



BRITISH
COLUMBIA

Invoice

G.S.T.# R107864738

Province of British Columbia - Ministry of Agriculture and Lands
Ste 142 - 2080 LABIEUX ROAD
NANAIMO BC V9T 6J9
250 751-7276

Invoice Number: 517807
File Number: 1407751
Your Reference Number: 2380
Document Number: 106431
Billing Date: OCT-22-2009
Run Date: OCT-23-2009
DUE DATE: DEC-01-2009

CORPORATION OF THE TOWN OF LADYSMITH
410 ESPLANADE
PO BOX 220 STN MAIN
LADYSMITH BC V9G 1A2

Disposition No: 161661
Legal Description: Block C, District Lot 2016, Cowichan District
Location: COWICHAN DIST.
Purpose: COMMERCIAL

Do Not Send Cash in the Mail

Please complete and return the enclosed declaration.

Transaction Description

Annual Rent: Fixed By Agreement
GST

Transaction Amount

11,284.19
564.21

Interest will be charged on overdue accounts.

A service fee of \$20.00 will be charged for dishonoured cheques.

Your cancelled cheque is your receipt.

Invoice Amount: \$11,848.40

(Tear Along Perforated Line)

Client Number	17,521	Billing Date	OCT-22-2009	Due Date	DEC-01-2009	Invoice Amount	\$11,848.40
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Disposition No.: 161661

Please remit this Part when making Payment

**Please make Cheques Payable to:
Minister of Finance**

Invoice Number: 517807
File Number: 1407751

Province of British Columbia - Ministry of Agriculture and Lands
Ste 142 - 2080 LABIEUX ROAD
NANAIMO BC V9T 6J9

CORPORATION OF THE TOWN OF LADYSMITH

Please Indicate
Change of Address ☐

Amount
Paid:

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TOWN OF LADYSMITH

410 Esplanade, P.O. Box 220, Ladysmith, BC V9G 1A2

Municipal Hall 250-245-6400 • Fax 250-245-6411 • Info@ladysmith.ca • www.ladysmith.ca

Integrated Land Management Bureau
Coast Region

Our File: 2380-20

November 6, 2009

Mr. Myles Mana
Front Counter BC
Suite 142, 2080 Labieux Road
Nanaimo, BC V9T 6J9

*Consent to Sublease
enclosed 7 give to
Mg.*

Dear Mr. Mana:

Re: Town of Ladysmith - Marina Lease No. 106431

The Town of Ladysmith is the Lessee of Land and Improvements in Ladysmith Harbour under a Marina Lease No. 106431 (Provincial file no. 1407751).

Under the Lease, the Town uses the Land and Improvements solely for the purpose of conducting the business of a marina, which includes the provision of mooring and storage of boats, and operation of the Ladysmith Marine Society. The Town is in compliance with every provision of the Lease, including the covenants to pay the Province the fees stipulated under the Lease.

As stated, one of the purposes of the Lease is to provide for the operation of the Ladysmith Marine Society which operates the Marina. The Ladysmith Marine Society is a non-profit society incorporated under the Society Act (British Columbia) and has operated the Town's community Marina for a number of years.

In order to facilitate the financing of the marina expansion within the Lease area, in accordance with the terms of the Lease, the Town and the Ladysmith Marine Society have agreed that the optimal approach would be to incorporate a wholly owned subsidiary of the Town to hold a sublease and borrow the monies necessary for the expansion. This would in no way involve any mortgage or other encumbrance against the Lease itself. It would, however, enable the expansion of the Marina to occur. This is important for economic development of Ladysmith, tourism development, job creation and the provision of an important community marina service.

Accordingly, the Town respectfully requests the consent of Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Agriculture and Lands, to sublet the Lease to DL2016 Holding Corporation.

.../2

Cowichan

The acquisition of the shares of DL2016 Holding Corporation by the Town of Ladysmith has been approved by the Inspector of Municipalities for the purpose of enabling the Town's holding company to hold the sublease and borrow the funds necessary to carry out the expansion of the Marina.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Rmalli'.

Ruth Malli
City Manager

Biss, Barbara ILMB:EX

From: Ruth Malli [rmalli@lady-smith.ca]
Sent: Friday, November 27, 2009 2:38 PM
To: Mana, Myles ILMB:EX
Cc: Biss, Barbara ILMB:EX
Subject: RE: Copy of sub-lease
Attachments: License Agreement - FINAL (00118737).PDF; Management and Operating Agreement - FINAL (00118736).PDF; Community Marina Lease - FINAL (00118727).PDF

Sorry for the delay! Thanks! R

From: Mana, Myles ILMB:EX [mailto:Myles.Mana@gov.bc.ca]
Sent: November 27, 2009 9:53 AM
To: Ruth Malli
Cc: Biss, Barbara ILMB:EX
Subject: Copy of sub-lease

Hello Ruth. I just checked through my in-box and haven't received a copy of the marina water lot sublease agreement between the Town and DL 2016 Holding Corp. If you could have a copy sent to Barbara Biss at our office, with a .cc to me that would be great. Barb is our Portfolio Administrator who is taking care of that request. I've cc'd Barb on this note, so you'll have her e-mail address.

Thanks,

Myles Mana
Manager, Crown Lands and Resources

Integrated Land Management Bureau

Regional Operations, Coast

Nanaimo, BC

ph. 250-751-7234
fax. 250-751-7224

MANAGEMENT AND OPERATING AGREEMENT

BETWEEN

DL 2016 HOLDINGS CORPORATION

AND

LADYSMITH MARITIME SOCIETY

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SCHEDULE A

Jun 29, 2009 7:39 AM/K

09\0517\000\DOCManagement and Operating Agreement - Jun 1, 09 (00099887-2).DOC09\0517\000\DOCManagement and Operating Agreement (00118723).DOC

**LADYSMITH COMMUNITY MARINA
MANAGEMENT AND OPERATING AGREEMENT**

THIS AGREEMENT dated for reference July 1, 2009,

BETWEEN:

DL 2016 HOLDINGS CORPORATION

Incorporation No. BC0857041
500 – 221 West Esplanade
North Vancouver, BC V7M 3J3
("DL 2016")

AND:

LADYSMITH MARITIME SOCIETY

(Incorporation No: S-20456) a non-profit Society organized under the
Society Act of British Columbia
P.O. Box 1030
Ladysmith, British Columbia V9G 1A7

("LMS")

GIVEN THAT:

- A. DL 2016 is the sub-lessee under a sub-lease of the License Area of the Water Lot from the Town of Ladysmith, which holds the Head Lease of the Water Lot;
- B. The Town of Ladysmith, which holds all issued shares of DL 2016 has entered into a Memorandum of Understanding with LMS dated the 15th day of October, 2008, which has established a principled relationship to govern the parties ("MOU");
- C. LMS has agreed to be accountable for the planning, development, expansion, operation, marketing, maintenance, supervision and management of the Facility to contribute to the vision shared by DL 2016, the Town of Ladysmith, and LMS in accordance with the MOU principles and the terms and conditions in this agreement (the "Services");
- D. DL 2016 has agreed to grant LMS the License for use and occupation of the Facility for the Term;
- E. DL 2016 and LMS wish to adhere to the principles and terms and conditions set out in the MOU, which include the following:

Jun 29, 2009 7:39 AM/K

- (a) the parties wish to establish a community marina that will be a true community asset welcoming citizens to the waterfront of Ladysmith Harbour by virtue of public access to the Marina and by virtue of a broad variety of programs operated by LMS to be operated within the area of Ladysmith Harbour within the License Area;
- (b) the parties wish the marina to be operated on a basis that will balance affordability for local boat owners with an adequate financial return to DL 2016's shareholder, the Town of Ladysmith;
- (c) the parties acknowledge the importance of marine tourism and the importance of the development by LMS of dedicated dock area and other facilities for this purpose, and the parties will have joint responsibility for marketing the community marina for the purposes of enhancing and expanding marine tourism;
- (d) significant improvements to and expansion of the community marina are desired, and so the certainty of the 20 year Term of the Sub-lease, the License and this Agreement reflect the capital financing requirements;
- (e) timely expansion of the License Area to accommodate additional moorage and facilities including walkways, eco-initiatives, parking, administrative functions, and other marine functions, is desirable in the near future;
- (f) the Sub-Lease, License and this Agreement must be consistent with the Head Lease;

THEREFORE in consideration of the payment by DL 2016 to LMS of TEN (\$10.00) DOLLARS, the premises and mutual covenants in this agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by both parties), DL 2016 and LMS covenant and agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this agreement:

- (a) "Affiliate" means any corporation affiliated with LMS, as defined in the *Company Act* (British Columbia);
- (b) "Best Efforts" means, in relation to the performance of an obligation under this agreement, timely efforts that are sensible and practical in a commercial context and involve the exercise of sound judgment, having regard to all of the relevant circumstances;

- (c) **"Business Day"** means any day except Saturday, Sunday and a day that is a statutory holiday in British Columbia;
- (d) **"Commencement Date"** means July 1, 2009;
- (e) **"Costs"** means the total, without duplication, of all costs incurred for the planning, development and expansion and for the continued management, marketing, operation, supervision, maintenance, repair, replacement and preservation of the Facility, including the costs of the following:
 - (i) repair and maintenance;
 - (ii) rental or purchase of signs and equipment, supplies, lighting, security protection, sanitary control, traffic control, refuse removal, removal of snow and ice, painting and otherwise maintaining the Facility;
 - (iii) wages and compensation paid for employees or agents of LMS including payments for workers' compensation, unemployment insurance, vacation pay, Canada Pension Plan and fringe benefits whether statutory or otherwise to the extent that such wages and compensation are directly attributable to the management, marketing, operation, maintenance, repair, replacement or preservation of the Facility;
 - (iv) service contracts with independent contractors in respect of the planning, development, expansion, management, marketing, operation, maintenance, repair, replacement or preservation of the Facility;
 - (v) operating, maintaining, repairing and replacing security systems, plumbing, electrical, heating, water, sewer, air-conditioning, refrigeration, sprinkler and other utility systems and services in respect of the Facility including the automated systems;
 - (vi) insurance coverage in respect of the Facility obtained from time to time pursuant to this agreement;
 - (vii) supplying electricity, water, sewer services, natural gas and other fuel and utility services to the Facility;
 - (viii) accounting costs and audit fees incurred by LMS in connection with management and operation of the Facility;
 - (ix) all rates, charges, duties, assessments and taxes that may be levied, imposed, rated, charged, or assessed against or in respect of the Facility, including, without limitation, Social Service tax, Goods and Services Tax on the Costs and other taxes and assessments, both general and

special, ordinary and extraordinary and foreseen or unforeseen levied, imposed, rated, charged or assessed by Statutory Authorities;

