

## TERMS OF INSTRUMENT - PART 2

THIS AGREEMENT, dated for reference January 1, 2021

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated pursuant to the *Community Charter* and having an address of 830 Cliffe Avenue, Courtenay British Columbia V9N 2J7

(the “City”)

AND:

**COURTENAY MARINA SOCIETY (INC. NO. S31255)** a society duly incorporated under the laws of the Province of British Columbia, with a mailing address of 110 –20<sup>th</sup> Street, PO Box 3757, Courtenay, British Columbia, V9N 7P1

(the “Tenant”)

WHEREAS:

- A. The City is the registered owner of lands and premises in the City of Courtenay more particularly described as follows:

PID: 004-154-665, Lot 1, Section 68, Comox District, Plan 15512

(hereinafter called the “Property”);

- B. The Tenant has been requested by the City to operate a public marina including moorage docks and boat ramp (collectively the “Marina”) on a portion of the Property and the City has agreed to lease such portions of the Property as herein described to the Tenant, and the Tenant has agreed to accept that lease, all on the terms and conditions hereafter set forth;
- C. In accordance with Section 26 of the *Community Charter*, the City has published notice in a newspaper of its intention to lease a portion of the Property to the Tenant.
- D. The City is authorized by Section 24 of the *Community Charter* to lease land or improvements at less than market value and, in accordance with that section the City has published notice in a newspaper of its intention to provide assistance to the Tenant by leasing the portion of the Property at less than market value.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the premises and of the mutual covenants and agreements herein set forth, the City and Tenant covenant and agree as follows:

## 1. PREMISES

The City hereby demises and leases to the Tenant that part of the Property identified as;

- (a) Lease Area A, Section 68, Comox District, Plan 15512 having an area of 0.359 ha” and attached as Schedule “A” hereto.
- (b) Lot 1, Section 68, Comox District, Plan 15512, (“the designated portion of the Marina Building”) and attached as Schedule “B” hereto (the “Premises”).

## 2. PURPOSE AND USE OF PREMISES

- (a) The Tenant shall use the Premises for the purposes of a public marina, public boat ramp and office space in the Marina Building and for no other purposes whatsoever.
- (b) The rules and regulations with such reasonable variations, modifications, and additions as shall from time to time be made by the City, shall be observed and performed by the Tenant, its agents, employees, sub-tenants, licensees and invitees. All such rules and regulations shall be deemed to form a part of this Agreement.
- (c) Except as specifically provided herein, the Tenant shall not use or permit any part of the Premises to be used for or with respect to or in connection with the operation of any business, commercial or revenue generating enterprise without the prior written consent of the City.
- (d) The Tenant shall comply with its constitution, bylaws and constating documents at all times and shall notify the City whenever a change in the Tenant’s constitution or bylaws occurs.

## 3. TERM

- (a) The term of this Agreement shall be for a period of FIVE (5) YEARS commencing on January 1, 2021 and terminating on December 31, 2025 (“Term”).
- (b) The Tenant shall, at the expiry or sooner determination of this Agreement or any renewal thereof peaceably surrender and yield unto the City the Premises together with all fixtures or erections which at any time during the Term of this Agreement or renewal thereof may be made thereon in good and substantial repair and condition and deliver to the City all keys to the Premises that the Tenant has in its possession.

## 4. RENEWAL

The Tenant, if not in default hereunder, may renew this Agreement for three additional terms of FIVE (5) YEARS each on the same terms and conditions contained herein, save and except for this covenant for renewal and except that the Rent to be paid during such renewal period shall be fixed and determined by the City at the time of the renewal at any greater or other rate than herein reserved (based on the applicable policies of the City in effect), subject to the following:

- (a) The Tenant shall exercise this renewal by giving written notice to the City in the manner provided herein not less than SIX (6) MONTHS prior to the expiry of the term; and
- (b) Any renewal granted under this section shall only be granted if approved by the municipal council of the City.

## 5. HOLDING OVER

If at the expiration of the Term the Tenant shall hold over with the consent of the City, the tenancy of the Tenant shall thereafter, in the absence of written agreement to the contrary, be from year to year, at the same rental as set out in this Agreement and shall be subject to all other terms and conditions of this Agreement.

## 6. RENT

- (a) The Tenant shall pay to the City rent in the amount of 10% of the total moorage fees levied by the Tenant for 28 boat moorage locations at the Marina in each year (“**Moorage Fees**”).
- (b) The Tenant shall pay Moorage Fees by delivering to the City, on or before July 1 of each year of the Term, the amount due for Moorage Fees for the prior 12 months of that year collected to that date, and shall pay the balance of the percentage of Moorage Fees forthwith upon the Tenant collecting same from each boat occupant.
- (c) The Tenant shall set the Moorage Fees prior to January 1<sup>st</sup> of each year of the Term and shall only charge such Moorage Fees after approval in writing of the amount by the City, provided that the amount of the Moorage Fees shall be not less than \$35.00 per foot and shall increase each year of the Term and said increase shall not be less than \$1.00 per foot per year.
- (d) In addition to the Moorage Fees payable the Tenant shall pay to the City, from time to time on demand, all other sums payable to the City pursuant to this Agreement (the “**Additional Rent**”).
- (e) Additional Rent shall include, but not be limited to, the pro rata share of the Marina (100%) and Marina Building (9%) of costs used by the Tenant including utilities, a percentage of the City’s property and environmental insurance premiums for the Premises, and other reasonable costs as identified by the City.
- (f) Marina electrical usage, equipment, installation and maintenance costs shall be paid directly to the third party provider by the Tenant.
- (g) The City, at any time during the Term of the lease, may install a water meter and the Tenant shall pay to the City water consumption fees based on the Marina’s consumption for the fiscal year and the City’s published water use fees.
- (h) The City shall invoice the Tenant Additional Rent and shall be due within thirty (30) days of receipt of invoice.

