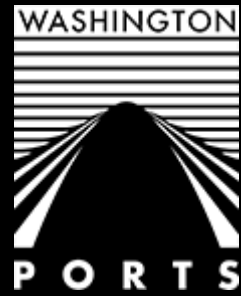




Non-Traditional Lease Arrangement

A Break from the Ordinary



PRESENTED BY
Larry Costich, PE
| Attorney

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Schwabe
WILLIAMSON & WYATT

HUH?

Non-Traditional Lease Arrangements?

1. Participating Ground Lease
~ Cost & Profit Sharing
2. Minimum Annual Guarantees
3. Pre-Payment of Rent
4. Site Restoration Guarantee

1. COST & PROFIT SHARING ~ PARTICIPATING GROUND LEASE

Why?

- Long Term Ground Lease
- Premises Development
- Sublease or Assignment



POSSIBLE BENEFITS

For Tenant

- Helps Fund Site Development Costs – More Attractive to Lenders
- Risk Shifting?

For Port (Landlord)

- Promotes Site Development
- Provides Alternative Financing Arrangement

POSSIBLE DRAWBACKS

For Tenant

- Reduced Profit

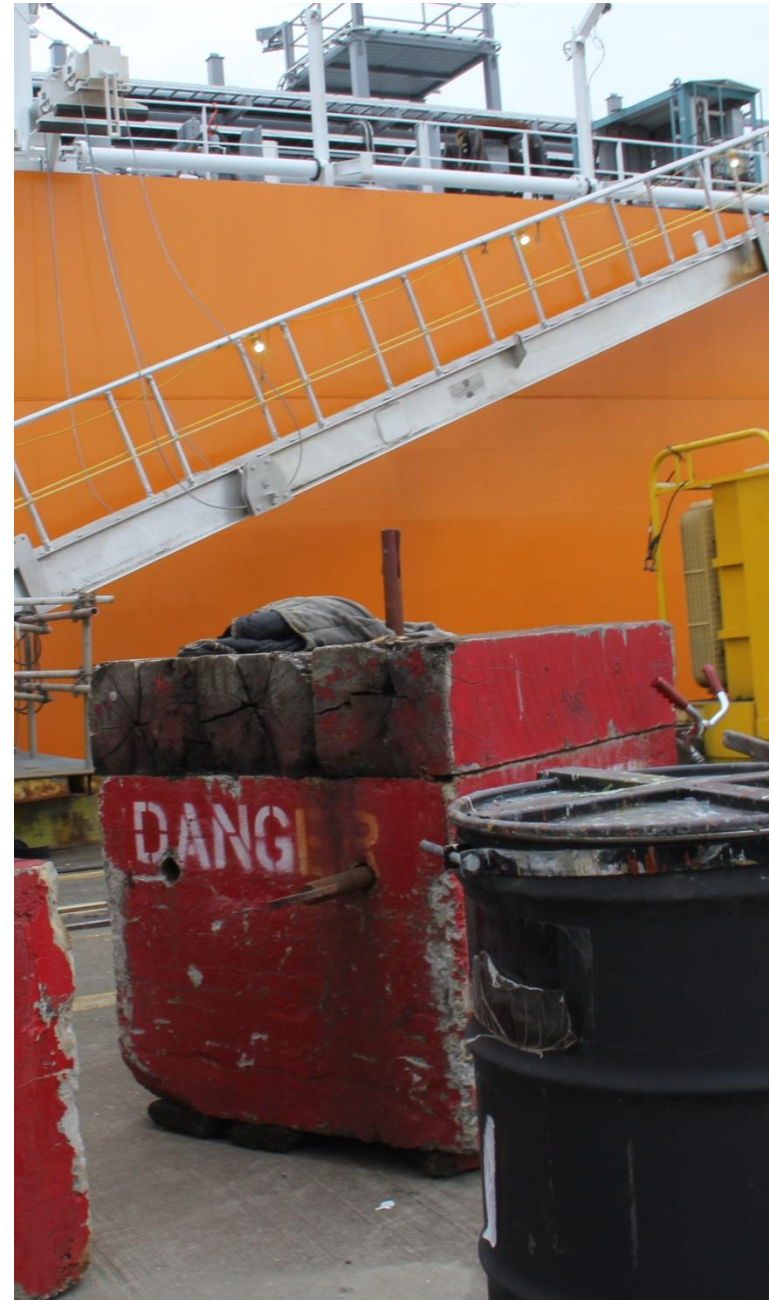
For Port (Landlord)