- (x) costs of promoting and advertising the Facility;
- (xi) all tax which is required to be paid to any government authority on the License Area and Improvements and on goods and services which are supplied or provided to or for the benefit of the Facility;
- (xii) the License fee;
- (f) **"Equipment"** means the chattels and fixtures in the License Area;
- (g) **"Facility"** means Ladysmith Community Marina, and includes the License Area and the Improvements;
- (h) **"Force Majeure"** means anything beyond the reasonable control of a party, including an act of God, fire, flood, explosion, riot, war, labour disputes, strikes, rebellion, sabotage, vandalism and atomic or nuclear incidents, but excluding the impact of the financial circumstances of a party upon its ability to perform this agreement;
- (i) **"GAAP"** means generally accepted accounting principles in Canada from time to time;
- (j) **"Head Lease"** means the Crown lease of the Water Lot from the Province of British Columbia to the Town of Ladysmith for a term commencing December 1, 1999 and terminating November 30, 2029, which lease is dated for reference December 1, 1999;
- (k) **"Improvement"** means any structure situate on, over or under the Water Lot;
- (l) **"License"** means the license of the License Area of the Water Lot granted by DL 2016 to LMS on July 1, 2009, a copy of which is attached as Schedule A;
- (m) **"License Area"** means the portion of the Water Lot that is subject to the License, a sketch plan of which is shown on Schedule B;
- (n) **"Manage"** means to provide the Services, and, without limitation, to manage, operate, market, supervise, maintain and keep safe and secure and includes without limitation responsibility for the planning, development and expansion of the Facility and the day to day management, marketing and operation of the Facility and all other activities required to manage, operate, market, maintain and keep safe and secure the Facility in accordance with Prudent Management Practice;

- (o) **"Prime Rate"** means the commercial prime rate posted from time to time by the Royal Bank of Canada, Main Branch, Vancouver, B.C. for its best commercial clients;
- (p) **"Prudent Management Practice"** means the practices, methods and acts including those related to availability, safety, cost and business conduct generally accepted at the relevant time by marinas in British Columbia;
- (q) **"Revenue"** means revenue generated from the operation of the Facility excluding any revenue received directly by DL 2016 from sponsorships, advertising, promotions or other similar activities related to the community use of the Facility including program advertising and temporary signs displayed in conjunction with such a community use from time to time;
- (r) **"Services"** has the meaning ascribed to it in Recital C;
- (s) **"Sublease"** means the sublease agreement between the Town of Ladysmith and DL 2016 dated for reference July 1, 2009, a copy of which is attached as Schedule C;
- (t) **"Term"** means the term of this agreement as established under Section 10;
- (u) **"Water Lot"** means the water lot leased by the Province to the Town under the Head Lease.

Interpretation

1.2 In this agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this agreement;
- (d) if a word or expression is defined in this agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;

- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) all provisions are to be interpreted as always speaking;
- (h) reference to a "party" is a reference to a party to this agreement and to their respective successors, permitted assigns, trustees, administrators and receivers; and
- (i) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided.

- 1.3 Where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

2.0 APPOINTMENT OF LMS

Appointment of LMS

- 2.1 Subject to the terms and conditions of this agreement, DL 2016 appoints, approves, and authorizes LMS to Manage the Facility on behalf of DL 2016 for the Term in accordance with the terms and conditions of this agreement.

Acceptance by LMS

- 2.2 LMS hereby accepts the appointment to Manage the Facility on behalf of DL 2016 at LMS' sole risk, cost and expense for the Term in accordance with the terms and conditions of this agreement.

Application of Revenue

- 2.3 Subject to section 14.0, LMS will apply all Revenue generated during the Term:
- (a) firstly, to payments to DL 2016 under section 14.5(c), provided that this paragraph (a) is of no force and effect when section 14.0 is no longer of force and effect under section 14.10;
 - (b) secondly to payment of Costs; and
 - (c) thirdly any surplus to be retained by LMS in full and final satisfaction of any claims LMS may have for compensation under this agreement, if the surplus is used only for Management of the Facility.
- 2.4 Without limiting the generality of the foregoing LMS covenants and agrees that it will not seek reimbursement, compensation or payment except in respect of damages

sustained as a result of a breach by DL 2016 of any term or provision of this agreement to be expressly observed or performed by DL 2016 and other than as set out in this agreement for any Costs incurred by LMS in the fulfillment of its duties, obligations and covenants under this agreement even if Costs exceed Revenue.

- 2.5 Without limiting sections 2.3 and 2.4, LMS will be entitled to Revenue from the Facility during the Term, even if payment is received after the Term and LMS will not be entitled to Revenue from activities at the Facility held after the Term, even if payment for the activities is received during the Term.
- 2.6 At the expiry or earlier termination of this agreement, DL 2016 and LMS will make payments to each other as necessary for these purposes.

Interest

- 2.7 All amounts overdue and unpaid by LMS to DL 2016 bear interest at Prime Rate, plus 4%, compounded annually.

3.0 DUTIES, OBLIGATIONS AND COVENANTS OF LMS

Operation

- 3.1 LMS must Manage the Facility as a marina for the Term so as to provide a full range of marina uses, on and subject to the terms and conditions set out in this agreement and consistent with the terms and conditions of the Head Lease.
- 3.2 LMS must pay all Costs incurred in respect of the Facility as same fall due irrespective of whether there is sufficient Revenue available to pay the Costs.

Operating Duties and Obligations

- 3.3 In addition to the other covenants and obligations to be performed by LMS hereunder, LMS covenants and agrees that it will, at all times during the Term:
 - (a) Manage the Facility in a lawful and orderly manner in full compliance with all applicable federal, provincial, municipal and other laws, bylaws (including bylaws of the Town of Ladysmith), regulations and statutes;
 - (b) Manage the Facility so that no act or thing whatsoever may be done, permitted or omitted to be done upon the Facility which may be or may become a nuisance, damage, or unlawful disturbance to DL 2016, or to the owners or occupiers of any neighbouring property;
 - (c) Manage the Facility substantially in accordance with the provisions of this agreement and other relevant agreements entered into between LMS and DL 2016 in respect of the Facility, the decisions and determinations and orders of

the arbitrators pursuant to this agreement, and Prudent Management Practice and otherwise to the standard of Prudent Management Practice. LMS will exercise that standard of care and diligence that is consistent with Prudent Management Practice;

- (d) subject to reasonable security provided by LMS in respect of privately owned assets, including vessels, in the marina, consistent with prudent management practice applied in British Columbia marinas, ensure that, unless prevented by any statutory authorities having jurisdiction or for reasons of repair and maintenance, and except as set out in Section 3.3, the Facility is open and available to the public during the Term in accordance with the terms and conditions of the Head Lease;
- (e) diligently encourage, promote and carry on a marina operation in the Facility;
- (f) not release, compromise, assign or transfer any claim, right or benefit of DL 2016;
- (g) not do or suffer or permit to be done any act, activity or thing which may render void or voidable, or which may conflict with the requirements of any policy or policies of insurance in respect of the License Area, Improvements and Facility of which LMS is aware; and
- (h) not do or suffer or permit to be done any act, activity or thing to encumber the Facility, except that LMS may use the Facility assets to secure debt if at the time DL2016 is not indebted to any person as reported under Section 14.5(a). Without limiting the generality of the foregoing LMS will keep the Facility free of any builder's liens which relate to the actions of LMS or any party for which LMS is responsible at law. In the event that any such lien or a claim is filed in regard to work done or labour or material supplied to the Facility or so claimed or alleged, LMS will discharge same within fifteen (15) days after request made by DL 2016 to LMS. LMS will indemnify and save harmless DL 2016 from and against all costs, damages, expenses, actual lawyers' costs and fees arising from or relating to any such builder's liens filed or registered against the Facility or made or claimed against DL 2016 in connection with the Facility.

General

3.4 In addition to the other covenants and obligations to be performed by LMS hereunder, LMS covenants and agrees that it will, at all times during the Term:

- (a) maintain its corporate existence under the laws of the Province of British Columbia and remain duly qualified to do business in British Columbia and in the Town of Ladysmith;
- (b) perform promptly and safely all of its obligations under this agreement; and

- (c) be just and faithful in the performance of its obligations under this agreement and in its dealings with DL 2016 under this agreement. Without limiting the generality of the foregoing, LMS shall make full, frank and immediate disclosure to DL 2016 of all matters coming to the attention of LMS or any of its officers, directors employees, agents, servants or consultants in relation to the Facility and this agreement which are material and adverse to the interests of DL 2016.

