

Schedule "A"

Bylaw No. 3736

Land Title Act
Form C
Section 219.9
Province of
British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of Page(s)

APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
Cook Roberts, Barristers and Solicitors, 4th Floor, 777 Fort Street,
Victoria, BC, V8W 1G9, Ph. 385-1411

Kary Thornton

File RCC/12418

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:*

(PID)
009-141-111

(LEGAL DESCRIPTION)
Lot B, Section 23, Victoria District, Plan 368

3. NATURE OF INTEREST:*

DESCRIPTION
Lease

DOCUMENT REFERENCE
(PAGE AND PARAGRAPH)
Entire Document

PERSON ENTITLED TO INTEREST
Oak Bay Marina (1992) Ltd.

TERMS: Part 2 of this instrument consist (select one only)

- (a) Filed Standard Charge Terms _____ D.F. No.
(b) Express Charge Terms Annexed as Part 2
(c) Release _____ There is no Part 2 of this instrument

A selection of (a) includes any addition or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

TRANSFEROR(S):*

THE CORPORATION OF THE DISTRICT OF OAK BAY

TRANSFeree(S): (including postal address(es) and postal code(s))*

OAK BAY MARINA (1992) LTD., a British Columbia company, Inc. No. 326013, with registered office at 1327 Beach Drive, Victoria, B.C., V8S 2N4

ADDITIONAL OR MODIFIED TERMS: *

n/a

Execution(s): This instrument creates, assigns, modified, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charges terms, if any.

Execution Date

Officer Signature(s)

Party(ies) Signature(s)

Y M D

THE CORPORATION OF THE DISTRICT OF OAK BAY by its authorized signatory:

OFFICER CERTIFICATION:

Our signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act R.S.B.C. 1979, c. 116, take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

EXECUTIONS CONTINUED

Page 2

Execution Date

Officer Signature(s)

Y M D

Lender(s) [Morgagor(s)]

Signature(s)

OAK BAY MARINA (1992) LTD. by its
authorized signatory

SOLICITOR CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

Marina Lease dated January 1, 1993

Lessor: **The Corporation of the District of Oak Bay**

Lessee: **Oak Bay Marina (1992) Ltd.**

Guarantor: **Oak Bay Marina Ltd.**

INDEX

Recitals

- A. Crown lease of foreshore and/or land covered by water
- B. Registered ownership of Marina Upland and part of Upland
- C. Crown lease of remainder of Upland
- D. Upland committed to public use
- E. Agreement for lease and right-of-way

Provisions

1. **Interpretation**

- 1.1 Definitions
- 1.2 Guides for interpretation
- 1.3 Exhibits

2. **Demise**

- 2.1 Demise of Aquatic Lands
- 2.2 Demise of Marina Upland
- 2.3 Term
- 2.4 Yield

3. **Improvements**

- 3.1 Consent to Capital Improvement
- 3.2 Commitments for Capital Improvement
- 3.3 Standards
- 3.4 Additional improvements
- 3.5 Cooperation
- 3.6 Irrevocable letter of credit

4. Rent

- 4.1 For Aquatic Lands: Percentage Rent
- 4.2 For Marina Upland: Basic Rent and Percentage Rent
- 4.3 Additional Rent
- 4.4 Area adjustment
- 4.5 Rent review
- 4.6 No unauthorized set-off

5. Percentage Rent Procedure

- 5.1 Records
- 5.2 Reporting and payment
- 5.3 Audit

6. Community Use

- 6.1 Sublease/option to sublease
- 6.2 Restricted use
- 6.3 Lessor's responsibility
- 6.4 Sea rescue

7. Use

- 7.1 Permitted
- 7.2 Not permitted

8. Maintenance and Repair

- 8.1 Lessee's responsibility
- 8.2 Inspection by Lessor
- 8.3 Lessor's financial responsibility
- 8.4 Procedure where Lessor responsible

9. Indemnity

- 9.1 General indemnity
- 9.2 Specifically, lienable claims
- 9.3 Exception
- 9.4 Notices

10. Insurance

- 10.1 Public liability insurance

10.2 Fire and related coverage
10.3 Course of construction insurance
10.4 Compliance with insurer's regulations
10.5 Proof

11. Lessor's covenants

11.1 Crown lease valid
11.2 Crown lease performance
11.3 Ownership of Upland
11.4 Marina lease authorized
11.5 Crown consent
11.6 Quiet enjoyment
11.7 Parking lot
11.8 Access
11.9 Non-competition
11.10 Signage
11.11 Municipal services

12. Lessee's covenants

12.1 Pay rent
12.2 Prove payments to others
12.3 Assignment
12.4 Subletting
12.5 Contracts limited to duration of Term
12.6 Performance obligations
12.7 Removal on expiry
12.8 Dock option

13. Lessor's Remedies

13.1 Remedies

14. Non-disturbance

14.1 Subtenant

15. Miscellaneous

15.1 Entire agreement
15.2 Registration
15.3 Further assurances
15.4 Dispute resolution

15.5 Notice

16. Guarantee

Exhibits

1. Rent Summary

Preliminary Plans and Specifications namely:

- 2.1 Plan
- 2.2 Elevations
- 2.3 Landscape Construction Plan
- 2.4 Dock Plan
- 2.5 Typical Details (Dock)

3. Crown Lease

Sketch Plan (showing Aquatic Lands, Marina Upland & Upland)

5. Servicing Agreement

6. Landscape Maintenance Plan

7. Sketch of Floating Yacht Brokerage facility

8. Section 215 Covenant

Marina Lease dated January 1, 1993.

Between:

The Corporation of the District of Oak Bay
2167 Oak Bay Avenue, Victoria, B.C., V8R 1G2

Lessor

And:

Oak Bay Marina (1992) Ltd., a British Columbia company
Inc. No. 326013, with registered office at 1327
Beach Drive, Victoria, B.C., V8S 2N4

Lessee

And:

Oak Bay Marina Ltd., a British Columbia company
Inc. No. 51515, with registered office at 1327
Beach Drive, Victoria, B.C., V8S 2N4

Guarantor

Whereas:

- A. The Lessor holds by lease from the Crown the foreshore and/or lands covered by water described in this document as the Aquatic Lands.
- B. The Lessor is registered owner of firstly the lands and premises described in this document as the Marina Upland and secondly, part of the lands and premises described in this document as the Upland.
- C. The Lessor has the use and occupation of the remainder of the lands and premises described in this document as the Upland subject to rights of the Government of Canada with respect to the breakwater on Block A, District Lot 144 as described in the records of the Ministry of Environment, Lands and Parks (B.C.).
- D. The whole of the Upland is committed to public use for parking, recreation and other civic purposes throughout the term of this Marina Lease.
- E. The Lessor has agreed to grant to the Lessee a sub-lease of the Aquatic Lands

and a lease of the Marina Upland subject to the covenants and mutual agreements set out in this Marina Lease.

Witness:

1. **Interpretation**

1.1 **Definitions.** For all purposes of this document, except as otherwise provided or unless the context otherwise requires:

1.1.1 **Agreement** means this document as it may from time to time exist and be lawfully amended.

1.1.2 **Annual Sales Threshold** means the annual volumes of sales below which Percentage Rent does not become payable and above which Percentage Rent becomes payable.

1.1.3 **Aquatic Lands** means the foreshore and/or lands below the high water mark and described in the records of the Ministry of Environment, Lands and Parks (B.C.) as follows:

1.1.3.1 **Blocks A, B and C** of Lot 114, Victoria District and,

1.1.3.2 **Block B** of Lot 113, Victoria District.

The location of the Aquatic Lands is shown outlined in green on the Sketch Plan marked Exhibit 4. Part of said Block A may be deleted from the Aquatic Lands and added to the Marina Upland during the Term. Accordingly the Aquatic Lands will be subject to reduction pursuant to Section 1.2.8.

1.1.4 **Capital Improvement** means the aggregate of Lessee's Work and Lessor's Work.

1.1.5 **Crown** means Her Majesty the Queen in Right of the Province of British Columbia.

1.1.6 **Crown Lease** means the Lease Aquatic Lands dated December 31, 1992 between the Crown and the Lessor (Ministry of Environment, Lands and Parks Lease No. 104469, File No. 014194) which is attached and marked Exhibit 1 as it may be lawfully amended during the Term, with consent of the Lessee where such amendment affects the interest of the Lessee, such consent not to be unreasonably withheld or delayed.

and a lease of the Marina Upland subject to the covenants and mutual agreements set out in this Marina Lease.

