

## Economic Development & Planning Committee



January 5, 2010 - 5:15 p.m.  
City Hall - Council Chambers

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<u>Committee Members</u>	<u>Areas of Responsibility</u>	
Councillor J. Baker, Chair	Economic Development	Vision 20/20
Councillor M. Kalivas	Planning	* Community Council
Councillor S. Williams	Chamber of Commerce	* Downtown Revitalization
Mayor D. Henderson,	DBIA	* Industry Advisory
Ex-Officio	Heritage Brockville	* Tourism Advisory

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Page

### STAFF REPORTS

- 3-30 1. TUNNEL BAY HARBOUR MARINA DESIGN

### DELEGATIONS

1. a) S. Fuller - Fuller Marine Services  
b) A. Neetson - 1000 Islands & Seaway Cruises  
c) D. Publow - Brockville Yacht Club  
d) N. Moores - Tunnel Bay Marina  
e) L. Pearson - Tunnel Bay Marina

### NEW BUSINESS - REPORT FROM MEMBERS OF COUNCIL

### CONSENT AGENDA



**DECEMBER 23, 2009**

**REPORT TO ECONOMIC DEVELOPMENT & PLANNING COMMITTEE –  
JANUARY 5, 2010**

**2010-001-01**

**TUNNEL BAY HARBOUR MARINA REDESIGN**

**B. CASSELMAN  
CITY MANAGER**

**RECOMMENDATIONS:**

THAT Brockville City Council approve the Tunnel Bay Harbour Marina Redesign as depicted in Option "A" attached to report 2010-001-01; and

THAT the Mayor and Clerk are hereby authorized to execute all documentation associated thereto.

**BACKGROUND**

In response to the City of Brockville's request, Tall Ships Landing Developments Inc. (TSL) has proposed to provide marina services including the replacement of docks, relocation of fuel services, pump out facilities, washrooms and dock masters office in exchange for a long-term lease of the City's water lot, details of which are outlined with Schedules "1" and "2".

Paragraph 5 of the aforementioned Schedule "1" reads as follows:

*"The Parties acknowledge and agree that in order for the above marina to be viable, the Developer will have to be able to create approximately one hundred and twenty (120) docks. One hundred and ten (110) docks to be allocated to seasonal boaters and ten(10) docks to be allocated to transient boaters. The Parties acknowledge a further term;*

- 1) *The City wishes to undertake a review of the proposed marina facilities east of the centre line of Phase 1. The City has requested the cooperation of the Developer in this review. The Parties agree to create the terms of reference of the review. Should both Parties not support the recommendation of the review by October 31, 2008, the Developer and the City acknowledge that the draft conditions of Site Plan and the existing or new configuration of the docks stand. The Parties further agree that a Site Plan for this area may be submitted at a later date, such delay will not hinder the Sit Plan submission the balance of Phase 1.*

Over the course of the past fifteen (15) months, a series of meetings have been held with various stakeholders including representatives from the City of Brockville, Leeds

Condo Corp. 18, Tunnel Bay Marina, 1000 Islands & Seaway Cruises, Brockville Yacht Club, and Fuller Marine Services.

A set up of objectives was established at our first meeting including:

1. Safe navigation
2. Full service marina/service dock located on the wharf
3. Maximum number of transient docks
4. Mooring of Fair Jeanne/Program Relationship to Maritime Discover Centre (MDC)
5. Create space for enhanced island programming through water taxi/shuttle
6. The terminus of Broad Street to become one of the major vistas to the City

Given that form must follow function our initial series of meetings included a review of the regulations/restrictions concerning storage above or below ground and handling/sale of fuel for a marina.

The parties acknowledged that the Technical Standards and Safety Authority (TSSA) is the regulatory body relative to fuel Storage/Dispensing.

The Developer will be responsible for creating a design that is fully compliant with TSSA requirements.

Our subsequent meetings focused on vessel circulation including service dock location, turning circle, maximization of moorings, the location of Fair Jeanne and creating a major vista to the City at the terminus of Broad Street.

There were a variety of options considered by the stakeholder group including those outlined in the attached Options "1 – 3".

To be clear, there is not consensus amongst the stakeholder group relating to vessel circulation. While the majority of the stakeholder group prefers Option "A", representatives of the Boardwalk Tunnel Bay Boat Club prefer Option "C".

Transport Canada is the regulatory body that will approve the reconfiguration of the inner harbour including docking and vessel circulation.

## **ANALYSIS**

The Brockville Harbour is owned by the federal government (Ministry of Fisheries and Oceans) and is defined as Part 1 on Reference Plan 28R-11123. This part abuts the lands owned by the Leeds Condo Corp. 18 described as Part 1 on Plan 28R-5565.

The City of Brockville holds the head lease of the Brockville Harbour pursuant to a lease dated January 1, 2007.

The City of Brockville subleased to the Leeds Condo Corp. 18, a portion of the harbour pursuant to the terms outlined in Schedule "3". While the subject sublease expires on December 31, 2009 it is subject to a further one (1) year extension at the discretion of the City.

Option "A" is the preferred redesign of Tunnel Bay Harbour because it:

- 1) Provides approximately 300' of service dock to be used for transient boaters in close proximity to the MDC.
- 2) Maximizes the turning radius within the inner harbour.
- 3) Provides an alternative location for the Fair Jeanne thus reducing vessel navigation congestion between the south extremity of the wharf and Block House Island seawall.
- 4) Provides the 1000 Islands & Seaway Cruises opportunity to facilitate passengers pick up/drop off at the terminus of Broad Street.
- 5) Promotes the Broad Street promenade as being a major vista for the City thus promoting the City's desire to create and support a regionally significant anchor attraction.
- 6) Provides the Tunnel Bay Boat Club with the same mooring space albeit reallocated to the east seawall.
- 7) Provides for controlled access by transient boaters from the service dock to the wharf.
- 8) Provides unimpeded access to/from the fuel/pump out service docks.

## **FINANCIAL IMPLICATIONS**

The cost to relocate the existing docks owned by the Tunnel Bay Boat Club to the east seawall will be at the expense of the City. Should security fencing be desired by the Tunnel Bay Boat Club along the east seawall, it will at the expense of the City. The sublease with the Leeds Condo Corp. 18 be extended to December 31, 2010 with a further one (1) year extension at the discretion of the City. The rent during the period of sublease extension January 1, 2010 – December 31, 2010 shall be waived.

