCIPAL AND INTEREST</p> <ul style="list-style-type: none"> <li>✓ After May 31, 2017, the Association must submit proof of annual payment of loan principal and interest to DEQ. Failure to make any annual payment shall be cause for termination of this Lease. Suspension or termination of loan contract by DEQ pursuant to IDAPA 58.01.12.080 will result in immediate termination of this Lease.</li> </ul>

7-31-47

FUNDING REPAYMENT OR FORGIVENESS COMPLETED

- ✓ Proof of DEQ loan repayment and/or forgiveness.
- ✓ Suspension or termination of loan contract by DEQ pursuant to IDAPA 58.01.12.080 will result in immediate termination of float home leases.

*NOTES: The milestones are based upon conservative time frames but some processes, which are controlled by other entities, may require considering adjustments and Board approval.*

**Lease Attachment E**  
**Float Home Reconfiguration Plan**

(see attached form)

JOHN F. MAGNUSON  
ATTORNEY AT LAW

ADMITTED IN IDAHO AND WASHINGTON

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SUITE A  
COEUR D'ALENE  
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May 8, 2014

VIA E-MAIL: [nancy.merrill@idpr.idaho.gov](mailto:nancy.merrill@idpr.idaho.gov)

VIA E-MAIL: [steve.strack@ag.idaho.gov](mailto:steve.strack@ag.idaho.gov)

Nancy Merrill, Director  
Idaho Department of Parks & Recreation  
5657 Warm Springs Avenue  
Boise, ID 83716-8700

VIA E-MAIL: [dwhite@idpr.idaho.gov](mailto:dwhite@idpr.idaho.gov)

David E. White  
North Region Manager  
Idaho Department of Parks & Recreation  
2885 Kathleen Avenue, Ste. 1  
Coeur d'Alene, ID 83815

Idaho Attorney General  
Attn: Steven W. Strack  
Deputy Attorney General  
Natural Resources Division  
P.O. Box 83720  
700 W. State Street  
Joe R. Williams Building, 2<sup>nd</sup> Floor  
Boise, ID 83720-0010

Re: Requested Modifications - Hidden Lake Float Home Lease

Dear Director Merrill and Messrs White and Strack:

This letter is sent on behalf of the Hidden Lake Float Home Lessees. This letter is sent at the request that it be provided to the Board Members for inclusion in their respective packets as part of the upcoming May 2014 meeting.

For the benefit of Director Merrill and the Board, following the last Board meeting, IDPR staff and Deputy Strack worked with the Lessees and the undersigned to attempt to reach consensus on the terms of the lease form that will take effect January 1, 2014. Numerous suggested revisions and comments have been exchanged. Some of the Lessees' suggested revisions have been implemented, and some have not.

Approximately two weeks ago, on April 25, 2014, Deputy Strack provided a revised Lease for review and comment on the part of the Lessees. Please let this letter serve as a summation of the remaining comments of the Float Home Lessees with respect to the Lease form that will be presented to the Board for its consideration at the May 20, 2014 meeting.

**PROPOSED MODIFICATION NO. 1 (LEASE SECTION 2)**

Lease Section 2 limits each Float Home Lessee to a single float home and a single boat garage (provided the boat garage was in existence at the beginning of the Lease term). The proposed Lease makes two (2) exceptions to this rule: an exception for the Chestnuts and an exception for the Eisengers. The Lessees request, for the reasons set forth below, that Tim Greene be granted an exception no different in kind or degree than the Chestnuts or the Eisengers.

In approximately 1997, the Greenes converted an existing boat garage into a storage/sleeping area. This was accomplished by constructing over the "cut-out" internal boat slip. Please note that there is no running water, heat, bathrooms, kitchen, toilet, or any other amenities in the boat garage. This is to be distinguished from the Chestnuts' second structure which does have additional "creature comforts." The Greenes primarily use the boat garage for the storage of kayaks and additional items, as well as for occasional sleeping space.

The Chestnut and Greene converted boat garages have existed in their current state for many, many years. The Chestnuts' converted garage dates back thirty-seven (37) years and the Greene's converted garage dates back seventeen (17) years. The Lessees believe IDPR was aware of both of these situations for many years and no objection was interposed.

Please also recognize that the Greenes, by including no other "creature comforts" in their boat garage, have really done nothing that couldn't otherwise be accomplished in a manner beyond objection. For example, the cut-out boat slip, which was not very large to begin with, could be covered with temporary boards, plywood, or the like so as to render the same usable for storage or sleeping on a temporary basis. Further, there is nothing to prohibit the Greene children or grandchildren from sleeping in a boat that is parked in the boat garage. Nothing was done with a nefarious intent and there is no functional distinction between the Greene boat garage and the Chestnut boat garage save and except for the fact that the Greene garage has no additional improvements.

The Greene structure, when reconfigured approximately seventeen (17) years ago, was done at a time when members of the IDPR Board, as then constituted, were pushing for elimination of the float homes. While not an excuse, the conversion of the boat garage into a facility capable of storage, with no added comforts, was not done to breach any rule or regulation but in anticipation of an exodus that may now have been averted through continued cooperation and dispute resolution.

At the November IDPR Board meeting, the Board also discussed the Eisenger cabin that was likely pushed on the shore in the late 1920s or early 1930s. This probably occurred during the epoch

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flood of 1933, when the Lake actually crested on Christmas day at an elevation that has never been equaled since. The Board, in discussing the Eisenger cabin, noted that the structures have been in place for some time and then proceeded to grant a special exception under the new Lease for both the Eisengers and the Chestnuts. The Greene structure was not listed as an agenda item and, accordingly, was not formally acted upon by the Board. However, the Greene cabin was discussed at the November meeting and Mr. White indicated that before the Board made a decision, they should consider whether or not there would be any precedential effect upon the Greene cabin. Following Mr. White's comments, the Board approved the Chestnut and Eisenger non-conformities.