- Uncertain Rent
- Administrative Oversight



FUNDING SITE DEVELOPMENT CONSTRUCTION COSTS

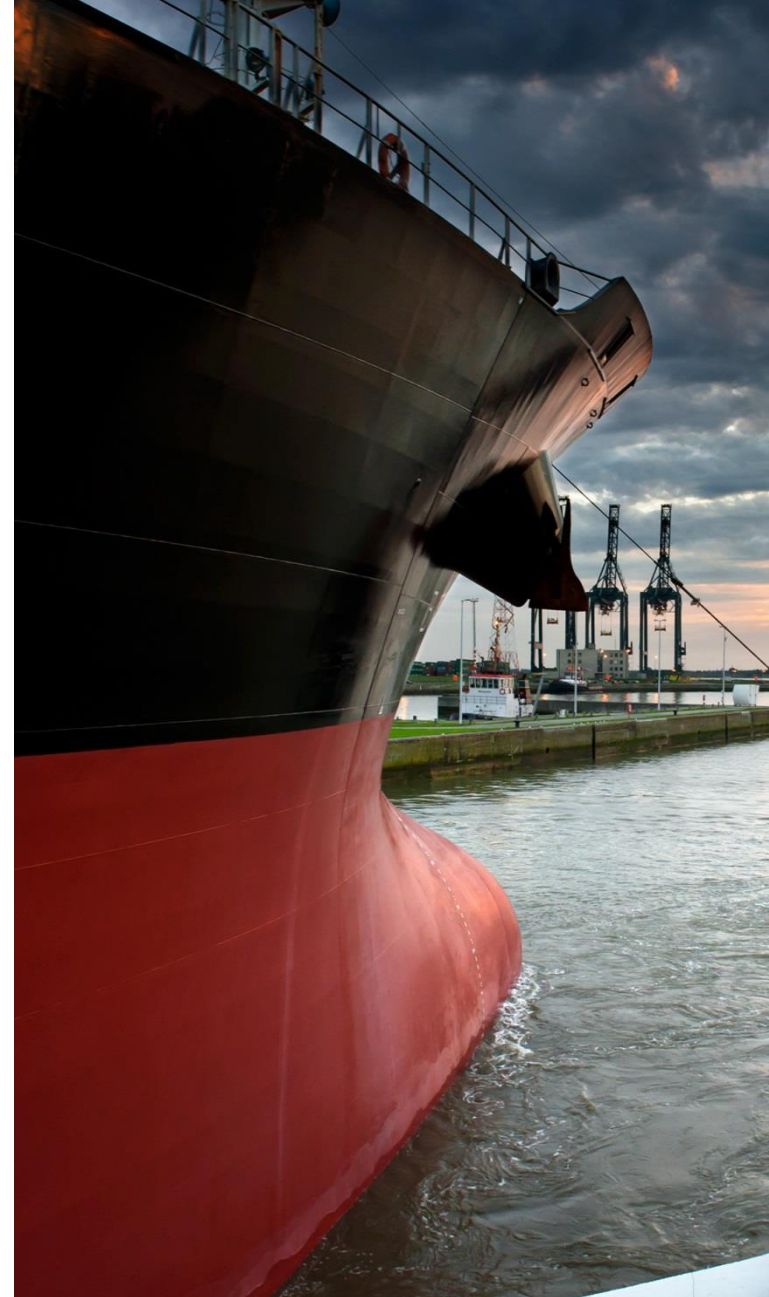
- Financeable
- Title to Improvements?



