

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

RIGHT OF ENTRY

Pease Development Authority, Division of Ports and Harbors (“PDA-DPH”) with an address of 55 International Drive, Portsmouth, NH 03801, under the authority set forth in NH RSA 12-G, grants a Right of Entry (“ROE”) to **Swell Oyster Company, LLC.** (“Swell ”), **196 Drinkwater Rd., Hampton Falls, NH 03844** to use designated property of the State of New Hampshire, at the **Hampton Harbor Marine Facility, 1 Ocean Blvd. Hampton, NH** (the “**Marine Facility**”) solely pursuant to the terms of this ROE and for the following purposes, and for no other uses unless expressly authorized in writing.

This ROE is given subject to the following conditions:

- PREMISES: An area of land located within the Marine Facility, as shown in the location map attached as **Exhibit A**, which is incorporated herein by reference, for the placement of a 21 x 21 foot +/- wooden frame, single-story building (“**Building**”) owned by Swell (“**Premises**”).
- PURPOSE OF ROE: To provide a location for the placement of the Building at the Marine Facility to be used for storage and sorting of oysters directly related to the ROE holder’s commercial oyster business operations at the Marine Facility; no other use of the Premises is permitted.
- PERIOD OF USE: Period 1-July 1, 2023-April 30, 2024
Period 2-May 1, 2024-April 30, 2025
- CUSTOMER
- PARKING FEE: Period 1-\$5.00 per vehicle
Period 2-\$5.00 per vehicle, subject to change per paragraph 4
- ROE FEE: Period 1-\$1,000.00
Period 2-\$1,250.00

1. PDA-DPH grants **Swell** the right and privilege to place and maintain the Building on the Premises. Improvements or alterations to the interior or exterior of the Building are subject to the advance approval of PDA-DPH. **Swell** shall ensure the Building is properly secured to the Premises and shall maintain the exterior and interior of the Building to ensure it is neat and attractive in appearance to the public, and agrees to periodically apply fresh coats of paint or stain, and take such other measures as may be required to meet this requirement, subject to the approval of PDA-DPH.

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2. The term of this ROE shall be as set forth above as Period of Use. Requests for renewal shall be submitted to the DPH Director in writing no less than ninety (90) days prior to the expiration of Period 2.
3. **Swell** customers shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot, subject to PDA-DPH established parking fees as may be amended over time by the PDA-DPH. **Swell** shall work cooperatively with PDA-DPH to ensure its customers abide by all traffic and parking requirements at the Marine Facility.
4. **Swell** employees and agents shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot. Notwithstanding the foregoing, **Swell** shall be provided with employee seasonal parking passes in accordance with the provisions of Pda 604.03 or as agreed upon in any other lawful agreement made with PDA-DPH. **Swell** agrees to require all of its employees and agents to park in the area designated by PDA-DPH as "Employee Parking," and further understands and agrees that any violation of this clause may result in the revocation of the employee's driving and parking privileges within the facility, as well as termination of this ROE.
5. **Swell** agrees that its owners, employees, and agents, who are the owner or custodian of any animal, while at the Marine Facility, or within any building subject to any ROE where PDA-DPH is a party, shall at all times have said animal on a standard or retractable leash not greater than six (6) feet in length and shall promptly and properly dispose of any waste the animal excretes or garbage it causes to be scattered on the property.
6. **Swell** is required to use the Marine Facility Pier in connection with its ROE operation, unless excused from such requirement in writing by PDA-DPH at its sole discretion, and as such shall obtain a separate Pier Use Permit which shall grant nonexclusive access to the Marine Facility pier, in accordance with N.H. Administrative Rules Part Pda 600.
7. **Swell** shall obtain all necessary permits and licenses that are required to engage in its operations under this ROE and provide copies of them to PDA-DPH at the time of execution of this document. Required documents may include, but are not limited to, Pier Use Permit, Captains License(s), NH Fish and Game Fishing and/or Charter licenses, NH Department of Environmental Services permits, and NH Secretary of State Registration paperwork.
8. The scheduling of any/all departures and arrivals at the Premises and the Marine Facility in connection with any activity allowed under this ROE shall not interfere with the scheduled use of common areas or adjoining areas by other entities which actively conduct business at the Marine Facility and have previously been issued a permit or ROE(s) by PDA-DPH.
9. **Swell** may utilize the area in front of the Building for loading and unloading. Any loading and unloading shall not unreasonably interfere with the scheduled use of common areas or adjoining areas by other entities which actively conduct business at the Marine Facility and have previously been issued a permit or ROE(s) by PDA-DPH. Final decisions regarding delivery times are determined by PDA-DPH.
10. The Rental Fee for the Premises is due and shall be paid in full on or before July 1st each year of the term of this ROE. The rental fee shall be made payable to PDA-DPH and forwarded to PDA, 55 International Drive, Portsmouth, NH 03801. Written notification of any fee and rate increases will be provided to current ROE holders on or before February 1st of any given year during the term of the ROE and will become part of this ROE and effective on April 1st of that year.