We have had much discussion amongst the Lessees who attended the November meeting or who have reviewed the proceedings afterwards. The Lessees honestly believed, as did Mr. Greene, that the determination by the Board so as to allow the Chestnuts and Eisengers would apply equally to Mr. Greene. Since there was no specific motion to authorize the Greene structure at the November Board meeting, this issue is now coming back for your consideration.

The Lessees have worked diligently to maximize future public space, to garner legislative support for a long-term lease, to secure a loan to pay for a \$1.2 million asset for the State, and to then donate this asset to the Park. As the Lessees assume these expensive endeavors, they ask the Board to help minimize any unnecessary expenses such as rebuilding a boat house where no harm was intended and none can be found. We appreciate the opportunity to make this request to the Board and hope for your approval.

Enclosed is a copy of a photograph depicting Tim Greene's float home and his converted boat garage. The converted boat garage is shown on the left. A similar situation took place with respect to the Chestnuts. The second page of the enclosed photographs, at the top, shows the two (2) Chestnut improvements (including an A-frame). The Chestnuts' converted boat garage is on the left. The bottom photograph at page 2 shows the Eisenger float home that has been "beached" for approximately eighty (80) years.

#### **PROPOSED MODIFICATION NO. 2 (LEASE SECTION 4.3)**

The proposed Lease raises the annual rental rate to five percent (5%) in 2020. This represents an increase from the current Lease rate of 3.75%. The Lessees request that the rent remain at 3.75% given the extraordinary pro rata financial contributions they will each be required to make to fund what is expected to be a \$1.2 million sewer package that will provide a future income stream and ancillary benefits to the State. While 1.25% per year may not seem like much, in isolation, when coupled with the other expenditures the float home owners will be making, it continues to add up. While five percent (5%) may be a historic rate in other contexts, other Lessees, including the land-based cabins, are not incurring a per Lessee financial burden of over \$50,000 for purposes of creating an asset that will benefit the State.

**PROPOSED MODIFICATION NO. 3 (LEASE SECTION 8.2.2)**

Section 8.2.2. vests IDPR with the ability to immediately terminate the Lease if a construction milestone is not met. Please recognize that a project of this magnitude, both from an engineering standpoint and from a financial standpoint, is subject to delays for reasons unattributable to the Lessees. Further, if a delay of thirty (30) days is encountered, after the project is half-completed and half-funded, then based upon the language of 8.2.2, IDPR could terminate the Lease, leaving the Lessees and DEQ in a perilous position. We request some reasonable discretion and flexibility be employed in order to meet the changing complexion of a project of this magnitude and scope. The Lessees are not intent on going out and creating delays. The Lessees do not want delays. However, if experience tells us anything, there likely will be delays.

**PROPOSED MODIFICATION NO. 4 (LEASE SECTIONS 4.2.1, 11.1, and 12.1)**

The Lessees had requested that decisions on whether or not a breach had been cured should be left to the Board. The Lessees withdraw this requested revision.

**PROPOSED MODIFICATION NO. 5 (LEASE SECTION 11)**

Section 11 provides a thirty (30) day period for complying with an alleged breach under a Notice of Violation. The Lessees request that, as to all violations noticed other than the failure to pay rent, that the period for curing the alleged breach be extended to sixty (60) days. In all candor, by the time a notice comes from IDPR to the Lessee, and the Lessee is able to review and respond with the degree of seriousness required, there may be a need for additional time beyond thirty (30) days. Again, the Lessees are proposing sixty (60) days as a reasonable accommodation for curing Notices of Violation other than a Notice related to non-payment. This is particularly appropriate since the failure to cure a Notice of Violation in a timely manner may give rise to a Notice of Termination.

**PROPOSED MODIFICATION NO. 6 (LEASE SECTION 16)**

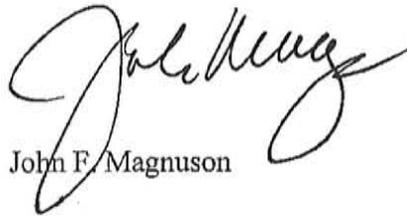
Section 16 obligates each of the Lessees to maintain \$1 million in insurance for liability and property damage. This level of insurance, given the values of the float homes, is excessive and perhaps unobtainable. We would request that the dollar amount be limited to \$500,000 for each Lessee, given the aggregate sums that the Lessees are paying for all other obligations made a part of this amicable resolution.

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Thank you for the ability to continue to provide comment and suggested revisions through this process. We have collectively made a lot of headway over the past few years. Particular thanks is given to Director Merrill for reaching out to the Lessees.

Sincerely,



John F. Magnuson

JFM/js  
Encls.

cc: Hidden Lake Lessees  
ID STATE PARKS-MERRIL-WHITE-STRACK.LTR.wpd

## John Magnuson

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**From:** Timothy Greene <tgreene@moscow.com>  
**Sent:** Tuesday, March 25, 2014 6:54 PM  
**To:** John Magnuson  
**Subject:** IMG\_0855.JPG....Greene cabin...  
**Categories:** Red Category

John:

Here is a picture of my cabin. I can find a picture of just the second structure if you would prefer that. Thanks.

Tim



IMG\_0855.JPG

