

LEASE dated as of the 1st day of April 2003

With respect to

**DEPARTURE BAY
NANAIMO**

BETWEEN:

BC TRANSPORTATION FINANCING AUTHORITY
(hereinafter referred to as the "**Landlord**")

of the first part

AND:

BRITISH COLUMBIA FERRY CORPORATION
(hereinafter referred to as the "**Tenant**")

of the second part

TERMS OF INSTRUMENT - Part 2

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(the "Tenant")

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WHEREAS:

- A. The Landlord is a Crown corporation and, pursuant to the *Build BC Act*, is an agent of the government and has agreed to hold all right, title and interest to the Ferry Terminal Properties as Landlord pursuant to this Lease;
- B. The Tenant and the Province have entered into the Coastal Ferry Services Contract under which the Tenant has agreed to operate the BC Ferry System;
- C. The parties wish to enter into this Lease on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the rents, premises, terms, conditions, covenants and agreements herein set out, the sufficiency and receipt of same being hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1 In this Lease:

“Additional Rent” means all sums of money to be paid by the Tenant to the Landlord under this Lease, except Basic Rent and Renewal Rent;

“Authority” means the municipality, region or district in which the Ferry Terminal Properties are located;

“Basic Rent” means the sum of money described in Paragraph 13.1 of this Lease to be paid by the Tenant to the Landlord;

“BC Ferry System” has the meaning given to that term in the Coastal Ferry Services Contract;

“Coastal Ferry Services Contract” means the agreement between the Province and the Tenant made as of April 1, 2003 under which the Tenant has agreed to operate the BC Ferry System;

“Commencement Date” means the 1st day of April, 2003;

“Competent Authority” means any statutory, regulatory, governmental, administrative or public authority which has jurisdiction with respect to any matter referred to in this Lease;

“Development Agreements” means those written agreements made by the Tenant with third parties to have an interest in or access to the Ferry Terminal Properties, or any part thereof, that run with the Ferry Terminal Properties and that may continue to be binding upon the owner of the Ferry Terminal Properties after the termination of this Lease;

“Dispute” means any disagreement, dispute, controversy, difference of opinion or claim between the Landlord and the Tenant arising out of, relating to or in connection with the lease of the Ferry Terminal Properties or the interpretation of, or compliance or non-compliance with the provisions in this Lease;

“End Date” means the day before the sixtieth (60th) anniversary of the Commencement Date;

“Event of Force Majeure” means an event that is beyond the reasonable control and without the fault of a party and includes acts of God, changes in the laws of Canada, governmental restrictions or control on imports, exports or foreign exchange, wars (declared or undeclared), fires, floods, storms, strikes (including illegal work stoppages or slowdowns), lockouts (other than lockouts initiated by the Tenant in compliance with the Labour Relations Code of British Columbia), labour shortages, freight embargoes and power failures; provided always that a lack of money, financing or credit will not be and will not be deemed to be an "Event of Force Majeure";

“Existing Facility” means any building, facility, utility, improvement, pavement, landscaping, filled foreshore, infrastructure or structure, including Leasehold Improvements and Marine Structures that are on the Ferry Terminal Properties as of the Commencement Date;

“Existing Landlord Agreements” means those agreements which exist as of the Commencement Date and are made between the Landlord or the Province or their respective predecessors and one or more third parties (including the Tenant) granting such third party an interest in or access to such parts of the Ferry Terminal Properties which were highway on March 31, 2003 and more particularly described in Schedule "2" as the same may be altered from time to time as contemplated by Paragraph 9.2 ;

“Existing Tenant Agreements” means all liens, charges, encumbrances and tenancies registered against title to any of the Ferry Terminal Properties as of the Commencement Date and any agreements which exist as of the Commencement Date between the Tenant, Land and Water British Columbia Inc. or their respective predecessors and one or more third parties (including either the Landlord, the Province or either of their predecessors) to have an interest in or access to parts of the Ferry Terminal Properties more particularly described in Schedule "3" as the same may be altered from time to time as contemplated by Paragraph 9.3 ;

“Ferry Terminal Properties” means more or less all and singular those certain parcels or tracts of lands and water lots more particularly described in Schedule "1" as the same may be altered from time to time as contemplated by Paragraph 4.2 ;

“Hazardous Substances” means:

- (a) any oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, or pollutants which

pose a hazard to all or any part of the Ferry Terminal Properties, or any person, business, occupant or user of the Ferry Terminal Properties; or cause all or any part of the Ferry Terminal Properties or any user or occupant of the Ferry Terminal Properties to be in violation of any Hazardous Substances Laws;