## **7. PAYMENT OF TAXES**

The Tenant shall promptly pay when due municipal, regional district, school, hospital district and other property taxes and all other taxes, charges, levies, assessments, and other fees which may be imposed or that may arise in respect of the Premises or the Tenant's use of the Premises. The Tenant shall pay to the City all taxes, charges, levies and other fees, including Goods and Services Tax or any replacement tax, which may be payable in respect of this Agreement.

## **8. INSURANCE**

- (a) The Tenant shall obtain, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage for death, bodily injury, property loss, property damage and other potential loss and damage arising out of the Tenant's use and occupation of the Premises in an amount of not less than FIVE MILLION (\$5,000,000.00) DOLLARS inclusive per occurrence.
- (b) On the first day of the Term and at other times upon demand by the City, the Tenant shall deliver to the City certified copies of the policies of insurance required to be maintained by the Tenant under this Agreement.
- (c) The City may, from time to time, notify the Tenant to change the amount of insurance required by this Agreement and the Tenant will, within FORTY-FIVE (45) DAYS of receiving such a notice, cause the amounts to be changed and deliver to the City a letter from its insurer certifying the change in the amount of insurance.
- (d) The Tenant shall ensure that all policies of insurance pursuant to this Agreement:
  - (i) are underwritten by a responsible insurance company or companies licensed to do business in the Province of British Columbia and that meet with the reasonable approval of the City;
  - (ii) are written in the name of the Tenant and the City with loss payable to them as their respective interests may appear;
  - (iii) list the City as an additional insured;
  - (iv) contain a cross liability clause and a waiver of subrogation clause in favour of the City;
  - (v) are primary and do not require the sharing of any loss by any insurer that insures the City;
  - (vi) contain a clause to the effect that any release from liability entered into by the City prior to any loss shall not affect the right of the Tenant or the City to recover; and
  - (vii) endorsed to provide the City with THIRTY (30) DAYS advance notice in writing of cancellation or material change.

- (e) The Tenant agrees that if it does not provide or maintain in force such insurance, the City may take out the necessary insurance and pay the premium therefore for periods of one year at a time, and the Tenant shall pay to the City as Additional Rent the amount of such premium immediately upon demand.
- (f) In the event that both the City and the Tenant have claims to be indemnified under any insurance, the indemnity shall be applied first to the settlement of claims of the City and the balance, if any, to the settlement of the claim of the Tenant.
- (g) The Tenant shall not do or permit to be done any act or things which may render void or voidable or conflict with the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriter applicable to such policy or policies, whereby the Marina or the Marina Building or the contents of the premises of any tenant are insured or which may cause any increase in premium to be paid in respect of any such policy.
- (h) The Tenant will ensure that vessel owners provided moorage and/or renewing moorage will acquire and or maintain adequate insurance, including third party liability insurance. The insurance must protect against loss caused by storm, fire, theft, vandalism or any other cause. Proof of insurance must be forwarded to the City by March 31st of each year, and the insurance must be maintained throughout the moorage year. Vessel owners who do not provide this document by March 31st will be required to remove their vessel from the Marina until such time the insurance is provided.

## **9. FINANCIAL REPORTS**

The Tenant will provide its yearly financial reports to the City within 4 weeks of the Tenant's financial year-end.

## **10. QUIET POSSESSION**

The City hereby covenants with the Tenant that the Tenant, upon paying the Rent hereby reserved and performing the covenants hereinbefore contained, may peaceably possess and enjoy the Premises for the term hereby granted without any interruption or disturbance from the City or any person lawfully claiming by, from or under the City.

## **11. COMPLIANCE WITH REGULATIONS**

The Tenant shall, in all respects, at all times during the Term abide by and comply with all applicable statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws relating to environmental matters and relating to the Property and its operation, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.

## **12. NUISANCE**

The Tenant shall not at any time during the Term of this Agreement or any renewal thereof, use,

exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Premises or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the Premises or any part thereof which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the occupiers or owners of the land or adjoining land and properties, provided that the reasonable use of the Premises for the maintenance, storage, landing and taking off of aircraft shall not be considered a nuisance.

### **13. ASSIGNMENT AND SUBLEASES**

The Tenant shall not make any assignment of this Agreement, nor any transfer or sublease of the whole or any part of the Premises demised or leased hereunder, without obtaining the prior consent in writing of the City to such assignment, transfer or sublease. In requesting the City's consent to an assignment, sublease or licence, the Tenant must provide the City with all information requested by the City. The Tenant must, if required by the City, enter into sub-leases, assignment agreements or licences on terms required by the City, including requirements for insurance and indemnities.