Witness:

1. **Interpretation**

1.1 **Definitions.** For all purposes of this document, except as otherwise provided or unless the context otherwise requires:

1.1.1 **Agreement** means this document as it may from time to time exist and be lawfully amended.

1.1.2 **Annual Sales Threshold** means the annual volumes of sales below which Percentage Rent does not become payable and above which Percentage Rent becomes payable.

1.1.3 **Aquatic Lands** means the foreshore and/or lands below the high water mark and described in the records of the Ministry of Environment, Lands and Parks (B.C.) as follows:

1.1.3.1 **Blocks A, B and C** of Lot 114, Victoria District and,

1.1.3.2 **Block B** of Lot 113, Victoria District.

The location of the Aquatic Lands is shown outlined in green on the Sketch Plan marked Exhibit 4. Part of said Block A may be deleted from the Aquatic Lands and added to the Marina Upland during the Term. Accordingly the Aquatic Lands will be subject to reduction pursuant to Section 1.2.8.

1.1.4 **Capital Improvement** means the aggregate of Lessee's Work and Lessor's Work.

1.1.5 **Crown** means Her Majesty the Queen in Right of the Province of British Columbia.

1.1.6 **Crown Lease** means the Lease Aquatic Lands dated December 31, 1992 between the Crown and the Lessor (Ministry of Environment, Lands and Parks Lease No. 104469, File No. 014194) which is attached and marked Exhibit 1 as it may be lawfully amended during the Term, with consent of the Lessee where such amendment affects the interest of the Lessee, such consent not to be unreasonably withheld or delayed.

1.1.7 Demised Premises means the Aquatic Lands and the Marina Upland.

1.1.8 Docks means berths, moorings, wharfs, floats, piers, gangways and approaches thereto.

1.1.9 Event of Default means:

1.1.9.1 Holding captive whales on the Aquatic Lands after June 30, 1993, which will constitute an absolute default under this Marina Lease, or

1.1.9.2 Default in prompt payment of Rent or in performance or observance of any of the other agreements, terms, covenants or conditions set out in this Agreement on the part of the Lessee to be performed or observed, which payment or other default remains after 60 days written notice by the Lessor to the Lessee specifying same and requiring its rectification (this period will be extended insofar as reasonably necessary in the event the Lessee diligently pursues rectification but is delayed or prevented in completing rectification by force majeure or other cause(s) beyond the Lessee's reasonable control) or

1.1.9.3 Filing in any Court of a voluntary assignment in bankruptcy (or similar process) by the Lessee or

1.1.9.4 Filing in any Court of a petition in bankruptcy (or similar process) against the Lessee for a receiving order or for the appointment of a receiver or trustee of the Lessee's property, which proceeding is not dismissed within 60 days after such filing (this period will be extended insofar as reasonably necessary in the event the Lessee asserts and diligently pursues a bona fide defence) or

1.1.9.5 Appointment of a receiver or a receiver-manager entitled to possession of the assets and undertaking of the Lessee on the Aquatic Lands and the Marina Upland, which appointment is not cancelled within 60 days thereafter (this period will be extended insofar as reasonably necessary in the event the Lessee asserts and diligently pursues a bona fide claim for such setting aside or cancellation).

1.1.10 Lessee's Work means:

1.1.10.1 Renovation and redevelopment of the buildings and other structures wholly or partly situate on the Marina Upland;

1.1.7 Demised Premises means the Aquatic Lands and the Marina Upland.

1.1.8 Docks means berths, moorings, wharfs, floats, piers, gangways and approaches thereto.

1.1.9 Event of Default means:

1.1.9.1 Holding captive whales on the Aquatic Lands after June 30, 1993, which will constitute an absolute default under this Marina Lease, or

1.1.9.2 Default in prompt payment of Rent or in performance or observance of any of the other agreements, terms, covenants or conditions set out in this Agreement on the part of the Lessee to be performed or observed, which payment or other default remains after 60 days written notice by the Lessor to the Lessee specifying same and requiring its rectification (this period will be extended insofar as reasonably necessary in the event the Lessee diligently pursues rectification but is delayed or prevented in completing rectification by force majeure or other cause(s) beyond the Lessee's reasonable control) or

1.1.9.3 Filing in any Court of a voluntary assignment in bankruptcy (or similar process) by the Lessee or

1.1.9.4 Filing in any Court of a petition in bankruptcy (or similar process) against the Lessee for a receiving order or for the appointment of a receiver or trustee of the Lessee's property, which proceeding is not dismissed within 60 days after such filing (this period will be extended insofar as reasonably necessary in the event the Lessee asserts and diligently pursues a bona fide defence) or

1.1.9.5 Appointment of a receiver or a receiver-manager entitled to possession of the assets and undertaking of the Lessee on the Aquatic Lands and the Marina Upland, which appointment is not cancelled within 60 days thereafter (this period will be extended insofar as reasonably necessary in the event the Lessee asserts and diligently pursues a bona fide claim for such setting aside or cancellation).

1.1.10 Lessee's Work means:

1.1.10.1 Renovation and redevelopment of the buildings and other structures wholly or partly situate on the Marina Upland;

1.1.10.2 Construction and placement of dock and dock facilities on the Aquatic Lands;

1.1.10.3 Construction of perimeter walkway, parkette (including park benches and park lighting) and construction and planting of landscaping on that part of the Upland and Marina Upland in the areas coloured green on Exhibit 2.3

substantially as shown on the Preliminary Plans and Specifications. Without limitation of the foregoing, the Lessee's Work includes supply, installation and finishing of all details and accessories shown on the Preliminary Plans and Specifications including bicycle racks. Notwithstanding the foregoing, Lessee's Work does not include any item within sections 1.1.11.1 or those items which are the financial responsibility of the Lessor pursuant to Section 8.3.

1.1.11 Lessor's Work:

1.1.11.1 Means the construction or reconstruction of any part of the existing buildings or other structures situate wholly or partly on the Marina Upland required during the course of construction of the Lessee's Work to bring the same up to existing building code standards.

1.1.11.2 But excludes asbestos abatement and any such construction or reconstruction which becomes necessary as a result of the Lessee expanding the size of any building or other structure or electing to provide services or materials in excess of building code standards or standards set by the Lessor.

1.1.12 Liquor means liquor as defined in the Liquor Control and Licensing Act and Regulations thereto.

1.1.13 Marina Upland means that part of PID No. 009 141 111, Block B, Section 23, Victoria District, Plan 368 which is outlined in red on Reference Plan number 1752R as filed at the Land Title Office, Victoria, B.C. The Marina Upland will be subject to enlargement pursuant to section 1.2.8.

1.1.14 Preliminary Plans and Specifications means the design concept proposed by the Lessee and approved in principle by the Lessor, namely the plan, elevations, landscape construction plan, dock plan and typical details attached to this Agreement and marked Exhibits 2.1 - 2.5.

1.1.15 Rent means the Basic Rent, Percentage Rent and Additional Rent (and those terms have the meanings assigned by section 4).

1.1.16 Sales means the gross annual income from the sale of all food, beverages and other goods and services throughout the Term on or from the Demised Premises whether or not used or consumed on the Demised Premises except:

1.1.16.1 Liquor;

1.1.16.2 Fishing excursions (except food and beverages supplied therefor from the Demised Premises);

1.1.16.3 Charges for moorage, wharfage and supply of utilities and other services to patrons on the Aquatic Lands.

1.1.16.4 Fuel and petroleum products;

1.1.16.5 Sales of new and used boats (and attached motors) displayed on the Aquatic Lands, boat and equipment rentals, boat charters (with or without skipper), sailing schools and fishing on the Aquatic Lands from the Docks.

1.1.16.6 Travel or tour packages booked from the Demised Premises but supplied by the Lessee or any other person from some location other than the Demised Premises.

1.1.16.7 Any income, whether or not already excepted, the actual or projected amount of which is taken into account by the Crown in calculating the rent payable by the Lessor to the Crown under the Crown Lease.

1.1.17 Structural Element includes foundations, sub-floors, weight-bearing-walls (except weight-bearing-walls which must be removed, relocated or reinforced as a result of expansion of the building or other structure undertaken by the Lessee and not required by the Lessor), beams, roofs, sump pump, plumbing roughed in to points of connection at an interior wall, boiler, HVAC system, power vault and service lines and connections for all utilities namely electric power, telephone, gas, water and sewer. In this context utility means hardware to provide the Lessee with continuous supply of electric power (to be drawn from the vault) and water, in each case sufficient to service the obligations of the Lessee under this Agreement and its operations contemplated by this Agreement without expansion of the buildings wholly or partly situate on the Marina Upland other than as contemplated in the Preliminary Plans and Specifications.