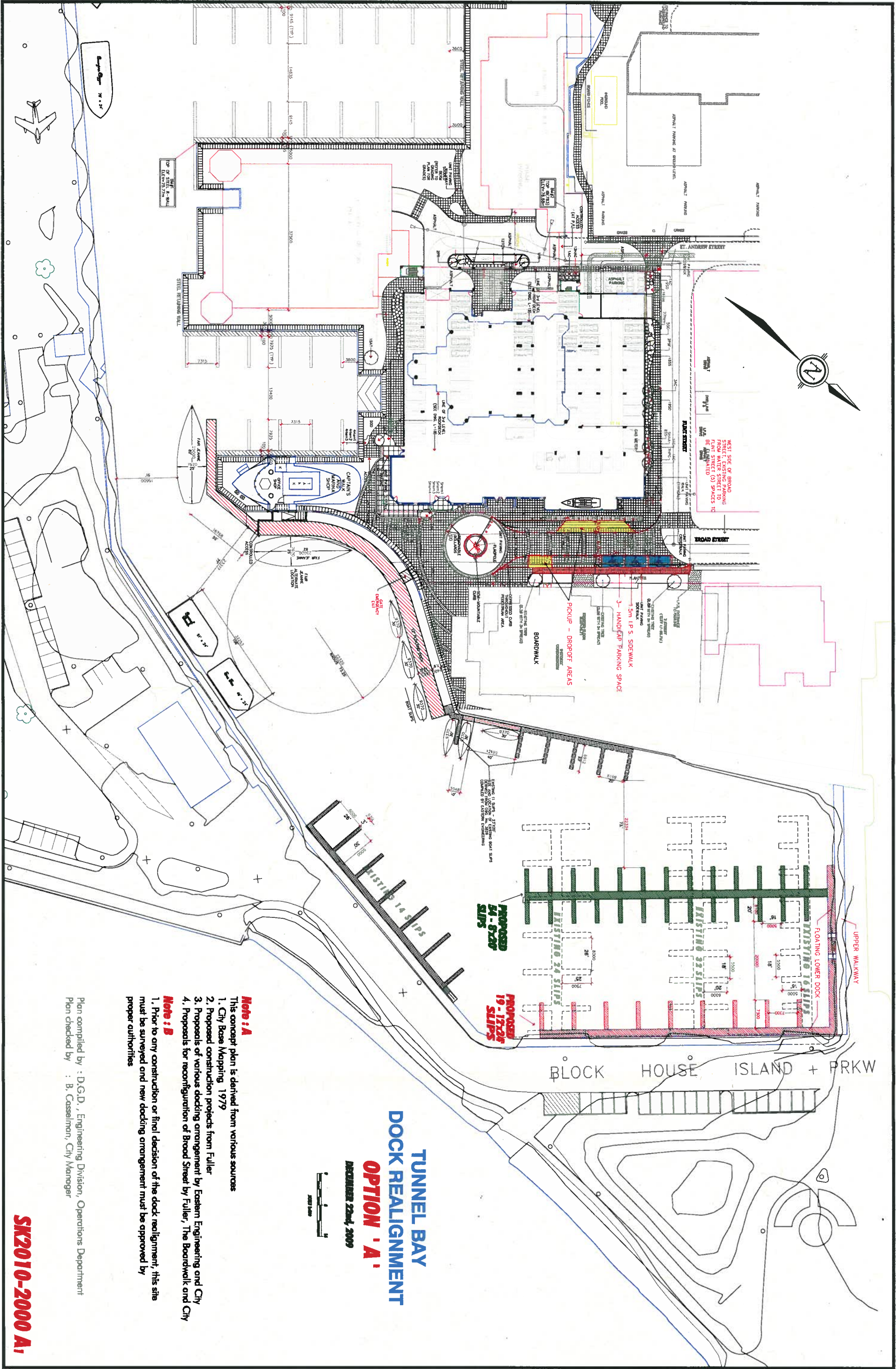
All costs associated with design, construction and maintenance of fuel dispensing/storage and service docks will be the responsibility of TSL/Fuller Marine Services as outlined in the aforementioned Memorandum of Understanding.

## CONCLUSION

The need for change to our current design and operation of the Brockville Inner Harbour has been well documented in the Anchor Attraction for Brockville: The Maritime Discovery Centre and other Waterfront Enhancements Report, Anchor Attraction proposal, and the Premier Ranked Tourism Project. The redesign concept outlined in Option "A" addresses several of the needs identified in the aforementioned documentation and furthers the City's desire to create a regional attraction and in so doing revitalize the historic Downtown of Brockville.

  
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B. Casselman, City Manager





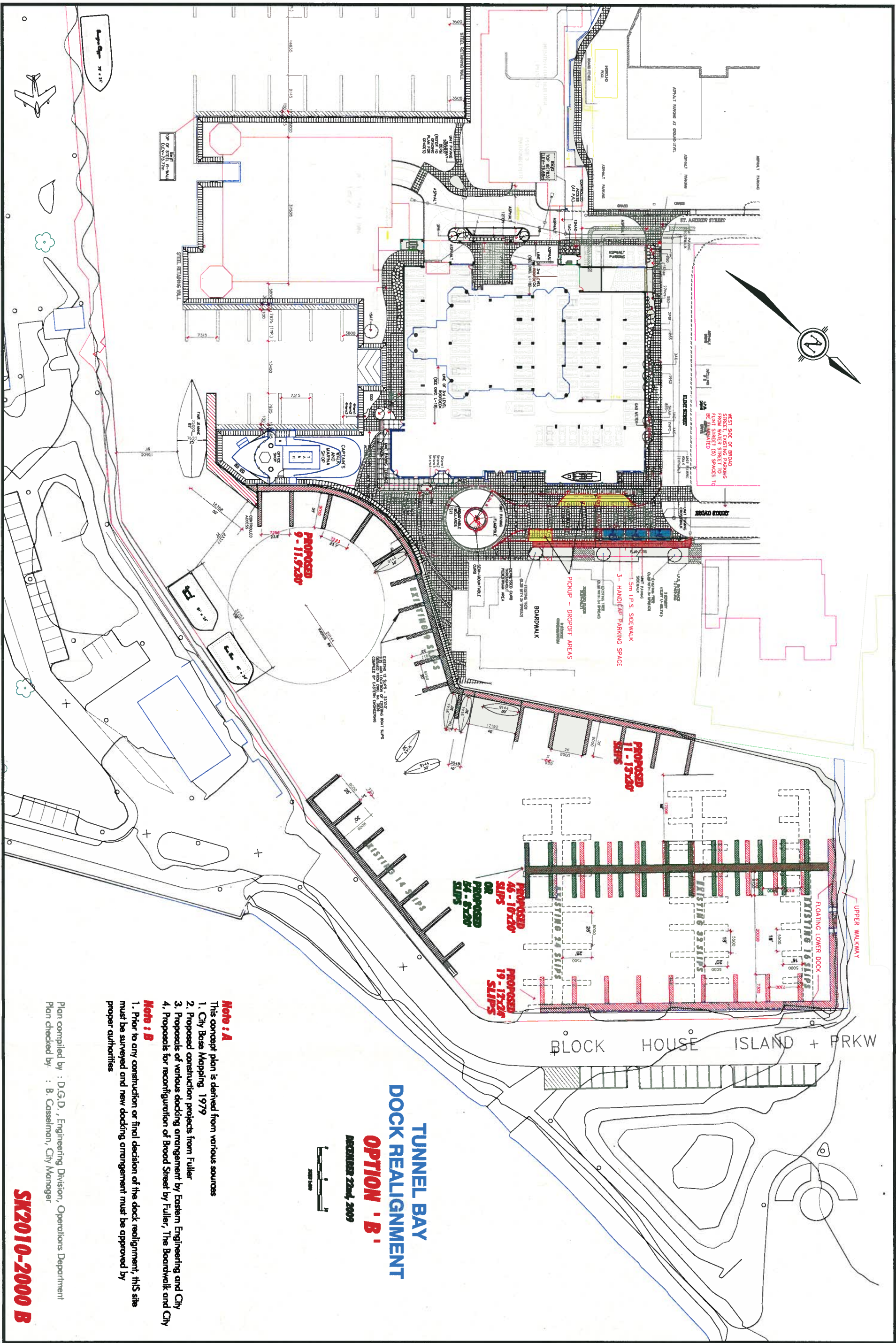
**Note : A**  
This concept plan is derived from various sources  
1. City Base Mapping, 1979  
2. Proposed construction projects from Fuller  
3. Proposals of various docking arrangement by Eastern Engineering and City  
4. Proposals for reconfiguration of Broad Street by Fuller, The Boardwalk and City

