



## LICENCE OF OCCUPATION

Licence No.:

114030

File No.: 1405848

Disposition No.: 875319

THIS AGREEMENT is dated for reference AUGUST 11, 2011 and is made under the *Land Act*.

### BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia

(the "Province")

### AND:

**COMMUNITY MARINE CONCEPTS LTD.** (Inc. No. BC 0736657)

Attn: Lachlan Maclean

10213 111 ST NW

Edmonton, AB T5K 2V6

(the "Licensee")

The parties agree as follows:

### ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**Commencement Date**" means the date set out above as the reference date of this Agreement;

"**Disposition**" has the meaning given to it in the *Land Act* and includes a licence of occupation;

"**Fees**" means the fees set out in Article 3;

"**Improvements**" means all buildings, structures, equipment, improvements and marine

docking, moorage, storage and launching facilities for the accommodation, moorage, storage, launching, maintenance and minor repair of marine vessels (including bulkheads, groins, breakwaters and floating booms) that are made, constructed, erected, placed or installed on the Land at any time during the term of this Agreement, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs to any of them;

**“Land”** means that part or those parts of the following described land shown outlined by red line on the schedule attached to this Agreement entitled “Legal Description Schedule”:

That part of District Lot 119, Esquimalt District, containing approximately 1.74 hectares and to be more precisely defined by legal survey as herein provided

except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the *Transportation Act*);

**“Lease”** means the lease of Crown land to be issued by us to you in accordance with section 2.3;

**“Management Plan”** means the most recent management plan prepared by you in a form acceptable to us, signed and dated by the parties, and held on file by us;

**“Realty Taxes”** means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

**“Security”** means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

**“Term”** means the period of time set out in section 2.2;

**“we”, “us” or “our”** refers to the Province alone and never refers to the combination of the Province and the Licensee: that combination is referred to as **“the parties”**; and

**“you” or “your”** refers to the Licensee.

- 1.2 In this Agreement, “person” includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.



- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 All provisions of this Agreement in our favour and all of our rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

## **ARTICLE 2 - GRANT AND TERM**

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for excavating, dredging and construction of marina Improvements. You acknowledge and agree that this licence does not allow you to operate a marina on the Land and you must satisfy the conditions for the issuance of the Lease as provided in section 2.3 and must be issued the Lease before providing moorage to vessels within the area of the Land. You further acknowledge and agree that this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the second (2<sup>nd</sup>) anniversary of that date, or such earlier date provided for in this Agreement.
- 2.3 On or prior to the second anniversary of the Commencement Date and provided you have satisfied the conditions set out below we will on your written request issue you a lease of the Land, which will be substantially in the form attached as a schedule to this Agreement together with any such other terms as we may require and that are consistent with terms established under generally applicable policies at the time the Lease is issued. Upon the issuance of the Lease this Agreement will terminate. The issuance of the Lease is conditional on the satisfaction of the following conditions:
- (a) at the time the Lease is to be issued you are not in default of any term of this Agreement in respect of which we have given a notice of default as contemplated by subsection 8.1(a);
  - (b) a survey of the boundaries of the Land has been completed by a British Columbia Land Surveyor in compliance with the instructions of the Surveyor General and the Surveyor General has accepted and confirmed that survey in accordance with section 72 of the Land Act;
  - (c) you have executed and returned to us the Lease in the form required by us pursuant to this section 2.3 and you have paid and provided any rent, security and evidence of insurance that may be required in accordance with the terms of Lease and any document processing or other fees that may be required in connection with the Lease; and
  - (d) you have completed the construction of the Improvements required for the operation of the Marina as depicted on that portion of the Management Plan titled "Marina Layout/Site Plan" and dated November 17, 2010 and you have provided to us an "as built" survey prepared by a British Columbia Land Surveyor confirming that all such Improvements are within the boundaries of the Land.

### ARTICLE 3 - FEES

- 3.1 You will pay to us Fees equal to \$12,079.20 for the first year of the Term and \$24,158.40 for each subsequent year of the Term, which Fees together with all taxes thereon will be payable annually in advance prior to the Commencement Date and each anniversary of the



Commencement Date during the Term.

- 3.2 If prior to the second anniversary of the Commencement Date you are issued a Lease in accordance with section 2.3 and this Licence is terminated as a result then any prepaid Fees under this Licence that are not otherwise payable to us will be credited against any rent payable by you under the Lease.