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11. **Swell** shall obtain advance approval from the PDA-DPH for all signs and advertisements posted on the Premises. In all cases the decision of PDA-DPH on whether to approve the sign or advertisement shall be in its sole discretion and shall be final.
12. In order to guarantee the high quality of services and merchandise provided to the public from the Premises, any PDA-DPH questions relating to policies, prices, quality, cleanliness and services must be settled to the satisfaction of PDA-DPH. In making its decisions, PDA-DPH will be aided by members of its staff and such other officials of the State of New Hampshire as may be deemed appropriate and necessary.
13. All utilities to serve the Premises and the Building shall be at the sole responsibility and cost of **Swell**.
14. **Swell** shall be responsible for regular and routine cleaning of all areas of the Premises, the Building, and equipment where merchandise is stored, prepared or sold. **Swell** shall be responsible for grounds pickup on the Premises and in common areas which are used by **Swell's** customers. All areas of the Premises, including but not limited to areas behind the Building, shall be maintained in a neat and orderly manner. Cleaning within this ROE shall include the picking up of all waste material and the routine cleaning of equipment, walls, floors, windows, fixtures, draperies, blinds, and garbage containers. The term "routine cleaning" shall imply all of the provisions associated with good housekeeping, including supplying materials and supplies that may be necessary to perform this service. **Swell** shall be responsible for maintaining high standards of sanitation in accordance with the rules and regulations promulgated by the NH Department of Health and Human Services, Bureau of Food Protection, PDA-DPH, or any other governmental agency having jurisdiction over such matters. **Swell** shall be responsible for promptly and regularly picking up garbage and rubbish generated by its operations or customers and depositing same at a location at the Marine Facility designated by PDA-DPH.
15. **Swell** agrees to defend and indemnify the State of New Hampshire and PDA-DPH against and from any and all claims, judgments, damages, penalties, fines assessments, costs and expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts fees) resulting or arising during the term of this ROE:
 - A. From any condition of the Premises including the Building structure or improvements thereon for which **Swell** has taken possession of hereunder;
 - B. From any breach or default of any obligation on the part of **Swell** to be performed pursuant to the terms of this ROE or from any act or omission of **Swell** or any of its agents, contractors, servants, employees, licensees or invitees; or
 - C. From any accident, injury, death, loss or damage whatsoever caused, to any person or property occurring during the term of this ROE, on or about the Marine Facility areas (including but not limited to piers, docks, gangways, building, and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this ROE.
16. On or before the effective date of this ROE, **Swell** and any agent, contractor, or vendor of **Swell** shall provide PDA-DPH with proof of required insurance coverage as outlined in **Exhibit B**. These are minimum insurance requirements designed to protect the interests of PDA-DPH and the State of NH. Replacement costs of **Swell's** building and contents may not be protected under these terms.

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Swell should consult with its insurance provider to ensure its individual insurance needs are met.

