



This is the 3rd Affidavit of Yu-Chiao (Joy) Chiang  
in this case and was made on April 13, 2020  
No. S217202  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

AND:

PETITIONER

COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL MARINA  
LTD. ETERNALAND YUHENG INVESTMENT HOLDING LTD., AND 0736657 B.C.  
LTD.

RESPONDENTS

**AFFIDAVIT**

I, Yu-Chiao (Joy) Chiang, of Forrester & Company Law Corporation, 300-171 Water Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a paralegal at Forrester & Company, counsel for the Applicant in respect of the Application filed in this matter on April 7, 2022. As such, I have personal knowledge of the facts and matters hereinafter deposed to by me except where stated to be made upon information and belief and where so stated I believe those facts and matters to be true.
2. The Applicant has not to date included in its application materials reference to the following documents to be signed by Applicant on behalf of the Respondent 0736657 B.C. Ltd, and by the First Lender 1129057 B.C. Ltd. and the Her Majesty the Queen in Right of Canada (the "Federal Crown"), which counsel for the First Lender has requested be filed with the Court:
  - a. Now shown to me and attached hereto as **Exhibit "A"** is a true copy of the Consent and Non-Disturbance Agreement.
  - b. Now shown to me and attached hereto as **Exhibit "B"** is a true copy of the Land Lease Agreement.

3. The above documents are included amongst the documents the Applicant seeks permission to sign pursuant to the within Application.

AFFIRMED BEFORE ME at the City of )  
Vancouver, in the Province of British )  
Columbia, Canada this 13<sup>th</sup> day of April, 2022 )

\_\_\_\_\_  
A Notary Public or a Commissioner )  
for taking affidavits in the Province of BC

*Glen Forrester*

  
\_\_\_\_\_  
YU-CHIAO (JOY) CHIANG

**FORRESTER & COMPANY LAW CORPORATION**  
300-171 WATER STREET  
VANCOUVER, B.C. V6B 1A7  
604-682-1066

# CONSENT AND NON-DISTURBANCE AGREEMENT

THIS AGREEMENT is dated for reference \_\_\_\_\_, 2022

BETWEEN:

0736657 B.C. LTD.  
240 - 730 View Street  
Victoria, BC V8W 3Y7

(the "Tenant")

AND:

1129057 B.C. LTD.  
6869 Selkirk Street  
Vancouver, BC V6P 4H1

(the "Lender")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by the Minister of Transport

(the "Crown")

This is Exhibit "A" referred to in the  
Affidavit of Yu-Chia (Joy) Chiang  
sworn (or affirmed) before me at

Vancouver, B.C.  
this 3 day of April, 2022

A Commissioner/Notary Public for the  
Province of British Columbia

## WHEREAS:

- A. By way of a lease dated for reference January 1, 2018 (the "Lease"), the Crown, as landlord, leased to the Tenant, as tenant, the real property covered by water in Victoria Harbour, in the Province of British Columbia, comprising three parcels for a combined area of 36.18 meters squared, more or less, and more particularly described in the Lease (the "Leased Premises") for certain purposes as described in the Lease.
- B. The Lender has provided a loan to the Tenant to finance the Tenant's undertaking.
- C. To secure the repayment of the loan, the Tenant has, among other things, mortgaged the Lease to the Lender (the "Security").
- D. To protect the Lender's rights under the Security, the Lender and the Tenant have requested of the Crown that the Crown agree to certain provisions with respect to how the Crown shall proceed in the event of a default in the Lease on the terms set out in this consent and non-disturbance agreement (the "Agreement").

ACCORDINGLY, for consideration of the sum of \$1.00 now paid by each of the Tenant and the Lender to the Crown, the parties agree as follows:

## ARTICLE 1 - CONFIRMATIONS CONCERNING THE LEASE

1.1 The Crown confirms to the Lender that:

- (a) the Crown has not received any notice of assignment concerning the Lease or any notice that a third party makes a claim against the Lease;

- (b) the Crown has not given to the Tenant any notice of default, notice of failure, or notice of intent to terminate under the Lease ("Notice");
  - (c) the Crown is not aware of any circumstance which would entitle the Crown to give a Notice (but the Crown has not undertaken any diligent investigation in respect of this confirmation);
  - (d) as of the date of this Agreement, the Lease has not been modified or amended and constitutes the entire agreement between the Crown and the Tenant in connection with the Leased Premises; and
  - (e) without giving the Lender at least 60 days' prior notice, the Crown shall not do any of the following:
    - (i) enter into any agreement with the Tenant which shall amend, replace or terminate the Lease, except where the replacement of the Lease is to extend its term for a longer period under substantially the same terms and conditions as currently exist;
    - (ii) accept any surrender of the Lease, unless the surrender is carried out in the manner set out in section 4.9 of this Agreement;
    - (iii) consent to any assignment or subletting of the Lease including, without limitation, by way of security; or
    - (iv) terminate the Lease.
- 1.2 Except as specifically set out on this Agreement, this Agreement shall not be deemed to waive or modify the Lease or to relieve the Tenant from any of the Tenant's obligations under the Lease.
- 1.3 The Crown covenants and agrees with the Lender that the Crown shall permit the Lender to:
- (a) pay any arrears of the Tenant under the Lease;
  - (b) remedy any default of the Tenant under the Lease and to enter the Leased Premises in order to do so;
  - (c) exercise the Lender's right to assume the Lease and the Tenant's undertaking, if such exercise is permitted under the Security; and
  - (d) transfer the Lease and the Tenant's undertaking to a third party, if such transfer is permitted under the Security and always subject to the terms of the Lease, including, without limitation, that the Lease may not be assigned, transferred, or subleased in whole or in part without the prior written consent of the Minister (as defined in the Lease), which consent will not be unreasonably withheld.
- 1.4 If the Crown, as of the date of this Agreement, holds any interest in the Lease as a result of a mortgage of the Tenant's interest in the Lease to the Crown, or if the Crown shall acquire any such interest at any time in the future, the Crown hereby grants to the Lender priority of the Security over any such interest.

## ARTICLE 2 - SECURITY OVER THE LEASE TO THE LENDER

- 2.1 The parties acknowledge that the Security arises from a transaction between the Tenant and the Lender which requires the consent of the Crown, and the Crown does hereby provide that consent.
- 2.2 The Lender acknowledges that:
- (a) it has received a copy of the Lease; and
  - (b) the Security is subject in all respects to the terms and conditions of the Lease and this Agreement.
- 2.3 The Tenant represents and warrants that the Lender is the only person to whom it has granted a security interest in the Lease.

## ARTICLE 3 - DEFAULT

In this Article,

**"Minister"** has the meaning given to it in the Lease;

**"Receiver"** means a receiver, a manager, a receiver-manager or any other person, including the Lender itself, who lawfully assumes possession and control of the Tenant's property charged in the Security for the purpose of exercising the Lender's rights under the Security;

**"Remediation"** means, with respect to a Tertiary Default, either or both of the following (as the particulars of the situation dictate);

- (a) mitigation of damage done as a result of the Tertiary Default; and
- (b) to the extent feasible, meeting the obligations the Tenant would have been under had the default not occurred;

**"Primary Default"** means a default in the performance of an obligation under the Lease which entitles the Crown to terminate the Lease without first providing notice of the default to the Tenant and providing the Tenant a period of time to cure the default;

**"Secondary Default"** means a default in the performance of an obligation under the Lease which:

- (a) does not entitle the Crown to terminate the Lease until the Crown provides:
  - (i) notice of such default to the Tenant; and
  - (ii) the Tenant with a period of time to cure the default; and
- (b) by its nature is capable of being cured; and

**"Tertiary Default"** has the same meaning as Secondary Default except that such default, by its nature, is not capable of being cured.

- 3.1 If and when a Receiver becomes engaged, each of the Lender and the Tenant, promptly upon

becoming aware of the engagement, shall provide written notice of the engagement, with appropriate particulars, to the Crown.