#### ARTICLE 4 - COVENANTS

4.1 You must

- (a) pay, when due,
  - (i) the Fees to us at the address set out in Article 10,
  - (ii) the Realty Taxes, and
  - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
  - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements, and
  - (ii) the provisions of this Agreement;
- (d) unless we otherwise provide our prior written consent, not construct, place, anchor, secure or affix any Improvement in, on, to or into the Land except as shown on that portion of the Management Plan titled "Marina Layout/Site Plan" and dated November 17, 2010 and prior to commencement of any construction;
- (e) not permit any boathouse, building or other similar covered structure within the area of the Land;
- (f) in respect of the use of the Land by you or by anyone you permit to use the Land, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (g) not commit any wilful or voluntary waste, spoil or destruction on the Land;

- (h) not do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (i) not construct, place, anchor, secure or affix anything on or to the Land that will interfere with the riparian right of access of any person over the Land and you acknowledge and agree that the granting of this Licence and our approval of the Improvements under this Licence does not:
  - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or
  - (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land; andyou remain responsible for ensuring that you will not cause any infringement of any riparian right of access;
- (j) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (k) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act*;
- (l) if any claim of lien over the Land is made under the *Builders Lien Act* for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (m) dispose of raw sewage and refuse only in accordance with the requirements and regulations of appropriate federal and provincial agencies;
- (n) store bulk hazardous petroleum products and other toxic substances in accordance with the provisions of the *Environmental Management Act*;
- (o) not use construction materials containing toxic substances, except in marine waters where the use of a preservative-treated wood may be necessary;
- (p) not without prior written consent from us deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land;
- (q) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for



administering the *Heritage Conservation Act*;

- (r) provide without compensation temporary accommodation to any vessel that is disabled or that seeks shelter in weather conditions that would render it unseaworthy;
- (s) have a qualified registered professional archaeological monitor present on the site during dredging, at your expense if dredging requires the removal of sediments over two (2) metres depth;
- (t) have a qualified registered professional environmental monitor familiar with a marine environment present on site during dredging and pile driving, at your expense;
- (u) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, provided that in regard to our inspection of the Improvements we take reasonable steps to minimize any disruption of your operations;
- (v) maintain the non-motorized paddling corridor through Lots 3 and 4, District Lot 119, Esquimalt District, Plan 47008 for use by members of the public as per the approved Management Plan;
- (w) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of
  - (i) your breach, violation or nonperformance of a provision of this Agreement,
  - (ii) any use of the Land by you that is alleged to constitute an infringement of a riparian right of access over the Land even if such claim is groundless or false; and
  - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and
- (x) on the termination of this Agreement (other than a termination as a result of the issuance of a Lease to you in accordance with section 2.3),
  - (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
  - (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you and you are not in default of this Agreement,

- (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
- (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
- (v) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to our satisfaction, but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

- 4.2 You will not permit any person to do anything you are restricted from doing under this Article.

## ARTICLE 5 - LIMITATIONS

### 5.1 You agree with us that

- (a) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) this Agreement is subject to
  - (i) all subsisting dispositions and subsisting grants to or rights of any person made or acquired under the *Coal Act*, *Forest Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Wildlife Act* or *Water Act*, or any extension or renewal of the same, whether or not you have actual notice of them, and
  - (ii) the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
- (c) without limiting subsection 4.1(w), you must indemnify and save us and our servants, employees and agents harmless from and against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of any conflict between your rights under this Agreement and the rights of any person under a disposition or under a subsisting grant to or right of any



person made or acquired under the *Coal Act, Forest Act, Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, Wildlife Act or Water Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect), or any extension or renewal of the same, whether or not you have actual notice of them, and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand;

- (d) you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your rights under this Agreement and the rights of any person under a disposition or under a subsisting grant to or right made or acquired under the enactments referred to in subsection (b), and you acknowledge that this Agreement and your rights under this Agreement are subject to those grants and rights referred to in subsection (b) whether or not you have actual notice of them.
- (e) all of your costs and expenses, direct or indirect, that arise out of any lawful interference with your rights under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles reserved to us in subsection (b) will be borne solely by you;
- (f) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any lawful interference with your rights under this Agreement that arises as a result of the exercise or operation of the interests, rights, privileges and titles described in subsection (b);
- (g) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, other than a termination as a result of the issuance of a Lease to you in accordance with section 2.3, and except where an Improvement may be removed under paragraph 4.1(x)(ii), (iii) or (iv) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(x)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(w)(iii); and
- (h) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

## ARTICLE 6 - SECURITY AND INSURANCE

6.1 On the Commencement Date, you will deliver to us security in the amount of \$250,000.00



which will

- (a) guarantee the performance of your obligations under this Agreement;
- (b) be in the form required by us; and
- (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.

6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.

6.3 We may use the Security for the payment of any costs and expenses incurred by us to perform any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.

6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.

6.5 You acknowledge that we may, from time to time, notify you to

- (a) change the form or amount of the Security; and
- (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, effect and keep in force during the Term the following insurance with insurers licensed to do business in Canada:

Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of



material change or cancellation, and include us as additional insured;

- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

6.9 You waive all rights of recourse against us with regard to damage to your own property.

## ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.
- 7.2 For the purpose of section 7.1, if you are a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) will be deemed to be a transfer of this Agreement.

- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you submit to us a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land or other similar type of investigation of the Land.