**Note : B**  
1. Prior to any construction or final decision of the dock realignment, this site must be surveyed and new docking arrangement must be approved by proper authorities

Plan compiled by : D.G.D., Engineering Division, Operations Department  
Plan checked by : B. Casselman, City Manager

**SK2010-2000 A1**





**Note : A**  
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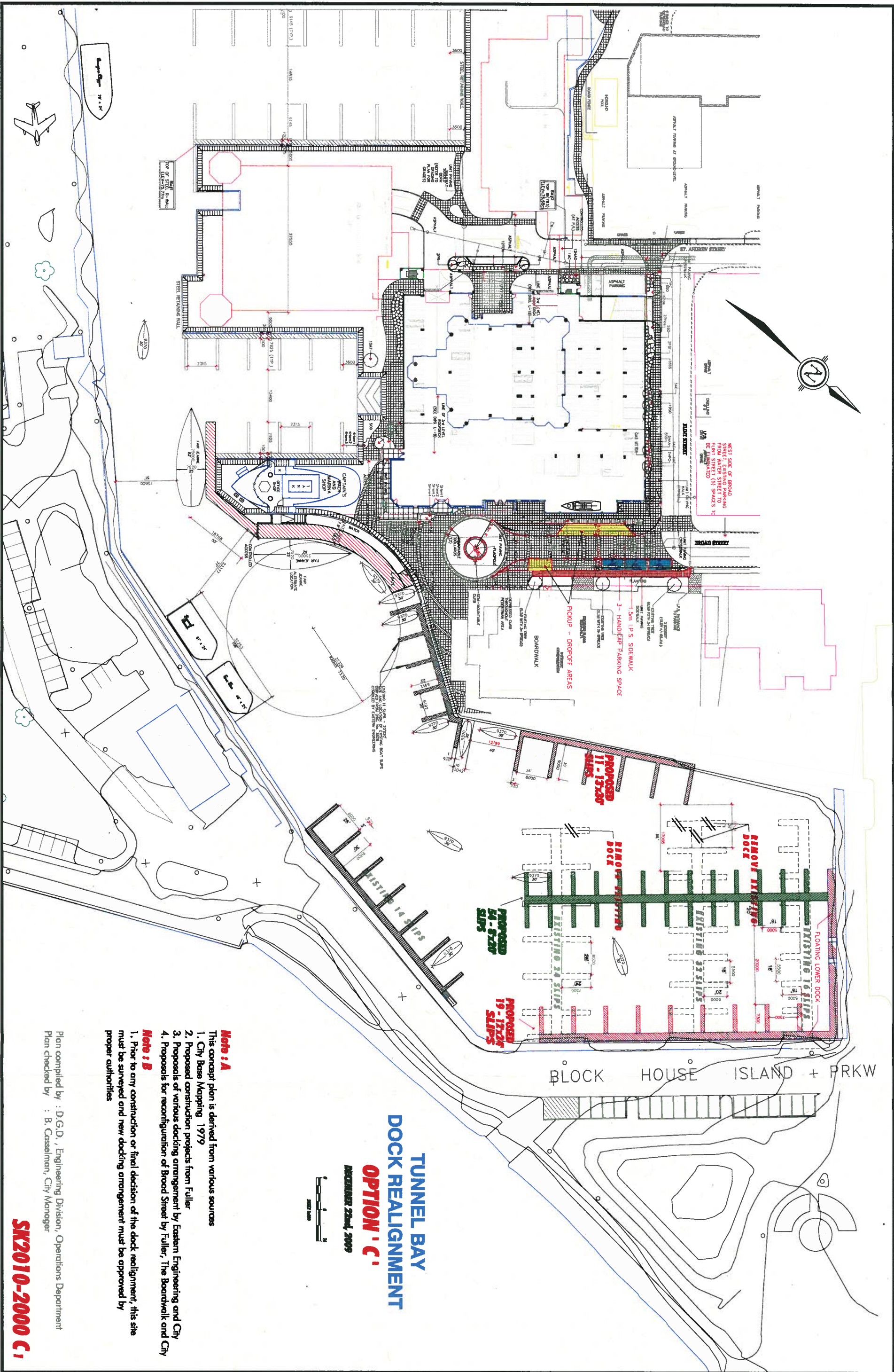
# **TUNNEL BAY DOCK REALIGNMENT OPTION B**

DECEMBER 22nd, 2009



**SK2010-2000 B**





**Note : A**  
This concept plan is derived from various sources  
1. City Base Mapping 1979  
2. Proposed construction projects from Fuller  
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4. Proposals for reconfiguration of Broad Street by Fuller, The Boardwalk and City

**Note : B**  
1. Prior to any construction or final decision of the dock realignment, this site must be surveyed and new docking arrangement must be approved by proper authorities

Plan compiled by : D.G.D., Engineering Division, Operations Department  
Plan checked by : B. Casselman, City Manager

**SK2010-2000 C1**

This Memorandum of Understanding made this                      day of                      , 2008

Between:

**THE CORPORATION OF THE CITY OF BROCKVILLE**

(herein referred to as the "City")

And:

**Tall Ships Landing Developments Inc.**

(herein referred to as the "Developer")

**WHEREAS:**

- A. The Developer has purchased certain lands and water lots in the City of Brockville and is planning to construct a mixed-use development on the lands and utilize its water lot;
- B. The City owns a water lot in front of Ernie Fox Quay (herein after referred to as the "Quay Water Lot"), which is presently leased to the Developer. On this water lot are floating docks, which amongst other things the Developer owns and operates as a marine facility. This Quay Water Front Lease expires on October 31, 2008;
- C. The City leases from the Federal Department of Fisheries and Oceans a water lot at the foot of Broad Street (herein after referred to as the "Broad Street Water Lot"), which lease expires in 2011;
- D. The Developer intends to utilize its water lot in the construction of its mixed-use development;
- E. The City would like to have constructed and maintained a full service marina in Tunnel Bay and the Developer is willing to provide, on terms and conditions acceptable to both Parties, such a marina;
- F. The Developer is of the opinion, and the City accepts, that to construct and maintain a full service marina as contemplated in this memorandum, more than just boat slips are required, namely, washroom, fuel and pump-out facilities. This suggests a longer term lease or if terminated earlier by the City, a corresponding financial obligation;
- G. The City acknowledges that Tall Ships Landing Developments Inc. may be substituted with Fuller Marine Services;

SO THEREFORE the Parties are setting forth below their general understandings which will govern the preparation of the Public Private Partnership Agreement for the provision of the marine facilities on the lands and water lots described above. It is further understood in this Memorandum of Understanding that there will be many specific terms, calculations and definitions that are not contained in this memorandum, which will have to be included in the Partnership Agreement, and the Parties agree to work diligently in the negotiation of these terms