4.0 MAINTENANCE AND REPAIRS

- 4.1 In addition to the other covenants and obligations to be performed by LMS hereunder, LMS covenants and agrees that it will, at all times during the Term:

- (a) assume sole responsibility for the condition, maintenance, repair and replacement of the Facility in a state of good repair to the same extent and in the same manner as a prudent owner would do, except only for reasonable wear that does not materially affect the operation of the Facility, so that at all times throughout the Term and upon the termination of this agreement the Facility remains a fully operating and functioning marina facility. All repairs will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Facility and the Improvements and will meet the lawful requirements of all Statutory Authorities. LMS acknowledges that DL 2016 will not be obliged to repair, maintain, replace or alter the Facility or any part thereof or to supply any services or utilities to the Facility;
- (b) except where required by emergency, not make any major repairs or replacements that constitute capital outlays under the generally accepted accounting principles and that are made by LMS using funds borrowed by DL 2016 to any part of the Facility and not make any major alterations or Improvements that constitute capital outlays under generally accepted accounting principles without first submitting to DL 2016:
 - (i) such indemnification against liens, costs, damages and expenses as DL 2016 reasonably requires; and
 - (ii) evidence satisfactory to DL 2016 that LMS has obtained, at LMS' expense, all necessary consents, permits, licenses and inspections from all governmental and regulatory authorities having jurisdiction.

All such work, repairs, replacements, alterations or Improvements by LMS to the Facility, whether required to be approved by DL 2016 or not, will be performed:

- (iii) at the sole cost of LMS;

- (iv) in a good and competent manner;
 - (v) subject to the reasonable inspection by DL 2016.
- (c) not do, suffer or permit to be done any work, replacements, alterations or Improvements to the Facility which may weaken or endanger the structure or adversely affect the condition or operation of the Facility or diminish the value thereof;
- (d) without limiting the generality of Section 4.1(a), promptly upon notice by DL 2016 (without any requirement by DL 2016 to give notice), make and do all repairs and maintenance which LMS is obliged to make and do pursuant to this agreement. If LMS does not complete such work within thirty (30) days of being given said notice or where such work, because of its nature, would require more than thirty (30) days to complete has not, within fifteen (15) days of being given said notice, commenced such work and thereafter promptly, effectively and continuously proceeded with the work to completion, DL 2016 will be entitled, in addition to any other remedies available to DL 2016, to make and do such repairs and maintenance at the sole cost and expense of LMS and to deduct the cost of the work from any monies due and owing to LMS by DL 2016;
- (e) without limiting the generality of the foregoing, all maintenance must be carried out to all standards specified in manufacturer's warranties and specifications, if any, and to industry standards;
- (f) LMS must ensure that, at the end of the Term, the Facility is in a condition of repair such that, while it will be an aged facility, it is clean, in good condition and repair, reasonable wear and tear excepted, and its structure, building systems and Equipment will remain functional and usable for their intended purposes without the requirement of capital repairs, other than those which subsequently arise in the ordinary course of operation of the Facility.
- 4.2 Without limiting the above, LMS must ensure that the Equipment is inspected and maintained to a standard, and, if necessary to meet this obligation, LMS must replace the Equipment during the Term at its own cost.

5.0 LMS'S FURTHER RESPONSIBILITIES

LMS's Discharge of Liabilities

- 5.1 LMS must discharge all liabilities incurred by it for labour, Equipment, materials or services used or reasonably required for use, in the performance of the Services, on or before the date upon which each becomes due, except those which LMS has contested in good faith, in which case LMS must pay the disputed amount into court or otherwise secure the payment of the disputed amount.

Payment of Workers

- 5.2 Workers employed by LMS must be paid in full at intervals not less frequently than required by applicable enactments.

Workers Compensation

- 5.3 On or before the Commencement Date, LMS must provide DL 2016 satisfactory written evidence of compliance by LMS with all requirements under the *Workers Compensation Act*, including registration with, and payments of assessments due, to the Workers Compensation Board of British Columbia. Without affecting the rest of this section, DL 2016 may at any time require LMS to provide evidence of compliance with this section.

Liens

- 5.4 LMS must not permit any builders' liens for work, labour, services or material ordered by LMS or for the cost of which LMS may be in any way obligated during the Term of this agreement to attach to the Facility or the common property of the Facility.
- 5.5 If a lien, claim of lien or related judgment or certificate of pending litigation is filed against the Facility, LMS within 30 days must procure its discharge by payment or by giving security or in such other manner as is or may be required or permitted by law.
- 5.6 LMS acknowledges that DL 2016 will file against the title to the Facility a lien notice pursuant to section 3 of the *Builders Lien Act*.

Record Keeping

- 5.7 In addition to the other covenants and obligations to be performed by LMS hereunder, LMS covenants and agrees that it will, at all times during the Term turn over to DL 2016, forthwith upon the expiration or termination of this agreement, all records and accounts in respect of repairs, replacements, alterations or Improvements throughout the Term with respect to the operation of the Facility. This obligation will survive any expiration or termination of this agreement.
- 5.8 During the Term, whenever DL2016 is indebted to a person as reported under Section 14.5(a), LMS must retain a qualified and licensed auditor to prepare annual audited financial statements respecting the Facility operations under generally accepted accounting principles, and LMS will provide DL 2016 with copies of its audited annual financial statements under this Section within 30 days of the audit being complete.

6.0 REPRESENTATIONS AND WARRANTIES

LMS's Representations and Warranties

6.1 LMS represents and warrants to DL 2016 that:

- (a) LMS is a society, duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) LMS has the corporate power and capacity to enter into this agreement and to comply with every term and condition in this agreement;
- (c) the observance and performance of this agreement by LMS will not constitute a breach by it or a default by it under:
 - (i) its constating documents; or
 - (ii) any contract or agreement to which it is currently a party.

DL 2016's Representations and Warranties

6.2 DL 2016 represents and warrants to LMS that:

- (a) DL 2016 is a corporation, duly organized, validly existing and legally entitled to carry on operations in British Columbia; and
- (b) the observance and performance of this agreement by DL 2016 will not constitute a breach by it or a default by it under any contract or agreement to which it is currently a party.

7.0 INDEMNITY AND INSURANCE

Non-liability of DL 2016

- 7.1 DL 2016 will not be liable or responsible in any way for any loss or injury that may be sustained by LMS or any loss or injury sustained by any employee, agent or independent contractor of LMS or any other person who may be upon the Facility, or for any loss of or damage or injury to property belonging to or in the possession of LMS or any employee, agent or independent contractor of LMS or any other person except loss, damage and injury directly resulting from the negligence or willful misconduct of DL 2016.

Indemnification

7.2 Without limiting any other obligation of LMS under this agreement or otherwise, LMS will indemnify and save harmless DL 2016, their officials, officers, employees, servants, agents and those for whom they are in law responsible, from and against any and all liabilities, damages losses, costs, expenses, (including lawyer's fees and litigation expenses) actions, causes of actions, claims, suits and judgments which DL 2016 may incur or suffer or be put to by reason of or in connection with or arising from:

- (a) any breach, violation or non-performance by LMS of any obligation contained in this agreement to be observed or performed by LMS;
- (b) any loss of or damage or injury to property or any loss or injury to any person, including death resulting at any time therefrom, occurring in or about the Facility except loss, damage and injury resulting directly from the negligence or wilful misconduct of DL 2016; and
- (c) any wrongful act or neglect of LMS, its employees, agents, independent contractors, in or about the Facility.

Should DL 2016 be made a party to any litigation commenced by or against LMS, then LMS will protect, indemnify and hold DL 2016 harmless and will promptly pay all costs, expenses and legal fees (on a solicitor and own client basis) incurred or paid by DL 2016 in connection with such litigation upon demand.

Survival of Indemnification

7.3 LMS' obligations under Section 7.2 will survive any expiration or termination of this agreement.

8.0 INSURANCE

LMS Insurance

8.1 LMS will obtain general comprehensive liability insurance (including legal and employer's liability and contractual liability to cover the responsibilities assumed under this agreement generally) containing the following terms and conditions:

- (a) providing for the minimum combined single limit of not less than \$5,000,000 or such other amount as DL 2016 may reasonably require for each occurrence or accident;
- (b) without limitation, providing coverage for damage because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of injury to or destruction of property caused by any

occurrence or accident arising out of any activities in connection with the Facility or its operation;

- (c) the policy will name DL 2016 and the town of Ladysmith as an additional named insured with a cross liability clause and, if required, extend to cover the employees of the insured. The policy will contain a clause providing that the inclusion of more than one insured will not in any way affect the rights of any insured as respects to any claim, demand, suit or judgment made against any other insured;

with reputable insurers and upon terms and in amounts, as to deductibles and otherwise, satisfactory to DL 2016 acting reasonably from time to time. The cost of premiums and deductibles for each and every such policy will be paid by LMS. LMS will obtain from the insurers under such policies, undertakings to notify DL 2016 in writing at least thirty (30) days prior to any cancellation, expiry or amendment thereof. LMS agrees that if LMS fails to take out or keep in force such insurance, DL 2016 will have the right to do so and to pay the premium therefor and deduct that amount from any monies due and owing to LMS by DL 2016. LMS will provide DL 2016 with copies of all policies, or certificates of such insurance policies in lieu thereof as described herein and each renewal and replacement thereof and each endorsement thereto. LMS will deliver to DL 2016 notice of the continuation of such policies not less than ten (10) days prior to their respective expiry dates.

9.0 TAXES

LMS to Pay Taxes

- 9.1 LMS must pay all property taxes, social services tax under the *Social Services Tax Act*, customs duties and excises under the *Excise Tax Act* and other taxes payable in accordance with any applicable laws and enactments with respect to any component of the Services.
- 9.2 LMS shall collect and remit any GST eligible in respect of the operation of the Facility and provision of the Services as and when required by the *Excise Tax Act (Canada)* and shall indemnify and hold DL 2016 harmless from and against any GST and other taxes which LMS fails to remit as and when due, and from and against any penalties that may be levied against DL 2016, and any costs in respect thereof.

10.0 TERM

Term

- 10.1 Subject to Section 11.0, the term of this agreement begins on the Commencement Date and continues until November 30, 2029.

- 10.2 If LMS is not in default under this Agreement at the time of termination, and if LMS has complied with this Agreement prior to the time of termination, and if the Head Lease has been extended or renewed, this Agreement is renewed for an extended term consistent with the extended or renewed Head Lease, upon LMS delivering to DL 2016 written notice of its intention to renew no sooner than six months and no later than three months before the expiration of this Agreement or any renewal of it. Any renewals will be on the same terms and conditions except that LMS' right of renewal is reduced accordingly.