- 3.2 If, at any time, the Crown shall give a Notice to the Tenant, the Crown shall give a copy of the Notice to the Lender concurrently or promptly thereafter.
- 3.3 If the Lender has not appointed a Receiver (or a Receiver has not been otherwise appointed) within 60 days from the date on which the Lender has received (or shall be deemed to have received) a Notice (the "**Lender's Notice Period**") then, subject to section 3.4, the following shall apply:
  - (a) if the Notice is with respect to a Secondary Default, the Crown shall not terminate the Lease until the period of time set out in the Lease to cure the default has passed calculated from the end of the Lender's Notice Period, and shall terminate only if the default is not cured by the end of the period set out in the Lease; and
  - (b) if the Notice is with respect to a Primary Default or a Tertiary Default, then the Crown shall not terminate the Lease until a period of 60 days has passed calculated from the date on which the Lender has received (or shall be deemed to have received) the Notice.
- 3.4 If the Lender has appointed a Receiver (or a Receiver has been otherwise appointed) within 60 days from the date on which the Lender has received (or shall be deemed to have received) a Notice, or if the Lender shall appoint a Receiver (or a Receiver is otherwise appointed) before the Lease is terminated by the Crown as a result of the default set out in the Notice, then, subject to section 3.5, the following shall apply:
  - (a) the Crown shall not be entitled to terminate the Lease as a result of a Primary Default by the Tenant, whether or not the default is cured;
  - (b) the Crown shall be entitled to terminate the Lease as a result of a Secondary Default provided the period of time set out in the Lease to cure the default has passed (calculated from the date on which the Lender has received, or shall be deemed to have received the Notice) and shall terminate only if the default is not cured within that period;
  - (c) the Crown shall not be entitled to cancel the Lease as a result of a Tertiary Default if:
    - (i) the Lender or the Tenant (or both) have carried out Remediation; and
    - (ii) the Minister has provided the Minister's approval for the Remediation, which approval shall not be unreasonably withheld; and
  - (d) the Minister's approval shall be deemed to be reasonably withheld if an authority whose requirements were breached as a result of the default, or which has jurisdiction over damage arising from the default, is of the view that the Remediation is not sufficient.
- 3.5 If, after a period of 24 months after a Receiver is appointed by the Lender (or after such other period to which the parties wish to agree, with each party obliged to act reasonably), a third party has not been approved by the Crown, taken over the operation of the Tenant's undertaking and assumed the obligations under the Lease (or under a new interest in land issued by the Crown), then the Crown shall have the right to terminate the Lease as a result of any default or as otherwise permitted

by law.

- 3.6 The Lender shall not be deemed to have undertaken the enforcement and exercise of its rights under the Security simply by entering the Leased Premises for the purpose of examining the condition and operation of the improvements thereon.
- 3.7 The Lender assumes no liability to the Crown under the Lease by virtue of having appointed a Receiver.
- 3.8 For certainty, nothing in this Agreement shall prejudice or limit the powers of the Crown or the Minister in the exercise of its governance and regulatory functions under any applicable statute, regulation, order, or other applicable law, including, without limitation, regulations regarding traffic control, security, sanitation and all other regulations and directives relative to the management and operation of the Leased Premises, including but not limited to any directions or orders of the Victoria Harbourmaster, all of which may be exercised in accordance with applicable laws.
- 3.9 If the Lender takes enforcement proceedings under the Security and the Lender, or the Receiver, advises the Crown of its intention to cause the Lease to be maintained, then subject to sections 3.3 and 3.4, as applicable, the Lender or the Receiver, as applicable, will only be liable for:
- (a) breaches by the Tenant of any of the Tenant's obligations under the Lease (except for a non-curable default) of which the Crown had given Notice to the Lender before the Lender commenced enforcement proceedings; and
  - (b) the performance of the Tenant's obligations under the Lease during any period of actual possession of the Leased Premises by the Lender or the Receiver until any assignment or transfer of the Tenant's interest under the Lease to a third party approved by the Crown in accordance with this Agreement or any surrender, cancellation, or other termination of the Lease.

#### ARTICLE 4 - NOTICE AND MISCELLANEOUS

- 4.1 Any notice provided under this Agreement shall be in writing and may be given by personal delivery, registered mail, or by electronic transmission, addressed to the respective parties as follows:

- (a) to the Crown at:

**TRANSPORT CANADA**  
Suite 820 - 800 Burrard Street  
Vancouver, BC V6Z 2J8

Attention: Regional Manager, Property & Divestiture  
Email: jim.chan@tc.qc.ca

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(b) to the Tenant at:

**0736657 B.C. LTD.**  
240 - 730 View Street  
Victoria, BC V8W 3Y7

(c) to the Lender at:

**1129057 B.C. LTD.**  
6869 Selkirk Street  
Vancouver, BC V6P 4H1

with a copy to:

**LAWSON LUNDELL LLP**  
1600 - 925 West Georgia Street  
Vancouver, BC V6C 3L2  
Attention: Brenda Lightbody  
Email: blightbody@lawsonlundell.com

- 4.2 Notices given by electronic transmission shall be deemed to be received on the business day transmitted, if transmitted by 4:00 p.m. in the jurisdiction to which the notice is sent, and otherwise on the business day next following the date of transmission.
- 4.3 This Agreement is governed by British Columbia law, and the applicable laws of Canada and any legal proceedings shall be taken in the courts of British Columbia.
- 4.4 The Crown's obligations in this Agreement shall end when Security is discharged and the Lender and the Tenant agree to advise the Crown when that occurs.
- 4.5 This Agreement may be amended only by an instrument in writing signed by each of the parties.
- 4.6 This Agreement shall enure to the benefit of, and is binding upon, the parties, and their respective successors and permitted assigns, and each reference herein to a party includes its successors and permitted assigns.
- 4.7 This Agreement may be executed in counterparts, by electronic signatures, and delivered by electronic means. Each electronic copy will be deemed an original and may be used as evidence of execution. All counterparts together will constitute the same document.
- 4.8 This Agreement is not binding upon any party unless and until it is executed and delivered by all parties, whereupon this Agreement shall take effect as of the day first above written.
- 4.9 For so long as the Security is in place:
- (a) the Tenant shall not exercise any statutory right to abandon or terminate the Lease without written consent from the Lender; and
  - (b) before exercising any such statutory right to abandon or terminate the Lease the Tenant shall provide the Crown with a copy of the Lender's consent.



4.10 The parties agree:

- (a) subject to paragraph (b), the Crown shall not be liable to the Lender or to the Tenant for any loss or expense suffered by the Lender or the Tenant, nor shall the Crown incur any obligations to the Lender or the Tenant, as a result of the failure by the Crown to abide by the Crown's obligations under this Agreement; and
- (b) if the Crown shall terminate the Lease and if the Crown shall do so without providing either:

- (i) the Notice to the Lender; or
- (ii) the benefit of the applicable cure period as required in this Agreement,

then the Crown shall be obliged to make reasonable efforts to have the Lease reinstated in favour of the Lender or a party to whom the Lender may direct but the Crown shall have no other obligations.

4.11 The meaning of any term used in this Agreement shall be determined by considering the following in descending order of priority:

- (a) if the term is capitalized and defined in this Agreement, its meaning shall be as defined; and
- (b) if the term is not capitalized in this Agreement, its meaning shall be its meaning as used in the Lease document, unless the context of its use in this Agreement dictates otherwise, in which case its meaning shall be pursuant to the context.

4.12 Time is of the essence of this Agreement and shall be calculated in accordance with the provisions of the *Interpretation Act* (British Columbia).

4.13 If an issue shall arise between the parties to this Agreement (or between any two of them) as to the interpretation of this Agreement and the parties are not able to resolve the issue by agreement, then the matter shall be resolved by arbitration pursuant to the *Arbitration Act* (British Columbia).

4.14 This Agreement constitutes the entire agreement between the Lender, the Tenant, and the Crown with respect to the Security and the Lease. For certainty, the parties acknowledge that Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport, is not bound by that consent and non-disturbance agreement entered into among the Lender, the Tenant, and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the minister responsible for the *Land Act* (British Columbia), in connection with other security granted to the Lender by the Tenant.

## ARTICLE 5 - FOLLOWING TENURES

In this Agreement:

"Following Tenure" means a lease, licence, or other interest in land issued by the Crown:

- (a) to the Tenant over the Leased Premises or any part of the Leased Premises;

- (b) replaces the Lease (or a previous Following Tenure) or is one of two or more interests in land which replace the Lease (or a previous Following Tenure); and
  - (c) grants rights to the Tenant concerning the Tenant's undertaking.
- 5.2 The Crown agrees to be bound by its obligations in this Agreement, on the same terms and conditions as in this Agreement, with respect to any Following Tenures.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Transport

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**0736657 B.C. LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**1129057 B.C. LTD.**

By: \_\_\_\_\_  
Name:  
Title:

LAND LEASE | W18371388

0736657 B.C. LTD

Victoria Harbour (adjacent to District Lot 119, Esquimalt District)

This is Exhibit " B " referred to in the  
Affidavit of Yu-Chiao Tsai / Chiang  
sworn (or affirmed) before me at  
Vancouver, B.C.  
this 13 day of April 2022.

\_\_\_\_\_  
A Commissioner/Notary Public for the  
Province of British Columbia

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**EXECUTION OF LEASE**

**THIS LEASE** made this 1st day of January, Two Thousand and Eighteen.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented herein by the Minister of Transport  
(hereinafter called "the Lessor")

**OF THE FIRST PART**

- and -

**0736657 B.C. LTD**

240-730 View Street  
Victoria, BC V8W 1J8

(hereinafter called "the Lessee").