## ARTICLE 8 - TERMINATION

8.1 You agree with us that

- (a) if you
  - (i) default in the payment of any money payable by you under this Agreement, or
  - (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),and your default or failure continues for 60 days after we give written notice of the default or failure to you,
- (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;
- (c) if you
  - (i) become insolvent or make an assignment for the general benefit of your creditors,
  - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
  - (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation,



- (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
- (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent;
- (f) if this Agreement is taken in execution or attachment by any person; or
- (g) if we require the Land for our own use or, in our opinion, it is in the public interest to cancel this Agreement and we have given you 60 days' written notice of such requirement or opinion;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

## ARTICLE 9 - DISPUTE RESOLUTION

9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.

9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.

- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Nanaimo, British Columbia, and if we or our authorized representative have no office in Nanaimo, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Nanaimo, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

#### ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS  
Suite 142 - 2080 Labieux Road  
Nanaimo, BC V9T 6J9;

to you

COMMUNITY MARINE CONCEPTS LTD.  
Attn: Lachlan Maclean  
10213 111 ST NW  
Edmonton, AB T5K 2V6;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.



**ARTICLE 11 - MISCELLANEOUS**

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
  - (b) you diligently attempt to remove the delay.
- 11.6 You agree with us that
- (a) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
  - (b) nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives

you any authority or power to bind us in any way.

- 11.7 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of **HER MAJESTY  
THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA**  
by the minister responsible for the *Land Act*  
or the minister's authorized representative



Minister responsible for the *Land Act*  
or the minister's authorized representative

SIGNED on behalf of  
**COMMUNITY MARINE CONCEPTS LTD.**  
by a duly authorized signatory