- (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation or transformers; and
- (c) any chemical, material or substance defined as or included in the definition of “dangerous goods”, “deleterious substance”, “extremely hazardous wastes”, “restricted hazardous waste”, “toxic substances”, “waste” or words of similar import under any Law or under the publications promulgated pursuant thereto;

“Hazardous Substances Laws” means any local, provincial or federal laws, statutes, ordinances, rules, regulations, bylaws and enforceable orders, decisions or directives relating to the environment, any Hazardous Substances or the environmental conditions on, under or about the Ferry Terminal Properties including soil, groundwater, and indoor and ambient air conditions;

“Laws” means all federal, provincial, regional, municipal or local laws, statutes, ordinances, rules, regulations, bylaws and enforceable orders, decisions or directives including Hazardous Substances Laws, the *Coastal Ferry Act* and any permit authorizations required under any of the foregoing and including all applicable federal and provincial environmental assessment legislation and requirements and all applicable labour and human rights legislation;

“Leasehold Improvements” means all fixtures (excluding Tenant’s or Occupant’s trade fixtures), fixed equipment, improvements, infrastructure, filled foreshore and alterations existing on the Ferry Terminal Properties or any part thereof and those which from time to time are made, constructed, erected or installed by, for or on behalf of the Tenant or any Occupant of the Ferry Terminal Properties or any part thereof;

“Marine Structures” means dolphins, floating leads, wingwalls, transfer decks, trestles, docks, ramps and associated structures and equipment on the Ferry Terminal Properties or any part thereof;

“Master Agreement” means the agreement dated March 31, 2003 and made between the Landlord, the Tenant, the Province and Land and Water British Columbia Inc. with respect to the entering into of this Lease amongst other matters;

“New Facility” means any building, facility, utility, structure, improvement, pavement, landscaping, filled foreshore, infrastructure or structure, including Marine Structures created, installed or constructed on the Ferry Terminal Properties after the Commencement Date and includes any addition to, improvement to, alteration of or replacement of any Leasehold Improvement, Existing Facility or New Facility after the Commencement Date;

“Occupant” means a subtenant, licensee, concessionaire, franchisee, user or other third party, excluding a transferee or assignee of the Tenant’s interest in this Lease, who has entered into an Occupant Agreement, and who regularly occupies any part of the Ferry Terminal Properties, but does not include anyone who occupies the Ferry Terminal Properties solely as a result of having purchased a ticket allowing them to travel on a ferry or who is using the pick up and drop off facilities located on the Ferry Terminal Properties;

“Occupant Agreement” means a sublease, licence, concession, franchise, user or any other agreement, between the Tenant and an Occupant whereby the Tenant grants a right to such Occupant to occupy or use all or part of the Ferry Terminal Properties, but does not include a Security Interest, a Transfer or Assignment Agreement or any other agreement whereby there is a transfer or assignment of the Tenant’s interest in this Lease,

“Permits” means any and all zoning, rezoning, development, building, environmental, community plan, community charter, access or other permits which may be required by any Laws relating to the Tenant, any Occupant or any employee, agent, customer, contractor, subcontractor, invitee or licensee of the Tenant or any other person the Tenant is responsible for at law and any of their respective operations at, use and occupancy of the Ferry Terminal Properties or any part thereof;

“Province” means Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation;

“Renewal Rent” means the sum of money described in Paragraph 13.3 to be paid by the Tenant for the Renewal Term;

“Renewal Term” means twenty (20) years immediately following the expiration of the initial Term;

“Rent” means all Basic Rent, Additional Rent and any Renewal Rent;

“Security Interest” means a mortgage, trust deed, security interest, financial charge or other debt instrument of the Tenant’s or of an Occupant’s interest in the Ferry Terminal Properties or any part thereof;

“Taxes” means the aggregate of all, if any, applicable to the Landlord or the Tenant, taxes, local improvement or similar rates, duties, assessments and charges, municipal realty taxes, water taxes, school taxes or any other taxes, rates, duties, assessments both general or special or any rate, duty, assessment, charge or tax levied, charged or assessed in their place by any taxing authority levied or imposed on or in respect of the Ferry Terminal Properties, or any part thereof, by any taxing authority;

“Tenant’s Obligations” means the covenants, agreements, responsibilities, conditions and obligations required to be kept, performed or observed by the Tenant under this Lease;

“Term” means sixty (60) years commencing on April 1, 2003;