11.0 DEFAULT AND TERMINATION

Termination Without Cause

- 11.1 This Agreement may be terminated by mutual agreement of the parties made in writing.

No Further Claim

- 11.2 LMS covenants and agrees that, upon termination or expiration of this agreement, except in respect of damages sustained as a result of a breach by DL 2016 of any term or provision of this agreement to be expressly observed or performed by DL 2016:
- (a) LMS will not have or commence any right of action whatsoever, including any direct or indirect right of action at law or in equity, for:
 - (i) any losses sustained by LMS including capital and operating costs incurred by LMS in respect of the Facility; and
 - (ii) any consequential damages sustained by LMS; and
 - (b) DL 2016 will not be obligated to compensate LMS in any manner whatsoever.

Transfer of Information and Licences

- 11.3 Subject to renewal under s. 10.2, at the expiry or earlier termination of this agreement, LMS must:
- (a) use its Best Efforts to facilitate an orderly transfer of a going concern operation to DL2016. and
 - (a) at DL 2016's option, assign to DL 2016 all Facility user agreements for any uses of the Facility.

LMS Default

- 11.4 The occurrence of any one or more of the following events by or in respect of LMS shall constitute a "Default" by LMS under this agreement:

- (a) if an order shall be made or a resolution passed for the winding-up of LMS or a petition shall be filed for the winding up of LMS unless the same is being contested in good faith and in connection therewith, dismissed, stayed, or withdrawn within sixty (60) days of LMS receiving notice or otherwise having knowledge of the institution thereof;
- (b) if LMS shall commit any act of bankruptcy or shall become insolvent or shall make an assignment or proposal under the applicable bankruptcy legislation of any jurisdiction or a general assignment in favour of its creditors or a bulk sale of its assets;
- (c) if any application is made by or with respect to LMS under the *Companies Creditors Arrangement Act* (Canada) or similar legislation or if a proceeding is instituted for the winding up of LMS or a petition in bankruptcy is filed or presented against LMS under a bankruptcy or similar act and if in any such case such application, proceeding or petition is not dismissed, stayed or withdrawn within sixty (60) days of LMS receiving notice or otherwise having knowledge of the institution thereof, or a receiver or receiver LMS is appointed of any part of the assets of LMS;
- (d) subject to Subsections 11.4(e) and (f) herein, if LMS is in breach of any term, provision or obligation in this Agreement and such breach has not been cured within thirty (30) days of being given notice specifying the breach, except in the case of a breach under section 8.1, in which case no notice is required;
- (e) subject to Subsection 11.4(f) herein, if LMS is in breach of any term, provision or obligation hereunder, other than a breach under Section 3.3(d) or (g) or Section 8.1, and such breach because of its nature would reasonably require more than thirty (30) days to cure and LMS has not within thirty (30) days of being given notice specifying the breach commenced curing the breach and thereafter promptly, effectively and continuously proceeded with the curing of the breach to completion;
- (f) if an arbitration under Section 12 is commenced with respect to a breach alleged in a notice from DL 2016, other than a breach under Section 3.3(d) or (g) or Section 8.1, and within thirty (30) days of the determination by the arbitrator that LMS is in breach of a term, provision or obligation hereunder the breach has not been cured or where such breach because of its nature would reasonably require more than thirty (30) days to cure, LMS has not, within fifteen (15) days of the determination by the arbitrator commenced curing the breach and thereafter promptly, effectively and continuously, proceeded with the curing of the breach to completion.

12.0 DISPUTE RESOLUTION

Parties Representatives

- 12.1 Each party will, during the Term appoint a person as its representative for the purpose of coordinating all matters and obligations of the parties as required by this agreement. Each party will advise the other party in writing of the name, telephone number and fax number of its representative and each party may change its representative from time to time by notice in writing to the other. At the time of entering into this agreement, LMS' contact person is David Ehrismann, telephone (250) 245-0109, facsimile: (250) 245-0108, and DL 2016's contact person is Ruth Malli, telephone (250) 245-6401, facsimile: (250) 245-6411.

Mediation

- 12.2 If any dispute arises between DL 2016 and LMS with respect to this agreement, then, within seven (7) days of notice from one party to the other, or such time as agreed to by both parties, the representatives of the parties will participate in good faith in order to resolve and settle the dispute. In the event that such representatives are unable to resolve the dispute within fourteen (14) days of the first written notice, or such other time period agreed to by both parties, each party will appoint a senior representative that has not been previously involved in the manner in dispute, to attempt to resolve the dispute. Each senior representative will meet and agree upon the selection of a qualified independent mediation practitioner versed in the resolution of commercial disputes in order to assist them within the forty-five (45) day time frame set out below. Each party will bear their own costs of the formal mediation process.

Arbitration

- 12.3 If the matter is not settled through the process in Section 12.2 within forty-five (45) days of the notice of the dispute being given unless the parties mutually agree to extend the forty-five (45) day period, the matter will be referred to a single arbitrator pursuant to the *Commercial Arbitration Act* of British Columbia. The single arbitrator will be selected by agreement of the parties or failing agreement of the parties a person shall be selected as follows:
- (a) within fourteen (14) days of written notice from one party to the other of the intention to arbitrate, each party shall appoint an arms-length representative, ("Appointment Agents") who will, pursuant to this Agreement be given the authority to meet and agree upon the selection and appointment of a single arbitrator;
 - (b) if within the fourteen (14) days either party fails or refuses to appoint its Appointment Agent, or if the Appointment Agents fail to appoint a single arbitrator within ten (10) days thereafter then a single arbitrator will be

appointed pursuant to the provisions of the *Commercial Arbitration Act* of British Columbia.

12.4 A single arbitrator will be an experienced professional versed in the matters in dispute.

13.0 INDEPENDENT CONTRACTOR, LABOUR ISSUES AND ENVIRONMENTAL ISSUES

Agreement for Services

13.1 This is an agreement for the performance of the Services and LMS is engaged as an independent contractor for the sole purpose of providing the Services. Neither LMS nor any of its employees or contractors is engaged by DL 2016 as an employee or agent of DL 2016. LMS is solely responsible for any and all remuneration and benefits payable to its employees and contractors, and all payments and deductions required to be made by any enactment, including those for Canada Pension Plan, Employment Insurance, Workers Compensation or Income Tax. This Agreement does not create a joint venture, partnership or agency, and LMS has no authority to represent or bind DL 2016 in any way.

Environmental Provisions

13.2 LMS must:

- (a) permit DL 2016 to investigate the Facility and LMS' records at any time and from time to time to verify whether LMS is in compliance with all environmental laws
- (b) not store, dispose, treat, use, release or transport any environmental contaminants on or from the Facility in violation of any environmental laws nor knowingly permit such;
- (c) provide DL 2016 with all necessary authorizations in order for DL 2016 to make inquiries about LMS' compliance with environmental laws.

14.0 FINANCING CAPITAL EXPENDITURES

Capital Improvements

14.1 Without limiting section 3.0, LMS will design, finance, construct, install and commission capital improvements it considers are required for the Management of the Facility, where "capital" refers to outlays of a capital nature under the generally accepted accounting principles.

- 14.2 LMS may request funds from DL 2016 for capital expenditures related to the Management of the Facility by delivering to DL 2016 at least sixty days before the date the funds are required:
- (a) a written request for the funds; and
 - (b) copies of the drawings, specifications and a financial statement of capital project costs for the proposed major capital work, alteration or Improvement in respect of which the funds are required.
- 14.3 On receipt of a request from LMS under section 14.2, DL 2016 must within fifteen days consider approval of the funding of the major capital work, alteration or Improvement and inform LMS of its decision in writing.
- 14.4 If DL 2016 approves the funding under section 14.3, DL 2016 must use Best Efforts to borrow or otherwise obtain the monies required to fund the LMS request.
- 14.5 On the first day of every month during the Term until the date this section 14.0 no longer has force and effect in accordance with section 14.10, DL 2016 must deliver to LMS a statement which sets out:
- (a) the amount of debt, debt servicing costs or any other amount owing as of that date by DL 2016 to a lender or other person in respect of the funds provided by DL 2016 to LMS under this section 14.0;
 - (b) the monthly payment, if any, due and owing by DL 2016 to a lender or another person for principal and interest in respect of a loan or other assistance related to the funds provided by DL 2016 to LMS under this section 14.0; and
 - (c) an invoice from DL 2016 to LMS for the amount set out in the statement under paragraph (b).
- 14.6 LMS must pay DL 2016 the amount set out in the invoice referred to in section 14.5(c) within thirty days of receipt of same.
- 14.7 LMS may, in its sole discretion, elect to pay to DL 2016 all or part of the amount set out in the statement referred to in section 14.5(a), and if LMS so elects, DL 2016 must immediately use the payment to reduce the amount set out in the statement referred to in section 14.5(a).
- 14.8 The amount payable by LMS to DL 2016 under section 14.5(c) is a debt due and owing by LMS to DL 2016 and, without limiting any other provision of this agreement, DL 2016 may collect the debt by any means available to it under the law and section 2.7 applies to the debt.
- 14.9 Despite section 16.3, the Improvements defined in section 16.3 may at any time be used for collateral security for any borrowing by DL 2016.

- 14.10 This section 14.0 has no force and effect as of the date LMS has paid DL 2016 sufficient monies under this section 14.0 to permit DL 2016 to repay any loan or other obligation it has incurred in relation to the amount set out at any time in a statement under section 14.5(a).

15.0 FORCE MAJEURE

Force Majeure

- 15.1 Any delay in performance by, or failure to perform by, LMS under this agreement does not constitute a Default, or give rise to any claim by DL 2016 against LMS other if and to the extent caused by Force Majeure. If performance of this agreement is, in the reasonable opinion of LMS, made impossible by Force Majeure, then LMS must give notice to DL 2016 to that effect and DL 2016 is entitled, in its sole discretion, to do either of the following:
- (a) give notice of termination of this agreement, effective immediately; or
 - (b) require LMS to continue to perform this agreement with such changes as are required by the Force Majeure and as are agreed upon by the parties.