### **14. RIGHTS OF ACCESS**

- (a) The City, its servants or agents shall have full and free access for inspection purposes during normal business hours and in the presence of the Tenant or a representative of the Tenant to any and every part of the Premises; it being expressly understood and agreed, however, that in cases of emergency, the City, its officers, servants or agents, shall at all times and for all purposes have full and free access to the Premises.
- (b) The City shall have the right to enter upon the Premises to install, maintain and repair buildings, pipes, wires, air ducts, utilities or any other installations required by the City for the City's use of the Premises and neighbouring lands.
- (c) Subject only to the provisions of this Agreement, the Tenant shall have the right of ingress and egress over the Premise roadways crossing City property subject to rules and regulations as may be established by the City respecting such use.
- (d) The Tenant shall not permit any vehicles belonging to the Tenant or to any sub-tenant, licensee, invitee, agent or employee to cause obstruction to any roads, driveways or common areas of the Premises, the Property or in the neighbourhood surrounding the Premises, or prevent the ingress and egress to all other persons using the Premises.

### **15. ADDITIONAL RIGHTS OF THE CITY**

The City reserves the right to grant leases or licences, rights of way or privileges to others on, over, under, through or across the Premises provided however that the granting of such rights of way or privileges will not damage or disrupt permanently the physical facilities of the Tenant, will not impose any cost upon the Tenant, and will not weaken, diminish or impair the rights and obligations of the parties under this Agreement.

**16. "AS IS" CONDITION**

The Tenant accepts the Premises "as is" and acknowledges that it has had the opportunity to undertake such inspections, tests and surveys of the Premises as it considers necessary and that the City has made no representations or warranties respecting the Premises, and that by entering into this Agreement, it is satisfied that the Premises is suitable for its purposes.

**17. ZONING**

The Tenant acknowledges that the Tenant must not use the Premises or permit a use of the Premises in breach of the City of Courtenay zoning bylaw.

**18. OWNERSHIP OF DOCKS**

- (a) The City and the Tenant agree that the title to and ownership of all structures or improvements constructed, erected or installed to be constructed, erected or installed on the Premises by the Tenant, together with all replacements, alterations, additions, changes, substitutions, improvements and repairs thereto (the "**Docks**"), shall at all times during the Term be vested in the Tenant, notwithstanding any rule of law to the contrary.
- (b) At the expiration or early termination of the Term, the Tenant shall have the opportunity to remove the Docks and any part of the Docks not removed by the Tenant shall become the absolute property of the City free of all encumbrances, without payment of any compensation to the Tenant.

**19. ENVIRONMENTAL RESPONSIBILITIES**

- (a) For the purpose of this Part:

**"Environmental Law"** means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;

**"Hazardous Substance"** means a contaminant, pollutant, dangerous goods, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;

**"Notice"** means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency;

**"Permit"** means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law.

- (b) The Tenant will conduct its business and operation on the Premises in compliance with all Environmental Laws and all Permits.

- (c) The Tenant will immediately notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:
- (i) a release of a Hazardous Substance on the Premises, except as is authorized under Environmental Law;
  - (ii) the receipt by the Tenant of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
  - (iii) the receipt by the Tenant of a Notice of a claim by a third party relating to environmental concerns; or
  - (iv) the receipt by the Tenant of information which indicates that Hazardous Substances are present in or on the Premises.
- (d) The Tenant will not permit the storage, treatment or disposal of Hazardous Substances on the Premises except in accordance with all Environmental Laws.
- (e) The Tenant shall not cause or suffer or permit any oil or grease or any harmful, objectionable, dangerous, poisonous, or explosive matter or substance to be discharged on to the Premises or any building on the Premises and will take all reasonable measures for insuring that any effluent discharge will not be corrosive, poisonous or otherwise harmful, or cause obstruction, deposit or pollution on the Premises, or driveways, ditches, water courses, culverts, drains or sewers.
- (f) The Tenant will conduct such investigations, searches, testing, and sampling ("Investigations") as may at any time be required by the City where any reasonable evidence exists that the Tenant's current or prior use or occupation of the Premises may be introducing or increasing the existence of any Hazardous Substance on the Premises. If the Tenant does not complete the Investigations to the satisfaction of the City, the City may enter on the property of the Tenant and take any actions necessary to complete the Investigations, the cost of which actions will be borne by the Tenant.
- (g) If Hazardous Substances are present on or in the Premises as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant to remediate the Premises to a level acceptable to the City and to governmental authorities.
- (h) Prior to the termination of the lease, the Tenant will conduct all Investigations required by the City where any reasonable evidence exists that the Tenant's use or occupation of the Premises has introduced or increased the existence of any Hazardous Substance on or in the Land. The Tenant will provide the result of the Investigations to the City. Where any Hazardous Substance is found on or in the Premises as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant, to remediate the Premises to a level acceptable to the City and to governmental authorities.

- (i) The Tenant will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City from time to time.
- (j) The Tenant will, jointly and severally, indemnify and save harmless the City, its officers, directors, employees, agents and shareholders from and against any and all losses, claims, costs, expenses, damages and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City, its officers, directors, employees, agents and shareholders arising, directly or indirectly, out of:
  - (i) a breach by the Tenant of any of the covenants contained in this Agreement;
  - (ii) where the Tenant's use or occupancy of the Premises results in the presence, release or increase of any Hazardous Substance on the Premises (or on any other land by way of migration, seepage or otherwise);
  - (iii) any reasonable action taken by the City with respect of the existence of or remediation for any such Hazardous Substance on the Premises (or on any other land by way of migration, seepage or otherwise); or
  - (iv) any reasonable action taken by the City in compliance with any Notice of any governmental authority with respect to the existence of any such Hazardous Substance on the Premises (or on any other land by way of migration, seepage or otherwise).
- (k) The indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

## **20. WASTE**

The Tenant will not commit, suffer, or permit any wilful or voluntary waste, spoil or destruction of the Premises.