“Transfer or Assignment Agreement” means any agreement, arrangement or understanding, including a partnership or joint venture, which results in the assignment or transfer of the whole or any part of this Lease by the Tenant or any interest of the Tenant herein but does not include any Security Interest or Occupant Agreement made in accordance with the provisions in Paragraphs 34.1, 34.3 and 34.4 or any agreement where the effective control or beneficial ownership of the Tenant may change; and

“Work” means any proposed or actual New Facility which adversely impacts the integrity of, efficient functioning of, capacity of, or safe public passage on, any highway adjacent to all or any part of the Ferry Terminal Properties, any third party rights, any Provincial need which is greater than the lease of the Ferry Terminal Properties under this Lease (as determined by the Province in its sole and absolute discretion) or the Tenant’s covenants, agreements and obligations under the Coastal Ferry Services Contract.

2. ENTIRE AGREEMENT

- 2.1 This Lease, the Master Agreement and the Coastal Ferry Services Contract constitute the entire agreement between the parties with respect to the subject matter of this Lease and supersede and revoke all prior negotiations and representations. No understanding, agreement, representation or warranty, oral or otherwise, exists between the parties with respect to the subject matter of this Lease except as expressly set out in this Lease, the Master Agreement and the Coastal Ferry Services Contract.
- 2.2 In the event of any inconsistency amongst the provisions in this Lease, the Master Agreement or the Coastal Ferry Services Contract, the provisions in the Coastal Ferry Services Contract will take precedence over this Lease and the Master Agreement.

3. INTERPRETATION

- 3.1 This Lease will be interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia.
- 3.2 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Lease, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect. Unless otherwise indicated, all enactments referred to in this Lease are enactments of the Province of British Columbia.
- 3.3 The headings in this Lease are for reference purposes only and are not to be relied upon for purposes of interpretation.
- 3.4 Wherever the masculine, feminine, body corporate, singular or plural is used in this Lease, the parties agree to substitute feminine, masculine, individual, plural or singular where the

context so requires. This principle applies to all words in this Lease, including defined terms.

- 3.5 Each obligation or agreement contained in this Lease is to be construed as and considered for all purposes as a covenant.
- 3.6 If any part of this Lease is found to be illegal or unenforceable, that part will be considered separate and severable and the remainder of this Lease will remain binding and enforceable insofar as is required to give effect to the intent of the parties as evidenced by this Lease.
- 3.7 The words “including,” “include” or other variations thereof, when following any general statement, term or matter is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather such general statement, term or matter is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.
- 3.8 Any reference in this Lease to a designated “Paragraph,” “Schedule” or any other subdivision is a reference to the designated Paragraph, Schedule or other subdivision of this Lease unless the context requires otherwise.
- 3.9 The parties acknowledge that the Tenant is, as at the date of this Lease, applying to be converted to a company under the *Company Act*, R.S.B.C. 1996, c. 62 and the parties each covenant and agree that all rights and obligations of the parties as set out in this Lease will continue on such conversion.

4. TIME OF THE ESSENCE

- 4.1 Time is of the essence in this Lease.

5. NET LEASE

- 5.1 Subject to the limits on the financial obligations of the Tenant as expressly set out in this Lease or in the Master Agreement, the Tenant acknowledges and agrees that this Lease is intended to be a completely carefree absolutely net lease to the Landlord and that the Landlord will not be responsible for any costs, charges, expenses or outlays of any nature or kind whatsoever arising from or relating to this Lease or any matters contemplated in this Lease, the Tenant, any Occupant, the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities, including the use, repair, maintenance, development, management, lease or operation of same, or any part thereof, and the Tenant covenants with the Landlord to pay promptly all of such costs, charges, expenses or outlays.

6. DEMISE AND TERM

- 6.1 Subject to the terms of this Lease and the rights of the parties as set out herein, the Landlord demises and leases to the Tenant the Ferry Terminal Properties from 12:01 a.m. on the Commencement Date, for and during the Term, which will end at midnight on the 31st day of March, 2063, subject only to any earlier termination hereunder and the renewal of this Lease in accordance with the terms and conditions set forth in Paragraph 7.

7. RENEWAL

- 7.1 In the event that the Tenant becomes entitled to renew the Coastal Ferry Services Contract in accordance with the provisions of that contract, then, provided that the Tenant is not in default of any of the Tenant's Obligations, the Tenant may, by written notice delivered to the Landlord at least 12 months prior to the End Date, renew this Lease and extend the Term for one additional period of twenty (20) years commencing on the date immediately following the End Date and this Lease will be renewed on the same terms and conditions as set out in this Lease except that there will be no further right of renewal.