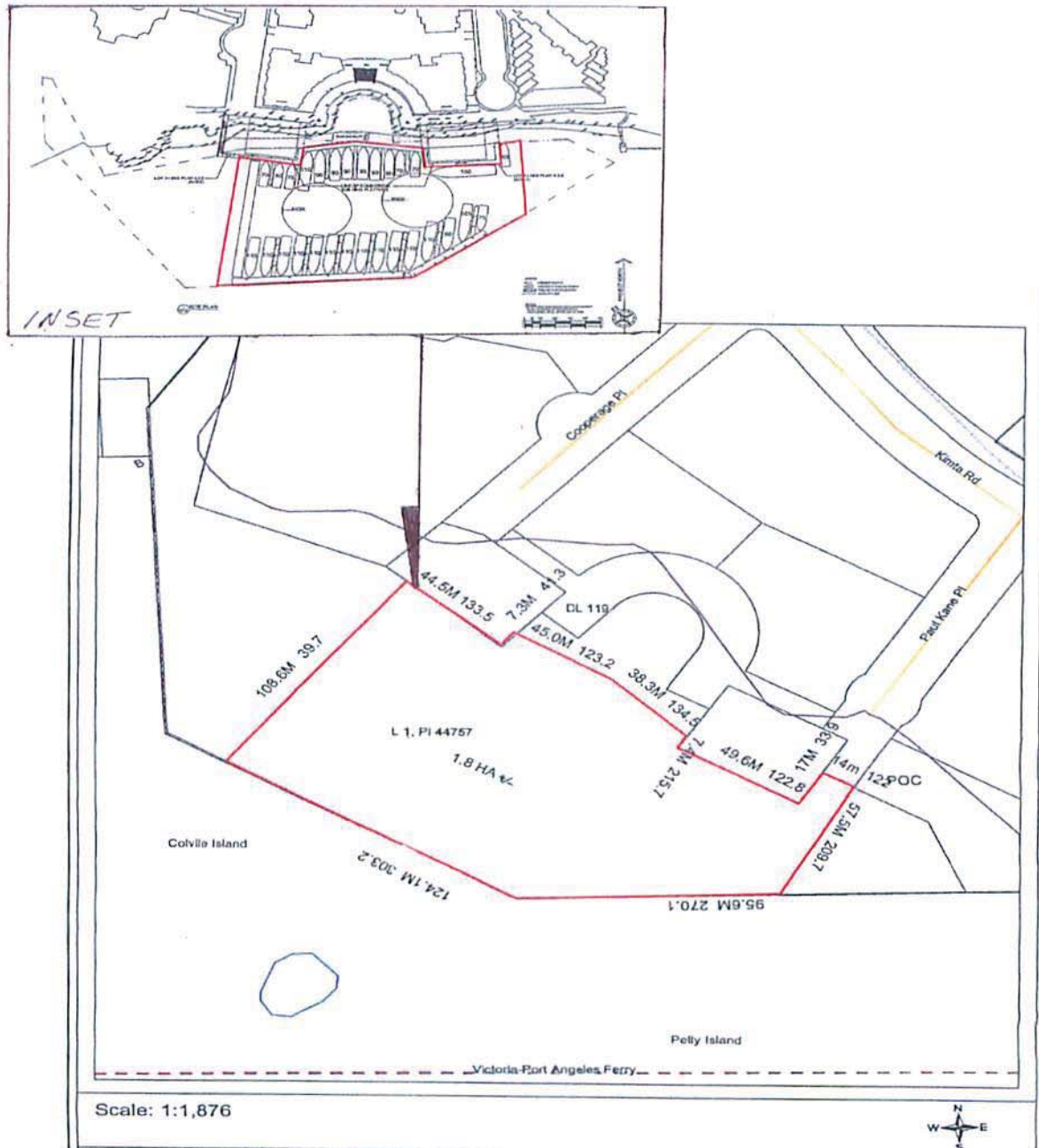


Authorized Signatory



**LEGAL DESCRIPTION SCHEDULE**

That part of District Lot 119, Esquimalt District, containing approximately 1.74 hectares and to be more precisely defined by legal survey as herein provided



Lease No.:

File No.: 1405848

Disposition No.: 892824

## TERMS OF INSTRUMENT - Part 2

For valuable consideration, the parties agree as follows:

### ARTICLE 1 - INTERPRETATION

#### 1.1 In this Agreement

**"Agreement"** means this General Instrument;

**"Commencement Date"** means TO BE DETERMINED;

**"disposition"** has the meaning given to it in the *Land Act* and includes a licence of occupation;

**"Hazardous Substance"** means any substance which is hazardous to persons, property or the environment, including without limitation

(a) waste, as that term is defined in the British Columbia *Environmental Management Act*; and

(b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority;

**"Improvements"** means all buildings, structures, equipment, improvements and marine docking, moorage, storage and launching facilities for the accommodation, moorage, storage, launching, maintenance and minor repair of marine vessels (including bulkheads, groins, breakwaters and floating booms) that are made, constructed, erected, placed or installed on the Land at any time during the term of this Agreement, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs to any of them;

**"Land"** means the land described in item 2 of Part 1 of this General Instrument;

**"Linear Footage of Moorage Space"** means: the linear footage of all moorage space within the Land, whether open or covered by a boathouse, together with the linear footage of all improvements used for an Ancillary Marine Use;

**"Management Plan"** means the most recent management plan prepared by you in a form acceptable to us, signed and dated by the parties, and held on file by us;

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**“Month to Month Moorage Charge per Linear Footage” means:**

- (a) if you charge your customers only on the basis of a standard monthly linear footage rate, then that rate; or
- (b) if you do not charge solely on the basis of a standard monthly linear footage rate but in addition, or instead, charge a membership fee or charge on the basis of a prepaid fee for one or more years, or on some other basis then either the amount as specified in (i) or (ii) below as we may select for any particular year in our sole discretion:
  - (i) a month to month linear footage rate which we determine to be equivalent to the amounts you charge; or
  - (ii) a month to month linear footage rate which we determine taking into consideration any monthly linear footage rate you charge your customers and the rates charged by commercial marinas which charge on a linear footage basis that we may determine to be comparable having regard to location and other factors;

**“Potential Gross Income From Moorage” means for any particular year of the Term, the amount calculated as follows:**

$$A \times B \times C$$

where:

A = the amount of Linear Footage of Moorage Space on the Land;

B = the Month to Month Moorage Charge per Linear Footage; and

C = the number of months the operation was open for business in that year;

**“Rate”**

- (a) during the first 15 year period of the Term means 3.5%; and
- (b) during the period after the 15<sup>th</sup> anniversary of the Commencement Date 4.0%.

**“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;**

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- “Rent”** means the rent set out in Article 3;
- “Security”** means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;
- “Term”** means the period of time set out in section 2.2;
- “we”, “us” or “our”** refers to the Transferor alone and never refers to the combination of the Transferor and the Transferee: that combination is referred to as **“the parties”**; and
- “you” or “your”** refers to the Transferee.
- 1.2 In this Agreement, “person” includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary

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for the performance of the provisions of this Agreement.

- 1.10 All provisions of this Agreement in our favour and all of our rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Where this Agreement contains the forms of words contained in Column I of Schedule 4 of the *Land Transfer Form Act*, those words will have the same effect and be construed as if the appropriate forms of words contained in Column II of that Schedule were contained in this Agreement, unless the context requires another construction of those words.

## ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a lease of the Land for the purpose of conducting the business of a marina as more fully described in the Management Plan.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the 45th anniversary of that date, or such earlier date provided for in this Agreement.
- 2.3 In using the Land as permitted by this Agreement, you will not restrict, or permit the restriction of, the use of any service or facility (set out in section 2.1) to a defined or limited group of persons, it being the intention of the parties that such services and facilities will be available for use by all members of the public but for certainty this does not restrict you from providing long term moorage arrangements as more fully described in the Management Plan.