1.1.18 Term means 30 years less 2 days commencing January 1, 1993 and ending December 29, 2022.

1.1.19 Upland means those parts of:

Firstly, Block B, Section 23, Victoria District, Plan 368;
Secondly, District Lot 115;
Thirdly, Block A, District Lot 144 and
Fourthly, Block B, District Lot 144

shown outlined in red on the Sketch Plan attached and marked Exhibit 4. Secondly, Thirdly and Fourthly are so described in the records of the Ministry of Environment, Lands and Parks (B.C.). The boundaries of the Upland are subject to such adjustment as may be required in the event of a legal survey.

1.2 **Guides for interpretation.** For all purposes of this Agreement except as otherwise expressly provided or unless the context otherwise requires:

1.2.1 The index, headings and captions in this Agreement are for convenience of reference only and are not intended to interpret, define or limit the scope, extent or intent of the provisions of this Agreement.

1.2.2 Accounting terms not otherwise defined in this Agreement have the meanings assigned by generally accepted accounting principles.

1.2.3 Reference to currency in this Agreement means Canadian currency.

1.2.4 Reference to statutes mean statutes of British Columbia (B.C.) or Canada (CAN) as amended from time to time.

1.2.5 Reference to any section of this Agreement includes its subsections.

1.2.6 Words importing the masculine gender include the feminine or neuter and words in the singular include the plural and vice versa.

1.2.7 Reference to the Lessor and the Lessee includes their respective successor(s) and permitted assign(s) and, as the context requires, permitted sublessees.

1.2.8 If the Lessor acquires title in fee simple to any part of the Aquatic Lands adjacent to the Marina Upland, such part will be deleted from the Aquatic Lands and will be added to the Marina Upland without necessity of execution of any document by the Lessor or the Lessee.

1.2.9 Reference to an Exhibit is by reference to its title.

1.3 **Exhibits.** The following are the Exhibits to this Agreement:

- 1 Rent Summary.
2 Preliminary Plans and Specifications namely:

<u>Exhibit</u>	<u>Title</u>
2.1	Plan
2.2	Elevations
2.3	Landscape Construction Plan
2.4	Dock Plan
2.5	Typical Details (Docks)

- 3 Crown Lease.
4 Sketch Plan (showing Aquatic Lands, Marina Upland and Upland)
5 Servicing Agreement
6 Landscape Maintenance Plan
7 Sketch of Floating Yacht Brokerage facility
8 Section 215 Covenant

2. Demise

- 2.1 **Demise of Aquatic Lands.** The Lessor subleases the Aquatic Lands to the Lessee.
2.2 **Demise of Marina Upland.** The Lessor leases the Marina Upland to the Lessee.
2.3 **Term.** The Lessee is to have exclusive possession of the Aquatic Lands and the Marina Upland during the Term, subject to the Lessee's covenants and agreements for community use as set out in Section 6 of this Agreement.
2.4 **Yield.** This Agreement is to yield the Rent to the Lessor.

3. Improvements

- 3.1 **Consent to Capital Improvement.** The Lessor consents to the Capital Improvement, subject to approval of final plans, specifications and landscape detail by the Lessor, such approval not to be unreasonably withheld or delayed, and subject to the Lessee obtaining all necessary permits.
3.2 **Commitments for Capital Improvement.**
3.2.1 The Lessee covenants and agrees to carry out the whole of the Lessee's Work at its own cost.

- 1 Rent Summary.
2 Preliminary Plans and Specifications namely:

<u>Exhibit</u>	<u>Title</u>
2.1	Plan
2.2	Elevations
2.3	Landscape Construction Plan
2.4	Dock Plan
2.5	Typical Details (Docks)

- 3 Crown Lease.
4 Sketch Plan (showing Aquatic Lands, Marina Upland and Upland)
5 Servicing Agreement
6 Landscape Maintenance Plan
7 Sketch of Floating Yacht Brokerage facility
8 Section 215 Covenant

2. **Demise**

- 2.1 **Demise of Aquatic Lands.** The Lessor subleases the Aquatic Lands to the Lessee.
- 2.2 **Demise of Marina Upland.** The Lessor leases the Marina Upland to the Lessee.
- 2.3 **Term.** The Lessee is to have exclusive possession of the Aquatic Lands and the Marina Upland during the Term, subject to the Lessee's covenants and agreements for community use as set out in Section 6 of this Agreement.
- 2.4 **Yield.** This Agreement is to yield the Rent to the Lessor.

3. **Improvements**

- 3.1 **Consent to Capital Improvement.** The Lessor consents to the Capital Improvement, subject to approval of final plans, specifications and landscape detail by the Lessor, such approval not to be unreasonably withheld or delayed, and subject to the Lessee obtaining all necessary permits.

3.2 **Commitments for Capital Improvement.**

- 3.2.1 The Lessee covenants and agrees to carry out the whole of the Lessee's Work at its own cost.

3.2.2 The Lessor agrees to contribute, by set off against Rent, the aggregate sum of \$176,380 to the cost of the Lessee's Work on the Demised Premises:

<u>Year of lease term</u>	<u>Set off amount</u>
1	\$60,000
2	70,000
3	46,380

3.2.3 The Lessor covenants and agrees to carry out the whole of the Lessor's Work at its own cost.

3.2.4 Notwithstanding section 3.2.3, if requested to do so by the Lessor the Lessee will undertake and complete any specified part of the Lessor's Work on terms and at such cost as may be agreed between the Lessee and the Lessor; and the Lessee shall be entitled to set off such cost against Rent.

3.3 **Standards.** In connection with the Capital Improvement the Lessee will cause all work to be done and material to be supplied:

3.3.1 In accordance with the following construction schedule.

On execution and unconditional delivery of this Lease by both parties the Lessee will prepare detailed plans and specifications for the Capital Improvement and subject to final design approval and all necessary permits, the Lessee will commence and diligently pursue its work. The Lessee will reopen the restaurant on or before June 30, 1993 and will complete the parkette, walkway and landscaping on the Upland on or before December 31, 1993. The Lessee will substantially complete all of its Capital Improvement work on the Upland and the Marina Upland on or before May 31, 1994.

Dock construction will be phased as follows. The Lessee will commence maintenance dredging and dock construction on or before October 31, 1993 and will complete and install 140 marine berths including the platform referred to in Section 6.1 on or before June 30, 1994, 160 marine berths on or before October 31, 1994 and the balance on or before June 30, 1995.

Notwithstanding the foregoing the construction schedule will be extended insofar as reasonably necessary in the event the Lessee diligently pursues the Capital Improvement but is delayed or prevented in completion of any part(s) of its work by force majeure or other cause(s) beyond the Lessee's reasonable control.

3.3.2 In a good and workmanlike manner. Without limitation, dock construction is to meet or exceed the standard of the most recently constructed Docks at North Saanich Marina particulars of which appear from Exhibit 2.5.

3.3.3 In compliance with all applicable federal, provincial and municipal laws including without limitation building bylaws, zoning bylaws, codes and all lawful rulings and directives of persons authorized by public authority.

3.4 Additional improvements. The Lessee will be entitled to make additional improvements during the Term, including without limitation renovation and decoration of the buildings or other structures situate from time to time on the Aquatic Lands and the Marina Upland but after completion of the Capital Improvement the Lessee will not structurally alter any buildings or other structures without prior written consent of the Lessor, such consent not to be unreasonably withheld or delayed.

3.5 Cooperation. The Lessor will cooperate with the Lessee in respect of the Capital Improvement and any further improvements or renovations the Lessee may propose and carry out during the Term. Without limitation, as may be applicable but at the Lessee's cost, the Lessor will apply or join in applying for all permits, licences, approvals and consents required from other authorities by applicable law or otherwise reasonably necessary for cost efficient completion and operation by the Lessee. The Lessor and the Lessee agree to cooperate with each other in adjustment of the boundaries of the Aquatic Lands as the Lessee may reasonably request in the interest of avoiding inadvertent encroachment of any Docks as shown on Exhibit 2.4 outside the Aquatic Lands or use of the area of land covered by water and lying between the Aquatic Lands and the breakwater.

3.6 Irrevocable Letter of credit. Prior to issue of a building permit for the Lessee's Work, the Lessee, the Lessor and the Guarantor will execute and deliver a Servicing Agreement in the form attached and marked Exhibit 5 and the Lessee or the Guarantor will furnish the Lessor an irrevocable letter of credit for \$300,000, which will serve as a surety for substantial completion and payment until all of the Lessee's Work has been completed and where applicable permits for occupation and use have been issued. The Servicing Agreement will be subject to this Agreement, which will prevail in the case of any inconsistency between them.