16.0 GENERAL PROVISIONS

Notices

- 16.1 Except in the case of an emergency, when notice may be given by telephone with later confirmation in writing, any notice which may be or is required to be given under this agreement shall be in writing and either be delivered personally or sent by fax or sent by mail, addressed as follows:
- (a) To DL 2016:

DL 2016 HOLDINGS CORPORATION
 500 – 221 West Esplanade
 North Vancouver, BC V7M 3J3

 Attention: Ruth Malli
 Fax: (250) 245-6411
 - (b) To LMS

LADYSMITH MARITIME SOCIETY
 (Incorporation No: S-20456) a non-profit Society organized under the
Society Act of British Columbia

P.O. Box 1030
Ladysmith, British Columbia V9G 1A7

Attention: David Ehrismann
Fax: (250) 245-0108

or to such other address or fax of which notice has been given as provided in this section. Any notice which is delivered by hand is to be considered to have been given on the first Business Day after it is dispatched for delivery. Any notice which is sent by fax is to be considered to have been given on the first Business Day after it is sent. Any notice which is sent by mail is to be considered have been given three days after mailing. If a party changes its address or fax number, or both, it shall promptly give notice of its new address or fax number, or both, to the other party as provided in this section.

Remedies Preserved

- 16.2 The rights and remedies under this agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. Any termination of this agreement pursuant to Section 11.6 will be without prejudice to any rights or remedies available to the parties with respect to an Event of Default which has occurred and which resulted in the termination hereof. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

Fixtures

- 16.3 DL 2016 agrees that any goods, alterations, additions, Improvements and fixtures ("Improvements") made to or installed upon or in the Facility, whether before or after the Commencement Date, will immediately upon affixation become the property of LMS and remain with the Facility as part thereof upon the expiration or earlier termination of this agreement, except that:
- (a) if this agreement is not renewed under s. 10.2, except for the reason that the Head Lease has not been renewed, the Improvements become the property of DL 2016 and remain with the Facility as part thereof upon the expiration or earlier termination of this Agreement;
 - (b) without limitation, if LMS commits an act of default that is not cured under this Agreement, is struck from the Register of Societies, is dissolved, petitions for bankruptcy or is petitioned into bankruptcy, or becomes subject to proceedings under the *Creditors Arrangement Act*, the Improvements become the property of DL 2016 and remain with the Facility as part thereof, unless and until LMS is reinstated in good standing and not subject to the pervue of the *Bankruptcy Act* or the *Creditors Arrangement Act*.

DL 2016's Powers Unimpaired

- 16.4 Nothing contained or implied herein shall derogate from the obligations of LMS under any other agreement with DL 2016 or prejudice or affect DL 2016's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act* as amended from time to time and the rights, powers, duties and obligations of DL 2016 under all public and private statutes, by-laws, orders and regulations.

Decisions by DL 2016

- 16.5 All decisions and judgments which may be made by DL 2016 under this agreement may be made on its behalf by its Board.

Amendments

- 16.6 No amendments to this agreement shall be valid unless made by written agreement executed by DL 2016 and LMS.

Assignment

- 16.7 This agreement may not be assigned or subcontracted by LMS in whole or in part without the prior written consent of DL 2016 in its sole discretion. For the purpose of this section, any change in the controlling interest of LMS is deemed to be an assignment and if there has been an assignment consented to by DL 2016, any change whereby the assignee ceases to be an Affiliate of LMS will be deemed to be an assignment.

Enurement

- 16.8 This agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.

Access to Information Legislation

- 16.9 LMS agrees that:

- (a) DL 2016 is subject to the *Freedom of Information and Protection of Privacy Act* and agrees that this agreement and the information it contains, and any information supplied by LMS to DL 2016 in connection with this agreement, are not implicitly confidential for the purposes of that enactment, but LMS may explicitly stipulate that any technical, scientific, commercial, financial or trade secret information of LMS supplied to DL 2016 in connection with this agreement is confidential for the purposes of that enactment; and
- (b) this agreement, and the information it contains, may be the subject of an access to information request made to DL 2016 under the *Freedom of Information and Protection of Privacy Act* and that, despite subsection (a), DL 2016 may be

obliged by that enactment to disclose all or part of this agreement and the information it contains and all or part of any information of LMS supplied to DL 2016 in connection with this agreement, whether or not LMS has expressly stipulated that the information in question is confidential for the purposes of that enactment.

- 16.10 DL 2016 agrees that DL 2016 will take notice of the applicability of the *Freedom of Information and Protection of Privacy Act* in determining what information should be disclosed by LMS to DL 2016 under this agreement.

Time of the Essence

- 16.11 Time is of the essence respecting this agreement.

Further Assurances

- 16.12 The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this agreement.

Compliance with Laws

- 16.13 LMS shall comply with all laws, regulations, bylaws, orders and other requirements applicable to its operations and the Facility.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the dates written below.

DATED the ____ day of _____, 2009.

The Corporate Seal of DL 2016
HOLDINGS CORPORATION was
hereunto affixed in the presence of:

C/S

Authorized Signatory

Authorized Signatory

DATED the ____ day of _____, 2009.

The Corporate Seal of **LADYSMITH**)
MARITIME SOCIETY was hereunto)
 affixed in the presence of:)
) C/S
)
 _____)
 Authorized Signatory)
)
 _____)
 Authorized Signatory)
)

This is page 24 of the MANAGEMENT AND OPERATING AGREEMENT entered into
 between **DL 2016 HOLDINGS CORPORATION** and **LADYSMITH MARITIME**
SOCIETY dated for reference the 1st day of July, 2009.

LICENSE AGREEMENT

THIS AGREEMENT dated for reference July 1, 2009, is

BETWEEN:

DL 2016 HOLDINGS CORPORATION

Incorporation No. BC0857041
500 – 221 West Esplanade
North Vancouver, BC V7M 3J3

(the "Licensor")

AND:

LADYSMITH MARITIME SOCIETY

(Incorporation No: S-20456) a non-profit Society organized under the
Society Act of British Columbia
P.O. Box 1030
Ladysmith, British Columbia V9G 1A7

(the "Licensee")

GIVEN THAT:

- A. The Licensor is the sub-lessee under a sublease dated for reference July 1, 2009 of the License Area (herein defined), from the Town of Ladysmith, which holds a Head Lease under Marina Lease No. 106431;
- B. The Licensee has entered into a management and operating agreement dated for reference July 1, 2009 with the Licensor under which the Licensee will plan, develop, expand, operate, market, maintain, supervise and manage the Ladysmith marina facility to contribute to the vision shared by DL 2016, the Town of Ladysmith, and LMS in accordance with the MOU principles and the terms and conditions in the Management and Operating Agreement;
- C. The Licensee has requested permission from the Licensor to occupy, possess and use the License Area;

THIS AGREEMENT is evidence that in consideration of \$1.00 and other good and valuable consideration paid by the Licensee to the Licensor, the receipt and sufficiency of which the Licensor acknowledges the Licensee and the Licensor agree as follows:

License

1. The Licensors grants to the Licensee a license to occupy that portion of the Head Lease Water Lot outlined in heavy black on the drawing attached as **Schedule "A"** (the "License Area"), which includes the area shown hatched which may be used for a Marina and the purpose of:

protecting and promoting Ladysmith's maritime heritage including

- (i) the development and operation of a maritime museum
- (ii) fostering expertise in the construction, maintenance, and restoration of heritage boats;

promoting tourism activity in the harbour;

protecting and promoting public access to the waterfront;

operating a marina for the benefit of Ladysmith area residents including

- (iii) provision of moorage and services for local and visiting boaters
- (iv) provision of services for heritage and other vessels, including heritage vessels owned by the Society;

operating as a non-profit society under the *BC Society Act*;

operating as a registered charity recognized by the Government of Canada;

holding and operating properties and facilities of the Society.

Term

2. The term of this License shall commence July 1, 2009 and terminate on November 30, 2029 (the "Term") unless terminated sooner or unless extended pursuant to the terms of this Agreement.

Renewal

3. If the Licensee is not in default under this Agreement at the time of each renewal and if the Licensee has complied with this License prior to the time of each renewal and if the Head Lease has been renewed, this License is renewed for an extended term consistent with the extended Head Lease upon the Licensee delivering to the Licensors written notice of its intention to renew no sooner than six months and no later than three months before the expiration of this License or any renewal of it. Any renewals will be on the same terms and conditions except that the Licensee's right of renewal is reduced accordingly.

License Fee

4. The Licensee shall pay to the Licensors in advance an annual license fee (the "License Fee") as follows:

three and one-half percent (3-1/2%) of Potential Gross Income (PGI), as defined in Marina Lease No. 106431 (the "Head Lease"), of the marina operation which the Lessor will remit to the Province under the Head Lease; and

five percent (5%) of gross income from moorage, based on the actuals from year-end annual audited financial statements of the Licensee's most recent fiscal year, which will be remitted to the Licensors to be used only for Town of Ladysmith waterfront improvements of a capital or operating nature, after consultation with the Licensee.
5. The Licensee shall also remit to the Licensors as an additional License Fee a Fifty (\$50.00) Dollar monthly fee for every liveaboard vessel where "liveaboard" refers to a vessel in respect of which a person stays overnight on the vessel for more than ten (10) days in any thirty (30) day period. If there are at any time more than two (2) liveaboard vessels moored on the Land, the monthly License Fee payable by the Licensee to the Licensors for a liveaboard vessel, other than liveaboards grandfathered under section 4.01(r) of the Sub-Lease referred to in Recital A of the Preamble and attached as Schedule B, shall be an additional \$200/month for every liveaboard vessel above two(2).
6. Liveaboard owners levied property taxes for these vessels are exempt from the \$50.00 monthly fee referred to in Section 5.
7. License Fee payments are due in advance on the reference date this Agreement and on the anniversaries of the reference date hereafter.