## ARTICLE 3 - RENT

- 3.1 You will pay to us:
  - (a) for the first five years of the Term Rent of \$24,158.40 payable annually in advance, on

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or before the Commencement Date and each of the first, second, third and forth anniversaries of the Commencement Date; and

- (b) during the balance of the Term the Rent determined under sections 3.2 payable in advance beginning on the fifth anniversary of the Commencement Date and thereafter on each anniversary of that date.
- 3.2 The annual Rent for any particular year shall be an amount equivalent to the product of the Potential Gross Income from Moorage for the previous year multiplied by the Rate applicable to the particular year for which Rent is being calculated.
- 3.3 No later than 90 days prior to the fifth (5<sup>th</sup>) anniversary of the Commencement Date and each ensuing anniversary of the Commencement Date you must deliver to us a Statutory Declaration, or such other document that we may approve from time to time to (a "statement") for the purpose of verifying the information necessary to calculate the Rent payable under section 3.2. We may give you notice from time to time specifying the form of the statement, the information to be set out in the statement and any supporting documents that you will be required to provide with the statement.
- 3.4 In the event you deliver the statement referred to in section 3.3 to us before the deadline referred to in section 3.3, we may, not later than 15 days before the anniversary of the Commencement Date during each year of the Term, give written notice to you specifying the annual Rent payable under section 3.2 for the immediately succeeding year of the Term.
- 3.5 If we do not give you notice under section 3.4, the annual Rent shall be equal to the annual Rent calculated or in force during the immediately preceding year of the term.
- 3.6 If you fail to deliver the statement referred in section 3.3 within the time required we may:
  - (a) enter upon the Land and do such things as are necessary to determine the information required in section 3.3; and
  - (b) based on the information determined under subsection (a) above, set the annual Rent, retroactive to the last anniversary date of the Commencement Date.
- 3.7 The annual Rent specified in a notice given under section 3.4 shall constitute conclusive evidence of the annual Rent payable for the year of the Term specified in the notice.

#### ARTICLE 4 - COVENANTS

- 4.1 You must

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- (a) pay, when due,
  - (i) the Rent to us at the address set out in Article 10,
  - (ii) the Realty Taxes, and
  - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
  - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and human health and safety, and
  - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by anyone you permit to use the Land, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) not construct, place, anchor, secure or affix any Improvement in, on, to or into the Land except as permitted in the Management Plan and without limitation you must not permit any boathouse, building or other similar covered structure within the area of the Land;
- (g) not construct, place, anchor, secure or affix anything on or to the Land that will interfere with the riparian right of access of any person over the Land and you acknowledge and agree that the granting of this Licence and our approval of the Improvements under this Licence does not:
  - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or

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- (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;
- and you remain responsible for ensuring that you will not cause any infringement of any riparian right of access;
- (h) use and occupy the Land only in accordance with and for the purposes set out in section 2.1 and in the Management Plan;
- (i) maintain the non-motorized paddling corridor through Lots 3 and 4, District Lot 119, Esquimalt District, Plan 47008 for use by members of the public as per the approved Management Plan;
- (j) in each moorage agreement with your customers include a term in a form approved by us in which the customer acknowledges that moorage is subject to you maintaining this Agreement in good standing including meeting all ongoing obligations to pay annual Rent;
- (k) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that you are required to hold back under the *Builders Lien Act*;
- (l) if any claim of lien over the Land is made under the *Builders Lien Act*, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (m) dispose of raw sewage and refuse only in accordance with the requirements and regulations of appropriate federal and provincial agencies;
- (n) not use all or any part of the Land:
- (i) for the storage or disposal of any Hazardous Substances; or
- (ii) in other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;
- unless:
- (iii) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety, and

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- (iv) we have given our prior written consent to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required;
- (o) not without prior written consent from us deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land;
- (p) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the *Heritage Conservation Act*;
- (q) not alter or add to any Improvement without our prior written consent;
- (r) provide without compensation temporary accommodation to any vessel that is disabled or that seeks shelter in weather conditions that would render it unseaworthy;
- (s) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (t) have a qualified registered professional archaeological monitor present on the site during dredging, at your expense if dredging requires the removal of sediments over two (2) metres depth;
- (u) have a qualified registered professional environmental monitor familiar with a marine environment present on site during dredging and pile driving, at your expense;
- (v) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances that may be necessary or advisable for us determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances, provided that in regard to our inspection of the Improvements we take reasonable steps to minimize any disruption to your operations;
- (w) periodically upon our written request (which we may make not more frequently than annually), provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us;