**OF THE SECOND PART**

**THIS LEASE WITNESSES** that in consideration of the rents, covenants, and conditions hereinafter reserved and contained the Parties hereto covenant and agree as follows:

**ALL AND SINGULAR** the Lessor hereby demises and leases to the Lessee, and the Lessee hereby leases from the Lessor, on and subject to the terms and conditions hereinafter set forth, all that real property (hereinafter called "Leased Premises") covered by water in Victoria Harbour, in the Province of British Columbia (the "Harbour"), comprising of three parcels for a combined area of 36.18 meters squared, more or less, and more particularly shown as inset "Detail A", "Detail B" and "Detail C" on Schedule "A" on Site Plan of Block A, District Lot 119, Esquimalt District, surveyed by J.E. Anderson & Associates, certified correct dated November 16, 2017 by Ryan P. Hourston BCL, hereto annexed.

**AND the Parties agree as follows:**

**ARTICLE I - DEFINITIONS**

- (1) The word "Lessor" when used herein means the Sovereign and shall include the Successors and Assigns of the Sovereign and includes any person authorized by the Minister of Transport, pursuant to *Section 12* of the *Department of Transport Act* to act on his behalf;
- (2) The word "Lessee" or other words relative thereto, or of like import, shall mean and include, irrespective of gender or number, the party or parties of the second part as above designated or described, and their or any of their executors, administrators, successors or assigns;
- (3) The word "Minister" means the person holding the position, or acting in the capacity, of the Minister of Transport, for the time being and shall include the person holding the position, or acting in the capacity, of the Deputy Minister of Transport, for the time being;
- (4) The word "Hazardous Substances" means any substance which is hazardous to persons, plants, animals, waterlife and which affects the soil of or water in, on, over, or under the Leased Premises, and any structure thereon; and
- (5) The words "Remedial Work" means any work required to remedy an adverse environmental condition caused by the existence of a Hazardous Substance affecting the soil or the water in, on, over or under the Leased Premises, and any improvements or structures thereon, which is required under (a) applicable Federal Environmental laws of general application as amended or (b) applicable Provincial Environmental laws of general application, as amended.

**ARTICLE 2 - PURPOSE**

The Leased Premises shall be used only for the purpose of maintaining a float and wave attenuator associated with the operation of a marina and shall be used for no other purpose or purposes whatsoever.



**ARTICLE 3 - TERM****3.01 LENGTH OF TERM**

The Lessee shall have and hold the Leased Premises, from and after the 1<sup>st</sup> day of January, Two Thousand and Eighteen for a term or period of twenty (20) years, ending on the 31<sup>st</sup> day of December, Two Thousand and Thirty-Seven and then fully to be complete and ended.

**3.02 OVERHOLDING TENANCY**

- (1) The payment of rent for the Leased Premises after the end of the term of this Lease does not constitute overholding. Should the Lessee choose to remain in possession of the said Leased Premises after the end of the term of this Lease, and prior to the execution and delivery of a new Lease or a written renewal of this Lease, the Lessee requires the written permission of the Lessor to remain in possession of the said Leased Premises. Once written permission from the Lessor to overhold the lease is secured, the Lessee shall pay during the time of such occupancy the rent as set out in the written permission of the Lessor in accordance with *Article 4 - Rent* of this Lease. If the overholding is a result of the Lessee's failure to perform any obligation or covenant of this Lease, the monthly rent payable shall be at the discretion of the Lessor but shall not be less than one sixth of the annual rent which was payable immediately prior to the overholding. The Lessee is responsible for submitting a copy of the written permission with the monthly rent payable in advance on the first day of each month.
- (2) Upon termination of the month to month tenancy at will, any rental payments during the tenancy at will shall be considered as payments on account only and in the event that a new Lease of the said Leased Premises is entered into by the parties, an adjustment shall be made to bring the amount paid in respect of the period of the month to month tenancy, as agreed by the Lessor's written permission, with the provisions of the new Lease, it being expressly agreed that the acceptance of rents or any implied condition, or any implication of law, shall in no way renew this Lease or create any tenancy other than a tenancy at will from month to month subject in all respects to the same terms as are herein set out, insofar as they are applicable to a tenancy at will.
- (3) The Lessee shall promptly indemnify and hold harmless the Lessor from and against any and all costs incurred by the Lessor as a result of the Lessee remaining in

possession of all or any part of the Leased Premises after the expiry or termination of this Lease. The Lessee shall not interpose any counterclaim in any summary or other proceeding based on overholding by the Lessee.

### 3.03 CANCELLATION PRIVILEGE

If by reason of fire, flood, lightning, tempest, earthquake, impact of aircraft, explosion, or Acts of God, or the Queen's enemies the Leased Premises shall, at any time during the term hereby granted be destroyed or so damaged as to render the Leased Premises unfit for occupancy, the Lessee will, then, have a period of ninety (90) days after such damage or destruction within which to decide whether or not it will repair or rebuild. If the Lessee decides not to rebuild or repair, it may terminate this Lease by notice, in writing, given to the Lessor within the said ninety (90) day period; provided, however, that in the event of such notice being given to the Lessor pursuant to this clause, the rent reserved to the Lessor under this Lease shall be due and payable up to the date of removal, clearance and levelling of the Leased Premises to the satisfaction of the Lessor.

### 3.04 SURRENDER OF PREMISES

At the expiration or sooner determination of the term of this Lease, the Lessee shall peaceably surrender and yield to the Lessor, in a condition satisfactory to the Lessor, the Leased Premises. The Lessee shall thereupon forthwith remove from the Leased Premises all chattels, goods, supplies, articles, equipment, materials, effects or things and shall also, to the satisfaction of the Lessor, repair all and every damage and injury occasioned to the premises of the Lessor by reason of such removal or in the performance thereof, but the Lessee shall not, by reason of any action taken or things performed or required under this clause, be entitled to any compensation whatever. Unless required by the Lessor, no chattels, goods, supplies, articles, equipment, materials, effects or things shall be removed from the Leased Premises until all rent due or to become due under this Lease is fully paid. The Minister may, at his option, remove at the risk of and at the cost and expense of the Lessee, the chattels, goods, supplies, articles, equipment, materials, effects or things from the Leased Premises and the Lessee shall reimburse the Lessor forthwith upon receipt of appropriate accounts therefor and for any storage charges which may have been or will be incurred by the Lessor as a result of such removal. Where not removed by the Lessee, the Lessor may consider the chattels, goods, supplies, articles, equipment, materials, effects or things to be abandoned, and take title thereto in the name of the Lessor.

**3.05 TERMINATION BY EITHER PARTY**

Where the Leased Premises is no longer used only for the purpose in *Article 2 - Purpose*, or failure by the Lessee to perform any obligation or covenant under this Lease, may result in the termination of this Lease at any time:

(1) by the Lessor by 90 days' notice in writing signed by or on behalf of the Minister;

OR

(2) by the Lessee by 90 days' notice in writing:

And thereupon after the expiration of such period of notification, this Lease shall be determined and ended, and the Lessee shall thereupon, and also in the event of the termination of this Lease in any other manner, except re-entry under *Article 10 Default and Re-entry* hereof, and except and subject as in this Lease otherwise provided if required by the Lessor, forthwith remove from the Leased Premises, all chattels, goods, supplies, articles, equipment, materials, effects or things and shall also, to the satisfaction of the Lessor, repair all and every damage and injury occasioned to the premises of the Lessor by reason of such removal or in the performance thereof, but the Lessee shall not, by reason of any action taken or things performed or required under this clause, be entitled to any compensation whatsoever. Unless required by the Lessor, no chattels, goods, supplies, articles, equipment, materials, effects or things shall be removed from the Leased Premises until all rent due or to become due under this Lease is fully paid. The Lessor may, at Her option, remove at the risk of and at the cost and expense of the Lessee, the chattels, goods, supplies, articles, equipment, materials, effects or things from the Leased Premises and the Lessee shall reimburse the Lessor forthwith upon receipt of appropriate accounts therefor and for any storage charges which may have been or will be incurred by the Lessor as a result of such removal. Where not removed by the Lessee, the Lessor may consider the chattels, goods, supplies, articles, equipment, materials, effects or things to be abandoned, and take this thereto in the name of the Lessor.

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#### ARTICLE 4 - RENT

##### 4.01 RENT

The Lessee shall pay during the currency of this Lease to the Lessor through the Honourable the Receiver General for Canada for the time being, in lawful money of Canada as rent for the term commencing on the 1<sup>st</sup> day of January, 2018 and ending on the 31<sup>st</sup> day of December, 2038, Five Hundred Dollars (\$500.00) per annum, plus GST. Payment shall be paid in a lump sum payment of Ten Thousand Dollars (\$10,000.00) plus GST, payable in advance, on or before 1<sup>st</sup> day of January, 2018.