8. RIGHT TO TERMINATE

- 8.1 In the event that the Tenant wishes to discontinue all such Designated Ferry Routes (as defined in the Coastal Ferry Services Contract) operating to or from the Ferry Terminal Properties, the Tenant must first:
- (a) provide the Landlord with written notice, at least two (2) years in advance of the date upon which the Tenant will discontinue all such Designated Ferry Routes; and
 - (b) have duly complied with all of the Tenant's Obligations and its obligations as set out in the Coastal Ferry Services Contract;

and in such event the Lease will terminate on the date specified by the Tenant in its notice given under Paragraph 8.1(a) and the Tenant will not be entitled to a rebate or refund of any prepaid Rent.

- 8.2 (a) If the British Columbia Ferries Commissioner appointed under the *Coastal Ferry Act* or any other person of Competent Authority issues an Order authorizing the Tenant to discontinue all Designated Ferry Routes to or from the Ferry Terminal Properties, then the Tenant will deliver to the Landlord a true copy of such Order within five (5) days of the Tenant's receipt thereof and this Lease will terminate on the effective date of the discontinuance under the Order, and

- (b) only if such Order was not due to any default of the Tenant's Obligations, any negligence or misconduct of the Tenant, any Occupant or any employee, agent, customer, contractor, subcontractor, invitee or licensee of the Tenant or any other person the Tenant is responsible for at law, then the Tenant will be entitled to receive, from the Landlord, a refund of the remaining net book value of the Existing Facilities, Leasehold Improvements or New Facilities then remaining on the Ferry Terminal Properties, with such value being determined by amortizing their original costs on a straight line basis over their respective useful lives, as determined in accordance with Canadian generally accepted accounting principles.

8.3 If, as a result of any Event of Force Majeure, the whole or any part of the Ferry Terminal Properties, the Leasehold Improvements, the Existing Facilities or the New Facilities are destroyed or so damaged that they are unfit for occupancy, then the Tenant will only be obligated to repair or restore the Ferry Terminal Properties to a condition that reasonably allows the Tenant to use the Ferry Terminal Properties in accordance with the provisions of this Lease if the restoration or repairs

- (a) will be, or, as provided in this Lease, should have been, paid by an insurer of the Tenant's, or
- (b) will be paid by the Landlord, the Province or any other third party.

In the event that the Tenant is unable to confirm that such restoration or repairs will be so paid or in the event that the Tenant was not insured or was not required to insure against the Event of Force Majeure that occurred, then the Tenant may terminate this Lease by giving the Landlord written notice of the Tenant's intention to terminate within six (6) months of the destruction or damage having occurred and this Lease shall terminate on the date set out in the notice.

8.4 In the event that the Tenant does not notify the Landlord of the Tenant's intention to terminate this Lease in accordance with the provisions in Paragraph 8.3, the Tenant will forthwith restore or repair so much of the Ferry Terminal Properties, the Leasehold Improvements, the Existing Facilities and the New Facilities in order for the Tenant to use the Ferry Terminal Properties in accordance with the provisions of this Lease but without hindrance to the Tenant's ability to remove, demolish or redesign as many of the improvements or other structures located on the Ferry Terminal Properties as it determines appropriate for its operations provided it does so in compliance with the provisions in Paragraphs 20.1 to 20.4 .