Use of License Area

8. The Licensee shall use the License Area for the purposes set out in Section 1, and without limitation must comply with the terms and conditions of the Sub-Lease, a copy of which is attached as Schedule B, as if it were the Lessee under the Sub-Lease.
9. The Licensee shall not by its activities on the License Area disrupt the peace, quiet or enjoyment of the owners or occupiers of adjacent lands;

Permission to Construct Works

10. The Licensors hereby grants to the Licensee permission to enter upon and occupy the License Area for the purpose of operating, managing, repairing or maintaining the existing marina, or erecting, placing or constructing any new fixtures, structures or buildings (the "Works").

Survey

11. After completion of the Works, the Licensee shall, where requested by the Licensor, at the Licensee's sole expense, cause a survey to be made of the License Area and the Works and the Licensee shall deliver a copy of the plan to the Licensor and, from that time forward, all references in this Agreement to the "License Area" shall refer to the area more precisely defined by the survey plan. Should the Licensee fail to deliver a survey plan to the Licensor within 90 days of completion of the Works, the Licensor may cause such plan to be prepared and the Licensor may apply the Deposit (as hereinafter defined) or part of it to the cost of preparation of the plan (the "Survey Cost"). Without limitation the License Area shall never exceed the Sub-Lease area.

Construction, Alteration and Maintenance of the Works

12. The Licensee may, at its sole expense, do such work on the License Area as may be necessary to install and construct the Works in a safe and competent manner.

Builders Liens

13. The Licensee shall promptly discharge any builder's lien which may be filed against the title to the Water Lot relating to any work or construction which it undertakes on the License Area, and the Licensee acknowledges that the Licensor has or will file a notice against the License Area pursuant to Section 3 of the *Builders Lien Act* that the Licensor and the Town of Ladysmith will not be responsible for any of the work or improvements.

The Licensor Access

14. The Licensor shall have the right at any time to enter upon the License Area for the purposes of inspecting the Works and reconstructing, maintaining, repairing, inspecting, testing or removing any works, utility or road existing at the date of this Agreement in the vicinity of or within the Works. The Licensor shall in undertaking such activities use reasonable efforts to cause its officers, directors, employees, agents and contractors to minimise any disruption or damage to the Works.

Licensor Construction

15. All costs to repair or replace the Works which occur as a result of the Licensor's activities in, on or under the License Area contrary to this agreement, and all necessary and reasonable costs incurred by the Licensor as part of the Licensor's activities in excess of those costs that would have been incurred if the Works did not exist, shall be borne entirely by the Licensee. These costs are a debt due and owing from the Licensee to the Licensor.

Termination

16. The default and termination provisions of the Management and Operating Agreement between the parties dated for reference the 1st day of July, 2009, apply in their entirety to this Licence Agreement.

Emergency

17. The Licensee grants to the Licensor the right at any time, in the case of an emergency or apprehended emergency, without compensation to the Licensee and without notice, to enter, remove, destroy or alter the Works. All necessary and reasonable costs incurred by the Licensor in respect of the Works in alleviating the emergency or apprehended emergency shall be borne entirely by the Licensee and may be recovered by the Licensor from the Deposit.

Default

18. Without restricting the generality of Section 16 of this Agreement, in the event the Licensee:

fails to keep the Works or any covering or structure pertaining thereto in good and sufficient repair to the reasonable satisfaction of the Licensor;

fails or refuses to remove the Works, fill up any excavation or restore the site to the satisfaction of the Licensor;

fails to maintain the insurance required under this Agreement;

fails to pay the License Fee provided for in this Agreement;

ceases to hold a valid license for the operation of the business on the Lands;

violates the terms or conditions of a noise permit issued in respect of its activities on the License Area; or

violates any other provision of this Agreement,

19. the Licensor may deliver a written notice, in the manner provided herein, to the Licensee stating the actions required by the Licensee to remedy the default and if the default is not remedied within the time period specified in the notice, the Licensor may, at its option, do one or both of the following:

the Licenser may enter onto the License Area to remedy the default, whether by removing the Works or otherwise, and all costs of remedying the default shall be paid by the Licensee and the Licenser may apply the Deposit or part of it to the costs of remedying the default; and

the Licenser may notify the Licensee that the License hereby granted shall cease thirty (30) days after receipt by the Licensee of the notice, in which case the Licensee shall remove the Works and restore the License Area within the thirty (30) day time period.

Indemnification

20. The Licensee hereby indemnifies and saves harmless the Licenser and its members, directors, officers, employees and agents from and against any and all liability, actions, causes of action, claims, debts, suits, losses, costs (including actual costs of professional advisors), demands and harm, whether known or unknown, which the Licenser now has or may at any time suffer in relation to death, bodily injury, property loss, property damage or other loss or damage of any kind whatsoever, arising from or connected with:

the license granted hereby;

the exercise by the Licensee of any right or permission under this Agreement;

the use of the License Area by any person;

the construction, maintenance, existence, use or removal of the Works;

the default or breach of the Licensee; or

the wrongful act, omission or negligence of the Licensee, its members, directors, officers, employees, agents, contractors, subcontractors, invitees, customers and others for whom it is responsible.

Insurance

21. The Licensee must comply with the insurance provisions under section 8.0 of the Management and Operating Agreement made 1st day of July, 2009 between DL 2016 and the Licensee. Satisfaction of the insurance provisions of the Management and Operating Agreement are deemed to satisfy any insurance requirements of this Licence Agreement.

Release

22. The Licensee hereby releases and forever discharges the Licenser from all manner of claims of any nature whatsoever which may arise by reason of any act or omission, whether or not negligent, of the Licenser pursuant to this Agreement.
23. The release in Section 22 and indemnity in Section 20 shall survive any termination of this Agreement.

Public Access and Safety

24. Nothing in this Agreement grants to the Licensee exclusive possession of the License Area;

The Licensee shall keep the docks and walkways clear of ice and snow and, without impairing the operating efficiency of the Marina, ensure the safety of the public through the removal of unnecessary obstacles from walkways and public access areas.

Taxes and Utilities

25. The Licensee shall be solely responsible for the due and proper payment of all municipal property taxes and other governmental fees, levies and charges which may be assessed and payable by the Licensee in respect of the Works, the License Area or the License herein granted, and the Licensee shall furnish and pay for the necessary water, electrical, heating and other utility services required for the License Area.

Remedies

26. Notwithstanding the other remedies provided herein, the Licensor shall retain the right to proceed with the enforcement of any security or indemnity provided in satisfaction of any claim, loss or expense of any kind whatsoever arising under this Agreement or from the License granted herein.

Compensation

27. Notwithstanding any provision of this Agreement, the Licensee shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Works and, without limitation, shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Works or by reason of the termination of the License.

Interest in Land

28. This Agreement grants no interest in land in the License Area to the Licensee.

Further Assurances

29. The parties hereto shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.

Consents

30. Any approval, permission or consent of the Licensor herein required shall be at the sole discretion of the Licensor.

Waiver

31. Waiver by the Licensor of any default by the Licensee shall not be deemed to be a waiver of any subsequent default.

Notice

32. All notices, demands and payments to be given hereunder shall be in writing and may be delivered by hand, sent by facsimile transmission, or may be forwarded by first-class prepaid registered mail to the addresses set forth on the first page hereof, and notice may be delivered by the Licensor to the Licensee for the purposes of this Agreement by posting such notice on the Lands. If notice is given by the Licensee to the Licensor, it shall be to the attention of the President. Any notice delivered by hand or sent by facsimile transmission shall be deemed to be given and received the day after it is sent. Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of 3 days after it is posted, addressed in accordance with the addresses on page 1 hereof, or to such other address or addresses as may from time to time be advised in writing by the parties hereto, provided that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effective if actually delivered.

Interpretation

33. Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or feminine or the body politic or corporate as the context requires.

References

34. Every reference to each party is deemed to include the heirs, executors, administrators, permitted assigns, employees, servants, agents, contractors, officers, directors and invitees of such party, where the context so permits or requires.

Severance

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

Enurement

36. This Agreement shall enure to the benefit of and be binding on the parties hereto notwithstanding any rule of law or equity to the contrary.

Assignment

37. This License does not run with the Lands. The Licensee shall not be entitled to transfer or assign this Agreement, in whole or in part, and shall not permit or suffer any other person to occupy the whole or any part of the License Area, without the prior written consent of the Licensor.
38. This Agreement is assignable by the Licensor upon giving notice of such assignment to the Licensee.

Agreement in Effect

39. This Agreement shall remain in full force and effect until terminated in accordance with the provisions contained herein, at which time the parties shall no longer have any obligations to each other pursuant to this Agreement save the Licensee's obligations to indemnify and release the Licensor.

Previous Agreement

40. The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.

Time of Essence

41. Time is of the essence of this Agreement

Governing Law

42. This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.

Reference to Statutes

43. Any reference to a statute or bylaw refers to it as amended or replaced from time to time.

Provisos

44. PROVIDED always and it is hereby agreed as follows:

metered water and power services will be charged to the Lessee according to Usage established by reading the consumption as shown in the meters referred to in section 6.02 and the charges calculated using the following rates:

- (i) water at the commercial rate as of January 1 in every year of the lease, less any allowance should the Fire Department use the facilities for training,
- (ii) electricity for power consumption at the Machine Shop Building.

Usage charges will be billed on a regular basis to suit the Licensor's accounting cycles;

the watermain serving the marina will cross Lot 4, Plan 45800 and District Lot 8G, not being part of the License Area forming part of this lease, for the term of this Agreement;

if during the continuance of this Agreement the improvements or any part of them now or hereinafter constructed on the License Area are destroyed by fire, lightning, tempest, impact of aircraft, acts of God, riots, insurrections or explosions:

- (iii) the rental herein paid or reserved shall be suspended, on the portion so affected, until reconstruction is complete, and the marina is back to full operation,
- (iv) if the destruction is of such magnitude that reconstruction is not feasible, at the Licensee's option this lease can be declared terminated and the rents paid shall in that case will be proportionately refunded.