AND payment of rent shall be made by the Lessee without prior demand by the Lessor, to the Receiver General for Canada and delivered to:

Transport Canada, Financial Services (NDFK)  
700 Leigh-Capreol,  
Dorval QC H4Y 1G7

##### 4.02 PAYMENT OF RENT

The Lessee shall pay all rent herein reserved at the time and in the manner in this Lease set forth, without any abatement or deduction whatever.

##### 4.03 INTEREST ON RENT IN DEFAULT

Without waiving any other right of action of the Lessor in the event of default of payment of rent hereunder, in the event that the Lessee is delinquent after the date above appointed in making the payments required hereunder, the Lessee shall pay interest thereon at the rate of 4.25 percent per annum (0.35% percent per month, compounded), retroactive from the date any such amount is due and payable until paid. In order to reflect prevailing interest rates, the Lessor may review and adjust the interest rate from time to time.

**ARTICLE 5 - LEASED LAND, SERVICES AND IMPROVEMENTS****5.01 "AS IS" CONDITION**

The Lessee accepts the Leased Premises in an "as is" condition and any improvements made to the Leased Premises by the Lessee at any time during the currency of this Lease, to make the Leased Premises suitable for the operations of the Lessee hereunder, shall be at the risk, cost and expense of the Lessee and to the satisfaction of the Lessor.

**5.02 ACCESS**

(1) The Lessor, Her officers, servants or agents, shall have full and free access for inspection purposes during normal business hours and in the presence of the Lessee or a representative of the Lessee to any and every part of the Leased Premises; it being expressly understood and agreed, however, that in cases of emergency, the Lessor, Her officers, servants or agents shall at all times and for all purposes have full and free access to the Leased Premises.

(2) Subject as in this Lease provided, the Lessee shall have quiet possession of the Leased Premises.

**5.03 MAINTENANCE OF LEASED PREMISES**

The Lessee shall, at all times during the currency of this Lease, keep the Leased Premises and the improvements and the structures located on the Leased Premises in good repair, reasonable wear and tear excepted, free of debris and in reasonably clean condition in all respects to the entire satisfaction of the Lessor and at the sole cost and expense of the Lessee.

**5.04 ADDITIONAL RIGHTS OF THE MINISTER**

The Lessor reserves the right to grant licenses, rights of way or privileges to others on, over, under, through or across the Leased Premises, provided, however, that such rights of way or privileges are not detrimental to the proper conduct of the business or operation of the Leased Premises and related services, will not damage or disrupt permanently the physical facilities of the Lessee, will not impose any cost upon the Lessee, and will not weaken, diminish or impair the security of this Lease.

**5.05 SERVICES**

- (1) The Lessee shall, at the cost and expense of the Lessee, be responsible for the installation and maintenance of the connecting system to the municipality's water, sanitary sewerage and storm sewerage system at the nearest point of connection; the plans and specifications for connecting to such services shall be approved by the Lessor before work is commenced and the work in connection therewith performed under the supervision of a designated officer of the Lessor.
- (2) The Lessee shall, at the cost and expense of the Lessee, provide complete and proper arrangements for the adequate sanitary handling and disposal away from the Leased Premises of all trash, garbage and other refuse on or in connection with the Lessee's operations under this Lease, all to the satisfaction of the Lessor. Piling of crates, cartons, barrels or other similar items shall not be permitted.
- (3) The Lessee shall be responsible at the cost and expense of the Lessee for making arrangements for all services not supplied by the Lessor, provided, however, that the plans and specifications for installation thereof must be approved by the Lessor and the work performed under the supervision of a designated officer of the Lessor.

**5.06 REASONABLE USE**

The Lessee shall not, during the currency of this Lease, do, suffer nor permit to be done any act or thing which may impair, damage or injure the Leased Premises or any part thereof, beyond the damage occasioned by reasonable use, and shall, at the cost and expense of the Lessee, repair and renew in a good, sufficient and workmanlike manner all portions of the Leased Premises which may at any time by the Lessee be damaged (ordinary wear and tear only excepted) and in the event of the failure on the part of the Lessee to so repair and renew, the Lessee shall indemnify and save harmless the Lessor from all damages, costs and expenses suffered or incurred by the Lessor by reason of such impairment, damage or injury to the extent the Lessee is liable for the same in law, such payment to be made forthwith upon receipt of appropriate accounts therefor.

**5.07 NUISANCE**

The Lessee shall not do, suffer or permit to be done any act or thing upon or above the Leased Premises which is or would constitute a nuisance to the occupiers of any lands, premises or waters adjoining or in the vicinity of the Leased Premises or to the public generally.

**5.08 POLICE AND FIRE PROTECTION**

The Lessor shall not be responsible for providing fire protection to nor policing of, the Leased Premises and any improvements.

**5.09 FIRE PREVENTION**

The Lessee shall, at the expense of the Lessee, take all precautions to prevent fire from occurring in or about the Leased Premises, and shall observe and comply with all laws and regulations in force respecting fires at the said Leased Premises, and with all instructions given from time to time by the Lessor or any responsible authority with respect to fires and extinguishing of fires.

**5.10 ADVERTISING**

The Lessee shall not construct, erect, place or install on the Leased Premises any poster, advertising sign or display, electrical or otherwise, without first obtaining the consent, in writing, of the Lessor.

**5.11 DRAINAGE AND DISCHARGE OF MATERIAL**

The Lessee shall not discharge, cause or permit to be discharged or howsoever to pass into the municipal sewer systems, storm drains or surface drainage facilities at the said Leased Premises or elsewhere any deleterious material, noxious, contaminated or poisonous substances, all as determined by the Lessor, whose decision shall be final; it being expressly understood and agreed that in the event of a discharge or escape of such deleterious material, noxious, contaminated or poisonous substances in and under the control of the Lessee, the cost incurred in the clean-up to the satisfaction of the Lessor, shall be to the Lessee's account.

**5.12 REPAIR OF DAMAGE**

If, at any time or times hereafter, any damage or injury (ordinary wear and tear only excepted) should be occasioned to the Leased Premises, or any part thereof, or to any works of the Lessor on the said Leased Premises by reason of or on account of the operations of the Lessee hereunder or any action taken or things done or maintained by virtue thereof, then, and in every such case, the Lessee shall, within a reasonable time

upon notice thereof from the Lessor given in writing, repair, rebuild and restore the same in good, sufficient and workmanlike manner; in the event of failure on the part of the Lessee to so repair the Lessor may, at his option, repair such damage or injury in which case the Lessee shall repay and reimburse the Lessor for all costs and expenses connected therewith or incidental thereto to the extent the Lessee is liable for the same in law plus such additional charge as may be applicable in accordance with the policies of the Lessor for administration and overhead forthwith upon receipt by the Lessee of appropriate accounts therefor from the Lessor. In the event of failure on the part of the Lessee to repair such damage or injury and in the event of non-repair by the Lessor, the Lessee shall remain liable to the Lessor for the amount of such damage or injury to the extent the Lessee is liable therefor in law and payment of such amount shall be made by the Lessee to the Lessor forthwith, upon receipt by the Lessee of appropriate accounts therefor from the Lessor.

#### 5.13 ERECTION AND MAINTENANCE OF IMPROVEMENTS OR STRUCTURES

- (1) The Lessee shall not construct or erect any improvements or other structures on the Leased Premises without first obtaining the written approval of the Minister or his designated representative, of plans showing the design and nature of construction of such improvements or structures and their proposed location, and all such improvements or structures shall be constructed and thereafter maintained by and at the cost and expense of the Lessee to the satisfaction of the Lessor.
- (2) Prior to making any alterations or additions to the Leased Premises, the Lessee is shall submit a request under the Facility Alteration Permit process or any other process required by the Lessor (the "Approval Process"). The Lessee shall not make any alterations to the Leased Premises or facilities or services connected therewith or add any facilities or services prior to receiving an approval under the Approval Process, duly executed by or on behalf of the Lessor. Upon receipt of the approval under the Approval Process, the Lessee agrees to make the alterations at the Lessee's cost, in accordance with the requirements, terms and conditions specified in the approval under the Approval Process, and thereafter maintain the said alterations at the cost of the Lessee and to the satisfaction of the Lessor.
- (3) If, at any time during the term of this Lease, the Lessee defaults in its obligation of maintaining the Leased Premises, structures and improvements, and every of them, in accordance with the requirements of this Lease, the Lessor may give written notice, specifying the respect in which such maintenance is deficient, to the Lessee. If, within fifteen (15) days from the giving of such notice the default specified in such



notice has not been remedied or (if the nature of such default reasonably requires more than fifteen (15) days to remedy and make right) the Lessee has not commenced, or, having commenced, is not diligently completing the remedying of such default, or if such maintenance is not of a type satisfactory to the Lessor, the Lessor may enter upon the Leased Premises, structures and improvements and perform such maintenance, at the cost and expense of the Lessee, plus such additional charge as may then be applicable, in accordance with the policies of the Lessor for administration and overhead; it being expressly understood and agreed that the Lessor shall not be under any obligation to perform any maintenance during the term of this Lease.