## **21. SAFETY**

The Tenant shall take all possible precautions to ensure the safety of persons using the Marina and Marina Building.

## **22. SECURITY AND FIRE SYSTEMS PROTECTION**

The City shall not be responsible for providing fire systems protection to nor security of the Premises, the Marine Buildings and any improvements.

## **22. FIRE PREVENTION**

The Tenant shall, at the expense of the Tenant, take all precautions to prevent fire from occurring in or about the Premises, and shall observe and comply with all laws and regulations in force respecting fires at the said Marina, and with all instructions given from time to time by the City with respect to fire risk mitigation and extinguishing of fires.

## **23. SIGNS AND NOTICES**

The Tenant shall not display any signs or notices on the Premises without the prior written approval of the City with the exception of operationally required or safety related signs and notices. The Tenant shall inform the City about the installation of operationally required or safety related signs and notices.

## **24. ADVERTISING**

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

## **25. CONSTRUCTION**

- (a) If the Tenant is not then in default under this Agreement and with the prior written consent of the City, the Tenant may construct, renovate or replace the Docks. In giving its consent, the City may impose any conditions, including, without limitation, location requirements, parking and access requirements, construction requirements, design requirements, use restrictions, financial restrictions, and security obligations.
- (b) The Tenant acknowledges that prior to any construction on the Premises, including construction, renovation or replacement of the Docks, the Tenant must obtain a building permit and a development permit and comply with all other bylaw requirements imposed by the City on construction within its boundaries.
- (c) The Tenant shall promptly pay all charges incurred by the Tenant for any work, materials or services that may be done, supplied or performed in respect of the Premises and shall forthwith discharge any liens in respect of same at any time filed against the Premises.
- (d) The Tenant will not permit any liens, judgments or other charges to be registered against the Premises. If any lien, judgment or other charge is registered, the Tenant will obtain its discharge within THIRTY (30) DAYS of the said registration.
- (e) The Tenant shall reimburse the City for expenses incurred by the City in repairing any damage caused to the Premises, the improvements thereon or any part thereof as result of the negligence or wilful act of the Tenant, its invitees, licensees, agents or other persons from time to time in or about the Premises.

## **26. REPAIRS AND MAINTENANCE**

- (a) Throughout the Term at its own expense, the Tenant shall repair and maintain the Premises and keep the Premises in a state of good repair as a prudent owner would do. The City will not be obliged to repair, maintain, replace or alter the Premises, or any other Building or structure or any part thereof on the Premises during the Term or to supply any services or utilities thereto save and except for such services and utilities as the City may be required to provide strictly in its capacity as a municipality and not in its capacity as a landlord. The Tenant hereby assumes the full and sole responsibility for the condition, operation, maintenance, repair, replacement and management of the Premises during the Term.
- (b) The Tenant shall upon written notice from the City, make any repairs that are, in the opinion of the City, necessary to the Premises within SIXTY (60) DAYS of receipt of such notice.
- (c) The Tenant shall clear all ice and snow, repair and replace as necessary all walkways, ramps, parking areas and other public areas on the Premises in a well maintained, clean, tidy and safe state as befits land used for a Marina and as a prudent owner would do.
- (d) The Tenant shall not allow any ashes, refuse, garbage or other loose or objectionable material to accumulate on the Premises and shall maintain receptacles for garbage disposal and for the disposal of oil and other waste products.
- (e) The Tenant shall not, without the prior written consent of the City, make any alterations to the landscaping and topography of the Premises.
- (f) The Tenant shall not, without the prior written consent of the City, undertake any removal or cutting of foreshore trees and shrubs, or any marine habitat excavations of any kind. The Tenant shall work with a City designated Arborist, Marine Biologist or other agency, for the planning and execution of any foreshore tree and shrub cutting/removal or marine habitat excavation.
- (g) The Tenant shall reimburse the City for expenses incurred by the City in repairing any damage caused to the Premises, the improvements thereon or any part thereof as a result of the negligence or wilful act of the Tenant, its invitees, licensees, agents or other persons from time to time in or about the Premises.

## **27. LANDLORD'S RIGHT TO PERFORM**

If the Tenant shall fail to perform or cause to be performed each and every one of the covenants and obligations of the Tenant contained in this Agreement, on the part of the Tenant to be observed and performed, the City shall have the right (but shall not be obliged) to perform or cause the same to be performed and to do or cause to be done such things as may be necessary or incidental thereto (including without limiting the foregoing, the right to make repairs, installations, erection and expend monies) and all payments, expenses, charges, fees, (including all legal fees on solicitor and client basis) and disbursements incurred or paid by or on behalf of the City in respect thereof shall be paid by the Tenant to the City forthwith.

## **28. TENANT'S REPRESENTATIONS AND WARRANTIES**

The Tenant represents and warrants that the Tenant:

- (a) is a not-for-profit society validly incorporated and in good standing under the laws of British Columbia and does not conduct its activities with a view to obtaining, and does not distribute, profit or financial gain for its members;
- (b) has the power and capacity to enter into and carry out the obligations under this Agreement; and
- (c) has completed all necessary resolutions and other preconditions to the validity of this Agreement.

## **29. TEMPORARY SUSPENSION OF SERVICE**

Without limiting or restricting the generality of this Agreement, the Tenant shall not have nor make any claim or demand, nor bring any action or suit or petition against the City or any of its officers, servants or agents for any damage which the Tenant may sustain by reason of any temporary suspension, interruption or discontinuance, in whole or in part, from whatever cause arising in services supplied by the City hereunder.