The Licensor agrees that any goods, alterations, additions, Improvements and fixtures ("Improvements") made to or installed upon or in the facility, whether before or after the commencement date, will immediately upon affixation become the property of the Licensee and remain with the facility as part thereof upon the expiration or earlier termination of this agreement, except that:

- (v) if this Agreement is not renewed under s. 3, except for the reason that the Head Lease has not been renewed, these Improvements become the property of the Licensor and remain with the marina in the License Area as part thereof upon the expiration or earlier termination of this Agreement;
- (vi) these Improvements may at any time be used for collateral security for any borrowing by the Licensor, only to the extent the borrowing has been requested by the Licensee and the Licensee has not paid to the Licensor sufficient monies to enable the Licensor to repay the debt, including debt servicing; and

without limitation, if LMS commits an act of default that is not cured under this Agreement, is struck from the Register of Societies, is dissolved, petitions for bankruptcy or is petitioned into bankruptcy, or becomes subject to proceedings under the *Creditors Arrangement Act*, the Improvements become the property of DL 2016 and remain with the Facility as part thereof, unless and until LMS is reinstated in good standing and not subject to the prevue of the *Bankruptcy Act* or the *Creditors Arrangement Act*.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the date and year written below.

DATED the ____ day of _____ 20__

EXECUTED on behalf of DL 2016)
HOLDINGS CORPORATION)
by its authorized signatories :)

_____) c/s
Authorized Signatory)

_____)
Authorized Signatory)

DATED the ____ day of _____ 20__

EXECUTED on behalf of LADYSMITH)
MARITIME SOCIETY)
by its authorized signatories:)

_____) c/s
Authorized Signatory)

_____)
Authorized Signatory)

[The seal is not required to be affixed to the agreement.]

DATED the ____ day of _____ 20__

SIGNED, SEALED AND DELIVERED
in the presence of :

Witness

Address

Occupation

Name: _____

SCHEDULE 'A'

For Land Title Office use: Page ___ of ___.



**BRITISH
COLUMBIA**

Ministry of
Environment,
Lands and Parks

Legal Description Schedule

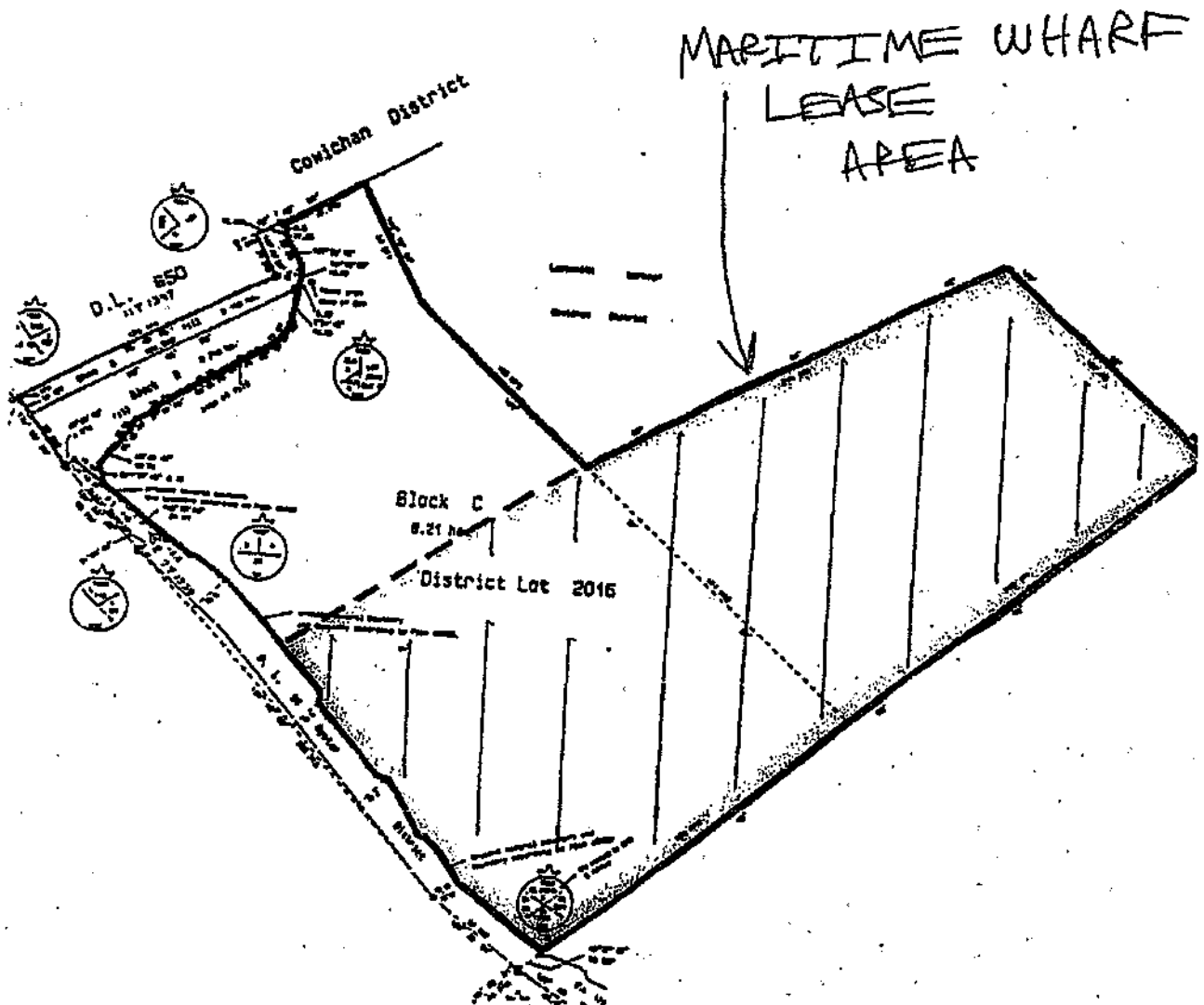
Lease No. _____

File No. 1407751

1. Legal Description

Block C of District Lot 2016, Cowichan District

2. Sketch Plan



COMMUNITY MARINA SUBLEASE

THIS SUBLEASE executed in duplicate and dated for reference the 1st day of July, 2009.
PURSUANT TO THE *LAND ACT* (SECTION 35) and the *LAND TRANSFER FORM ACT*.

BETWEEN: **THE TOWN OF LADYSMITH**
 P.O. Box 220, 420 Esplanade
 Ladysmith, British Columbia
 V9G 1A2

(hereinafter called the "Lessor")

OF THE FIRST PART

AND: **DL 2016 HOLDINGS CORPORATION**
 Incorporation No. BC0857041
 500 – 221 West Esplanade
 North Vancouver, BC V7M 3J3

(hereinafter called the "Lessee")

OF THE SECOND PART

GIVEN THAT:

- A. The Lessor has a Head Lease dated for reference December 1, 1999 of the Land covered by the Head Lease from the Province of British Columbia;
- B. The Lessor has agreed to grant a sublease to the Lessee over that parcel of land identified in Schedule "A" (hereinafter referred to as the "Land"). Furthermore, the Lessee agrees and understands that any or all terms contained in the Head Lease may be passed on as obligations to the Lessee at the Lessor's discretion;
- C. The Lessor and Lessee are desirous of establishing a community marina that will be a community asset welcoming citizens to the waterfront by virtue of public access to the marina and by virtue of a broad variety of programs open to the public;
- D. The marina will be managed and operated by the Ladysmith Maritime Society ("LMS");
- E. The Lessor and Lessee acknowledge the importance of marine tourism. The Lessee agrees to provide dedicated dock area and other facilities for this purpose. Both the Lessor and Lessee shall market the marina and the community for the purposes of enhancing and growing marine tourism;
- F. The Lessor and Lessee acknowledge that significant improvements to and expansion of the existing facilities are necessary. Such improvements have a significant capital cost and the

certainty of a long term lease during which capital borrowing can be amortized is desirable;

- G. The Lessor and Lessee further acknowledge that timely expansion of the subject lease area to provide space for additional moorage, both contract and visitor, and for such ancillary facilities as public walkways, eco-initiatives, parking, administrative functions, and miscellaneous marine functions, is desirable in the near future.

NOW THEREFORE in consideration of the rents reserved and the covenants and agreements set forth below, the parties agree as follows:

ARTICLE I – GRANT OF SUBLEASE

- 1.01 The Lessor demises and leases to the Lessee that parcel of land consisting of sea bed and foreshore identified in Schedule “A” annexed hereto (herein called the “Land”).

ARTICLE II – TERM

- 2.01 TO HAVE AND TO HOLD the Land unto the Lessee for a term from July 1, 2009 (“Commencement Date”) to expire on November 30, 2029, (the “Term”).

ARTICLE III – RENT

- 3.01 YIELDING AND PAYING THEREFORE for the Term as rent:
- (a) Three and one-half percent (3-1/2%) of Potential Gross Income (PGI), as defined in Marina Lease No. 106431 (the “Head Lease”), of the marina operation which the Lessor will remit to the Province under the Head Lease; and
 - (b) five percent (5%) of gross income from moorage, based on the actuals from year-end annual audited financial statements of LMS ‘s most recent fiscal year, which will be remitted to the Lessor to be used only for Town of Ladysmith waterfront improvements of a capital or operating nature, after consultation with the Lessee.
- 3.02 The Lessee shall also remit to the Lessor as additional rent a Fifty (\$50.00) Dollar monthly fee for every liveaboard vessel where “liveaboard” refers to a vessel in respect of which a person stays overnight on the vessel for more than ten (10) days in any thirty (30) day period. Subject to Section 4.01(r), if there are at any time more than two (2) liveaboard vessels moored on the Land, the monthly rent payable by the Lessee to the Lessor for liveaboard vessel shall be an additional \$200/month for every live aboard vessel above two (2).
- 3.03 Liveaboard owners levied property taxes for their vessels are exempt from the \$50.00 monthly fee referred to in Section 3.02.