- (4) All improvements or structures of the Lessee and facilities or services connected with the Leased Premises, at any time erected, laid, brought or placed upon the Leased Premises of the Lessor shall be entirely at the risk of the Lessee in respect of loss, damage, injury, destruction or accident from whatsoever cause arising.

**5.14 VESTING OF REPAIRS, ALTERATIONS, IMPROVEMENTS OR REPLACEMENTS**

Any repairs, alterations, improvements or replacements made by the Lessee to or upon the Leased Premises which by their nature are determined to be fixtures shall upon termination of this Lease, except and subject as in this Lease otherwise specifically provided, be vested in title in the Lessor without any payment of compensation to the Lessee in respect of the repairs, alterations, improvements or replacements; nevertheless the Lessor shall have the option of requiring or compelling the Lessee upon written notice, to remove such repairs, alterations, improvements or replacements, and the Lessee shall be so bound to remove and shall restore the Leased Premises to its original condition all at the cost and expense of the Lessee and without any right on the part of the Lessee to seek compensation for any reason whatsoever.

**5.15 PAYMENT OF TAXES AND OTHER CHARGES**

- (1) The Lessee shall pay or cause to be paid on or before their due date, all rates, charges, fees, taxes, and assessments of whatsoever description, including, without limitation, real property taxes, local improvement rates, or other charges imposed against or in respect of the Leased Premises, that may at any time during the existence of this Lease be lawfully imposed, and become due and payable, upon, or in respect of the said Leased Premises or any part thereof.

- (2) The Lessee shall pay any business tax, value added tax, multi-stage sales tax, goods and services tax or any other tax lawfully imposed on any rent receivable by the Lessor hereunder by any governmental or any other taxing authority having jurisdiction, whether known as business transfer tax, value added tax, goods and services tax, or by any other name.

#### 5.16 LESSEE'S RESPONSIBILITY

The Lessee shall, except where the Lessee is lawfully exempt from real property taxes or any other taxes:

- (a) upon request from the Lessor promptly:
  - (i) deliver to the Lessor receipts for payment of any real property taxes or any other taxes;
  - (ii) deliver to the Lessor notices of any assessment of any real property tax or any other taxes received by the Lessee;
  - (iii) furnish to the Lessor such other information in connection with any real property taxes and any other taxes as the Lessor may reasonably require from time to time; and
- (b) deliver to the Lessor notice of any appeal or contestation (collectively "Appeal") that the Lessee, at the Lessee's expense, intends to institute with respect to any real property taxes or any other taxes;
- (c) diligently prosecute any such Appeal to a speedy conclusion;
- (d) furnish to the Lessor satisfactory security for the payment in total of any of the aforementioned real property taxes or any other taxes by bond, irrevocable letter of credit or bank guarantee, or otherwise, in the event of failure of such Appeal or application;
- (e) keep the Lessor fully informed in writing of its progress in that regard from time to time, or immediately, upon the Lessor's request; and
- (f) submit a completed *Certificate of Compliance Form (Section 2)* as shown in *Schedule "B"* attached hereto respecting the payment of taxes, signed by a responsible authorized signed officer of the Lessee, within ninety (90) days of the end of each Lease year.

**5.17 LESSOR'S RIGHT TO PAY**

If and so often as the Lessee neglects or omits to pay or cause to be paid any real property taxes or any other taxes which the Lessee is required to pay or cause to be paid under this section, the Lessor may, after giving the Lessee fifteen (15) days prior notice, but shall not be obliged to, pay the same or pay a grant in lieu of the same, and the amount so paid shall forthwith, on demand, be payable by the Lessee to the Lessor together with interest thereon at the interest rate calculated from the date the Lessor has paid such amount to the date it is reimbursed by the Lessee to the Lessor and shall be recoverable by the Lessor as additional rent.

**5.18 ENFORCEMENT**

Any failure by the Lessee to comply with the terms and conditions as set out in *Clause 5.15 Payment of Taxes and other Charges* of the Lease herein, shall constitute a breach of the conditions of this Lease and this Lease shall be subject to cancellation without any right on the part of the Lessee to seek compensation in accordance with the provisions of *Clause 8.01 Claim or Demand* of the Lease.

The Lessor shall have the option of requiring or compelling the Lessee, upon written notice, to remove such improvements or structures, and the Lessee shall be so bound to remove and shall restore the said Lease Premises to its original condition at its own cost and expense and without any right on the part of the Lessee to seek compensation for any reason whatsoever.

**5.19 COMPLIANCE WITH REGULATIONS**

- (1) The Lessee shall, at its own cost and expenses, in all respects abide by and comply with all applicable statutes, lawful rules, regulations and by-laws of the Federal Government, Provincial Government, Municipal Government or any other governing body whatsoever and with all local police, health, or fire regulations or by-laws, in any manner affecting the Leased Premises or the conduct of the Lessee's business on the Leased Premises.
- (2) The Lessee shall abide by and comply with all regulations regarding traffic control, security, sanitation and all other regulations and directives relative to the management and operation of the said Leased Premises, including but not limited to any directions or orders of the Victoria Harbourmaster.

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**5.20 NAVIGABLE WATER PROTECTION ACT**

The Lessee shall fulfill in all respects the requirements of the *Navigation Protection Act, R.S.C. 1985, Chapter N-22* (the "Act"), as amended from time to time. It is the express condition of this Lease that no "work" within the meaning of the Act shall be undertaken, constructed, suffered or allowed on the Leased Premises by the Lessee until the provisions of the Act have been fully complied with.

**ARTICLE 6 - ENVIRONMENTAL PROTECTION**

**6.01 FILL, WASTE**

The Lessee shall not place or deposit or cause or permit to be placed or deposited, without the prior consent in writing of the Lessor, any fill, sand, gravel, detritus, waste debris or other materials, articles or things in the Harbour which may form a deposit thereon or therein.

**6.02 PARAMOUNTCY**

Notwithstanding anything contained in this Lease relating to any provincial or municipal law, statute, by-law, regulation, code or other enactment, the Lessor hereby declares that no such reference shall be interpreted, construed or implied as a recognition by the Lessor that any municipality, or any provincial or municipal law, statute, by-law, regulation, code or other enactment, has any jurisdiction over the Lessor or the Leased Premises and any improvements or structures thereon.

**6.03 Clause intentionally removed**

**6.04 Clause intentionally removed**

**6.05 LESSEE'S ENVIRONMENTAL AUDIT REPORT**

The Lessee will, at the expiration or earlier termination of this Lease, commission at its sole expense an environmental investigation which may require the inclusion of an environmental audit and the preparation of an environmental audit report by an independent consultant (the "Lessee's Consultant Audit Report") which will satisfy the Lessor that the Lessee has undertaken to develop an estimate of material which may result in adverse environmental conditions of the soil or the water in, on, over or under the Leased Premises and any improvements or structures thereon which are in excess of those identified in the Lessor's Environmental Assessment Report.

The Lessee shall furnish to the Lessor a copy of the Lessee's Consultant Audit Report forthwith upon receipt of the said report by the Lessee.

The Lessee's Consultant Audit Report shall be proof between the parties, in absence of evidence to the contrary as to the evidence between the parties hereto as to the existence

of any additional Hazardous Substances, in excess of those identified in the Lessor's Environmental Assessment Report in, on, over or under the Leased Premises and any improvements or structures thereon, and the Lessee agrees to undertake or have undertaken on the Lessee's behalf any Remedial Work required to restore the Leased Premises to their original environmental condition as existed as of the date of the Lessor's Environmental Assessment Report.

#### **6.06 LIMITATIONS ON LESSOR'S LIABILITY**

The Lessor's obligations shall be restricted to Hazardous Substances present in the soil of or the water in, on, over or under the Leased Premises, and their environmental impact, prior to the Lessee occupying the Leased Premises.

The Lessor's obligations herein are for the exclusive benefit of the Lessee and successors and permitted assigns and shall not be for the benefit of any other person.