WILL THERE BE PROFITS?

Profit (Net Income)
= Gross Income – Expenses

Audit Rights



WHAT ARE THE COSTS?

Debt Servicing

Development Costs

Management Fees

CAM / Op Ex

Subtenant Concessions

- Rent Abatement/Free Rent
- TI Allowances
- Relocation Allowances

Broker Commissions



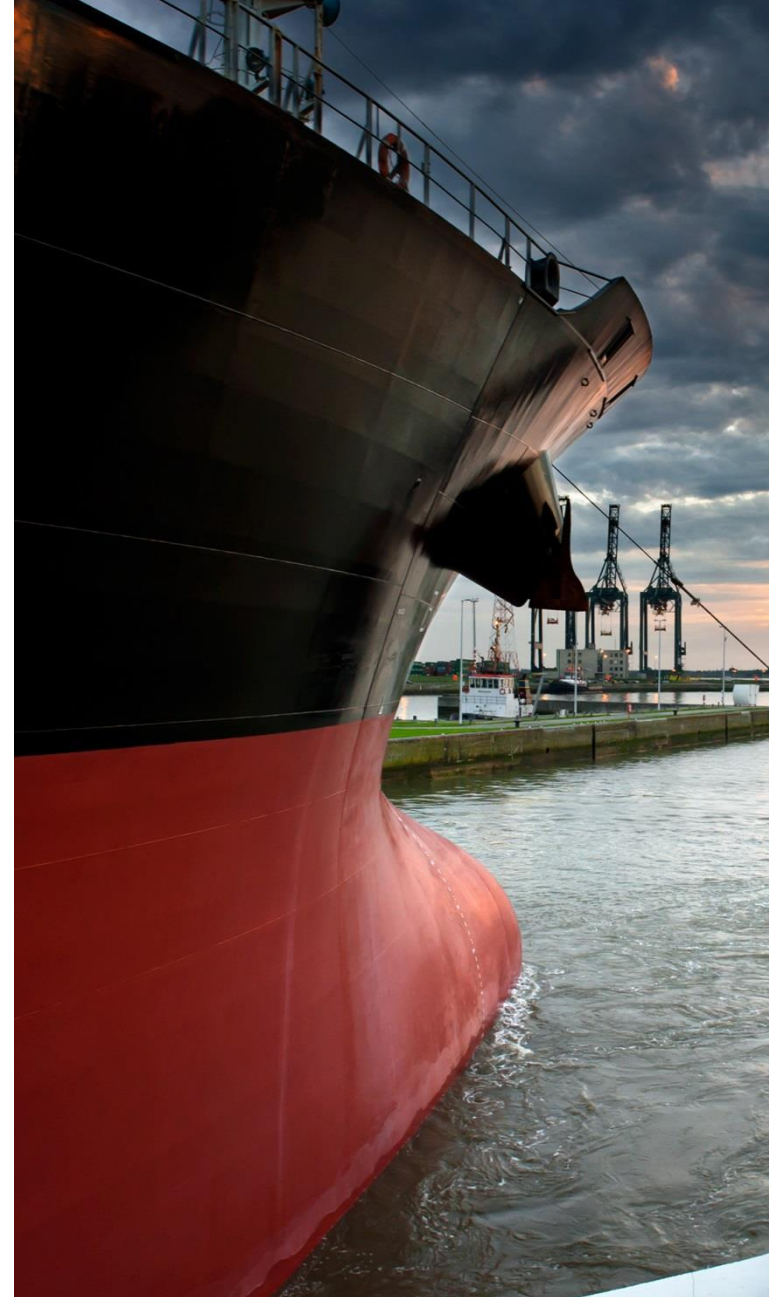
GIFT OF STATE FUNDS OR LENDING OF CREDIT?