- 3.04 Rent payments are due in advance on the date of signing this lease and on the anniversaries of the Commencement Date hereafter.

ARTICLE IV – COVENANTS OF THE LESSEE

4.01 The Lessee covenants with the Lessor:

- (a) to pay rent when due at the address of the Lessor first above written;
- (b) to pay and discharge when due all rates, levies, duties, and charges for electricity and water according to the meters installed for these services and read at regular intervals;
- (c) to observe, abide by and comply with all laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and improvements situate thereon, or their use and occupation;
- (d) to keep the Land in a clean, safe and sanitary condition satisfactory to the Lessor, and on written notice from the Lessor, to make safe, clean and sanitary any portion of the Land or improvement that in the reasonable opinion of the Lessor, contravenes the provisions of this covenant. The lessee assumes no responsibility and releases the Lessor from any and all claims by the Lessee for environmental conditions that existed prior to entering the lease. However, the Lessee does covenant that they will not exceed and/or contribute to any environmental concerns or conditions that have existed at the time of the lease commencing;
- (e) to keep adjoining land, where that land is used for related marina activities, in a safe and sanitary condition;
- (f) to keep the trail/stairway connecting the marina area with the upland in a safe condition, clear of underbrush;
- (g) not to commit or suffer any willful or voluntary waste, spoil or destruction on the Land or do so suffer to be done thereon anything that may become a nuisance or annoyance to the owners or occupiers of adjoining land, and for the purpose of this covenant, the permitted use of the Land in compliance with this lease shall be deemed not to constitute a nuisance or annoyance;
- (h) to use and occupy the Land only for the purposes of a marina operation, including:
 - i. protecting and promoting Ladysmith's maritime heritage including
 - A. the development and operation of a maritime museum
 - B. fostering expertise in the construction, maintenance, and restoration of heritage boats;

- ii. promoting tourism activity in the harbour;
- iii. protecting and promoting public access to the waterfront;
- iv. operating a marina for the benefit of Ladysmith area residents including
 - A. provision of moorage and services for local and visiting boaters
 - B. provision of services for heritage and other vessels, including heritage vessels owned by the society.

- (i) to effect and keep in force during the term of this lease insurance protecting the Lessor and the Lessee against claims for personal injury, death, property damage or third party liability claims arising from any accident or occurrence on the Land or improvements up to an amount not less than \$5,000,000.00;
- (j) to pay all premiums and moneys necessary to maintain the policy of insurance required to be maintained by the Lessee herein as the same becomes due;
- (k) to deliver to the Lessor from time to time, upon demand, copies of insurance policies required to be maintained by the Lessee, receipts or other evidence of payments of insurance premiums;
- (l) to indemnify and save the Lessor harmless against all losses, damages, costs and liabilities, including fees of solicitors and other professional advisors arising out of:
 - (i) any breach, violation or non-performance of any covenant, condition or agreement in this lease by the Lessee,
 - (ii) any personal injury, death or property damage occurring on the Land or happening by virtue of the Lessee's occupation of the Land,

and the Lessor may add the amount of such loss, damage, costs and liabilities to the rent herein reserved and the amount so added shall be payable to the Lessor immediately;

- (m) to pay all accounts and expenses for labour performed on, or material supplied to, the Land, in accordance with the *Builders Lien Act* and to place written notices immediately after the commencement of any construction on the Land, on at least two conspicuous places, giving notice, that the Lessor shall not be responsible for the cost of labour, services or materials performed on or supplied to the Land;
- (n) to provide moorage facility and marina services for seaworthy vessels, subject to suitable, available space, to the public unless concerns are expressed against an applicant for:
 - (i) financial irresponsibility, such as non-payment of moorage or other financial obligations at any other marina, or

- (ii) behaviour reasons, where it can be reasonably expected that the applicant will be a nuisance or annoyance to their neighbours and would cause the Lessee to be in breach of a covenant under this lease;
- (o) on the expiration or earlier cancellation of this lease:
 - (i) to peaceably quit and deliver possession of the Land to the Lessor in a safe, clean and sanitary condition,
 - (ii) to remove upon written request by the Lessor any improvements that the Lessee has constructed on the Land,
 - (iii) to remove voluntarily any improvements that the Lessee has constructed on the Land, and leave the Land in the same condition as found on Commencement Date;
- (p) to permit the Lessor or his authorized representative, to enter upon the Land at any time to inspect the Land and any improvements thereon;
- (q) not to use the Land or carry on or permit any activity on the Land that contravenes any provision of the *Federal Navigable Waters Protection Act* or any other enactment, order, regulation or law of the Canada respecting navigable waters or marine life resources;
- (r) to permit the moorage of no more than two liveaboard vessels and no more than two persons per vessel, where "liveaboard" refers to a vessel in respect of which a person stays overnight on their vessel for more than ten (10) days in any 30-day period. Only owners of the vessel are permitted to stay overnight on a liveaboard for more than ten (10) days in any 30-day period. If there are more than two liveaboard vessels moored at the marina as of the reference date of this lease, the owners and/or their vessels are grandparented as permitted non-conforming uses under this Sublease until such time as they lose their liveaboard status.

ARTICLE V – ASSIGNMENT

- 5.01 The Lessee shall not assign, sublet or transfer this lease without prior written consent of the Lessor.

ARTICLE VI – COVENANTS OF THE LESSOR

- 6.01 The Lessor covenants with the Lessee for quiet enjoyment.
- 6.02 Permission is granted by the Lessor:

- (a) for the Lessee to provide electric power from the Machine Shop Building, on Lot 4, Plan 45800, to the marina Land, through the existing sub-meter, for the duration of this lease;
- (b) for the Lessee to provide water to the marina Land through Lot 4, Plan 45800 and District Lot 8G, for the duration of the agreement. The Lessee will install a meter to measure consumption;
- (c) under a separate license agreement for the Lessee to use part of Lot 4, Plan 45800 and District Lot 8G for access and parking for the marina. This area will be along the natural boundary of the water immediately north of Lot 5, Plan 45800 and DL 17G;

6.03 The Lessor further covenants it will maintain vehicular access to the marina parking during the term of this lease and its extension.

ARTICLE VII – PROVISOS

7.01 PROVIDED always and it is hereby agreed as follows:

- (a) metered water and power services will be charged to the Lessee according to usage established by reading the consumption as shown in the meters referred to in section 6.02 and the charges calculated using the following rates:
 - (i) water at the commercial rate as of January 1 in every year of the lease, less any allowance should the Fire Department use the facilities for training,
 - (ii) electricity for power consumption at the Machine Shop Building.

Usage charges will be billed on a regular basis to suit the Lessor's accounting cycles;
- (b) the watermain serving the marina will cross Lot 4, Plan 45800 and District Lot 8G, not being part of the Land forming part of this lease, for the term of this lease;
- (c) if during the continuance of this lease the improvements or any part of them now or hereinafter constructed on the Land are destroyed by fire, lightning, tempest, impact of aircraft, acts of God, riots, insurrections or explosions;
 - (i) the rental herein paid or reserved shall be suspended, on the portion so affected, until reconstruction is complete, and the marina is back to full operation,
 - (ii) if the destruction is of such magnitude that reconstruction is not feasible, at the Lessee's option this lease can be declared terminated and the rents paid shall in that case be proportionately refunded;

- (d) and the parties acknowledge that title to and ownership of all buildings, structures and other improvements, except roads, now or hereafter constructed on the Land by the Lessee or its Licensee, LMS, shall be vested in the LMS during the Term in accordance with the terms and conditions set out in the License Agreement between the Lessee and LMS dated for reference July 1, 2009;
- (e) when the Lessor obtains a Head Lease of the Land from the Provincial government, the Lessor shall provide the Lessee with a copy of that Head Lease, and the Lessee shall be bound by the terms and conditions set out in that Head Lease in addition to any terms and conditions of this lease that do not conflict with the Head Lease.

ARTICLE VIII – EVENTS OF DEFAULT

8.01 If:

- (a) the Lessee defaults in the payment of an installation of rent, or the payment of any other sum payable hereunder, and such default continues for 30 days after giving of written notice by the Lessor to the Lessee;
- (b) the Lessee fails to perform or observe any of the covenants, agreements, conditions or provisos contained in the lease and such failure continues for or is not remedied within 60 days following the giving of written notice by the Lessor to the Lessee of the nature of such failure; or
- (c) or the Lessee commits an act of bankruptcy, becomes insolvent or is petitioned into bankruptcy or voluntarily enters into an arrangement with its creditors,

the Lessor may without further notice, cancel this lease and the rights herein granted. If the condition complained of (other than the payment of rent or other sums of money) reasonably requires more time to cure than 60 days, the Lessee shall be deemed to have complied with the remedying thereof if the Lessee commences to remedy or cure the condition within the 60 day period and diligently thereafter completes same.

- 8.02 The Lessee shall not be entitled to any compensation, whether for damages or otherwise, in respect of the cancellation of this lease by the Lessor under this Article.

ARTICLE IX – RENEWAL

- 9.01 Provided that the Lessee is not in default under this lease and the terms of the Head Lease permit, it must renew this Lease for a further term consistent with the term of the Head Lease on the same terms and conditions as herein contained except that the rent set out in Article III will be increased by an amount commensurate with the rent increase imposed by the Province under the Head Lease at the time of renewal of the Head Lease.

IN WITNESS WHEREOF the parties have executed this lease as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
by the Lessor, the Town of Ladysmith,)
by its duly authorized representatives:)

_____))
_____))
_____))

SEAL

THE COMMON SEAL OF THE)
DL 2016 HOLDINGS)
CORPORATION was affixed hereunto)
In the presence of:)

_____))
_____))
_____))

SEAL