17. Notwithstanding the foregoing, no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of the State of New Hampshire and no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire and PDA-DPH is reserved to the fullest extent allowed under law subject however to contractual claims arising under this ROE to the extent such are permitted by New Hampshire NH RSA Ch.492:8 as the same may be amended.
18. **Swell** may terminate this ROE by giving PDA-DPH thirty (30) days' advanced written notice. In the event of such termination, **Swell** shall remove the Building and all its possessions from the Premises prior to the expiration of the thirty (30) days' notice. The provisions of paragraph 15 shall survive termination.
19. PDA-DPH may terminate this ROE by giving **Swell** thirty (30) days advanced written notice of termination in the event of the failure of **Swell's** to perform, keep or observe any of the provisions of this ROE and the failure of **Swell** to correct the default or breach within the time specified by PDA-DPH. In the event of such termination, **Swell** shall remove the Building and all its possessions from the Premises prior to the expiration of the thirty (30) days' notice.
20. This ROE may be terminated immediately by PDA-DPH in the event **Swell** fails to provide proof of insurance coverage, or engages in any activity which is deemed by PDA-DPH in its sole discretion to compromise public safety or health. In the event of such termination, **Swell** shall remove the Building and all its possessions from the Premises immediately. The provisions of paragraph 15 shall survive termination.
21. In the performance of this ROE, **Swell** is in all respects an independent contractor and is neither an agent nor employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of **Swell** or any of its officers, employees, agents, or members resulting in either personal or property damage to any individual, firm or corporation. Neither **Swell** nor any of its officers, employees, agents, or members shall have the authority to bind the State of New Hampshire or PDA-DPH nor are they entitled to any of the benefits, Worker's Compensation or emoluments provided by the State of New Hampshire or PDA-DPH to its employees. **Swell** agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to its equipment or supplies or equipment rented or leased by the **Swell** from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.
22. In connection with the performance of this contract, **Swell** agrees to comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities, including those of PDA-DPH which shall impose any obligation or duty on **Swell** and to procure and maintain all necessary licenses and permits required in connection with the operations described herein. Required documents may include, but are not limited to, Pier Use Permit, Federal and/or State Aquaculture Permit, Wholesale Marine Species License, Wetlands Board, Marine Safety, Captains License(s), applicable NH Fish and Game Fishing and/or Charter licenses, and NH Secretary of State Registration paperwork.

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23. **Swell** shall be familiar with and follow Administrative Rules Pda CHAPTER 600. The Rules are available from PDA-DPH upon request or can be viewed on the Division's web site, www.portofnh.org.
24. In accordance with Administrative Rule Pda 603.11 (a), **Swell** acknowledges that camping or sleeping on state-owned commercial piers and associated facilities is prohibited.
25. In accordance with Administrative Rule Pda 603.11 (b), **Swell** acknowledges the service and consumption of alcohol is prohibited unless permission has been granted with the terms of a written contractual agreement with PDA-DPH.
26. The sale of ready to eat, restaurant style food items is not permitted under this ROE; a separate Concession Agreement is required for the sale of such items from or on the Premises. Ready to eat, restaurant style food items shall include, but not be limited to, sandwiches, wraps, burgers, hotdogs, soups & chowders, salads, prepared seafood, and such other edible/consumable items sold in conjunction therewith, The determination of what constitutes such food items is in the sole discretion of the PDA-DPH, which determination shall be final.
27. **Swell** is responsible for providing all necessary and required safety equipment and training to its employees and customers as may be required and appropriate to the uses allowed under this ROE.
28. Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and **Swell** for the purpose of discussing current operational issues, presentation of official requests for changes in schedules, process, portions, products or policies, and other pertinent business which may arise. The PDA-DPH will be represented at these meetings by the Director of the DPH or his authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate. **Swell** shall be represented, at a minimum, by one (1) officer/member of the company.
29. In the event the Premises, the Building, or any part thereof shall be destroyed by fire or unavoidable casualty so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, that portion of **Swell's** operation shall be suspended or abated until and if said Premises, Building, or any part thereof shall have been placed in proper condition for use by **Swell**. PDA-DPH may terminate this contract in the event **Swell** fails to repair or replace the Premises or Building within ninety (90) days of a fire or casualty. In the event of such termination, **Swell** shall remain responsible for the costs of any repair or removal undertaken by PDA-DPH.
30. The Building and any equipment thereof which are the property of **Swell** shall remain the property of **Swell** and, upon termination of this ROE by lapse of time or otherwise, **Swell** shall promptly remove same from the Premises. Upon the termination of this ROE, **Swell** may offer for sale to PDA-DPH, at fair market value, any and all buildings and equipment owned by **Swell**.
31. This ROE may not be assigned or transferred without the express written approval of the PDA-DPH. Consistent therewith, sale of the Building to another party does not guarantee that party will receive a Right of Entry for the Premises.
32. **Swell** shall allow PDA-DPH, or such person as may be designated by PDA-DPH, access to the Premises and Building at all reasonable hours for the purpose of examining and inspecting said Premises and Building, or for any other purpose as may be required by this ROE. Except in the event of an emergency, PDA-DPH agrees that such access will not unduly affect the operations of