1. The recitals set out above are true and form part of this MOU.
2. The City to lease to the Developer or a related company part of the Quay Water Lot being 43,977 square feet which is the area currently being leased on terms and conditions set out in this memorandum.
3. The Parties acknowledge that the present marine facilities will have to be decommissioned and the timing of this will be undertaken with the view to cause as little disruption to the use of the marina by its patrons as possible.
4. The Developer commits to constructing a new marine facility on its water lots, the Quay Water Lot at its cost.
  - i) the marina to be full service, containing showers, washroom and fueling/pump out facilities, and to be located on to the Developer's Development presently referred to as the Tall Ships Landing and operated at appropriate times and during appropriate months;
  - ii) the cost of decommissioning the present facility is to be borne by the Developer;
  - iii) the cost of building, maintaining and staffing the marina is to be borne by the Developer for the term of the agreement.
5. The Parties acknowledge and agree that in order for the above marina to be viable, the Developer will have to be able to create approximately one hundred and twenty (120) docks. One hundred and ten (110) docks to be allocated to seasonal boaters and ten (10) docks to be allocated to transient boaters. The Parties acknowledge a further term;
  - i) The City wishes to undertake a review of the proposed Marina Facilities east of the centre line of Phase 1. The City has requested the cooperation of the Developer in this review. The Parties agree to create the terms of reference of the review. Should both Parties not support the recommendation of the review by July 31, 2008, the Developer and the City of Brockville acknowledge that the draft conditions of site plan and the existing or new configuration of the docks stand. The Parties further agree that a site plan for this area



may be submitted at a later date, such delay will not hinder the site plan submission for the balance of Phase I.

However, at a minimum, the Developer shall provide the City with an easement for public access to the elevated walkway to be constructed over a portion of the wharf in Phase 1.

6. It is contemplated by the Parties that the marina will be constructed and decommissioning will occur in phases as the developer's project progresses with the marina facility comprising the three (3) water lots to be completed by June 2015.
7. The City water lot and the developer's water lots will be managed and slips will be assigned by the Developer subject to the following;
  - i) the Quay Water Lot and the developer's own water lot will be allocated to seasonal use with priority going first to the purchasers in the developer's project, next to the residents of the City of Brockville, and finally to non-residents, with the proviso that slips that are currently leased to Brockville residents on the City water lot will have the first right to continue with the new docks on new terms and conditions.
8. The Developer is not required to provide any parking on its lands for the marina.
9. The City is to receive twenty percent (20%) of the gross annual mooring revenue received from the Quay Water Lot. Gross revenue is defined as the total revenue from the said water lots less the developer's capital repayment on the capital improvements, i.e. docks (on the said water lot). It is understood by both parties that Fuller Marine Services will charge full market rental for docking taking into consideration the benchmark established by the City.
10. The present lease agreement between the Parties for the operation of the marine facility may be extended for a period of up to (3) years.
11. The Term of this agreement is to be a twenty-five (25) years commencing November 1, 2008 and ceasing on October 31, 2033.
12. The City and Developer have the right to terminate this agreement on six (6) months notice (with similar notice provisions that are in effect in the present lease) at five (5) year intervals on the anniversary of the signing of this lease upon the following terms and conditions,
  - i) the Developer will have to expend significant capital sums to fulfill its obligations under this agreement;



- ii) a significant portion of the infrastructure will take place on the developer's adjacent lands, not on the developer's water lots;
- iii) if the City terminates this lease early the City shall be required to pay to the Developer the residual of the capital costs of the marine facility amortized over twenty-five (25) years;
- iv) if the Developer terminates the lease early the City will not be required to pay any sums to the Developer;
- v) the parties agree to establish a capital budget by September 1<sup>st</sup>, 2008 Actual Costs to be verified by open book to June 2015;
- vi) on the 15<sup>th</sup> and 20<sup>th</sup> anniversary of the signing of this lease, the City of Brockville has the right to cancel the lease and lease from the Development the Marina Facilities owned and operated by the Developer at fair market rent. Further particulars of this lease option to the City to be incorporated in the agreement, which will flow from this Memorandum of Understanding.

13. The parties agree that they shall, no later than October 1, 2008, enter into a formal and binding agreement in respect to the subject matter of this agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date first above written.

Signed, Sealed and Delivered  
In the presence of

) The Corporation of the City of Brockville  
)  
)  
) Per: \_\_\_\_\_  
) Name/Title  
)  
)  
) Per: \_\_\_\_\_  
) Name/Title  
)  
)  
) Tall Ships Landing Developments Inc.  
)  
)  
) Per: \_\_\_\_\_  
) Name/Title  
)

This agreement, made as of the      day of May, 2008

between

**The Corporation of the  
City of Brockville**  
(hereinafter referred to as "the City")  
of the first part

and

**3700518 Canada Inc.**  
(hereinafter referred to as "Fuller Marine Services")  
of the second part.

1.0 The Premises

Certain water lots and surrounding land owned by the City located at the foot of Home and Apple Streets, in the City of Brockville, in the province of Ontario, all of which lands and water lots and premises are hereinafter referred to as "the Premises" as detailed on the attached map shown as Schedule "A".

NOW THEREFORE in consideration of the mutual agreements and covenants contained herein and other valuable consideration, the receipt in sufficiency of which is hereby acknowledged by each of the parties hereto, the parties agree as follows:

2.0 IN THIS AGREEMENT, THE TERM

- (a) "Docking facilities" shall mean all docks, power outlets, lighting fixtures, security fences and all other amenities and equipment that are housed on the premises.
- (b) "Tall Ships Landing Developments Inc. lands" shall mean those lands owned by the Tall Ships Landing Developments Inc. bounded by Broad Street to the east, Flint Street to the north and "the premises" to the west, all of which is identified on the attached map exclusive of any lands severed for condominiums or freeholds.

3.0 MANAGEMENT, RESPONSIBILITIES AND SERVICES  
TO BE PROVIDED BY FULLER MARINES SERVICES

It will be the responsibility of Fuller Marine Services, at its cost, to:

- 3.1 Operate and maintain the existing small craft harbour system, engineered, designed and installed in a configuration and manner, in accordance with the manufacturer and City specifications which ensure that it provides for a safe, efficient and attractive docking system.
- 3.2 Provide and maintain the existing utilities consisting of a minimum 30 amp power outlet and individual water source for each boat slip, to be installed in accordance with the manufacturer's specifications and all applicable building/electrical or other code requirements.