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- (x) periodically upon our written request (which we may make not more frequently than once during every five years) provide us with a written report to our satisfaction setting out the manner in which the Improvements will be removed at the end of the Term and the condition of the Land restored in accordance with your obligations under this Agreement and the estimated costs of the same;
- (y) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of
  - (i) your breach, violation or nonperformance of a provision of this Agreement, and
  - (ii) any use of the Land by you that is alleged to constitute an infringement of a riparian right of access over the Land even if such claim is groundless or false, and
  - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and
- (z) on the termination of this Agreement,
  - (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition,
  - (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land,
  - (iii) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
  - (iv) restore the surface of the Land as nearly as may reasonably be possible, to the condition that the Land was in prior to the construction of Improvements for the purposes described in this Agreement, to our satisfaction, but if you are not directed or permitted to remove an Improvement under paragraph (iii), this

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paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will cease and vest in us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 We may from time to time:

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

4.3 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time if we request and if you are in breached of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement or any other Crown land tenure agreement allowing for the construction or operation of the marina facilities on the Land;

save and except only to the extent that we have given a prior written consent expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.3 You will not permit any person to do anything you are restricted from doing under this Article.

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4.4 We will provide you with quiet enjoyment of the Land.

## ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) this Agreement is subject to
  - (i) all subsisting dispositions and subsisting grants to or rights of any person made or acquired under the *Coal Act, Forest Act, Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, Wildlife Act or Water Act*, or any extension or renewal of the same, whether or not you have actual notice of them, and
  - (ii) the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
- (b) without limiting subsection 4.1(x), you must indemnify and save us and our servants, employees and agents harmless from and against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of any conflict between your rights under this Agreement and the rights of any person under a disposition or under a subsisting grant to or right of any person made or acquired under the *Coal Act, Forest Act, Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, Wildlife Act or Water Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect), or any extension or renewal of the same, whether or not you have actual notice of them, and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand;
- (c) you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your rights under this Agreement and the rights of any person under a disposition or under a subsisting grant to or right made or acquired under the enactments referred to in subsection (b), and you acknowledge that this Agreement and your rights under this Agreement are subject to those grants and rights referred to in subsection (b) whether or not you have actual notice of them.
- (d) with your prior consent, which consent you will not unreasonably withhold, we may make other dispositions of or over the Land, or any part of it, to a person, including a Crown agency or ministry, and, upon such consent being given you will, if required by us in the case of a disposition by way of easement, right of way or statutory right of

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way, immediately execute and deliver to us such instrument as may be necessary to subordinate your rights under this Agreement to such easement, right of way or statutory right of way;

- (e) for the purpose of subsection (d), you will be deemed to have reasonably withheld your consent if a disposition made under that subsection would materially affect the exercise of your rights under this Agreement;
- (f) you will make no claim for compensation, in damages or otherwise, in respect of a disposition made under subsection (d), where such disposition does not materially affect the exercise of your rights under this Agreement;
- (g) subject to subsection (f), all of your costs and expenses, direct or indirect, that arise out of any lawful interference with your rights under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles reserved to us in subsections (a) and (d) will be borne solely by you;
- (h) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any lawful interference with your rights under this Agreement that arises as a result of the exercise or operation of the interests, rights, privileges and titles described in subsections (a) and (d);
- (i) any interference with your rights under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles described in subsections (a) and (d), or any exercise of a public right of navigation or fishing affecting your use of the Land, will not constitute a breach of our covenant of quiet enjoyment and you release and discharge us from all claims for loss or damage arising directly or indirectly out of any such interference;
- (j) any interest you may have in the Improvements ceases to exist and becomes our property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(x)(ii) or (iii) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(x)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(x)(iii); and
- (k) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.



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## ARTICLE 6 - SECURITY AND INSURANCE

6.1 On the Commencement Date, you will deliver to us security in the amount of \$100,000.00 which will

- (a) guarantee the performance of your obligations under this Agreement;
- (b) be in the form required by us; and
- (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.

6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.

6.3 We may use the Security for the payment of any costs and expenses incurred by us to perform any of your obligations under this Agreement that are not performed by you and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.

6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.

6.5 You acknowledge that we may, from time to time, notify you to

- (a) change the form or amount of the Security; and
- (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, effect and keep in force during the Term the following insurance with insurers licensed to do business in Canada:

Commercial General Liability insurance in an amount of not less than \$2,000,000.00

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inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;

- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

6.9 You waive all rights of recourse against us with regard to damage to your own property.

## ARTICLE 7 - ASSIGNMENT

7.1 You must not sublease, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.

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- 7.2 For the purpose of section 7.1, if you are a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) will be deemed to be a transfer of this Agreement.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including, without limitation, that you provide us with a report as to the environmental condition of the Land as provided in subsection 4.2.

#### ARTICLE 8 - TERMINATION

8.1 You agree with us that

(a) if you

- (i) default in the payment of any money payable by you under this Agreement, or
- (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),

and your default or failure continues for 60 days after we give written notice of the default or failure to you,

(b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;

(c) if you

- (i) become insolvent or make an assignment for the general benefit of your creditors,
- (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or

(iii) voluntarily enter into an arrangement with your creditors;

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- (d) if you are a corporation,
  - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
  - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate, and all of your right, interest and estate in the Land will be absolutely forfeited to us.