4. Rent

4.1 For Aquatic Lands: Percentage Rent. The Lessee agrees to pay the Lessor in respect of the Aquatic Lands a Percentage Rent equal to 128% of the rent payable by the Lessor to the Crown under the Crown Lease. Each year's Percentage Rent in respect of the Aquatic Lands will be payable 30 days after receipt of invoice from the Lessor.

4.2 For Marina Upland: Basic Rent and Percentage Rent. The Lessee agrees to pay the Lessor in respect of the Marina Upland:

4.2.1 The Basic Rent calculated as specified in the Rent Summary. Each year's Basic Rent will be payable in equal consecutive monthly instalments in advance on the first day of each month during such year provided that in consideration for the Lessee's Work, no Basic Rent will accrue or be payable in respect of the restaurant or the coffee shop until June 1, 1994 and,

4.2.2 Percentage Rent as specified in the Rent Summary on the amount if any by which Sales from each individual facility/revenue source exceed its Annual Sales Threshold as specified in the Rent Summary provided that until May 31, 1994 Percentage Rent will be payable on coffee shop and restaurant Sales without reference to Annual Sales Threshold. For greater certainty, Percentage Rent may become payable under this section in addition to Basic Rent in respect of Sales in excess of Annual Sales Threshold from the Boat Works Building, the Marine Sales and Service Building and the restaurant and coffee shop in the Food Service Building. Percentage Rent will not become payable in any event in respect of any offices in buildings on the Marina Upland. Percentage Rent will not become payable under this section in respect of the Docks.

4.2.3 For 1994, Basic Rent and Annual Sales Threshold for the restaurant and the coffee shop will be 7/12 of the figures shown in the Rent Summary and Sales between June 1 and December 31, 1994 will be used to calculate whether or not Percentage Rent is payable.

4.2.4 For the purpose of calculating Percentage Rent all Sales on or from the Docks will be allocated to the marine sales and service building except foods and/or beverages which are to any extent prepared or processed by or for the Lessee or any sub-lessee, which will be allocated to the restaurant.

4.3 Additional Rent. In addition to the Basic Rent and Percentage Rent, the Lessee agrees to pay directly all property taxes levied according to applicable law in respect of the Aquatic Lands and the Marina Upland, all utilities consumed on the Aquatic Lands and the Marina Upland, water consumed by the Lessee for landscape maintenance on the Upland, all premiums for insurance required pursuant to this Agreement and all repairs required to maintain the improvements on the Aquatic Lands and the Marina Upland (except Lessor's Work and any repairs which are the Lessor's responsibility under this Agreement). The Rent is to be an absolute net return to the Lessor subject to the following exceptions namely rent payable by the Lessor under the Crown Lease, property taxes and any rent payable by the Lessor in respect of the Upland, that part of the Capital Improvement which is Lessor's Work, any Marina Upland repairs which are the Lessor's responsibility under this Marina

Lease, maintenance and repairs on the Upland which are the Lessor's responsibility under this Marina Lease and any credits to which the Lessee may be entitled.

4.4 Area adjustment. The square foot area of the facilities/sources of revenue specified in the Rent Summary are agreed and will only be subject to adjustment to reflect expansion(s) constructed by the Lessee as part of the Capital Improvement or otherwise during the Term. Any such adjustment will become effective from and after the date of substantial completion of the Capital Improvement but not retroactively. In the event of expansion, the Lessor and the Lessee agree to adjust the Annual Sales Thresholds to amounts which bear the same proportion to the adjusted Basic Rents as the Annual Sales Thresholds bear to the Basic Rents specified in the Rent Summary.

4.5 Rent review. The Basic Rent and Annual Sales Thresholds specified in the Rent Summary will apply until May 31, 1999 but will be subject to review as of the first day of June 1999, 2004, 2009, 2014 and 2019. The rent review procedure will be as follows:

4.5.1 The Lessor will initiate the procedure 180 days prior to the rent review date by notice to the Lessee stating the Basic Rent amounts the Lessor considers appropriate and the data on which those amounts are based, failing which the Basic Rent amounts will remain unchanged between said rent review date and the rent review next thereafter.

4.5.2 Within 30 days after the Lessor's notice is given the Lessee will notify the Lessor of the Basic Rent amounts the Lessee considers appropriate and the data on which those amounts are based. Thereafter the Lessor and the Lessee will negotiate to determine new Basic Rent amounts which bear to then current market value rentals the same proportion as the figures in the Rent Summary bear to January 1, 1993 current market value rentals in each case for comparable space with comparable amenities and comparable restrictions on permitted use in a comparable area of the Capital Regional District. The Rent set will take into account the limited uses allowed, the parking availability and the ability of the Lessee to mark up leases to subtenants whether or not they are arms length. Notwithstanding anything in sections 4.5.2 or 4.5.3 none of the new Basic Rent amounts will be less in any event than the Basic Rent amounts in effect immediately prior to the rent review.

4.5.3 If the Basic Rent for each facility/revenue source (except Docks) specified in the Rent Summary is not determined by mutual agreement 60 days prior to the rent review anniversary, the Lessor and the Lessee will each be entitled to refer determination of the Basic Rent amounts to binding arbitration as provided in section 15.4. The arbitrator's determination will be according to the criteria specified in Section 4.5.2.

4.5.4 The Lessor and the Lessee agree to adjust the Annual Sales Thresholds to amounts which bear the same proportion to the adjusted Basic Rents as the Annual Sales Thresholds bear to the Basic Rents specified in Rent Summary. This provision applies to the following premises designated on Exhibit 2.1 namely all of A, all of B and only the areas designated as coffee shop and restaurant premises in C.

4.6 **No unauthorized set-off.** The Lessee will not be entitled to make any set-off against Rent except as may be expressly provided in this Agreement.

5. Percentage Rent Procedure

5.1 **Records.** The Lessee agrees to prepare and keep (or cause to be prepared and kept) adequate books and records to calculate and verify the Sales from each facility/revenue source detailed in the Rent Summary (except Offices and Docks).

5.2 **Reporting and payment.** On April 1, 1994, the Lessee will provide the Lessor the following particulars of its operations on the Aquatic Lands and the Marina Upland in respect of the preceding calendar year:

5.2.1 A statement of such Sales, itemized on a per facility basis and certified by a chartered accountant or certified general accountant.

5.2.2 A calculation of Percentage Rent payable.

5.2.3 Payment of the Percentage Rent so calculated.

The Lessee will provide similar particulars annually until April 1, 2024. In addition, the Lessee will provide the Lessor quarterly statements of Sales.

5.3 **Audit.** The Lessor will be entitled, at its own expense, to audit the Lessee's Sales in which event:

5.3.1 The audit will be conducted by a qualified independent auditor.

5.3.2 The audit will pertain to the lease year most recently completed and not more than the two lease years immediately preceding same.

5.3.3 The Lessor will provide the Lessee a copy of the auditor's report.

5.3.4 The Lessee will implement any reasonable Sales recording and reporting recommendations contained in the auditor's report.

5.3.5 The Lessor and the Lessee will adjust the Percentage Rent in accordance with the auditor's report and

5.3.6 If the Lessee's calculation of Percentage Rent for any audited lease year is understated by 5% or more of the Percentage Rent calculated by the auditor, the Lessee will pay the cost of the audit in respect of same.

6. **Community Use**

6.1 **Sublease/option to sublease.** The Lessee subleases to the Lessor and the Lessor accepts and agrees to sublease from the Lessee 400 square feet (more or less) of indoor space and 4 double marine berths. The indoor space will be located substantially as shown outlined in red on Exhibit 2.1 and the Lessee will install without cost to the Lessor an entrance door with lock, roughed in walls to drywall stage from floor to ceiling and lighting all to a standard suitable for storage use. The berths will be located on one of the small-boat docks and the Lessee will construct and maintain at its own expense a platform over the berths suitable for small boats to be pulled out of water and stored on the platform. The Lessee grants to the Lessor and others authorized as part of the community use contemplated by this Agreement, reasonable rights of ingress and egress to use the indoor space and the marine berths. Commencing on the first day of the month following completion of preparation of the indoor space, marine berths and platform as provided in this section, the Lessor will pay to the Lessee sublease rent for the indoor space equal to the Rent payable by the Lessee pro-rated on a square foot basis. The Lessor will pay to the Lessee wharfage for the marine berths at the Lessee's prevailing gross monthly rates from time to time but only to the extent that the Lessee may be unable to demonstrate to the reasonable satisfaction of the Lessor that all other small-boat marine berths on the two docks nearest to Beach Drive are and have been fully occupied throughout the months for which such wharfage is payable. In any event, the Lessor's obligation to pay this wharfage will be subject to a maximum of three months wharfage per year. The sublease rent and wharfage will be payable in cash rather than by set off against rent. The term of this sublease will expire on May 31, 1999. The Lessee grants the Lessor an option to renew the sublease from each rent review date until the next rent review date, the option to be exercised by notice at least 180 days prior to the next rent review date.