- 3.3 Maintain the existing lighting on the installed dock system to provide for safe usage during night hours all of which must be mutually acceptable to and approved by both parties.
- 3.4 Maintain the existing security in the form of a gated entrance to the docking system in a design which must be mutually acceptable to and approved by both parties.
- 3.5 Pay all applicable utility costs including hydro electricity, water and sewer service charges associated with the operation of the docking facilities.
- 3.6 Provide, on a seasonal basis (May 15 – September 30), adequate qualified staff to attend to the daily needs of the docking facilities seven days per week including all holidays or other such hours as may be required to properly accommodate boater needs.
- 3.7 Provide, on a seasonal basis (May 15 – September 30), and be responsible for the installation and maintenance of security measures necessary to ensure the safety of boats and boaters using the docking facilities. This may include but not be limited to a secured dock entrance gate and dock lighting.
- 3.8 Provide on a seasonal basis (May 15 – September 30), and maintain a telephone service during the hours that the docking facility is not attended so that customers may request service or report emergencies.
- 3.9 Provide, on a seasonal basis (May 15 – September 30), a thorough daily housekeeping and cleaning of the docking facilities including the supply of any necessary cleaning materials, tools, garbage bags, light bulbs, etc. A high standard of cleanliness is to be maintained on the docking facilities on a daily basis.
- 3.10 Provide, on a seasonal basis (May 15 – September 30), a daily inspection of the docking facilities for the purpose of identifying any unsafe conditions and correcting such conditions in an expedient manner so as to create a safe condition.
- 3.11 Provide, while the docks are in use, for the collection, transportation to and disposal of docking facilities garbage in an approved waste disposal site once per week. The disposal of all garbage from the docking facilities shall be the responsibility of Fuller Marine Services.
- 3.12 Furnish annual reports to the City on the operation of the docking facilities including a statement of annual revenues and provide such other information as the City may require from time to time including items on safety and boater statistics for use as economic impacts and trends in boater visitation (3.13c) for community planning.

- 3.13 Keep accurate records as the City may require including but not necessarily limited to:
- a) records of site inspections and facility cleaning
  - b) records of safety inspections of the docking facilities
  - c) log of daily transient docking usage
  - d) log of daily and/or other equipment inspections and actions taken to rectify problems
  - e) notify the City and proper authorities of any and all accidents, thefts, damage or other occurrences that may occur on the docking facilities
  - f) investigate and report on, at the City's request, the desirability of establishing other activities and services as may be deemed advisable or necessary for, or in conjunction with, the operation of the docking facilities
  - g) actively promote and assist in promoting business, tourism, and recreational uses of the docking facilities and report on such progress to the City.
- 3.14 Allow boat owners using the premises the right to have their own licensed mechanics, or other marine service personnel, repair their boats, subject to:
- a) these trades providing proof of third party liability insurance coverage in an amount not less than \$2 million (\$2,000,000).
  - b) the boat owners advising Fuller Marine Services in writing of their intention to do so.
- 3.15 Make available, a full service marina, containing showers, washroom and fueling/pump out facilities to be located on a portion of the adjacent Tall Ships Landing Development Inc. property, to be maintained, manned and staffed by Fuller Marine Services during the term of the agreement.
- 3.16 Make docking facilities located on the premises available to both City residents and summer residents (seasonal boaters from out-of-town) and be managed in a manner which will make additional transient docking space within Tunnel Bay.
- 3.17 No commercial ventures, other than the provision of marine-related services and trades, shall be permitted on the leased premises.

#### **4.0 RESPONSIBILITY OF THE CITY**

The City shall be responsible for, and pay any costs applicable for, the following:

- 4.1 Provide for an adequately sized water connection and hydro electric power supply connecting panel box and the on-going repair and maintenance of these source utility connections in order to ensure the availability of power and water to the docking facilities.
- 4.2 Required maintenance to the adjacent harbour basin park property and amenities including park lighting, pathways, boat ramp and boat ramp docking, including collection and disposal of garbage, grass cutting and other ground maintenance duties as may be required.



## **5.0 RIGHTS OF THE CITY**

Notwithstanding any agreement to be entered into with respect to the operation and management of the premises, the City shall at all times, reserve unto itself, the following rights:

- 5.1 The right to enter upon the premises owned by the City at any reasonable time and for any reasonable purposes and such right may be exercised by the City, its servants or employees and any designated employee of the Corporation of the City of Brockville. Such persons will carry identification sufficient to prove they are, in fact, representatives of the City.
- 5.2 The right to operate and manage a public boat launching facility located at the foot of Home Street, directly adjacent to, and sharing access with, the subject premises within the small craft harbour basin.

## **6.0 AGREEMENT**

- 6.1 The term Agreement shall be for a period of three (3) years commencing November 1, 2008 to October 31, 2011.

- 6.2. Termination of Agreement

The City and Fuller Marine Services has the right to terminate this Agreement for any reason, in any year of the Agreement, at the end of the boating season (October 30<sup>th</sup>), with six (6) months prior written notice. Should such termination be exercised by the City, then at Fuller Marine Services option, the City shall purchase the docking facilities from Fuller Marine Services at a pre-determined value as set out in Schedule "B". Notice of this option shall be served to the City within thirty (30) days of September 15<sup>th</sup> of the year of notice. This purchase by the City will close on October 30<sup>th</sup> with all monies due and payable on this date. No payments in any kind, other than the established value, plus any applicable taxes which may be assessed on this value (i.e. GST, RST, blended sales taxes, etc.) shall be paid to Fuller Marine Services, its liens or successors. Title to the assets (docking facilities) shall be transferred to the City from Fuller Marine Services, free and clear of any and all encumbrances.

Payment of the pre-determined value as detailed in Schedule "B" shall be based upon the docking facilities being turned over to the City in a good and sound, well maintained condition, normal wear and tear excepted. Any disrepair, other than normal wear and tear will be rectified by Fuller Marine Services prior to delivering up the docks to the City. In the event that the parties cannot agree on the degree of "wear and tear" a mutually agreeable marine industry professional will be engaged jointly by the parties, pursuant to the Arbitrations Act R.S.O. 1990, Chapter A.24 as amended from time to time, and he shall provide an assessment of work required over and above normal wear and tear. Fuller Marine Services agrees to comply with and rectify this disrepair before the docking facilities are accepted by the City.

Should such termination be exercised by Fuller Marine Services, then the City has no obligation to purchase the docking facilities.

**6.3 Bankruptcy of Fuller Marine Services**

Subject to the provisions of the *Bankruptcy and Insolvency Act* or any successor legislation or any other applicable legislation, where, during the term of the contract, Fuller Marine Services makes an assignment for the benefit of its creditors, or becomes bankrupt or insolvent, or undergoes reorganization or makes a proposal to its creditors, or otherwise becomes financially unable to perform this contract, the City may, at its option, declare the contract void. Where the City declares the contract void, the City will purchase the assets in accordance with Clause 6.2.1., Termination of Lease, and the City shall be entitled to enter into a contract with another party without the consent of Fuller Marine Services. The exercise by the City of its right to declare the contract void and to enter into a contract with another party shall in no way prejudice any rights or remedies that the City may have at law against Fuller Marine Services.

**6.4 Insurance**

Fuller Marine Services shall, throughout the contract term, at its sole cost and expense, take out and keep in full force and effect:

- a) Comprehensive general public liability insurance, all on an occurrence basis, with respect to the business carried on, or from, the docking facility and Fuller Marine Services' use and occupancy of the docking facilities with coverage for any one occurrence or claim of not less than \$2,000,000, or such other amount as the City may reasonably require upon not less than one month's notice at any time during the term of the contract.
- b) Property and business interruption insurance on an "all risk" basis respecting all property of every description and kind owned by Fuller Marine Services or for which Fuller Marine Services is legally liable, or installed by or on behalf of Fuller Marine Services, and which is located in or at the docking facility, including, without limitation, installations, alterations, additions, partitions, fixtures and anything in the nature of a lease-hold improvement and Fuller Marine Services' stock and trade, furniture and moveable equipment, in the amount of not less than \$100,000 for business interruption and not less than \$250,000 for property owned by Fuller Marine Services or for which Fuller Marine Services is legally liable.
- c) All policies of insurance required to be held by Fuller Marine Services shall name the City as an additional insured and shall be taken out and maintained with insurer's licensed to do business in Ontario and acceptable to the City and shall contain an undertaking by the insured to notify the City in writing not less than thirty days prior to any material change, cancellation or termination thereof.