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

## ARTICLE 9 - DISPUTE RESOLUTION

9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.

9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the

MARINA & YC LEASE-R

**SAMPLE**

Lease No.:

File No.: 1405848

Disposition No.: 892824

arbitration will be governed by the laws of the Province of British Columbia.

- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Nanaimo, British Columbia, and if we or our authorized representative have no office in Nanaimo, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Nanaimo, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

#### ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS  
Suite 142 - 2080 Labieux Road  
Nanaimo, BC V9T 6J9;

to you

COMMUNITY MARINE CONCEPTS LTD.  
Attn: Lachlan Maclean  
10213 111 ST NW  
Edmonton, AB T5K 2V6

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure

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agreed to by the parties, such deliveries to be effective on actual receipt.

#### **ARTICLE 11 - MISCELLANEOUS**

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublease, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublease, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
  - (b) you diligently attempt to remove the delay.
- 11.6 You agree with us that
- (a) this Agreement has been granted to you on the condition that you accept the Land on an "as is" basis;
  - (b) without limitation we have not made, and you have not relied upon, any representation

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or warranty from us as to

- (i) the suitability of the Land for any particular use, included for its use as intended by you;
- (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding;
- (iii) the general condition and state of all utilities or other systems on our under the Land or which serve the Land;
- (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and
- (v) the application of any federal or Provincial enactment or law to the Land;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection 11.6(b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a "site profile" under the *Environmental Management Act* or any regulations made under that act;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

11.7 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.



Lease No.:

File No.: 1405848

Disposition No.: 892824

MANAGEMENT PLAN SCHEDULE

(HELD ON FILE IN THIS OFFICE)

**END OF DOCUMENT**

MARINA & YC LEASE-R

**SAMPLE**



Ministry of Forests, Lands and Natural  
Resource Operations  
Suite 142 - 2080 Labieux Road  
Nanaimo, BC V9T 6J9

Telephone No: 250 751-7248  
Facsimile No: 250 751-7224

HST Registration No: R107864738

Your contact is: Gary Morley

Our file: 1405848

**NOTICE OF PROPOSED TENURE ISSUANCE**  
**(Applicant Required to Obtain Survey)**

Date: JUN 20 2011

COMMUNITY MARINE CONCEPTS LTD.  
4567 Blenheim St  
Vancouver, BC V6L 3A1

Attention: LACHLAN MACLEAN

Dear Sir:

**Re: Your Application for a Tenure over Crown Land**

Your application for a Crown land tenure for the construction and operation of a marina over:

That Part of District Lot 119, Esquimalt District, shown outlined in red on the sketch included in the attached licence of occupation, and containing approximately 1.74 hectares (the "Land")

has been accepted by us subject to the completion of certain matters and our final decision which will be made once the various matters described in this notice have been completed.

Because the Land has not yet been surveyed we propose to issue to you a licence of occupation for a two year term (the "Licence") over the Land, to allow you to commence construction and satisfy the survey requirements. As more specifically provided in the Licence, provided certain terms and conditions are satisfied, including the completion of required surveys, we will grant you a lease (the "Lease") for a term of 45 years commencing on the date the Lease is issued.



Please be aware that you will be required under the proposed Licence and Lease to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority which in any way affects your use and occupation of the Crown land and any improvements made to that land. You are responsible for, and encouraged to seek, your own legal advice with respect to those laws, bylaws, orders, directions, ordinances and regulations and you are also responsible for, and encouraged to seek, your own legal advice in regard to the terms and conditions set out in this Notice and the terms and conditions of the Licence and Lease.

### **Deadline for Satisfying Requirements to Proceed**

To proceed, you must sign two copies of the enclosed Licence documents and return them to us within 60 days from the date of this letter (or any such later date as we may allow in writing), together with each of the items listed below under the heading "Conditions". If you do not wish to proceed further with your application, please check the applicable box on the Response page and sign and return that page to us for our records.

#### **1. Conditions**

##### Monies Payable

You must deliver to us the monies payable as follows:

Licence Fee for the first year	*\$ 12,079.20
HST Total	\$ <u>1,449.50</u>
<b>Total Fees Payable</b>	<b>\$ <u>13,528.70</u></b>

\* denotes HST payable

Your cheque or money order must be payable to the Minister of Finance and be delivered to Suite 142 - 2080 Labieux Road Nanaimo, BC V9T 6J9. Please quote our file number when sending us your payment.

##### Security

You must deliver to us a security deposit in the amount of \$250,000.00 to guarantee the performance of your obligations under the Licence. Please see attached information regarding acceptable types of security. Upon issuance of a lease, the security deposit will be reduced to \$100,000.00.