6.2 **Restricted use.** The Lessor covenants and agrees to use such indoor space and marine berths only for the purpose of providing recreational facilities to the public, or an appropriate segment of the public, as part of a municipal (or municipally sanctioned) recreation program which does not compete with any business activity then carried on by or under the Lessee but in no event will the Lessor be prohibited from operating a sailing school, sailing club or sailing program for young people.

6.3 **Lessor's responsibility.** The Lessor covenants and agrees to:

6.3.1 Supervise children and other authorized users of the subleased facilities while on the Aquatic Lands and the Marina Upland.

6.3.2 Indemnify and save the Lessee harmless from all liability (in contract, in tort or otherwise) and expense the Lessee may incur in respect of such use or the presence of such authorized users on the Aquatic Lands and the Marina Upland except any liability and expense incurred by the Lessee as a result of its own negligence or the negligence of its servants, agents or invitees.

6.4 **Sea rescue.** The Lessee agrees with the Lessor to permit the Oak Bay Sea Rescue Society or its successor being a society or organization having similar objects, to moor and use without charge a boathouse facility big enough for one boat and designed as may be approved by the Lessor and the Lessee at such location on the Aquatic Lands as the Lessee may approve, (none of which approvals will be unreasonably withheld or delayed) on reasonable terms to be negotiated between the Lessee and such society. For greater certainty, this section is not intended to provide moorage for more than one sea rescue society or organization at any time.

7. Use

7.1 **Permitted.** The Lessee will be entitled to use the Aquatic Lands and the Marina Upland to carry on the business of a full service marina as that term may be generally understood from time to time during the Term. Without limitation, the following specific uses are expressly permitted, namely:

Marine docks, berths, moorings and ways.

Marine vessel construction, repair, sale, boat rental and brokerage

Marine tackle and chandlery sales and rental (hardware, clothing, footwear, safety devices, accessories and consumable supplies)

Marine fuel sales

Marine storage (vessels, tackle and personal lockers)

Food service (licensed restaurant and coffee shop)

Laundry, shower and public washroom facilities

Marine tours (except as not permitted)

Offices for administration, accounting, sales and marketing and for booking off-site tourist business.

7.2 **Not permitted.** Notwithstanding Section 7.1, the Lessee covenants and agrees not to use the Aquatic Lands or the Marina Upland to carry on any of the following commercial activities:

Ocean mammal performances or holding after June 30, 1993

Tours for whale watching
Liquor sales after midnight

Terminal for regularly scheduled public transportation by air or sea
Boathouses except a floating yacht brokerage building substantially the same as and not bigger than that shown on Exhibit 6 and the sea rescue facility referred to in Section 6.4

Dry land storage of marine vessels over 50 feet in length, even for the purpose of construction or repair

Strata title sales (as opposed to rentals) of marine berths

Sale of liquor (except as part of the operation of a restaurant or coffee shop in accordance with section 12.6.2)

8. Maintenance and Repair

8.1 Lessee's responsibility. The Lessee will:

8.1.1 Repair and maintain all Docks of the Lessee from time to time situate on the Aquatic Lands, according to industry standards generally prevailing at marinas throughout the Capital Regional District.

8.1.2 Repair, maintain (and as may be reasonably necessary, replace) all improvements and appurtenances from time to time situate wholly or partly on the Marina Upland (except those items for which the Lessor is financially responsible pursuant to section 8.3).

8.1.3 Maintain the Structural Elements, subject to the Lessor's financial responsibility with respect to same.

8.1.4 Provided in respect of Docks of the Lessee on the Aquatic Lands and in respect of all improvements and appurtenances situate wholly or partly on the Marina Upland that in the event of earlier loss or damage:

8.1.4.1 The Lessee will promptly commence and diligently work to restore, replace or rebuild such Docks, improvements and appurtenances to substantially the same structure and condition as existed before loss or damage.

8.1.4.2 Any proceeds of insurance payable in respect of such loss or damage shall stand charged for such restoration, replacement or rebuilding.

8.1.4.3 The Rent will not abate in respect of Docks but will abate in respect

of any improvements and appurtenances situate wholly or partly on the Marina Upland that are lost or damaged pending such restoration, replacement or rebuilding with such adjustments as may be reasonable subject to compliance with Section 8.1.4.1.

8.1.5 The Lessee's responsibility to maintain, repair and restore is subject to exception for reasonable wear and tear so long as the reasonable wear and tear exception does not impair the safe use of the Docks and facilities thereon.

8.1.6 The Lessee will irrigate and maintain, to standards reasonably acceptable to the Lessor, the perimeter landscaping and the median landscaping on the Upland including park benches and picnic tables. For greater certainty, these areas are shown shaded yellow on Exhibit 6.

8.1.7 The Lessee will provide, maintain and repair appropriate receptacles and will provide regular garbage removal service to such receptacles on the Upland, the Marina Upland and the Docks to the reasonable satisfaction of the Lessor.

8.1.8 The Lessee will provide regular service to its grease trap at such intervals as may be approved from time to time by the Lessor, such approval not to be unreasonably withheld. The Lessee acknowledges and agrees that any reasonable cost incurred by the Lessor for downstream sewer maintenance or repair caused by inadequate service of the Lessee's grease trap will be backcharged to and payable by the Lessee as Additional Rent.

8.1.9 The Lessee agrees to carry out such maintenance and repair on the Aquatic Lands and the Marina Upland as may be reasonably required throughout the term by the rulings and directives of persons authorized by public authority.

8.1.10 The Lessee will keep a log book to record each inspection by each such person with a summary of each inspector's approval and requirements or other comments. The Lessee will allow the Lessor to inspect the log book at the Marina Upland at all reasonable times.

8.2 Inspection by Lessor. The Lessee agrees to allow the Lessor its agents and servants to enter the Marina Upland and the Aquatic Lands at all reasonable times during the term to examine the condition of the buildings and Docks. The Lessor will notify the Lessee specifying particulars of any deficiency in its standard of maintenance and repair in which event the Lessee will have a period of 15 days, or such longer period as the Lessor's notice may specify, to dispute the requirement, dispute the Lessee's responsibility or commence and thereafter diligently pursue completion of the work failing which the Lessor will be entitled to carry out the work, bill the Lessee for the reasonable cost incurred by the Lessor

in so doing and recover the amount billed as Additional Rent. Notwithstanding the foregoing notice procedure, if reasonably required in the interest of public safety, the Lessor may carry out any maintenance or repair work which is the Lessee's responsibility without first giving notice to the Lessee and recover its cost from the Lessee as above.

8.3 Lessor's financial responsibility. The Lessor rather than the Lessee is financially responsible for:

8.3.1 Repair or replacement of any Structural Element of the buildings wholly or partly situate on the Marina Upland as may be reasonably required throughout the Term except to the extent that such repair or replacement is covered by insurance and except such repair or replacement that is:

8.3.1.1 Caused by the negligence of the Lessee, its servants, agents or invitees during the Term.

8.3.1.2 Resulting from the lack of proper maintenance of such Structural Element by the Lessee during the Term.

8.3.1.3 Necessitated by reason of the expansion of such building by the Lessee.

8.3.2 Following completion of the Capital Improvement any repair, replacement or upgrade to any building, structure or other improvement (other than docks) on the Demised Premises that is required by reason of a change in the existing building code or any applicable Municipal by-law or a change in the interpretation of the existing building code or applicable Municipal by-law. For the purposes of this section, completion may be staged and each stage will be deemed completed when all permits for its occupation and use have been issued.

8.3.3 Following completion of the Capital Improvement any repair, replacement or upgrade to the docks that is required by reason of a change in any existing applicable Municipal by-law or a change in the interpretation of any existing applicable Municipal by-law or a change in the interpretation of the existing building code.

8.3.4 Maintenance and repair of the perimeter walkway, repair of pavement for traffic and parking areas, repair of retaining walls, medians and curbs for traffic and parking areas, which responsibilities of the Lessor are conditional on the Lessee having completed the Lessee's Work on the Upland according to the standards approved by the Lessor.