## **30. RELEASE AND INDEMNITY**

- (a) The City shall not be responsible in any way for any injury to any person or for any loss or damage to any property belonging to the Tenant or to other occupants of the Premises or to their respective sub-tenants, invitees, licensees, agents, employees, or other persons from time to time attending at the Premises, including without limiting the foregoing, any loss of or damage caused by theft or breakage or failure to maintain and keep the Premises, the Buildings, or the land in good repair and free from refuse, obnoxious odours, vermin or other foreign matter, defective wiring, plumbing, gas, sprinkler, steam, running or clogging of the above pipes or fixtures, or otherwise, acts, or negligence of guests, invitees, or employees or the Tenant or any other occupants of the premises, or the acts or negligence of any owners or occupiers of adjacent or continuous property or their guests, invitees, or employees, act of God, acts or negligence of any person not in the employment of the City, or for any other loss whatsoever with respect to the Premises or any business carried thereon.
- (b) The Tenant hereby releases the City and its elected officials, officers, employees, contractors, agents, successors and assigns from and against any and all liabilities, damages, costs, claims, suits, or actions, which the Tenant may have, now or in the future, in relation to this Agreement, the Premises or the Tenant's use or occupancy of the Premises.
- (c) Save and except for the negligence of the City, and its elected officials, offices, employees, contractors, agents, successors and assigns, the Tenant and the Indemnifier, jointly and severally, will and hereby do indemnify and save harmless the City from any and all liabilities, damages, costs, claims, suits, or actions, (including without limitation, the full amount of all legal fees, costs, charges and expenses whatsoever) directly or indirectly arising from:

- (i) any breach, violation, or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed;
- (ii) any act, omission, or negligence of the Tenant, its members, officers, directors, employees, agents, contractors, subcontractors, subtenants, licensees, invitees or others for whom it is responsible;
- (iii) any gas, oil or other such spill or leak caused from the use of the Premises which may cause contamination to the environment or otherwise contravene the Waste Management Act;
- (iv) any damage to property occasioned by the Tenant's use and occupation of the Premises and Building or any injury to person or persons, including death, resulting at any time from the Tenant's use and occupation of the Premises and Building; or
- (v) the granting of this Agreement, and this indemnity shall survive the expiry or sooner determination of this Agreement.

### **31. DEFAULT**

- (a) If the Tenant defaults in the payment of any money payable under this Agreement or fails to observe, comply with or perform any of its covenants, agreements or obligations under this Agreement, the City may deliver to the Tenant a notice of default (in the manner required herein for giving notices) stipulating that the default must be rectified or cured within FIFTEEN (15) DAYS of the notice if the default is non-payment of Rent or Additional Rent and within THIRTY (30) DAYS of the notice for other defaults, but less or no notice is required to be given by the City in emergency or urgent circumstances, as determined by the City in its sole discretion, acting reasonably, or where the Tenant has failed to keep the Premises insured.
- (b) If the default (other than payment of money payable by the Tenant under this Agreement and other than failure to keep the Premises insured) reasonably requires more time to rectify or cure than THIRTY (30) DAYS, the Tenant will be deemed to have complied with the rectification or curing of it if the Tenant commences rectifying or curing the default within THIRTY (30) DAYS after notice from the City and diligently completes the same.

### **32. CITY'S RIGHTS ON DEFAULT**

Notwithstanding any other provisions of this Agreement, if the Rent or any part thereof shall be in arrears or unpaid for THIRTY (30) DAYS after the specified date of payment, whether or not the same shall have been in any manner demanded, or in the case default, breach or non-observance is made or suffered by the Tenant at any time, in or in respect of any of the covenants, which on the part of the Tenant ought to be observed or performed, then it shall be lawful for the City, its servants or agents to do any, all, or a combination of the following:

- (a) re-enter and thereafter to have, possess and enjoy the Premises and all improvements thereon; nevertheless, the City may, at his option, except as hereinafter set forth, compel the Tenant to remove from the Premises any improvements and any goods, chattels, materials, effects or things from the Premises all at risk of cost and expense of the Tenant;
- (b) terminate this Agreement; or
- (c) exercise or obtain such other rights as may be permitted by this Agreement or at law.

**33. TERMINATION ON CHANGE OF USE OR DAMAGE TO PREMISES**

- (a) If for any reason, other than regular maintenance or repair of the Premises, the Marina ceases to be used for the moorage of boats, the City or Tenant may terminate this Agreement by giving SIXTY (60) DAYS written notice of its intention to terminate this Agreement, and after the expiration of such period of notification, this Agreement shall be determined and ended without further notice or delay.
- (b) The parties hereto agree that if the Premises are damaged in any manner so as to render them unfit for the purposes of the Tenant, the City shall not be required to repair such damage or to make the Premises reasonably fit for the purposes of the Tenant, and the Tenant may at its option, exercised within SIXTY (60) DAYS of the occurrence of such damage, elect to repair the damage or to terminate this Agreement and the election shall be by notice in writing to the City. If the Tenant elects to terminate this Agreement, then the Tenant shall immediately deliver possession of the Premises to the City.