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Swell's business.

33. **Swell** may not self-fuel any boat used in connection with this ROE on the Premises or within the Premises. **Swell** will be allowed to purchase fuel from an approved vendor (diesel only) or from the fuel service available at the Premises (diesel or gasoline). To purchase diesel fuel from an approved vendor, the vessel owner must have a fuel variance approved by the Office of the NH State Fire Marshall in accordance with Information Bulletin #2015-07, as may be amended from time to time.
34. To the extent applicable, **Swell** agrees to hold the State of New Hampshire and PDA-DPH harmless with respect to taxes levied against the Premises subject to this ROE as a consequence of the application of RSA 72:23 I. **Swell** agrees to pay, in addition to other payments, all properly assessed real and personal property taxes against the Premises subject to this ROE in accordance with the provisions of RSA 72:23 I. In the event **Swell** shares a larger parcel of land with lessees or other ROE holders, it shall be obligated to pay only its pro rata share of any such taxes. Failure of **Swell** to pay its duly assessed personal and real estate taxes when due, shall be cause to terminate this ROE by PDA-DPH. **Swell** shall, in addition, reimburse PDA-DPH for any taxes paid by it pursuant to RSA 72:23 I as a result of **Swell's** failure to pay said taxes.
35. This ROE has been entered into in the State of New Hampshire and shall be interpreted under New Hampshire law.
36. This ROE may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


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Date: 6/14/23

Raeline A. O'Neil
Witness


Paul E. Brean, Executive Director, PDA

Swell Oyster Company, LLC.