For greater certainty, it is agreed that in no event shall the Lessor be responsible or liable for Remedial Work relating to any Hazardous Substance:

- (a) To the extent that such Hazardous Substance was added to or put in the soil of or water in, on, over or under the Leased Premises and any improvements or structures thereon during the occupancy of the Leased Premises by the Lessee after the commencement date of this Lease;
- (b) To the extent that any act or omission of any person during the occupancy of the Leased Premises by the Lessee after the commencement date of this Lease contributed to any substance becoming a Hazardous Substance; or
- (c) Which, during the occupancy of the Leased Premises by the Lessee after the commencement date of this Lease, is released, spilled, leaks or flows from any container, tank, pipe, conduit, tube or any related or other equipment in which any Hazardous Substance is contained or by or through which any Hazardous Substance is transmitted or transported.

As asbestos contamination is in large part related to the condition of the asbestos containing material, the need for remedial work should be addressed to the material that is friable or exposed where there is a likelihood of the material becoming an airborne particulate and/or where it may possibly be ingested. The presence of asbestos containing materials does not in all circumstances constitute a hazard.

Where the Lessee through error or omission has allowed or brought to pass the creation of an asbestos hazard, then it should be the Lessee's responsibility to rectify the situation at their cost.

#### **6.07 ACCESS FOR ENVIRONMENTAL TESTING**

The Lessee shall permit the Lessor and Her officers, servants, employees, agents, contractors, subcontractors and consultants reasonable access to the Leased Premises and any improvements or structures thereon for the purpose of making soil, water or other environmental tests, measurements, or surveys to determine the existence of any Hazardous Substance in, on, over or under the Leased Premises and any improvements or structures thereon which may cause or contribute to an adverse environmental condition provided that the Lessor shall do so at its own expense and at its own risk and shall not interfere with the operations of the Lessee at the Leased Premises and any improvements or structures thereon and shall return the Leased Premises and any improvements or structures thereon to the state in which they were before the commencement of such action. No action taken by the Lessor hereunder shall constitute a trespass or a taking of possession.

#### **6.08 MONITORING REPORTS**

- (1) In the event that a monitoring program is established for the Lessee's operations by either party, either on or after the commencement date of this Lease, the Lessee shall, at the Lessee's expense, comply with the monitoring program and the Lessee shall, at the request of the Lessor, provide copies of such monitoring reports to the Lessor.
- (2) In the event that the Lessee is required to submit monitoring reports on the environmental status of the Lessee's operations to other federal, provincial or other authorities, the Lessee shall, at the request of the Lessor, provide copies of such monitoring reports to the Lessor.

#### **6.09 COMPLIANCE WITH LAWS**

- (1) The Lessee shall, at its own cost and expense, in all respects abide by and comply with all applicable statutes, regulations, and by-laws, in any manner affecting the Leased Premises or the Harbour or the conduct of the Lessee's business on the Leased Premises or within the Harbour.

(2) Without limiting the generality of *Subclause 6.09(1)* or any other covenant herein, the Lessee shall, at its own cost and expense, comply with all applicable laws from time to time in force relating to environmental matters, the manufacture, use, storage, disposal and transportation of Hazardous Substance and the protection of the environment generally and shall immediately give written notice to the Lessor of the occurrence of any event in, on, over or under the Leased Premises and any improvements or structures thereon constituting an offence thereunder or a breach of this provision and, if the Lessee shall, either alone or with others, cause the happening of any such event, the Lessee shall, at its own expense:

- (a) immediately give the Lessor written notice to that effect and thereafter give the Lessor from time to time written of the extent and nature of the Lessee's compliance with the following provisions of this subsection;
- (b) promptly perform any Remedial Work which will result in conformity and compliance with all applicable laws governing such Hazardous Substance;
- (c) if requested by the Lessor, obtain a certificate from an independent consultant designated or approved by the Lessor verifying the complete and proper compliance with the requirements of any applicable law relating to such Hazardous Substances or, if such is not the case, reporting as to the extent and nature of any failure to comply with the foregoing provisions of this subsection;
- (d) promptly cease any activity which causes or permits any Hazardous Substance to be released, spilled, leaked or to flow onto or in, on, over or under the Leased Premises, and any improvements or structures thereon or any adjacent land, air or water or results in any Hazardous Substance being released into the environment; and
- (e) if requested by the Lessor, obtain a certificate from an independent consultant designated or approved by the Lessor verifying that any activity referred to in Paragraph (d) above has ceased.

The Lessee shall, at its own expense, remedy any damage to the Leased Premises and any improvements or structures thereon or adjacent land, air or water caused by the occurrence of any such event in, on, over or under the Leased Premises and any improvements or structures thereon or caused by the performance or lack of performance of any of the Lessee's obligations under this section.



If any governmental authority having jurisdiction shall require the clean-up of any Hazardous Substance held, released, spilled, leaked, abandoned, flowing onto or into or placed upon in, on, over or under the Leased Premises and any improvements or structures thereon or any adjacent land, air or water or released into the environment on or after the commencement date of this Lease as a result of any use or occupancy of the whole or any part of the Leased Premises and any improvements or structures thereon on or after the commencement date of this Lease then the Lessee shall, at no cost to the Lessor, prepare all necessary studies, plans and proposals and submit the same to the Lessor for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the Remedial Work required, and shall keep the Lessor fully informed and provide to the Lessor full information with respect to proposed plans and comply with the Lessor's requirements with respect to such plans. The Lessee further agrees that if the Lessor determines, in Her own discretion, that the Lessor, Her property or Her reputation is placed in jeopardy by the requirement for any such Remedial Work, the Lessor may Herself undertake such Remedial Work or any part thereof at the expense of the Lessee.

**6.10 LESSOR'S ACCESS TO PERFORM WORK**

In the event the Lessor elects to perform or have performed Remedial Work, the Lessor shall give 90 days prior notice to the Lessee before entering the Leased Premises and any improvements or structures thereon unless such Remedial Work is required on an emergency basis, and the Lessee shall provide the Lessor and Her officers, servants, employees, agents, contractors, subcontractors and consultants unrestricted and unimpeded access to the Leased Premises and any improvements or structures thereon, at all times and without cost in order to perform such Remedial Work. In the event of an emergency, the Lessor shall be given access to the Leased Premises without delay.

**6.11 LESSOR RIGHT TO CARRY OUT WORK**

If the Lessee fails to perform an obligation of Lessee under this Lease, the Lessor may perform the obligation and for that purpose may enter upon the Leased premises on not less than thirty (30) days' prior notice to the Lessee, or without notice in the case of an emergency, and do such things upon or in respect of the Leased Premises as the Lessor considers necessary. The Lessee will pay as additional rent all expenses incurred by or on behalf of the Lessor under this clause plus fifteen percent (15%) for overhead upon presentation of a bill. The Lessor will not be liable to the Lessee for loss or damage resulting from such action by the Lessor.

**6.12 ENQUIRIES AND INSPECTION BY LESSOR**

The Lessee hereby authorizes the Lessor to make enquiries from time to time, at the Lessor's discretion, of any government or governmental agency with respect to the Lessee's compliance with any applicable environmental laws pertaining to the Lessee, the Lessee's business as conducted on or from the Leased Premises and any improvements or structures thereon, including any law pertaining to an adverse environmental condition and the protection of the environment; and the Lessee covenants and agrees that the Lessee will from time to time forthwith on demand provide to the Lessor such written authorization as the Lessor may reasonably require in order to facilitate the obtaining by the Lessor of such information.

**6.13 OWNERSHIP OF HAZARDOUS SUBSTANCES**

If the Lessee shall bring, permit, suffer or create in or on the Leased Premises and any improvements or structures thereon any Hazardous Substance or if the conduct of any business or undertaking on any part of the Leased Premises and any improvements or structures thereon or the use of any part of the Leased Premises and any improvements or structures thereon shall cause there to be any Hazardous Substances upon the whole or any part of the Leased Premises which cause or contribute to any adverse environmental condition then, notwithstanding any rule of law to the contrary, such Hazardous Substances shall be and remain the sole and exclusive property of the Lessee and shall not become the property of the Lessor notwithstanding the degree of affixation of the substance or the goods containing the Hazardous Substances to the Leased Premises and any improvements or structures thereon and notwithstanding the expiry or early termination of this Lease.