For *King County v. Taxpayers of King County*, 133 Wn.2d 584

1. Consideration
 2. Donative Intent
- Profit-sharing with the municipal corporation for the term of the bonds of profit earned after accounting (following GAAP principles) for losses;
 - Payment of rent per annum;
 - Payment of any construction cost overruns;
 - Payment of any deficiencies on bonds for the parking facility;
 - Maintenance and operation in accordance with a management plan, and with municipal corporation oversight, with enforcement mechanisms to ensure compliance;
 - Making major repairs and capital improvements to the stadium; and
 - Provision of insurance

WHO OWNS THE IMPROVEMENTS?

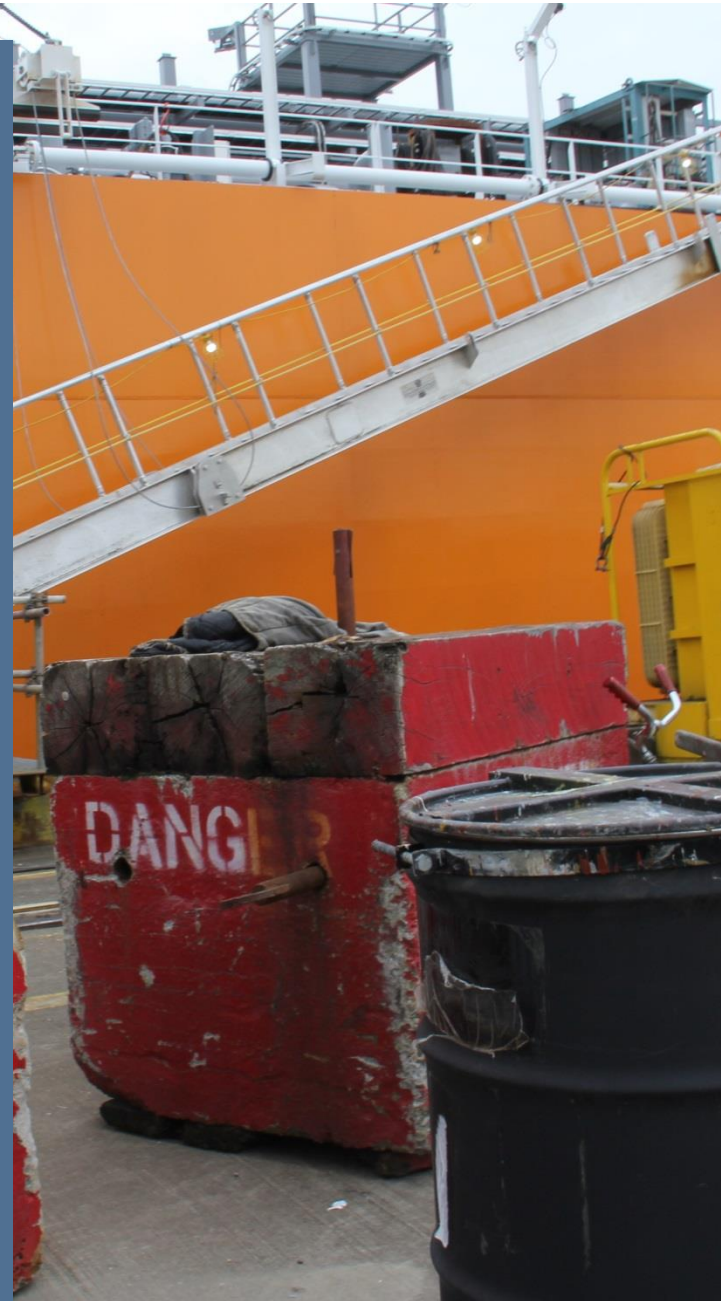
- Port's Reversionary Interest
- Site Restoration



2. MINIMUM ANNUAL GUARANTEES (“MAG”)

Why?

- Take-or-Pay Contracts
- A form of guarantee that Port will received certain minimum revenue from Tenant’s activity
- Incentivizes Tenant



WHERE?