6.5 Indemnity

Fuller Marine Services shall indemnify and save harmless the City from and against all claims, demands, loss, damages, actions, suits and other proceedings by whomever may sustain, brought or prosecuted in any manner, based upon, occasioned to, by or attributable to any injury or damage arising or resulting from any action or omission of Fuller Marine Services, its servants or agents using or occupying the set premises

6.6 Lease Payments

Lease payments for lease of the premises shall be made to the City by Fuller Marine Services on a monthly basis, in advance, and shall be due and payable on the first day of each month. This lease is a gross lease and the amounts hereunder constitute full and final consideration to be paid by Fuller Marine Services to the City in each of the year listed"

<u>Year</u>	<u>Annual Total Lease Payment</u>	<u>Monthly Total Lease Payment</u>
2009	13,954	1,131
2010	14,348	1,196
2011	14,753	1,229

6.7 Employment Standards

Fuller Marine Services shall comply with the requirements of the Ontario Occupational Health and Safety Act, as amended, the Employment Standards Act, as amended, and any other provincial legislation or regulations with respect to any and all workers employed in carrying out the terms of this agreement.

6.8 Assignment / Sublet Rights

Fuller Marine Services shall have the right to assign the Agreement or to sublet the Premises for the purpose of entering into an agreement with a third party to operate a marina facility. Any assignment of the Agreement or subletting of the premises shall not relieve Fuller Marine Services from any liability or obligation under the terms of the Agreement and Fuller Marine Services shall be responsible for all the acts, defaults or neglect of any assignment, subtenant or its agents or servants in all respects as if they were the facts, defaults, or neglects of Fuller Marine Services. Any assignment of the Agreement or subletting of the premises shall be subject to the consent of the City, such consent to be not unreasonably withheld.

6.9 Due Diligence

Both parties agree that they will do their utmost to work together to permit the installation and commencement of operations of the docking facilities on as timely a basis as is possible, recognizing that certain circumstances such as weather, availability of parts, strikes, etc. may delay either party from completing the project within their estimated timeframes. It is agreed that both parties will work together as cooperatively and quickly as possible and will not hold the other accountable for such unforeseen delays.

**6.10 Unavoidable Delay**

The term "Unavoidable Delay" means any prevention, delay, stoppage or interruption due to (a) strike, lockout, labour dispute, act of God or (b) inability to obtain labour or materials or failure to obtain any necessary permit or approval, in each case after the party obligated to do so has used its best efforts to do so, or (c) laws, ordinances, rules, regulations or orders of governmental authorities, or (d) enemy or hostile action civil commotion, fire or other casualty, or (e) other conditions or causes, whether of the foregoing character or not, (other than financial conditions) beyond the reasonable control of the party obligated to perform and not caused by its default or act of commission or omission and not avoidable by reasonable effort or foresight. Neither party hereto shall be in default in the performance of any obligation hereunder other than a financial obligation during the period of any Unavoidable Delay relating thereto and any period for the performance of such obligation shall be extended accordingly.



6.11 Acceptance

This offer is open for acceptance by the City and is irrevocable by Fuller Marine Services until 5:00 p.m. on \_\_\_\_\_, 2008

ACCEPTED BY THE CITY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

**CORPORATION OF THE  
CITY OF BROCKVILLE**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
seal

\_\_\_\_\_  
(print full name)

\_\_\_\_\_  
(print full name)

\_\_\_\_\_  
(print full name)

I have the authority to bind the corporation

By: \_\_\_\_\_

\_\_\_\_\_  
(print full name)

\_\_\_\_\_  
(print full name)

SIGNED BY 3700518 CANADA INC. THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200

**3700518 CANADA INC**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_ seal

Title: \_\_\_\_\_

I have the authority to bind the corporation

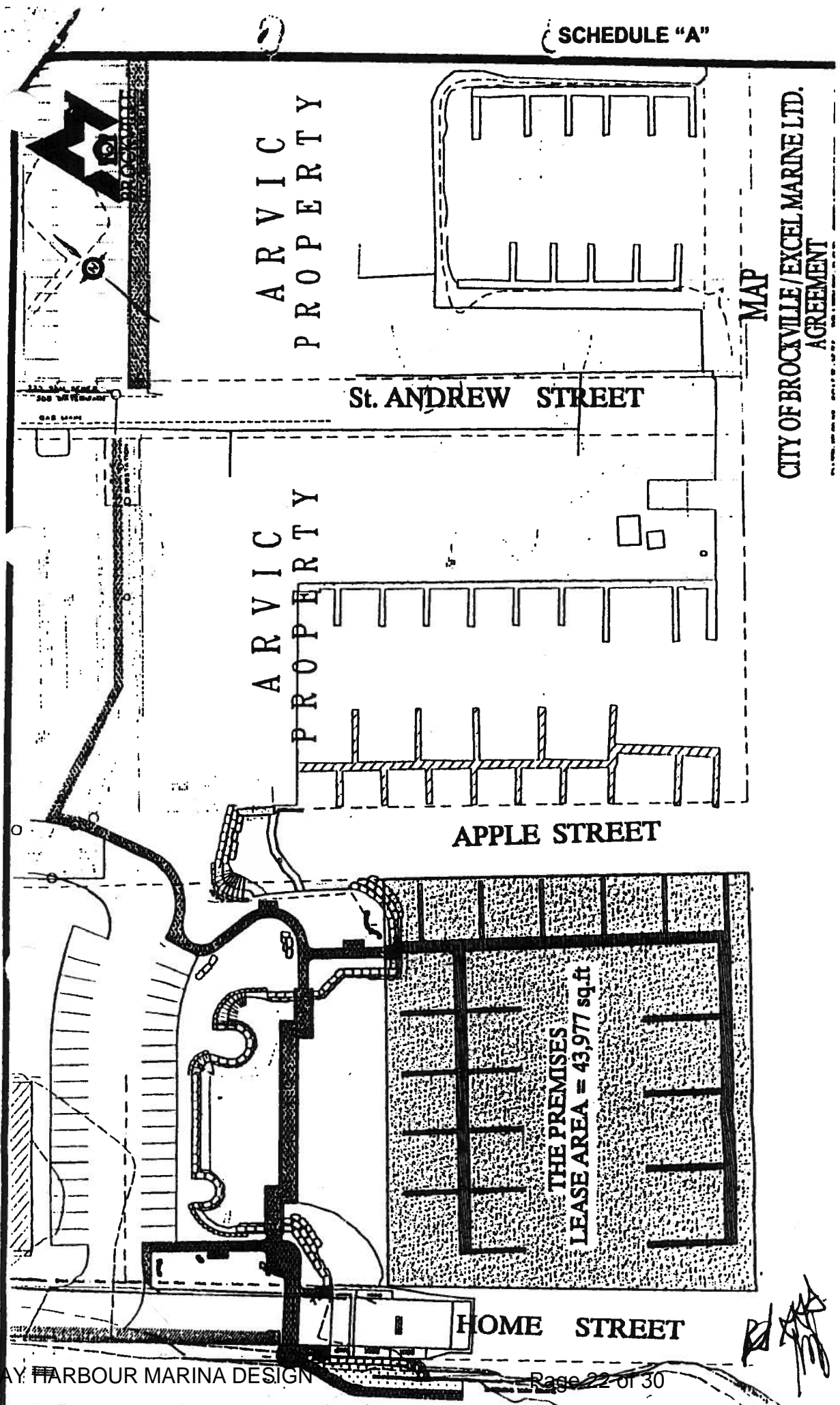
\_\_\_\_\_  
(print full name)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have the authority to bind the corporation