**6.14 PROHIBITIONS ON DUMPING**

The Lessee shall not dump and shall insure that any and all persons using the marina with permission of the Lessee shall not dump any substance on any land or water of the Leased Premises, all as determined by the Lessor whose decision shall be final. The Lessor shall be the sole judge and notify the Lessee in writing if, at any time during the currency of this Lease, any dumping on the Leased Premises occurs by reason or as a result of the operations of the Lessee. The Lessee shall forthwith upon receipt of a notice in writing from the Lessor undertake, prosecute without interruption and complete the work of removal of such material from the said Leased Premises. This work shall be at the cost and expense of the Lessee and shall be carried out to the satisfaction of the Lessor. In the case where the Lessee fails to carry out its obligations under this clause to remove such material from the said Leased Premises, the Lessor may cause such to be

undertaken, prosecuted and completed. All such work shall be at the cost of the Lessee. Upon demand by the Lessor the Lessee shall, forthwith reimburse the Lessor for all cost and expense incurred by the Lessor in the performance of such work. This shall include without limitation all other costs and expenses connected therewith or incidental thereto. All such costs and expenses shall constitute a debt payable by the Lessee to the Lessor.

**ARTICLE 7 - ASSIGNMENT****7.01 ASSIGNMENT**

The Lessee shall not make any assignment of this Lease, nor any transfer or sublease of the whole or any portion of the Leased Premises demised or leased hereunder, without obtaining the prior consent in writing of the Minister to such assignment, transfer or sublease and such consent shall not be unreasonably withheld. The Lessee shall remain liable with any assignee/transferee of all obligations resulting from the Lease. This provision shall survive the assignment, expiry or termination of this Lease.

**7.02 TRANSFER OF LESSOR'S INTEREST**

In the event of a sale or other disposition by the Lessor of the Leased Premises, the Lessee acknowledges that by operation of the law of British Columbia it shall be deemed to have attorned to the successor-in-interest of the Lessor, and shall, upon request attorn in writing to such successor-in-interest, and to the extent that the successor-in-interest assumes the covenants and obligations of the Lessor, the Lessee hereby releases the Lessor from all liability which may arise with respect to such covenants and obligations.

**ARTICLE 8 - LIABILITY AND INDEMNITY**

**8.01 CLAIM OR DEMAND**

The Lessee shall not have any claim or demand against the Lessor or any of Her officers, servants or agents for detriment, damage, accident or injury, of any nature whatsoever or howsoever caused to the Leased Premises, or to any person or property, including any improvements or structures, erections, equipment, materials, supplies, motor or other vehicles, fixtures and articles, effects and things erected, brought, placed, made or being on or about the Leased Premises, unless such damage or injury is due to the negligence of any officer, servant or agent of the Lessor while acting within the scope of his duties or employment.

**8.02 INDEMNITY**

The Lessee shall at all times indemnify and save harmless the Lessor or any of Her officers, servants or agents from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the execution of this Lease, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder, except claims for damage resulting from the negligence of any officer, servant or agent of the Lessor while acting within the scope of his duties or employment.

**8.03 ASSUMPTION OF RESPONSIBILITY**

The Lessee shall assume full responsibility for and assume all risk of loss, damage or injury to itself, its servants, agents, employees, students, invitees or licensees involving its use and occupation of the said Leased Premises.

**8.04 LIABILITY OF LESSOR**

The liability, if any, of the Lessor is subject to the provisions of the *Crown Liability And Proceedings Act*, 1985, CH. C-50 as amended from time to time.

ARTICLE 9 - INSURANCE

- (1) The Lessee shall place and at all times maintain during the currency of this Lease public liability and property damage insurance against claims for personal injury, death or damage to property arising out of any of the operations of the Lessee under this Lease, or of any of the acts or omissions of the Lessee or any of his agents, employees or servants or any person conducting business from the Leased Premises, to the combined limit as may be reasonably required by the Lessor from time to time but, in any case, of not less than FIVE MILLION DOLLARS (\$5,000,000.00) in respect of injury or death to a single person and in respect of any one accident concerning property damage. Such insurance shall be with a company or companies acceptable to the Lessor and all policies for such insurance shall be in an amount and in a form satisfactory to the Lessor.
- (2) The Lessee shall place and at all times maintain during the currency of this Lease, insurance against fire with respect to any improvements, or structures situated, constructed, brought or placed upon the Leased Premises by the Lessee during the term of this Lease, and any renewals hereof and all policies for such insurance shall be in an amount and in a form satisfactory to the Lessor.
- (3) The Lessee shall complete Section 3 of the *Certificate of Compliance* attached hereto as *Schedule "B"*, signed by a responsible authorized signed officer of the Lessee, and submit to the Lessor one of the following documents:
  - (a) the policy or policies,
  - (b) certified copies thereof,
  - (c) a Certificate of Insurance, or
  - (d) an affidavit from its insurance company confirming that proper insurance coverage is in place;and any renewals thereof.
- (4) The Lessee shall not do or omit to do or suffer anything to be done or omitted to be done on the Leased Premises which will in any way impair or invalidate such policy or policies.
- (5) Every policy shall contain a provision that written notice of cancellation shall be given to the Minister.

ARTICLE 10 - DEFAULT AND RE-ENTRY

10.01 DEFAULT AND RE-ENTRY

(1) It is expressly agreed that:

- (a) if the Lessee shall be in default in the payment of rent or amounts collectable hereunder as rent, whether lawfully demanded or not, and such default shall continue for a period of fifteen (15) days after the rent has become due and payable; or
- (b) if the Lessee shall be in default of any of its covenants or agreements hereunder (other than its covenant to pay rent or amounts collectable hereunder as rent) and such default shall continue for a period of thirty (30) days (or such longer period as may be reasonably necessary to cure such default considering the nature thereof) after notice by the Lessor to the Lessee specifying with reasonable particularity the nature of such default and requiring the same to be remedied; or
- (c) if the default set out in the notice given to the Lessee by the Lessor pursuant to paragraph (b) reasonably requires more time to cure than the thirty (30) day period referred to in that paragraph and the Lessee has not commenced remedying or curing the same within the thirty (30) day period or; in the opinion of the Lessor fails to diligently complete the same within a reasonable time; or
- (d) if the Lessee shall make an assignment for the benefit of creditors, or shall make an assignment or have a receiving order made against it under the Bankruptcy Act, or becoming bankrupt or insolvent shall make application for relief under the provisions of any statute now or hereafter in force concerning bankrupt or insolvent debtors, or any action whatsoever, legislative or otherwise shall be taken with a view to the winding-up, dissolution or liquidation of the Lessee;

then a fee in the amount of \$5,000.00 per annum plus GST, shall immediately become due and payable, and at the option of the Lessor the term hereby granted shall become forfeited and void, and the Lessor may without notice or any form of legal process whatsoever forthwith re-enter upon the Leased Premises or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding.

(2) Forfeiture of this Lease by the Lessee shall be wholly without prejudice to the right of the Lessor to recover arrears of rent or damages for any antecedent breach of covenant on the part of the Lessee, and notwithstanding any such forfeiture the Lessor may subsequently recover from the Lessee damages for loss of rent suffered by reason of the Lease having been determined prior to the end of the term of this Lease as set out herein and this clause and the rights hereunder shall survive the termination of this Lease whether by act of the parties or by operation of law.

#### **10.02 LIEN**

The Lessor shall have a lien upon the chattels, goods, supplies, articles, equipment, materials, effects or things of the Lessee for any loss or damage arising by reason of the breach of any of the conditions or provisions hereof, or the failure on the part of the Lessee to comply therewith.



**ARTICLE 11 - GENERAL**

**11.01 BRIBES**

The Lessee hereby confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of the Lessor for or with a view to obtaining this Lease any bribe, gift or other inducement and that it has not, nor has any person on its behalf, employed any person to solicit or secure this Lease upon any agreement for a commission, percentage, brokerage or contingent fee.

**11.02 MEMBERS OF THE HOUSE OF COMMONS**

No Member of the House of Commons of Canada shall be admitted to any share or part of this Lease, or to any benefit to arise therefrom.

**11.03 HEADINGS**

Any note appearing as a heading in this Lease has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope or meaning of the present Lease or any of its provisions.

**11.04 DIFFERENCES**

All matters of difference arising between the Lessor and the Lessee in any matter connected with or arising out of this Lease whether as to interpretation or otherwise, shall be determined by the Lessor but without prejudice to any recourse available under law.

**11.05 EFFECT OF LEASE**

This Lease and everything herein contained shall operate and take effect to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns, as the case may be, of each of the parties hereto, subject to the granting of consent by the Lessor as provided herein to any assignment, transfer or sublease of this Lease, and where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context, and all covenants and obligations shall be deemed joint and several.

**11.06 PROVISIONS SEPARATELY VALID**

If any covenant, obligation, agreement, term or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such covenant, obligation, agreement, term or condition to any persons or circumstances other than those in respect of which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation, agreement, term or condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by law.

**11.07 WAIVER NEGATED**

The failure by the Lessor or Her authorized representative, as the case may be, to require the fulfillment of the obligations, or to exercise any rights herein contained shall not constitute a waiver, a renunciation or a surrender of those obligations or rights.