Date: 6/5/23


Witness Signature

CANDY WALSH
Witness Printed Name


Authorized Signature

RUSSELL HILLIARD CO-OWNER
Printed Name/Title

EXHIBIT A

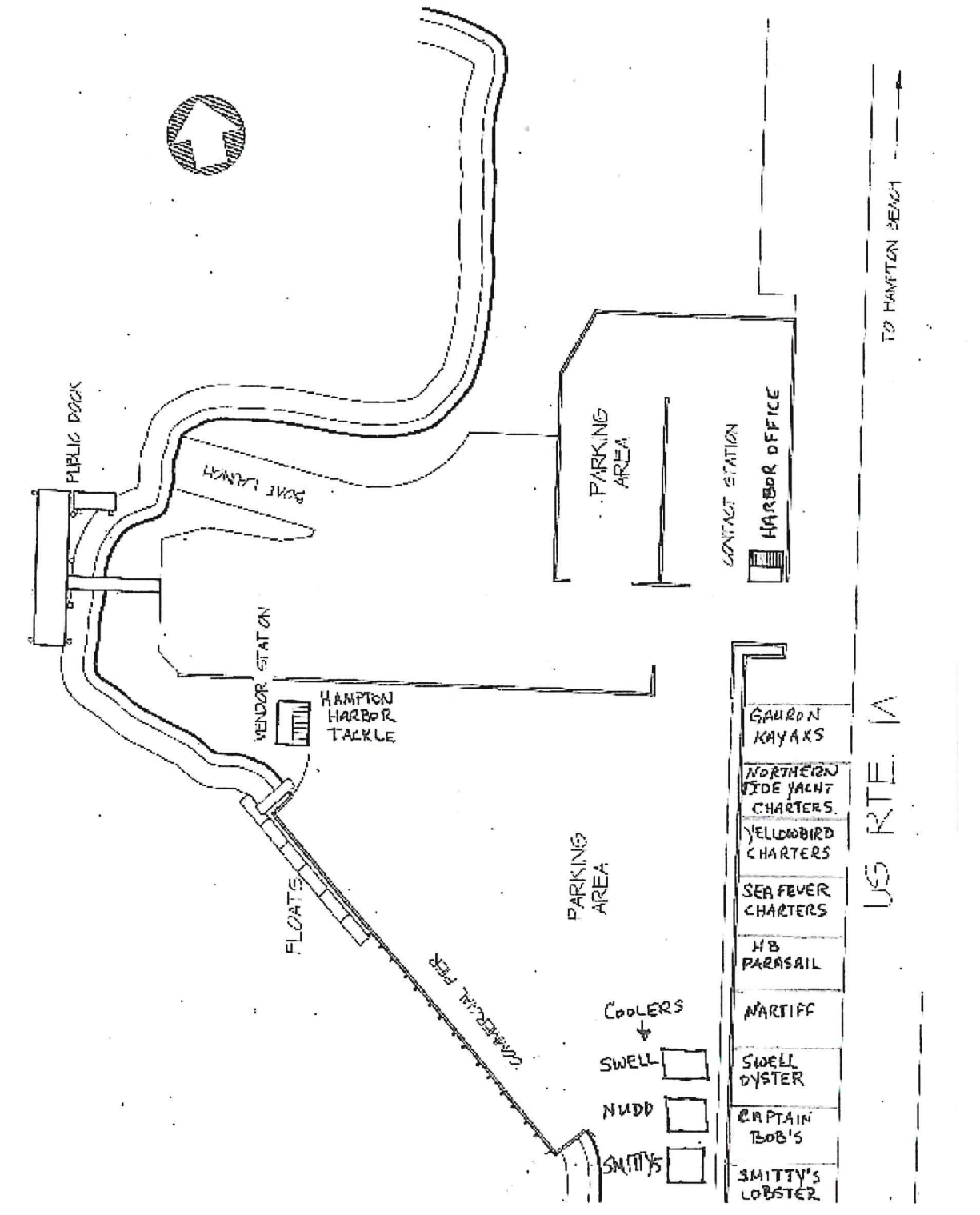


EXHIBIT B

**MINIMUM INSURANCE REQUIREMENTS
RIGHT OF ENTRY HOLDERS, WITH AN ASSOCIATED BUILDING,
OPERATING ON THE PROPERTY OF THE STATE OF NH,
PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)**

All Right of Entry holders with an associated building are required to provide a Certificate of Insurance (“COI”) to the Pease Development Authority-Division of Ports and Harbors (“PDA-DPH”) before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. ROE holder shall ensure renewal certificates of insurance are on file with PDA-DPH prior to policy expiration dates. Failure to comply with the requirements set forth herein may cause a delay in opening for business on schedule or result in the immediate termination of this contract.

The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Automobile Liability:** \$1,000,000.00 automobile liability coverage.
3. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
4. **Additional Insureds:** State of New Hampshire, Pease Development Authority, and Division of Ports and Harbors, must be named as additional insureds under all liability coverages
5. **Certificate Holder:**
Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
6. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
7. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
8. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
9. **Renewed COI’s to be forwarded to additional insured prior to previous COI expiration date.**

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.