## **SCHEDULE "B"**

### **DOCKING BUY-OUT PROVISION**

#### **AGREEMENT BETWEEN FULLER MARINE SERVICES AND THE CITY OF BROCKVILLE**

The following schedule details a maximum predetermined decreasing buyout value agreed upon between the City of Brockville and Fuller Marine Services based on an initial \$270,000 cost for the construction and installation of docks and docking amenities.

The City agrees to pay an amount detailed, in each year of the agreement based on a 25 year amortization of the total cost of the docking facilities. The total amount of cost not to exceed \$270,000, in accordance with Clause 6.2

Termination of Agreement.

Amount Paid to  
Fuller Marine Services  
by City of Brockville

<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>\$142,800</b>	<b>\$132,200</b>	<b>\$121,600</b>

**THE CORPORATION OF THE CITY OF BROCKVILLE**

**By-Law Number 049-2009**

*By-law to authorize the execution of a Sublease Agreement with Leeds Condo Corp.  
#18 for waterlot fronting on Part 1, Plan 28R5565, in the City of Brockville.*

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WHEREAS the City of Brockville has entered into an agreement with the Minister of Fisheries and Oceans pursuant to the Fishing and Recreational Harbours Act Section 8, Statutes of Canada 1978, for the occupancy and use of the Brockville Harbour, said agreement authorized by By-Law Number 027-2007; and

WHEREAS it is deemed expedient to enter into a sublease agreement with 772792 Ontario Inc.;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF BROCKVILLE ENACTS AS FOLLOWS:-

1. THAT the Mayor and Clerk be and they are hereby authorized to execute a sublease agreement with Leeds Condo Corp. #18 of the City of Brockville in the County of Leeds, in the Province of Ontario, for waterlot fronting on Part 1, Plan 28R5565, in the City of Brockville, County of Leeds and Province of Ontario, for a period of one (1) year, effective January 1, 2009 to December 31, 2009. At the sole discretion of the Sublessor, the terms of this agreement may be extended one additional year.
1. THAT when executed a copy of the lease agreement will be attached to and form part of this by-law.

Given under the seal of the  
Corporation of the City of Brockville  
and passed this 28<sup>th</sup> day of April 2009

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MAYOR

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CLERK



**THIS INDENTURE** made this \_\_\_\_ day of March, A.D., 2009

**BETWEEN:**

**THE CORPORATION OF THE CITY OF BROCKVILLE**

hereinafter called the “**SUBLESSOR**”

**OF THE FIRST PART**

- and -

**LEEDS CONDO CORP. #18**

of the City of Brockville, in the County of Leeds,

hereinafter called the “**SUBLESSEE**”

**OF THE SECOND PART**

**SUBLEASE**

**WITNESSETH** that the Sublessor in consideration of the rent, covenants, provisos and conditions contained herein hereby leases unto the Sublessee:

ALL THE SINGULAR that certain parcel of land and land covered by waters of the St. Lawrence River hereinafter referred to as “the said lands” situate, lying and being in the City of Brockville, in the County of Leeds shown outlined in red on the Plan hereto annexed and designated as Schedule “A” provided that the length of the docks that may be placed on the east seawall of the timber wharf shall not exceed twenty feet (20');

TO HAVE AND TO HOLD the said lands unto the Sublessee from and after the first day of January 2009 to and including the 31<sup>st</sup> day of December 2009 and then fully to be complete and ended;

YIELDING AND PAYING therefore during the currency of this sublease unto the Sublessor the sum of ONE THOUSAND FOUR HUNDRED AND TWENTY-TWO DOLLARS AND NINETY-TWO CENTS (\$1,422.92) of lawful money of Canada and an administration fee directed by Small Craft Harbours to be paid on or before the sealing and delivery hereof.

**IN THIS AGREEMENT:**

- (i) “Minister” means the Minister of Fisheries and Oceans and any person he has delegated to act on his behalf;

- (ii) "Director" means the Regional Director of Small Craft Harbours Branch Ontario Region, of the Department of Fisheries and Oceans of Canada and any person he has delegated to act on his behalf;

IT IS AGREED by and between the parties hereto that these presents are made and executed upon and subject to the covenants, provisos, conditions and reservations hereinafter set forth and contained, namely:

1. The Sublessee shall use and maintain the said lands, docks and catwalks thereon in conjunction with the use of Part 1, Plan 28R5565 in the City of Brockville.
2. That the Sublessee shall pay all rental herein reserved at the time and in the manner in these Presents set forth, without any abatement or deduction whatever.
3. That the Sublessee shall pay or cause to be paid all rates, taxes and assessments, whatsoever description, that may at any time during the existence of these Presents be imposed, or become due and payable upon, or in respect of the said lands.
4. The Sublessee shall in all respects abide by and comply with all rules, regulations and by-laws of municipalities and other governing bodies, in any manner affecting the said lands.
5. That the Sublessor, its servants or agents shall at all times and for all purposes have full and free access to any and every part of the said land while acting within the scope of their duties or employment.
6. That the Sublessee shall not make any assignment of these Presents, nor any transfer of any of the lands, rights or privileges demised or leased hereunder, without obtaining the prior consent in writing of the Director to such assignment or transfer provided that the Sublessee may rent dock space to individual boat owners during each summer season without prior consent.
7. That no concessions of any kind shall be granted by the Sublessee without the prior approval of the Director.
8. That the Sublessee shall not, during the currency of this sublease, do suffer or permit to be done any act or thing which may impair, damage or injure the said lands beyond the damage occasioned by reasonable use and shall at the Sublessee's own cost and expense maintain and repair all portions of the said land which may at any time be damaged by the Sublessee or its agent other than in the reasonable use thereof, the Minister to be the sole judge of the meaning of the words "reasonable use".
9. That the Sublessee shall not construct or erect any buildings or other structures on the said land without obtaining the approval of the Director, of plans showing the design and nature of construction of such buildings or structures and their proposed

locations, and all such buildings or structures shall be constructed and thereafter maintained by and at the cost and expense of the Sublessee all to the satisfaction of the Director.