Insurance

You must deliver to us a Province of British Columbia Certificate of Insurance for the insurance required to be maintained under the Licence. The Certificate must confirm the following:

That you have at your expense purchased the following insurance with insurers licensed to do business in Canada:

- (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured.
- (ii) Watercraft liability insurance on all owned or non-owned craft operated or used in the performance of this Agreement by you, in an amount not less than two million dollars (\$2,000,000) per occurrence, and such policy will include cross liability, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;

You must also ensure that all insurance required to be maintained by you under the Licence is primary and does not require the sharing of any loss by any of the Province of British Columbia insurers;

Confirmation re Survey

You must submit to us a letter from a British Columbia Land Surveyor confirming that you have hired the surveyor to prepare:

- (i) a boundary survey of the Land at your expense and in accordance with the requirements of the British Columbia Surveyor General and which is to be confirmed and approved by the Surveyor General; and
- (ii) a survey prepared by a British Columbia Land Surveyor showing that all improvements for the marina are within the boundaries of the Land.

Note that under the terms of the Licence, the issuance of the Lease is conditional upon these surveys being obtained within the Term of the Licence.



### Management Plan

You must submit to us a management plan that is acceptable to us for your proposed development and use of the Land. The Management Plan must include the information describing the construction and operation of the marina in sufficient detail to our satisfaction including but not limited to the following information: site improvements; servicing; summary of target clients; description of how the facilities will be rented; sample moorage agreement; public access; management of noise, vessel idling and other disturbances; and traffic control measures to ensure that vessels manoeuvring within the marina will not interfere with small craft transiting the area.

The enclosed tenure documents must **all** be signed in the spaces provided on the signature page by persons authorized to sign on behalf of the corporation. **Return all copies to us.**

Note that our final decision whether to proceed with issuance of the Licence to you will only be made when you sign the Licence documents and return them to us within 60 days from the date of this notice (or such later date as we may allow in writing), and when all of the other deliveries and conditions set out in this notice have been completed to our satisfaction.

## **2. Acknowledgments of the Applicant**

By deciding to proceed as outlined above, you represent, acknowledge and agree that:

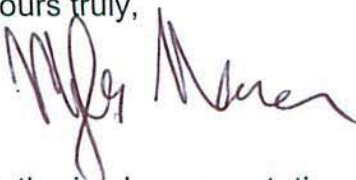
- (a) Your application for a Crown land tenure cannot be transferred to another person.
- (b) This Notice, the Licence and the Lease do not guarantee that:
  - (i) the Land is suitable for your proposed use,
  - (ii) the Land can be built on, or
  - (iii) there is access to the Land as required for your intended use.
- (c) The terms, conditions, acknowledgements and other agreements set out in this Notice will survive the signing and issuance of the Licence but if there is any contradiction with the terms of the Licence then the terms of Licence will prevail.
- (d) We do not have an obligation to issue the Licence to you, and you do not have the right to use or occupy the Land under the proposed Licence, until the Licence is signed on behalf of the Province and issued to you.

- (f) Time is of the essence and unless we agree in writing you must comply with the requirements set out in this notice within the periods stated.
- (g) You (or your authorized representative) have inspected the Land and are fully aware of its condition.
- (h) You have knowledge of all municipal and regional bylaws regulating the use and development of the Land.
- (i) Community Marine Concepts Ltd.:
  - (i) was incorporated under the laws of British Columbia under BC0736657, and is currently validly subsisting as a company under those laws;
  - (ii) has the legal capacity to acquire land and to carry out and perform all of its obligations under the proposed Licence and Lease; and
  - (iii) has taken all required corporate proceedings such that the Licence and Lease and all other documents delivered in accordance with this notice will be duly and validly authorized, executed and delivered by it.

### Freedom of Information

Personal information is collected under the *Land Act* for the purpose of administering Crown land. Information on your application, and if issued, your tenure, will become part of the Crown Land Registry, from which information is routinely made available to the public under freedom of information legislation.

Yours truly,



Authorized representative



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**Response to Notice of Proposed Tenure Issuance**

(Applicant Required to Obtain Survey)

File No. 1405848

Ministry of Forests, Lands and Natural Resource Operations  
Suite 142 - 2080 Labieux Road  
Nanaimo, BC V9T 6J9

Dear Gary Morley:

**Re: Application for Licence**

- ☐ I/We do not wish to proceed to obtain a Licence in accordance with the Notice dated \_\_\_\_\_ from the Ministry of Forests, Lands and Natural Resource Operations.
- ☐ I/We wish to proceed to obtain a Licence in accordance with the Notice dated \_\_\_\_\_ from the Ministry of Forests, Lands and Natural Resource Operations and enclose all copies of the Licence which I/We have signed.

DATED the \_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Applicant's signature/Applicant's  
representative's signature

\_\_\_\_\_  
Applicant's signature/Applicant's  
representative's signature

\_\_\_\_\_  
Print name of person signing

\_\_\_\_\_  
Print name of person signing