8.3.5 Continuing supply of power for lighting on the Upland.

8.4 **Procedure where Lessor responsible.** If any maintenance or repair is required during the Term which is the Lessor's financial responsibility pursuant to section 8.3, the Lessee (except as provided below) will notify particulars of the condition in need of maintenance or repair to the Lessor. If the condition in need of maintenance or repair substantially interferes with the Lessee's ability to carry on its various operations at the Demised Premises, by obstruction of the traffic and parking areas on the Upland or otherwise, the Lessee will notify the Lessor to that effect and if the Lessor does not promptly commence and diligently pursue the necessary maintenance or repair, the Lessee may carry out such maintenance or repair work as reasonably required and the Lessor will reimburse the Lessee for the reasonable cost incurred by the Lessee in so doing.

8.5 The Lessor and Lessee mutually agree that after completion of the Lessee's Capital Improvement work on the Upland the responsibilities of the Lessee on the Upland will be limited to those matters set out in Sections 8.1.6 and 8.1.7.

9. Indemnity

9.1 **General indemnity.** The Lessee will indemnify and save harmless the Lessor from and against all claims, debts, demands, actions, causes of action, costs and other loss whatsoever which may be suffered or incurred by the Lessor arising:

9.1.1 From Capital Improvement work by the Lessee on the Upland and;

9.1.2 From Capital Improvement work or other use by the Lessee of the Aquatic Lands, the Marina Upland and the improvements and appurtenances thereon.

9.2 **Specifically, lienable claims.** The Lessee will pay and satisfy as and when due all claims which are or may by operation of law become enforceable by any lien or process of attachment whereby the claim can be secured or enforced against the Demised Premises, the Upland or the improvements and appurtenances from time to time situate thereon. If any such lien, charge or process of attachment is filed or recorded, the Lessee will promptly and without demand procure its release provided that if the Lessee wishes to contest in good faith the amount or validity of any such lien, charge or process of attachment and has so notified the Lessor and has deposited with the Lessor evidence of security sufficient to ensure payment or satisfaction of the claim to which the lien, charge or process of attachment pertains, then the Lessee may defer payment for a period of time sufficient to enable the Lessee to contest same with due diligence provided that none of the Demised Premises, the Upland, the improvements or the appurtenances from time to time situate thereon nor any interest therein of the Lessor or the Lessee will be permitted to become liable to forfeiture in respect of such contest. The Lessor may, but will not be obliged, to discharge any lien or attachment if in its reasonable judgment there exists a risk which places the Lessor, the Demised Premises, the Upland or any of said improvements or

appurtenances in jeopardy and the Lessee will pay on demand as Additional Rent any amount so paid by the Lessor.

9.3 Exception. Sections 9.1 and 9.2 do not apply to claims which arise from work undertaken by the Lessor.

9.4 Notices. Pursuant to Section 13 of the Builders' Lien Act (B.C.) the Lessee will post and display notices on the Upland, the Marina Upland and the Aquatic Lands respectively until completion of the Lessee's work thereon and expiry of the time for registration of any lien or process of attachment in respect thereof. The text, size and location of such notices will be subject to approval by the Lessor. The Lessor reserves the right on its own behalf and on behalf of the Crown to post similar notices in respect of the Capital Improvement or any additional improvement the Lessee may carry out pursuant to Section 3.4.

10. Insurance

10.1 Public liability insurance. During the Term the Lessee will take out, maintain and pay for insurance protecting the Lessor as an additional insured against public liability for claims in respect of the Lessee's use and occupation of the Aquatic Lands and the Marina Upland. Such insurance is to be in such amount and on such form of policy as the Lessor may reasonably require.

10.2 Fire and related coverage. During the Term the Lessee will take out, maintain and pay for insurance protecting the Lessor and the Lessee (as their respective interests may appear) against loss or damage to the improvements, appurtenances and personal property from time to time situate on the Aquatic Lands and the Marina Upland caused by fire and similar perils. Such insurance is to be in such amount(s) and on such form of policy as the Lessor may reasonably require. Business interruption insurance will be at the option of the Lessee.

10.3 Course of construction insurance. Until completion of the Lessee's Work the Lessee will take out, maintain and pay for (or cause its contractor or contractors to take out, maintain and pay for) all risk course of construction insurance protecting the Crown, the Lessor and the Lessee in respect of the Lessee's Work as their respective interests may appear. Such insurance is to be in such amount(s) and on such form of policy as the Lessor may reasonably require. This insurance, while in force, is to be in substitution for that specified in Sections 10.1 and 10.2 to the extent the coverage would be duplicated.

10.4 Compliance with insurer's regulations. The Lessee agrees to comply with the regulations of any liability or fire insurance company providing any of the coverage required by the preceding sections insofar as such regulations are necessary to maintain the insurance coverage.

10.5 **Proof.** The Lessee will furnish the Lessor annually certificates or other evidence acceptable to the Lessor as to the insurance from time to time maintained. If the Lessee fails to so prove that such insurance is in effect, the Lessor may but will not be required to place such insurance coverage and the Lessee will pay on demand as Additional Rent any amount so paid by the Lessor.

11. **Lessor's covenants**

11.1 **Crown lease valid.** The Lessor covenants that it is entitled to exclusive use and occupation of the Aquatic Lands during the Term by virtue of but subject to any limitations contained in the Crown Lease, which is valid and enforceable according to its terms.

11.2 **Crown lease performance.** Subject to the obligation of the Lessee not to do or permit anything to be done which will put the Lessor in default under the Crown Lease, the Lessor will observe and perform its obligations under the Crown Lease and keep same valid and enforceable at all times during the Term.

11.3 **Ownership of Upland.** The Lessor covenants that it is the registered and beneficial owner of PID No. 009-141-111, Block B, Section 23, Victoria District, Plan 368 free and clear of all exceptions, encumbrances and adverse claims except as registered at the Land Title Office, Victoria, B.C. as of January 1, 1993. The Lessor and the Lessee acknowledge and understand that the Lessor has not yet finalized the purchase or long term lease from the Crown of that part of the Upland not presently owned by the Lessor. The Lessee acknowledges that the Lessor intends to grant a covenant pursuant to Section 215 of the Land Title Act (B.C.) substantially as set out in the form attached and marked Exhibit 8.

11.4 **Marina lease authorized.** The Lessor covenants that its execution and delivery of this Agreement has been authorized as required pursuant to applicable law.

11.5 **Crown consent.** The Lessor and the Lessee mutually agree that this Agreement and the sublease described in section 12.4 are conditional on consent from the Crown. If the Lessor, despite having used its best effort to do so, is:

11.5.1 Unable to obtain said consents prior to final design approval of the Capital Improvement and issue of all permits necessary for the Lessee to carry out the Lessee's Work, the Lessor will so inform the Lessee and at the Lessee's option this Agreement will be cancelled in which case neither the Lessor nor the Lessee will have any claim against the other or

11.5.2 Unable to acquire the fee simple in or a lease of said part of the Upland for at least 30 years from December 31, 1992 prior to final design approval of the Capital Improvement and issue of all permits necessary for the Lessee to carry out

the Lessee's Work, then the Lessor will indemnify the Lessee against any claims brought by the Government of Canada or the Crown arising out of the Lessee's Work on the Upland.

11.6 Quiet enjoyment. The Lessor covenants that except as provided in this Agreement, the Lessee will be entitled to hold, use and quietly enjoy the Aquatic Lands and the Marina Upland during the entire Term without any interruption, hindrance or adverse claim by the Lessor or by any person rightfully claiming under the Lessor subject only to the Lessee's obligation to pay the Rent and observe and perform its other obligations according to this Agreement and subject to the provisions of Section 6 relating to community use.

11.7 Parking lot. The Lessor will not, at any time during the Term, devote the Upland to any use except a parking area, parkette and pathway or other civic use open at all times to use without charge by the general public including the Lessee's patrons subject to which the Lessee acknowledges that the Lessor as a local government may enact and enforce regulations governing, inter alia, parking and traffic in a public place.

11.8 Access. The Lessor grants to the Lessee reasonable rights of ingress and egress for the Lessee, its patrons, employees and contractors to use the traffic and parking areas on the Upland for pedestrian and vehicular access to and from the Marina Upland and the Aquatic Lands. The Lessor makes no warranty that the number of parking spaces left by the general public from time to time will be adequate for the Lessee's patrons but covenants not to reduce the number of parking spaces available as of January 1, 1993 without consent of the Lessee which consent will not be unreasonably withheld or delayed.

11.9 Non-competition. The Lessor covenants and agrees that it will not, during the Term, directly or indirectly, operate or grant (except to the Lessee) any lease or concession for a marina, restaurant, coffee shop or yacht club on any lands or foreshore bounded on the west by Beach Drive, on the north by the extension easterly of the southerly boundary of Lot B, Section 69, Victoria District, Plan 11836, on the south by the extension northeasterly of Orchard Avenue and on the northeast by the extension southeasterly and northwesterly of the northeasterly boundary of Block A of Lot 144. This section is not intended and will not be interpreted to prevent development of a public fishing pier within the aforementioned area.

