



RIGHT OF ENTRY

Pease Development Authority, Division of Ports and Harbors ("PDA-DPH") with an address of 55 International Drive, Portsmouth, NH 03801 under authority set forth in NH RSA 12-G, grants a Right of Entry ("ROE") to **Swell Oyster Company LLC**. ("Swell"), **196 Drinkwater Rd., Hampton, NH 03844** to use designated property of the State of New Hampshire, at the **Hampton Harbor Marine Facility, 1 Ocean Blvd. Hampton, NH 03842** (the "Marine Facility") pursuant to the terms of this ROE and for the following purposes and for no other uses unless expressly authorized:

**PREMISES:** An area of land located within the **Marine Facility**, as shown in the attached location map which is incorporated herein by reference, for the placement of a building owned by **Swell** ("**Premises**")

**PURPOSE OF ROE:** To provide a location Placement of building on the Premises for the storage, sorting and retail sales of oysters in conjunction with Swell's oyster farm in Hampton/Seabrook Harbor.

**PERIOD OF USE:** Period 1-July 1, 2020 through June 30, 2021  
Period 2-July 1, 2021 through June 30, 2022  
Period 3-July 1, 2022 through June 30, 2023

**PARKING FEE:** \$5.00 per car, subject to change per paragraph 3

**RENTAL FEE:** Period 1-\$1000.00 for the period of July 1, 2020-June 30, 2021  
Periods 2 & 3-See paragraph 6 for fees for subsequent period of use

This ROE is given subject to the following conditions:

1. PDA-DPH grants **Swell** the right and privilege to place and maintain its building on the Premises in association with its charter boat operations. Improvements or alterations to **Swell's** building are subject to the approval of PDA-DPH. **Swell** shall maintain the exterior and interior of its 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 from **July 1, 2020** through **June 30, 2023**. Requests for extension or renewal shall be submitted to the DPH Director in writing by **April 1, 2023**.
3. **Swell** customers shall have nonexclusive use of parking spaces situated at the Premises parking lot. PDA-DPH will charge customers a \$5.00 parking fee per car, per day, for any vehicle using the Marine Facility parking lot. Parking fees are subject to change during the term of this ROE in accordance with Administrative Rules PART Pda 610.
4. **Swell** is required to use the Premises Pier in connection with its ROE operation and as such shall obtain a separate Pier Use Permit which shall grant nonexclusive access to the Premises pier, in accordance with N.H. Administrative Rules Part Pda 600.
5. 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 an ROE(s) by PDA-DPH.
6. The Rental Fee for the Premises is due and shall be paid in full on or before July 1<sup>st</sup> 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 April 1<sup>st</sup> of any given year during the term of the ROE and will become part of this ROE and effective on July 1<sup>st</sup> of that year.
7. **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.
8. In order to guarantee the high quality of services and merchandise provided to the public from the Premises, any 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.
9. All utilities to serve the Premises and the building thereon shall be the sole responsibility of **Swell**.
10. **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 immediately adjacent to its building and in common areas which are used by **Swell's** customers. Cleaning within this proposal shall mean routine cleaning of walls, floors, windows, fixtures, draperies, blinds, tables, chairs 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 promptly and regularly picking up garbage and rubbish its charter operations or customers generate and

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depositing same at a location at the Marine Facility designated by PDA-DPH.

11. **Swell** shall indemnify, defend (with counsel acceptable to the State of New Hampshire and PDA-DPH) and hold the State of New Hampshire and PDA-DPH harmless 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 any 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.
12. 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 A.
13. 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.
14. **Swell** may terminate this ROE by giving PDA-DPH thirty (30) days' advanced written notice. The provisions of paragraph 11 shall survive termination.
15. PDA-DPH reserves the right to terminate this ROE upon thirty (30) days' notice for, including, but not limited to, violations of any Administrative Rules or policies of the PDA-DPH. The provisions of paragraph 11 shall survive termination.

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16. 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 conditions of the ROE and the failure of **Swell** to correct the default or breach within the time specified by PDA-DPH. PDA-DPH may terminate this ROE for any other reason upon ninety (90) days advanced written notice of termination. The provisions of paragraph 11 shall survive termination.
17. Notwithstanding the provisions of paragraph 13, 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. The provisions of paragraph 11 shall survive termination.
18. 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.
19. 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**.
20. **Swell** shall obtain 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, Captains License(s), applicable NH Fish and Game Fishing and/or Charter licenses, NH sale of prepared food licenses and NH Secretary of State Registration paperwork.
21. **Swell** shall be familiar with and follow Administrative Rules CHAPTER 600. The Rules are available from PDA-DPH upon request or can be viewed on the Divisions web site, [www.portofnh.org](http://www.portofnh.org).
22. 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.

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23. 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.
24. **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.
25. Meetings between the parties to this ROE shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and **Swell**s 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.
26. 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 party 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.
27. 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**.
28. 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 to the Premises.
29. **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 inspection 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 **Swell**'s business.
30. **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

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Bulletin #2015-07, as may be amended from time to time. As of the commencement of this ROE the fuel vendor shall pay PDA-DPH \$0.10 per gallon, subject to increases which may be implemented from time to time during the term of this ROE.

31. 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.

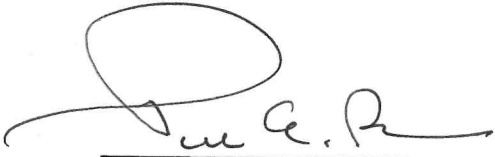
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PEASE DEVELOPMENT AUTHORITY  
DIVISION OF PORTS AND HARBORS

Date: 6/29/20 <sup>Cont</sup> 7/7/2020

Brenda Therrien  
Witness

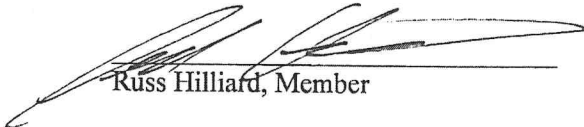
  
~~David R. Mullen~~, Executive  
Director, PDA  
PAUL E. BREAN

SWELL OYSTER COMPANY, LLC

Date: 6/29/20


  
Witness

CONNOR WALSH  
Witness printed name

  
Russ Hilliard, Member

  
Witness

RUSSELL HILLIARD  
Witness printed name

  
Conor Walsh, Member

**EXHIBIT A**

**MINIMUM INSURANCE REQUIREMENTS  
CHARTER 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 Charter 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. **Protection and Indemnity:** 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.
3. **Dockside liability endorsement:** Covering piers, gangways, and docks
4. **Automobile Liability:** One (1) million dollars automobile liability coverage.
5. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
6. **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
7. **Certificate Holder:**  
Pease Development Authority, Division of Ports of Harbors  
555 Market St.  
Portsmouth, NH 03801
8. **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.
9. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
10. **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.
11. **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.