- Dockage
- Wharfage
- Rail
- Water Purchase
- Minimum Storage Charges



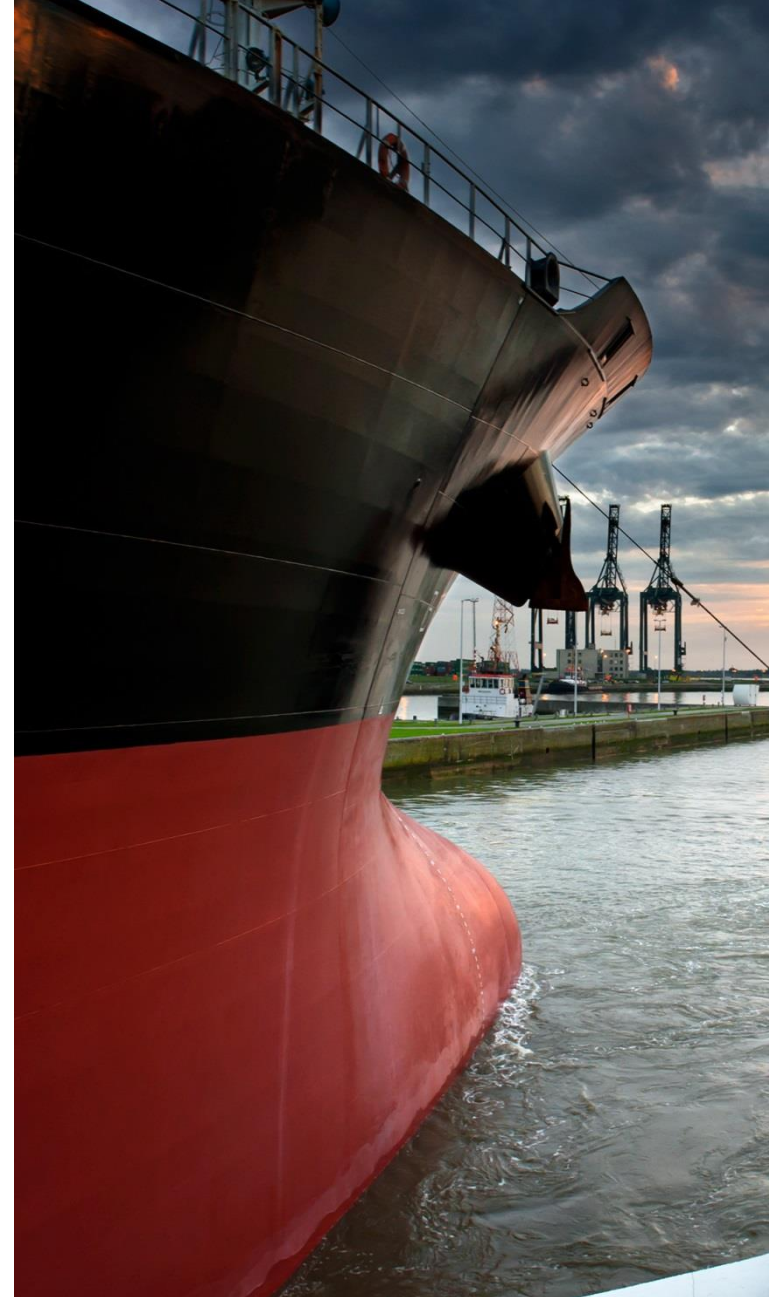
WHEN?

- Port charges are not reflected in the Tenant's base rent (typically not)
- Tenant seeks preferential use of Port facilities
- Port's recover of improvement or infrastructure construction costs