**34. CREDITORS**

If the Term of this Agreement or any renewal hereby granted shall at any time be seized or taken in execution or in attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of creditors, or become bankrupt or insolvent, or if the Tenant takes the benefit of any Act or regulation that may be in force for bankrupt or insolvent debtors, then in any such case the Term of this Agreement or any renewal thereafter, shall at the option of the City, immediately become forfeited and void, and all Rent then due shall immediately become due and payable, and in such case it shall be lawful for the City for any time thereafter to enter into and upon the Premises, or any part thereof, and repossess the Premises or any portion thereof for its sole use, and anything herein contained to the contrary notwithstanding.

**35. REMEDIES CUMULATIVE**

No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Tenant to collect any rent not paid when due, without exercising the option to terminate this Agreement.

**36. NO ABATEMENT**

The Tenant is not entitled to any abatement or reduction or deduction from the Rent or Additional Rent.

**37. DISTRESS**

If and whenever the Tenant is in default of the payment of any money, including rent, whether expressly reserved by this Agreement or deemed as Rent, the City may without notice or any form of legal process whatsoever, enter the Premises and seize, remove and sell the Tenant's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them in the same manner as if they had remained and been distrained in the Premises, notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

**38. WAIVER OR NON-ACTION**

Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of any subsequent default by the Tenant. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of such term, covenant or condition

**39. NO JOINT VENTURE**

Nothing contained in this Agreement creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives the Tenant any power or authority to bind the City in any way.

**40. ENTIRE AGREEMENT**

The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by an instrument in writing signed by the parties.

**41. INTERPRETATION**

Any note appearing as a heading in this Agreement has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope of meaning of the present Lease or any of its provisions. 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. All covenants and obligations shall be deemed joint and several. The invalidity of any section for any reason whatsoever shall not invalidate any other section of this Agreement. Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

**42. NOTICES**

- (a) Whenever in this Agreement it is required or permitted that notice or demand be given or served by either party of this Agreement to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by express mail to the addresses set out at the beginning of this Agreement.
- (b) Such addresses may be changed from time to time by either party giving notice as above provided.
- (c) Notice shall be deemed to have been effectively communicated or given on the day received or on the FIFTH (5<sup>th</sup>) DAY after it was mailed or sent, whichever is the earlier.

**43. AUTHORITY**

The Tenant represents and warrants to the City that it has full authority to enter into this Agreement and to carry out the actions contemplated herein, that all resolutions and other preconditions to validity have been validly adopted, and that those signing this Agreement on its behalf are authorized to bind the Lessee by their signatures.

**44. TIME OF THE ESSENCE**

Time shall be of the essence of this Agreement.

**45. REGISTRATION**

The Tenant shall be responsible for any costs of registering this Agreement in the Land Title Office, including the costs or any plan necessary for the registration of the lease and any modification of this Agreement.

**46. COVENANTS AND CONDITIONS**

All of the provisions of this Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

**47. NO EFFECT ON LAWS OR POWERS**

Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Premises, all of which may be fully and effectively exercised in relation to the Premises as if this Agreement had not been fully executed and delivered.

48. ENUREMENT

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors, assigns and other legal representatives, as the case may be of each of the parties hereto, and every reference herein to every party hereto shall include the successors, assigns and other legal representatives of such party.

49. LAWS OF BRITISH COLUMBIA



This Agreement shall be construed by the laws of the Province of British Columbia.

50. SEVERANCE

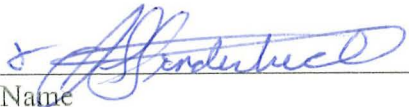

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of the lease.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C which is attached hereto and forms part of this agreement.

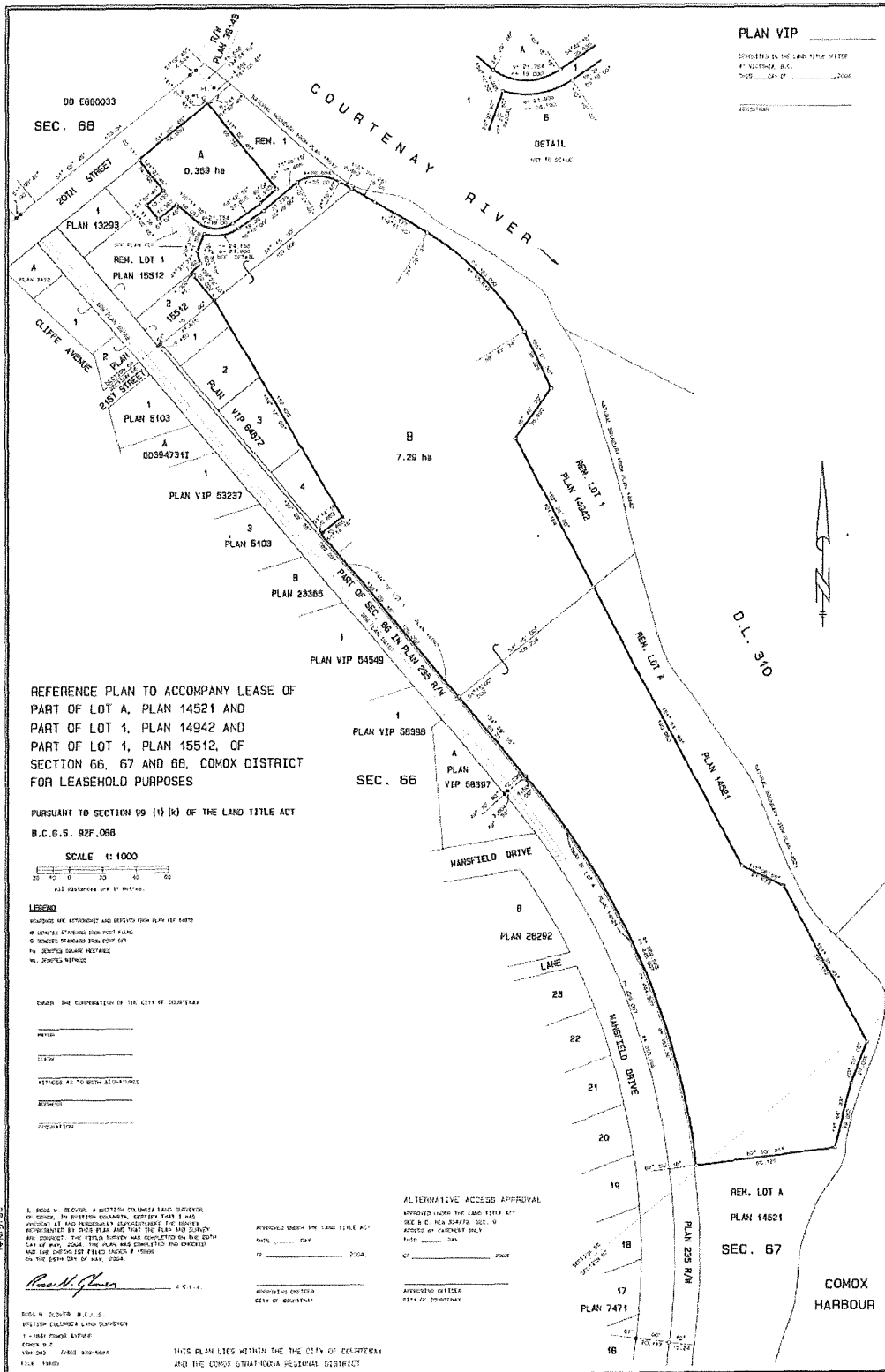
THE CORPORATION OF THE CITY OF COURTENAY, by its authorized signatories:

  
 \_\_\_\_\_ )  
 Mayor Bob Weis )  
  
  
 \_\_\_\_\_ )  
 Corporate Officer WENDY SOLICHTA. )

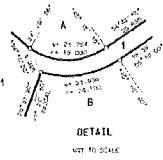
The COURTENAY MARINA SOCIETY, by its authorized signatories:

  
 \_\_\_\_\_ )  
 Name )  
  
  
 \_\_\_\_\_ )  
 Name )

# SCHEDULE 'A' THE LEASED PREMISES



**PLAN VIP**  
 SUBMITTED IN THE LAST TITLE OFFICE  
 AT VICTORIA, B.C.  
 THIS PLAN IS OF \_\_\_\_\_ 2004  
 REGISTERED



REFERENCE PLAN TO ACCOMPANY LEASE OF  
 PART OF LOT A, PLAN 14521 AND  
 PART OF LOT 1, PLAN 14942 AND  
 PART OF LOT 1, PLAN 15512, OF  
 SECTION 66, 67 AND 68, COMOX DISTRICT  
 FOR LEASEHOLD PURPOSES

PURSUANT TO SECTION 99 (1) (K) OF THE LAND TITLE ACT  
 B.C.S. 82F.068

SCALE 1:1000  
 ALL DIMENSIONS ARE IN METRES

**LEGEND**  
 BOUNDARIES ARE APPROVED AND DERIVED FROM PLAN VIP 53237  
 \* LOCATED STAKEHOLD (NON-POST) MARK  
 O BOUNDARY STAKEHOLD FROM 1997 SET  
 PA BOUNDARY STAKEHOLD  
 NO BOUNDARY MARKS

BY THE COMMISSIONER OF THE CITY OF COURTENAY  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I, ROSS W. GLOVER, A BRITISH COLUMBIA LAND SUPERVISOR  
 OF COURTESY, BY BRITISH COLUMBIA, CERTIFY THAT I HAVE  
 REVIEWED AND PERSONALLY SUPERVISED THE SURVEY  
 REPRESENTED BY THIS PLAN AND THAT THE PLAN AND SURVEY  
 ARE CORRECT. THE FIELD SURVEY WAS COMPLETED ON THE 20TH  
 DAY OF MAY, 2004. THE PLAN HAS BEEN CHECKED AND CHECKED  
 AND THE ORIGINAL FIELD BOOKS & NOTES  
 ARE IN THE OFFICE OF THE CITY OF COURTESY.

*Ross W. Glover*  
 Ross W. Glover B.C.L.S.  
 BRITISH COLUMBIA LAND SUPERVISOR  
 1 - 1881 FURBY AVENUE  
 COURTESY B.C.  
 V8M 3A9 JUBILEE BOUNDARY  
 V8L 1A9B