11.10 Signage. The Lessor consents to continued use of the Lessee's existing signage on the Upland. Subject to the foregoing, all signage is to comply with the Lessor's sign bylaws.

11.11 Municipal services. The Lessor covenants to make water supply, permits and all other municipal services available to the Lessee on terms not less favourable to the Lessee than the terms under which they are made available generally to businesses in Oak Bay throughout the Term.

12. **Lessee's covenants**

12.1 **Pay rent.** The Lessee covenants to make timely payment of all Rent without abatement or set off except as provided in this Agreement.

12.2 **Prove payments to others.** The Lessee will furnish the Lessor, on request, proof of due payment to third parties of any monies which are by virtue of this Agreement the responsibility of the Lessee.

12.3 **Assignment.** The Lessee covenants not to:

12.3.1 Assign its leasehold interest in the Aquatic Lands or the Marina Upland prior to December 31, 1995 or substantial completion of the Lessee's Work, whichever is later. After that time, the Lessee covenants not to assign its leasehold interest without prior written consent of the Lessor which will not be unreasonably withheld or delayed. Transfer of a controlling interest in the Lessee by transfer of shares in the capital of the Lessee constitutes an assignment of this Lease for the purposes of this Section.

12.3.2 Grant any mortgage of its leasehold interest in the Aquatic Lands or Marina Upland which is registerable as a charge thereon at the Land Title Office, Victoria, B.C. or in the records of the Ministry of Environment, Lands and Parks (B.C.). For greater certainty, the Lessee will be entitled to grant any security not so registerable.

12.3.3 Notwithstanding section 12.3.1 an assignment of this Lease is permitted at any time if the assignment is in favour of a company incorporated under the laws of Canada or any Province of Canada a controlling interest in which company is held by the Lessee or by any of the following persons directly or indirectly, legally or beneficially, alone or together namely Robert H. Wright, the salaried Vice Presidents of Oak Bay Marina Ltd. (as of May 31, 1992) and their respective spouses, children and grandchildren.

12.3.4 Notwithstanding section 12.3.1 a transfer of shares in the capital of the Lessee is permitted at any time if the share transfer:

12.3.4.1 Occurs on death of Robert H. Wright or

12.3.4.2 Is in favour of the Lessee, any of the following persons directly or indirectly, legally or beneficially, alone or together namely Robert H. Wright, the salaried Vice Presidents of Oak Bay Marina Ltd. (as of May 31, 1992) and their respective spouses, children and grandchildren or a company described in section 12.3.3.

12.4 Subletting. The Lessee covenants not to sublet any part of the Aquatic Lands or the Marina Upland without prior written consent of the Lessor, which consent will not be unreasonably withheld or delayed. It is agreed that it would not be reasonable for the Lessor to condition, withhold or delay its consent on the ground that the rent payable by the subtenant would exceed or may exceed the Rent payable by the Lessee for the subject premises. The Lessor hereby consents to a sub-lease of the Demised Premises in favour of Oak Bay Marina Ltd. (B.C. Inc. No. 51515) for successive terms of 3 years, 2 years and 25 years less 2 days terminating December 28, 2022 at not less than the same rent as provided in this Agreement including such terms, covenants and conditions as the solicitor for the Lessor may reasonably require and specifically including a provision that the sublease will terminate in the event of transfer of a controlling interest in Oak Bay Marina Ltd. by transfer of shares in its capital unless the transfer:

12.4.1 Occurs on death of Robert H. Wright or

12.4.2 Is in favour of any of the following persons directly or indirectly, legally or beneficially, alone or together namely Robert H. Wright, the salaried Vice Presidents of Oak Bay Marina Ltd. (as of May 31, 1992) and their respective spouses, children and grandchildren or a company described in section 12.3.3.

For greater certainty, in the event of transfer of a controlling interest in Oak Bay Marina Ltd. by transfer of shares in its capital other than as provided in this Section, its interest as a sublessee of the Demised Premises will terminate but neither said transfer nor termination of the sublease will constitute a default by the Lessee under this Agreement. Nothing in this Agreement or in said sublease is intended to restrict the transferability of shares in the capital of Oak Bay Marina Ltd.

12.5 Contracts limited to duration of Term. The Lessee will not without prior written consent of the Lessor enter any contract, formal or informal, whether for maintenance, employment, service or otherwise with respect to the Aquatic Lands, the Marina Upland or the improvements and appurtenances from time to time situate thereon if the term of such contract extends beyond expiry of the Term of this lease.

12.6 Performance obligations. The Lessee covenants and agrees:

12.6.1 Subject to section 7.2, throughout the entire Term the Lessee will provide the facilities and services of a full service public marina which, without limitation shall include:

12.6.1.1 Marina docks, berths and mooring

12.6.1.2 A restaurant

12.6.1.3 A coffee shop

12.6.1.4 Laundry, shower and public washroom facilities

provided that the Lessee will not increase the amount of space devoted to office use in the buildings situate wholly or partly on the Marina Upland as at May 31, 1992 (which amount is hereby acknowledged and agreed to be 4396.5 square feet) without prior written consent of the Lessor, which will not be unreasonably withheld or delayed provided however that this obligation on the part of the Lessee shall not prevent relocation of office space within and among the buildings and improvements situate wholly or partly on the Marina Upland where such relocation does not increase the total amount of space devoted to that use.

12.6.2 The Lessee will not operate any restaurant or coffee shop except as a dining establishment primarily engaged in the service of food and will observe and perform the provisions of the Liquor Control and Licensing Act, the Liquor Control and Licensing Regulations which apply as at January 1, 1993 as they may be amended from time to time provided that in the event of any change in said Act or Regulations the Municipality reserves the right to approve any changes of operation which would be permitted by the change of law, such approval not to be unreasonably withheld or delayed. It is mutually agreed that it would be unreasonable to withhold such consent if as a result the Lessee suffers a material disadvantage in competing with other dining establishments in its market area.

12.6.3 The Lessee will not keep the coffee shop open later than the regularly scheduled closing of the restaurant.

12.6.4 The Lessee will provide on the whole of the Docks designated A and B on Exhibit 2.4 marine berths designed to accommodate boats of length not greater than 25 feet provided that if during the Term the Lessee apprehends that the level of demand at local market moorage rates does not warrant the exclusive devotion of said docks to berthing for boats of this class, then it may apply to the Lessor for a release or modification of this obligation, which the Lessor will not unreasonably withhold or delay.

12.6.5 The Lessee will observe the following measures for fire protection:

12.6.5.1 Adequate water supply and connection hardware throughout the marina complex;

12.6.5.2 On the Docks, fire protection equipment meeting the standards at North Saanich Marina namely approved Tri- Class A, B and C fire

extinguishers each weighing not more than 18.14 kg (40lbs) with ULC rating not less than 3A. 60B.C. located, so that users need not travel more than 22.68 meters (75 feet).

12.6.5.3 The Lessee will not store gasoline, fuel oil or other petroleum products except as may be permitted under the Lessee's policy(ies) of insurance approved by the Lessor.

12.6.5.4 The Lessee will take reasonable measures to eliminate all fire hazards.

12.6.6 The Lessee will exercise reasonable effort to operate or to sublet part of the Aquatic Lands for operation as a marine fuel dock.

12.6.7 The Lessee will provide Customs and Immigration officers without charge use of facilities of the Lessee on the Aquatic Lands as and when reasonably required.

12.6.8 The Lessee will take reasonable measures to prevent use of skateboards and rollerblades on the parking area on the Upland notwithstanding that such area is public and under control of the Lessor.

12.6.9 The Lessee will promptly pay all municipal taxes and licence fees lawfully applicable and will promptly comply with any lawful rulings, directives and reporting requirements of persons authorized by public authority.

12.6.10 The Lessee will pay interest to the Lessor on any amounts in arrears under this Agreement at the Lessor's lowest borrowing rate from time to time plus 3% per annum.

12.6.11 The Lessee will not charge its patrons on the Aquatic Lands for supply of electric power any more than its cost of such power plus a reasonable administration fee.

12.6.12 If so requested by the Lessor to fulfil its obligation under the Crown Lease, the Lessee will provide the Lessor at the cost of the Lessee a survey of the Aquatic Lands.