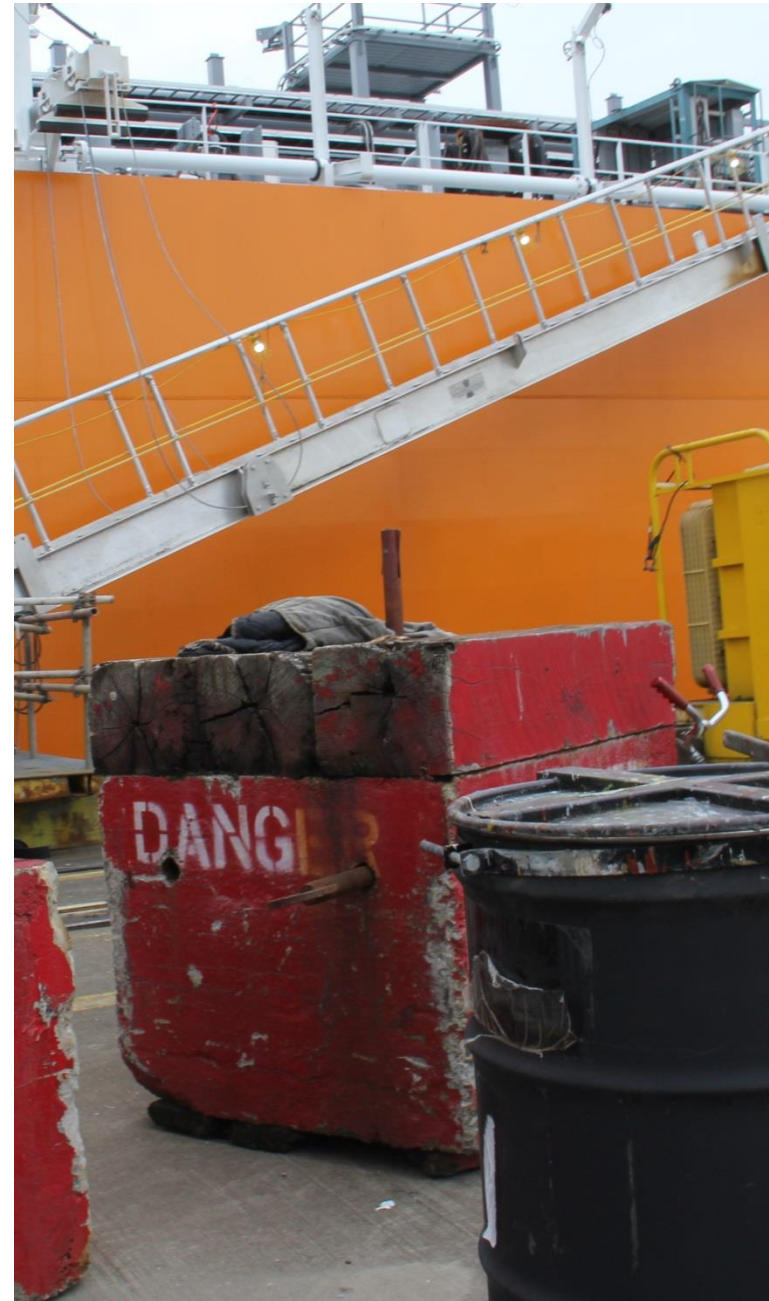
HOW?

- Periodic Targets (monthly or annual)
- Income Averaging
- Leasehold Excise Tax



WHEN TO DEFER OR FORGIVE?

Force Majeure Events



3. PREPAYMENT OF RENT

Why?

Tenant

- Discounted Rent based on Present Worth
- Hedges against rising market rent conditions

Port (Landlord)

- Rent received in advance as “security” against future rent

WHAT?

Only covers fixed rent for prescribed period.

Not Included:

- CAM / Op Ex Charges
- Pro Rata Insurance

Leasehold Excise Tax?



WHO OWNS THE PREPAID RENT?