**11.08 NO IMPLIED OBLIGATIONS**

No implied terms or obligations of any kind by or on behalf of the Lessor shall arise from anything in this Lease and the express covenants and agreements herein contained and made by the Lessor are the only covenants and agreements upon which any rights against the Lessor may be founded.

**11.09 ENTIRE AGREEMENT**

This Lease shall be deemed to constitute the entire agreement between the Lessor and the Lessee hereto with respect to the subject matter hereof and shall supersede all previous negotiations, representations, and documents in relation hereto made by any party to this Lease. This Lease may not be modified except as herein explicitly provided or except by subsequent agreement in writing of equal formality executed by the Lessor and the Lessee.

**11.10 TIME OF ESSENCE**

Time shall in all respects be of the essence in each and every one of the terms, covenants and conditions in this lease.

## ARTICLE 12 - NOTICES

(1) in this Lease, it is required or permitted that notice or demand be given or served by either party of this Lease to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by registered mail, priority post mail or facsimile as follows:

To the Lessor: Transport Canada  
Suite 820-800 Burrard Street  
Vancouver, BC  
V6Z 2J8

**Facsimile No.: (604) 666-2961**  
**Attn: Regional Manager, Property & Divestiture**

**To the Lessee:** 0736657 B.C. LTD  
240-730 View Street  
Victoria, BC V8W 1J8

Telephone No.: (778) 432-4077  
Email: cnorris@vimarina.ca

Attn.: Craig E. Norris, CEO

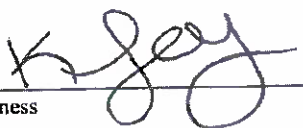
(2) Such addresses or facsimile numbers may be changed from time to time by either party giving notice as above provided

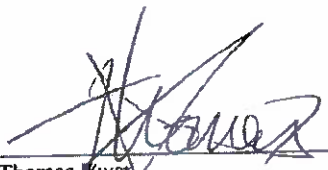
Case No. W-837-SMN - 606 N / 944 E D)

(3) If any question arises as to whether any notice was or was not communicated by one party to the other, it shall be deemed to have been effectively communicated or given on the day received or on the fifth day after it was mailed or sent, whichever is the earlier.

IN WITNESS WHEREOF the Lessee and Her Majesty have executed this Lease as of the date first above written.

HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA as represented  
by the Minister of Transport

  
\_\_\_\_\_  
Witness

Per:   
\_\_\_\_\_  
Thomas Kwai  
Regional Manager, Property & Divestiture

0736657 B.C. LTD.

  
\_\_\_\_\_  
Witness  
  
ANDREW XU  
Barrister & Solicitor  
2959 KINGSWAY  
VANCOUVER B.C.  
V6R 6M1  
TEL: 604-434-2977 FAX 604-434-2967

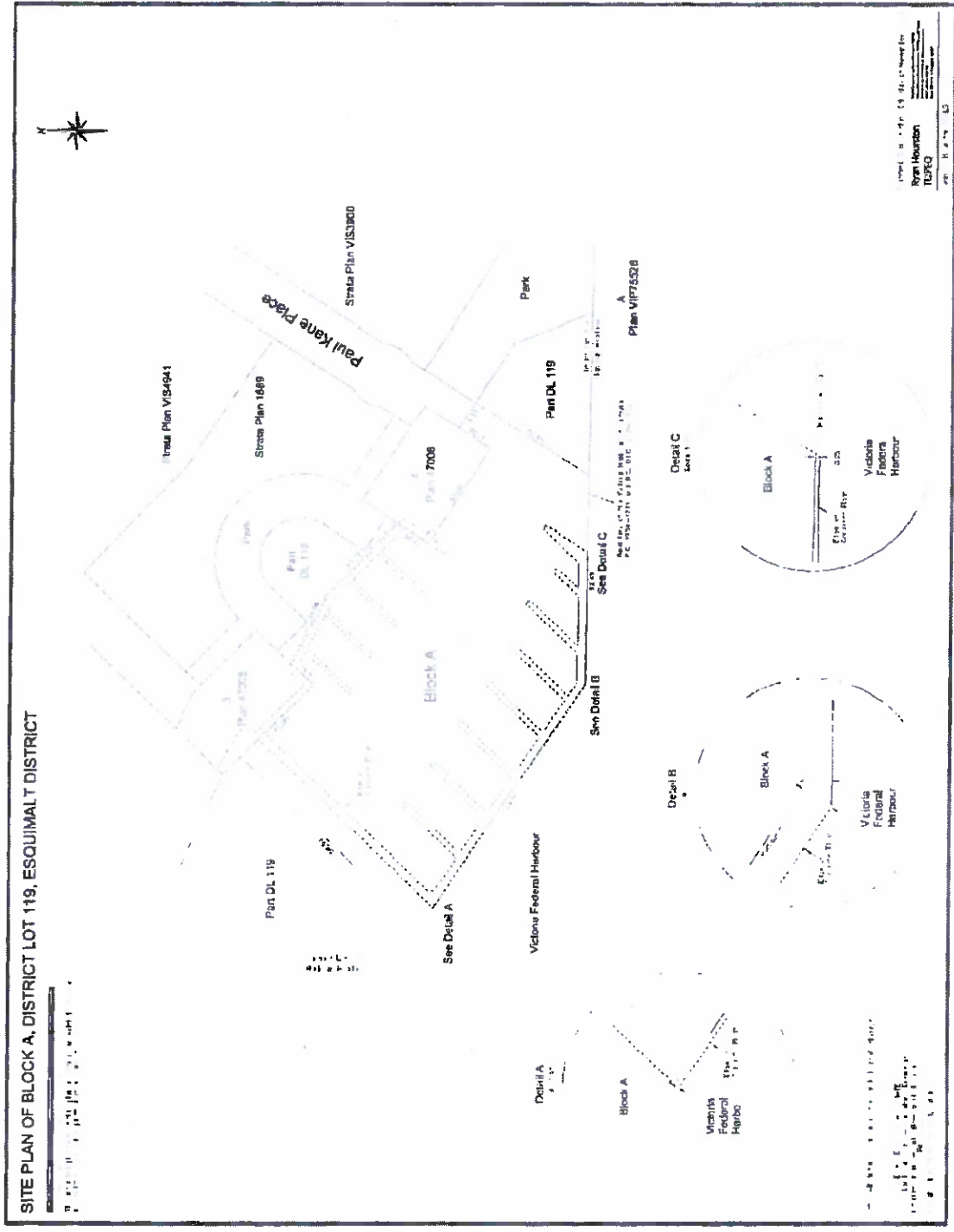
Per:   
\_\_\_\_\_  
Huaiyin Zhang  
Director

C S

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# SCHEDULE "A" - SITE PLAN (RDIMS 13752862)

SITE PLAN OF BLOCK A, DISTRICT LOT 119, ESQUIMALT DISTRICT



Prepared by: Ryan Houghton  
 Date: 15/06/2020  
 Scale: 1:1000  
 Project: 13752862

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## SCHEDULE "B" - CERTIFICATE OF COMPLIANCE

Fiscal Year: \_\_\_\_\_ to \_\_\_\_\_  
Month Day Year Month Day Year

I, \_\_\_\_\_, am the  
First & Last Name (print) Title (print)

Authorized Signatory for Lease Agreement No. W18371388 executed between Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport and 0736657 B.C. LTD declare as follows:

To complete the Statement, please check the applicable box.

### Section 1: Payment of Taxes

Pursuant to *Clause 5.15 - Payment of Taxes and Other Charges, Subclause (3)*:

- ☐ I confirm that the property taxes relating to the above mentioned lease have been paid for the fiscal year mentioned above.
- ☐ I confirm that no property taxes relating to the above mentioned lease have been assessed for the fiscal year mentioned above.
- ☐ I have appealed my assessment or property tax by the taxing authority and I have attached a copy of the appeal.

### Section 2: Insurance

Pursuant to *Article 9 - Insurance, Subclause (3)*, I have enclosed a copy of the following insurance documents to confirm that I have placed and maintained insurance of the proper type and in the appropriate amount during the term of this Lease:

- ☐ Original policy/policies
- ☐ Certified copy of policy/policies
- ☐ Certificate of Insurance
- ☐ Affidavit from the insurance company confirming that proper insurance coverage is in place.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Authorized Signatory

No. S217202  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL MARINA  
LTD. ETERNALAND YUHENG INVESTMENT HOLDING LTD., AND 0736657 B.C.  
LTD.

RESPONDENTS

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**AFFIDAVIT**

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FORRESTER & COMPANY LAW CORPORATION  
Barristers  
Suite 300, 171 Water Street  
Vancouver, BC V6B 1A7  
Telephone: (604) 682-1066  
Facsimile: (604) 682-8036  
Attention: Glen Forrester