10. That the Sublessee shall not, at any time during the currency of this sublease do cause or permit to be done, any act or thing in or upon the said land which shall or may be, or might become an annoyance, nuisance or disturbance to the occupiers of any lands or premises adjoining or in the vicinity of the said land and of which matters the Minister shall be the sole judge and his decision thereon binding on the Sublessee.
11. That it is hereby declared, and this sublease is accepted by the Sublessee upon the express condition that the Sublessee shall have no recourse against the Sublessor, should the Sublessor's title to the said lands be found to be defective, or should these Presents prove ineffectual by reason of any defect in such title.
12. That the Sublessee shall not have any claim or demand against the Sublessor for loss, damage or injury of any nature whatsoever, or howsoever caused to the said lands or to any person or property, at any time brought, placed or made or being on the said lands unless such damage or injury is due to the negligence of any officer or servant of the Sublessor while acting within the scope of its duties or employment.
13. That the Sublessee shall at all times indemnify and save harmless the Sublessor from and against all claims and demands, loss, costs, damages, actions, suits or other proceeds by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the execution of these Presents, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner or rights arising hereunder, except claims for damage resulting from the negligence of the Sublessor while acting within the scope of its duties or employment.
14. That this sublease may be extended:
  - (a) At the sole discretion of the Sublessor, the terms of this agreement may be extended one additional year, and then fully to be complete and ended on the 31<sup>st</sup> day of December 2010.
  - (b) The sublessee shall notify the sublessor a minimum of sixty (60) days in advance of the December 31, 2009 termination date of their desire to extend the terms of this contract one additional year.
15. That this sublease may be terminated at any time:
  - (a) By the Sublessor upon sixty days notice in writing and either delivered to the Sublessee or mailed to the last known place of residence of the Sublessee.
  - (b) By the Sublessee upon sixty days notice in writing such notice to be signed

by the Sublessee and delivered to or mailed, addressed to The City of Brockville, Victoria Building, One King Street West, P.O. Box 5,000, Brockville, Ontario, K6V 7A5

and thereupon, after the expiration of such period of notification, these Presents shall be determined and ended, and the Sublessee shall thereupon, and also in the event of the determination of this sublease in any other manner except re-entry under Clause No. 15 hereof, forthwith remove from the said land all things at any time brought or placed thereon by the Sublessee and shall also to the satisfaction of the Director repair all and every damage and injury occasioned to the said land by reason of such removal or in the performance thereof, but the Sublessee shall not, by reason of any action taken or things performed or required under this clause be entitled to any compensation whatever, provided that, unless required by the Minister, no goods, chattels, materials, effects or things shall be removed from the lands and premises of the Sublessor until all rent due or to become due under this lease is fully paid.

16. That, notwithstanding anything in this sublease contained if the rent above reserved, or any part thereof, shall be in arrears or unpaid, whether or not the same shall have been in any manner demanded or in case default, breach or non-observance be made or suffered by the Sublessee at any time or times, in or in respect of any of the covenants, provisos, conditions and reservations herein contained, which on the part of the Sublessee ought to be observed or performed, then, and in every such case provided such non-payment or rent, default, breach or non-observance is not cured within fifteen days from the date of notice thereof in writing from the Sublessor to the Sublessee and signed by or on behalf of the Minister, the Sublessor may terminate this sublease by giving notice to the Sublessee in writing and either delivered to the Sublessee or mailed to the last known place of residence of the Sublessee and thereupon after the delivery or mailing of such written notification this sublease shall be determined and ended and in that event, it shall be lawful for the Sublessor, its servants or agents, to re-enter and thereafter to have, possess and enjoy the said land and all improvements thereon. And no acceptance of rent subsequent to any breach or default, other than non-payment of rent, nor any condoning, excusing or overlooking by the Sublessor or previous occasions of breaches or defaults similar to that for which re-entry is made shall be taken to operate as a waiver of this condition nor in any way to defeat or affect the rights of the Sublessor hereunder.
17. Provided always and that it is hereby agreed by and between the parties hereto that if the said Sublessee shall hold over after the expiration of the term hereby granted, and the Sublessor shall accept rent, the new tenancy thereby created shall be a tenancy at will and not a tenancy from year to year, and the Sublessee shall pay as rent during the time of such occupancy a rental to be determined at the discretion of the Sublessor, and shall be subject to the covenants and conditions herein contained so far as the same are applicable to tenancy at will.

18. That the Sublessee shall fulfill in all respects the requirements of Part 1 of the Navigable Waters' Protection Act, Chapter N-19 of the Revised Statutes of Canada, 1970.
19. That the Sublessee shall at the Sublessee's own cost and expense, at all times during the currency of this sublease, keep the said lands in a neat and tidy condition, removing or causing to be removed therefrom all papers, refuse, litter, waste, or rubbish arising out of the operation of the Sublessee under this sublease, all to the satisfaction of the Director.

IN WITNESS WHEREOF the parties hereto have executed these Presents this \_\_\_\_ day of March, 2009.

SIGNED, SEALED AND DELIVERED in the presence of:

THE CORPORATION OF  
THE CITY OF BROCKVILLE

LEEDS CONDO CORP. #18

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Witness

## Waterlot Lease Agreements

Name	Term	Lease Agreement		Description	Termination Clause	Financial	
		Start	End			Revenues	Expenses
Lease (with City of Brockville) Tunnel Bay Marina <i>Docks owned by Fuller Marine Services</i>	7 months + provision for 1 year extension	Apr 1 2007	Oct 31 2011 <i>Memorandum of Understanding extended</i>	Docks	See "Termination of Agreement" Clause 6.2	\$12,060 \$12,400 \$12,751 \$13,199 \$13,571 \$13,571	2004 2005 2006 2007 2008 2009
Lease (with City of Brockville) Fisheries & Oceans Brockville Municipal Harbour <i>Docks owned by City</i>	5 yrs	Jan 1 2007	Dec 31 2011	Brockville waterlots 20% of gross revenues	Agreement may be terminated at any time: a) by the City upon 60 days notice in writing b) by the Minister upon 60 days notice in writing	\$28,821 \$28,693 \$32,384 \$31,685 \$32,214 \$36,553	2004 2005 2006 2007 2008 2009
Lease (with City of Brockville) 1082233 Ontario Limited <i>1000 Islands &amp; Seaway Cruises</i>	3 yrs	May 1 2009	Dec 31 2011	Docking plus misc. services	Agreement may be terminated by either party with six months advance notice	\$12,733 \$12,800 \$13,262 \$13,940 \$14,029 \$14,367	2004 2005 2006 2007 2008 2009
Sublease (with City of Brockville) Leeds Condo Corp. 18 <i>Boardwalk Condominiums</i> <i>Docks owned by Leeds Condo Corp.</i>	1 yr + provision for 1 year extension	Jan 1 2009	Dec 31 2009	Tunnel Bay waterlot	Agreement may be terminated at any time: a) by the City upon 60 days notice in writing b) by the Leeds Condo Corp #18 upon 60 days notice in writing	\$1,250 \$1,250 \$1,250 \$1,357 \$1,390 \$1,423	2004 2005 2006 2007 2008 2009
Sublease (with City of Brockville) Brockville Yacht Club <i>Docks owned by Yacht Club</i>	5 yrs	Jan 1 2007	Dec 31 2011	foot of St. Paul waterlot	Agreement may be terminated at any time: a) by the City upon 60 days notice in writing b) by the Brockville Yacht Club upon 60 days notice in writing	\$2,500 \$2,500 \$2,500 \$2,713 \$2,770 \$2,608	2004 2005 2006 2007 2008 2009

2009 12 21