Bankruptcy considerations

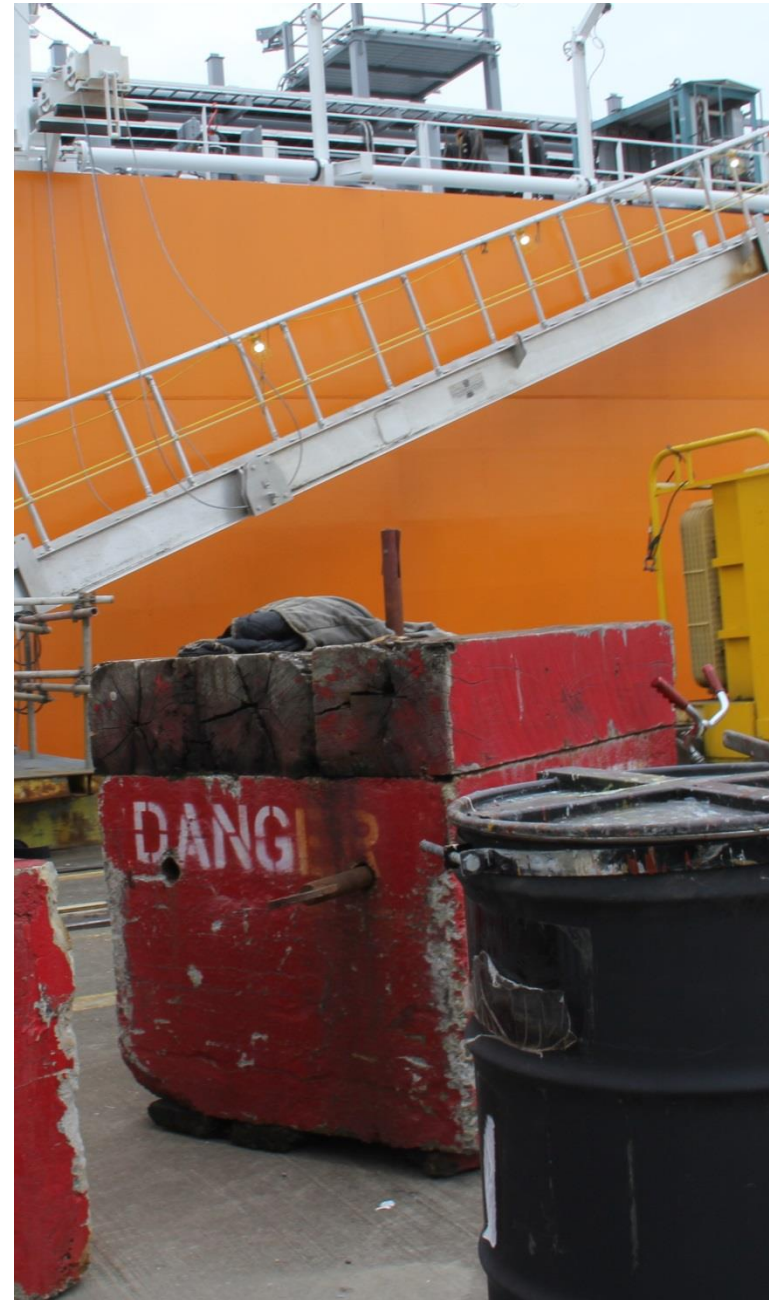
Clawback – Event of Default



4. END OF TERM ~ SITE RESTORATION

Why?

- Special Purpose Tenant Improvements
- Return Premises to Tenantable Condition
- Future Development of Site
- Not Rent Security



WHAT?

What condition upon
surrender?

How much security is
adequate?

What Form of Security?

- Bond
- Letter of Credit



WHEN WILL SECURITY BE DEPOSITED?

- Tying up Tenant's Money



Larry A. Costich

Transportation, Ports and
Maritime

Shareholder

206-407-1548 Direct

lcostich@schwabe.com



“It’s not enough to know what the textbook answers might be. We need to know what the right answer is for this client, and do it quickly and cost-effectively.”

Larry Costich is a real estate transactional attorney with a strong background in land use and natural resource law. He helps real estate and development clients throughout the Northwest resolve problems and move ahead with projects, ranging from major commercial and industrial developments to natural resource use and preservation. In addition, he represents commercial, agricultural and industrial clients, developers and port districts in real estate transactions, financing, permitting, land use, environmental and natural resource issues, and dispute resolution. Larry has also assisted clients on multi-family developments, preparing declarations of restrictive covenants and advising association governance. In all aspects of his practice, Larry is committed to finding practical solutions that achieve client objectives.

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