12.6.13 The Lessee will cooperate with the Lessor in respect of the Crown Lease and in respect of the interest of the Lessor in any part of the Upland from time to time held by the Lessor under lease from the Crown. Without limitation, as may be applicable but at the Lessor's cost, the Lessee will apply or join in applying or consent to application by the Lessor to the Crown for amendment of any such lease

provided the amendment would not impair the interest or interfere with the operations of the Lessee under this Agreement.

12.6.14 The Lessee will permit the Lessor to display a public notice on the Demised Premises during the last six months of the Term to the effect that the Demised Premises will be available to lease on expiry of the Term.

12.6.15 The Lessee will provide the Lessor a copy of its registers of members, allotments and transfers on request from the Lessor at reasonable intervals.

12.7 **Removal on expiry.** The Lessee covenants that on expiry or earlier termination of this Lease, the Lessee will remove from the Aquatic Lands and the Marina Upland all of its tangible personal property and all tenant improvements capable of removal without damage to buildings. In particular but without limitation the Lessee will remove all floating docks, all appurtenances attached to docks, all appurtenances to buildings insofar as such appurtenances were purchased and installed by the Lessee and all tangible personal property of the Lessee. The Lessee covenants to leave the Aquatic Lands and the Marina Upland in a sanitary and safe condition. This covenant is subject to the Lessor's option to purchase the docks pursuant to Section 12.8.

12.8 **Dock option.** The Lessee grants to the Lessor an option to purchase its floating docks with all appurtenances attached to the docks as at the date of expiry of the Term. The Lessor may exercise this option by notice to the Lessee given not more than 12 months or less than 6 months before that date failing which this option will lapse. In the event of early termination of this Lease pursuant to Section 13.1.1, the Lessor may exercise this option by notice to the Lessee given not more than 30 days after re-entry. The purchase price will be the fair market value of the docks and appurtenances and will be paid in cash. The purchase price will be determined by mutual agreement within 30 days after exercise of the option failing which the Lessor and the Lessee will each be entitled to refer determination of the price to arbitration as provided in Section 15.4.

13. Lessor's Remedies

13.1 **Remedies.** Upon occurrence or existence of an Event of Default and after having given to the Lessee such notice as may be required by this Agreement, the Lessor at its option will be entitled to:

13.1.1 Re-enter the Aquatic Lands and the Marina Upland whereupon all right, title and interest of the Lessee in the Aquatic Lands, the Marina Upland and the improvements and appurtenances situate thereon will terminate forthwith subject to Sections 12.8 and 14.1.

13.1.2 Waive the Event of Default absolutely or on such term(s) and condition(s) as the Lessor may specify, provided that no waiver will be deemed to have been made unless in writing signed by or on behalf of the Lessor and communicated by notice.

13.1.3 Itself perform the obligation in default in which case the amount of any reasonable expense incurred by the Lessor in so doing will be recoverable on demand as Additional Rent. The Lessor will not be obliged to remedy any default and will not incur any liability to the Lessee for any act or omission in the course of its curing or attempting to cure default for which the Lessee is responsible under this Agreement.

14. **Non-disturbance**

14.1 **Subtenant.** If and to the extent that the Lessee sublets, to a person other than an affiliate of the Lessee within the meaning of the Company Act, then on the request and at the expense of the Lessee, the Lessor will enter a non-disturbance agreement with the subtenant whereby if an Event of Default occurs, the Lessor will not disturb the occupation of the sublessee so long as the sublessee is not in default of its obligations to the Lessee and is not otherwise involved in the Event of Default.

15. **Miscellaneous**

15.1 **Entire agreement.** This Agreement constitutes the whole Agreement between the Lessor and the Lessee with respect to occupation of the Aquatic Lands and the Marina Upland and may not be modified except by subsequent agreement in writing executed by the Lessor and the Lessee and except any agreement made between the Lessor and the Lessee whenever made if such agreement contains a provision that it is to be effective notwithstanding the provisions of this Section 15.1. There are no covenants, representations, warranties, agreements or conditions, express or implied, collateral or otherwise, which form part of, affect or relate to the subject of this Agreement except as expressly set out in this Agreement.

15.2 **Registration.** The Lessee will have the right to register this Agreement in the Land Title Office at Victoria, B.C. provided that the Lessee will pay any costs involved in registration or in putting this Agreement into registerable form.

15.3 **Further assurances.** The Lessor and the Lessee agree to execute and deliver such further instruments and assurances as may be reasonably required to give effect to this Agreement.

15.4 **Dispute resolution.** All disputes arising out of or in connection with the terms of this Agreement will be referred to and finally resolved by a single arbitrator under the Rules of

the British Columbia International Commercial Arbitration Centre (BCICAC). The Lessor and the Lessee will each be entitled to make the referral unilaterally. Selection of arbitrator will be by mutual agreement within 15 days after the referral failing which the arbitrator will be appointed by BCICAC. The place of arbitration will be Victoria, B.C. The rules of BCICAC for the conduct of domestic commercial arbitrations will apply. Notwithstanding Section 1.1.9.2, in the event the Lessor or the Lessee refers to Arbitration a bona fide dispute involving calculation or payment of any Rent, the amount in issue, if paid to a member of the Law Society of British Columbia to be held in trust pending the outcome of the arbitration will not be deemed to be rent in default unless the amount determined to be payable remains unpaid on the 7th day after the arbitral award. The Lessor shall be entitled to require that the funds in trust be held by its solicitor.

15.5 Notice. Any notice to be given with respect to this Agreement will be given as follows:

15.5.1 Notice may be delivered personally or sent by telegram, facsimile or single registered mail as follows:

Lessor: Municipal Hall
2167 Oak Bay Avenue
Victoria, B.C.
V8R 1G2
Attention: Municipal Clerk

Fax: 598-9108
Telephone: 598-3311

Lessee: 1327 Beach Drive
Victoria, B.C.
V8S 2N4
Attention: President

Fax: 598-3366
Telephone: 598-1361

or at such other address or number as each of them may notify to the other.

15.5.2 Any notice will be deemed well and sufficiently given and received:

15.5.2.1 If delivered when delivered.

15.5.2.2 If sent by telegram or facsimile, when confirmed in writing as

received, which confirmation may be by telegram, facsimile or any other means of transmitting a message in writing.

15.5.2.3 If sent through any post office in British Columbia by prepaid single registered mail addressed to the recipient at its address specified in section 15.5.1 the notice will be deemed to have been received on the second normal government office business day following its postmark provided that should there be between the time of mailing and the time of deemed receipt a mail strike, slowdown or other labour dispute which might reasonably affect delivery of such notice then such notice will only be effective if and when actually delivered.

16. **Guarantee**

In consideration for the Lessor granting this Marina Lease to the Lessee and consenting to sublease by the Lessee to the Guarantor as provided in section 12.4, receipt and sufficiency of which consideration is hereby acknowledged, the Guarantor hereby covenants, promises and agrees with the Lessor that the Lessee will at all times pay or cause to be paid to the Lessor the Rent hereby promised or reserved and other monies hereby promised or secured at the time or times respectively appointed therefore and that the Lessee will observe and perform or cause to be observed or performed all the covenants, terms, provisos, stipulations and conditions herein contained on the part of the Lessee to be observed and performed and that it will at all times indemnify, protect and save harmless the Lessor from all loss, costs and damage occasioned by the Lessee or for which the Lessee is otherwise howsoever responsible to the Lessor in respect of this Agreement. No indulgence shown by the Lessor in respect of any default by the Lessee which may arise under this Agreement and no extension or extensions granted by the Lessor to the Lessee for payment of monies hereby secured or for the doing, observing and performing of any covenant, agreement, matter or thing herein contained to be done, observed or performed by the Lessee nor any dealings between the Lessor and the Lessee or any other person(s) shall in any way modify, alter, vary or prejudice the Lessor or affect the liability of the Guarantor which shall continue and be binding on the Guarantor as well after as before default and as well during as after expiry of this Agreement until the said monies are fully paid and satisfied, and, for greater certainty, but without any limitation on the foregoing it is understood and agreed that the within guaranty will continue notwithstanding that the sublease herein provided in favour of the Guarantor is terminated. In the event that pursuant to section 12.3.1 the Lessor consents to an assignment of the leasehold interest of the Lessee in the Demised Premises or so consents to transfer of a controlling interest in the Lessee, to which transaction neither section 12.3.3 nor section 12.3.4 applies, then closing of said transaction will operate to release the Guarantor from liability under this section in respect of the balance of the Term then remaining.

In witness whereof the parties hereto have executed this Agreement.

The corporate seal of the Lessor
was affixed by:

Mayor

Municipal Clerk

The corporate seal of the Lessee
was affixed by:

Authorized signatory

The corporate seal of the Guarantor
was affixed by:

Authorized signatory