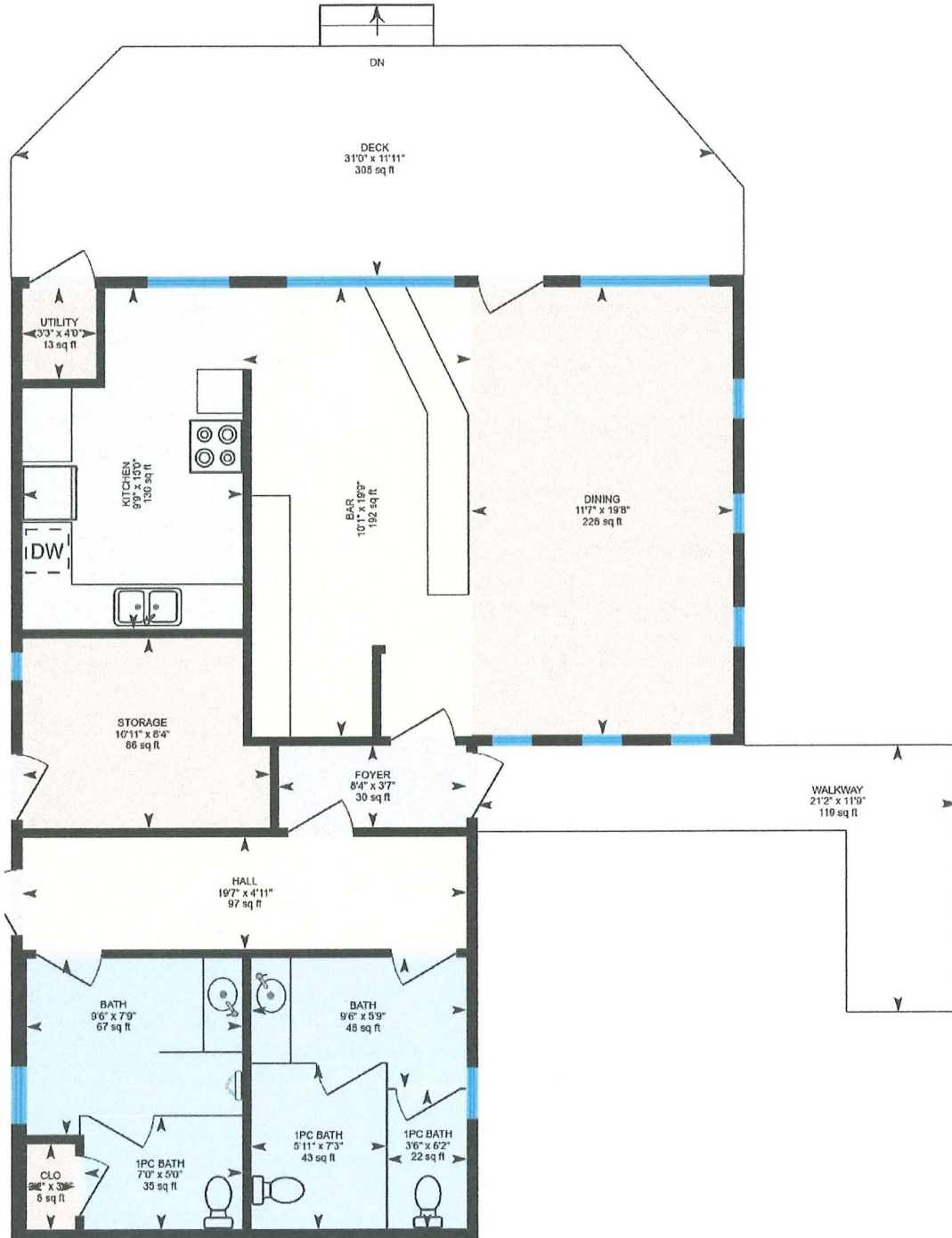
THIS PLAN LIES WITHIN THE CITY OF COURTESY  
 AND THE COMOX STRATHCORNA REGIONAL DISTRICT

**ALTERNATIVE ACCESS APPROVAL**  
 APPROVED UNDER THE LAND TITLE ACT  
 SEC 99 (1) (K) OF THE LAND TITLE ACT  
 APPROVED BY THE CITY OF COURTESY ONLY  
 THIS \_\_\_\_\_ DAY  
 OF \_\_\_\_\_ 2004

APPROVED BY THE CITY OF COURTESY  
 \_\_\_\_\_  
 APPROVED BY THE CITY OF COURTESY  
 \_\_\_\_\_

COMOX  
 HARBOUR

**SCHEDULE 'B'**  
**"STORAGE 10'11" x 8'4"**  
**LEASED PORTION OF MARINA BUILDING**



**SCHEDULE 'C'**

**SCHEDULE OF "NON-RENT" FEES PAYMENT RESPONSIBILITY**

**MARINA**

| <b>DESCRIPTION</b>                     | <b>CITY</b> | <b>TENANT</b>   |
|--|-------------|---|
| ELECTRICITY - metered                  |             | 100%  |
| PROPERTY TAX                           |             | 100%  |
| WATER                                  |             | 100%  |
| GARBAGE REMOVAL                        |             | 100%  |
| SECURITY                               |             | 100%  |
| FIRE PREVENTION                        |             | 100%  |
| BOAT RAMP MAINTENANCE                  |             | 100%  |
| PARKING LOT MAINTENANCE                | 100%        |   |
| REPAIR AND MAINTENANCE                 |             | 100%  |
| FORESHORE TREE AND SHRUB MAINTENANCE   |             | 100%  |
| COMMERCIAL GENERAL LIABILITY INSURANCE |             | 100%  |
| PROPERTY INSURANCE – docks, ramp       |             | Applicable Portion of<br>City Property<br>Insurance Policy      |
| ENVIRONMENTAL LIABILITY INSURANCE      |             | Applicable Portion of<br>City Environmental<br>Liability Policy |

**MARINA BUILDING**

|                                     | <b>CITY</b> | <b>TENANT</b>  |
|-------------------------------------|-------------|--|
| PROPERTY INSURANCE – 9% of building |             | Applicable Portion of<br>City Property<br>Insurance Policy |