9. AGREEMENTS WITH THIRD PARTIES

- 9.1 The Landlord agrees not to grant any licenses, rights of way, easements or any other privileges granting an interest in or access to the Ferry Terminal Properties or any part thereof to any other person or entity without the prior written consent of the Tenant, which consent may not be unreasonably withheld. The parties agree that it is reasonable for the Tenant to withhold such consent where the granting of such consent would have a material impact on the Tenant's provision of ferry and related services in accordance with the provisions of the Coastal Ferry Services Contract and *Coastal Ferry Act*, whether existing or part of the Tenant's future plans.
- 9.2 Notwithstanding the provisions of Paragraph 9.1 and subject to the Tenant's obligations as set out in Paragraph 9.4, the Landlord and the Tenant agree to respect and abide by the Existing Landlord Agreements described in Schedule "2". The Landlord may, at any time during the first ten (10) years of the Term, advise the Tenant of additional or of terminated Existing Landlord Agreements, in which case the parties agree that the Landlord will amend Schedule "2" accordingly to include or remove, as the case may be, such additional Existing Landlord Agreements. The Landlord acknowledges and agrees that its right to amend Schedule "2" does not include the right to revise any Existing Landlord Agreements on or after the Commencement Date.
- 9.3 The Landlord and the Tenant agree to respect and abide by the Existing Tenant Agreements described in Schedule "3" and the Landlord further agrees that, in the event that this Lease is terminated or expires, the Landlord will, subject only to the consent of the third party if required, assume responsibility for all of the Tenant's rights and obligations under such Existing Tenant Agreements. The Tenant may, within the first ten (10) years of the Term, advise the Landlord of all additional or of terminated Existing Tenant Agreements, in which case the parties agree that the Landlord will amend Schedule "3" accordingly to include or remove, as the case may be, such additional Existing Tenant Agreements. The Tenant acknowledges and agrees that its right to amend Schedule "3" does not include the right to revise any Existing Tenant Agreements on or after the Commencement Date unless such revisions comply with the requirements for Development Agreements set out in Paragraph 9.4.
- 9.4 The Landlord agrees that the Tenant may, without the prior consent of the Landlord unless otherwise provided herein and as a result of its development of the Ferry Terminal Properties, enter into Development Agreements solely for any use or purpose permitted under Paragraph 20.1; however, the Tenant agrees to provide the Landlord with a true copy of each Development Agreement and all amendments thereto within ten (10) days of the Landlord's request for the same from time to time. Notwithstanding the foregoing, if any such Development Agreement is expected to:
- (a) extend beyond the expiry of the Term,

- (b) reduce the number of vehicles capable of being held within any existing holding compound on the Ferry Terminal Properties by more than ten percent (10%);
- (c) be contrary to any provision in this Lease, any Existing Landlord Agreement, any Existing Tenant Agreement or the Coastal Ferry Services Contract; or
- (d) affect the integrity of, efficient functioning of, capacity of or safe public passage on, any highway adjacent to the Ferry Terminal Properties or any part thereof;

then the Tenant will not enter into, or agree to enter into, such Development Agreement unless the Tenant has obtained the Landlord's prior written consent to the same and the Tenant will comply with all terms and conditions which the Landlord may advise the Tenant of in connection with any consent to any such Development Agreement. In the event that a Development Agreement is expected to extend beyond the expiry of the Term, the Landlord may, in its sole discretion, require that the terms of the Development Agreement be satisfactory to the Landlord, who shall then also be made a party to it.

- 9.5 The parties acknowledge that the Tenant or any of its predecessors may have entered into agreements with third parties granting rights of access, an interest in or other rights over lands adjacent to or near the Ferry Terminal Properties which are required for the Tenant's use of the Ferry Terminal Properties as described in Paragraph 20.1. The Tenant covenants and agrees with the Landlord to use the Tenant's reasonable efforts to provide the Landlord with true copies of all of such agreements, if any, as soon as possible after the Commencement Date.
- 9.6 The parties acknowledge that the Landlord may have entered into agreements with third parties granting rights of access, an interest in or other rights over lands adjacent to or near the Ferry Terminal Properties which are required for the Tenant's use of the Ferry Terminal Properties as described in Paragraph 20.1. The Landlord covenants and agrees with the Tenant to use the Landlord's reasonable efforts to provide the Tenant with true copies of all of such agreements, if any, as soon as possible after the Commencement Date.
- 9.7 On the expiry of the Term or of any Renewal Term, or on any termination of this Lease, the Tenant agrees to deliver to the Landlord a copy of any agreements relating to lands, water or improvements outside of the Ferry Terminal Properties and made between the Tenant and a third party that are essential or necessarily incidental to the operation of the BC Ferry System from the Ferry Terminal Properties in accordance with the provisions of the Coastal Ferry Services Contract. In the event that this Lease is terminated or expires, the Landlord agrees that it will, subject only to the consent of the third party if required, assume responsibility for all of the Tenant's rights and obligations under such agreements.

10. OWNERSHIP OF FACILITIES

- 10.1 Except as otherwise provided for herein, the parties agree that, during the Term, or any Renewal Term, or from the Commencement Date to such earlier termination date if this Lease is terminated for any reason, the Existing Facilities, New Facilities and Leasehold Improvements are and will be the separate property of the Tenant and not of the Landlord. Notwithstanding that Existing Facilities and some of the Leasehold Improvements are, as at the Commencement Date, attached to the Ferry Terminal Properties, the Landlord acknowledges that, by executing this Lease, the Tenant is the owner of the Existing Facilities and such Leasehold Improvements together with all rights, interests, obligations and liabilities in connection with, arising from or related to the Existing Facilities.

11. SURRENDER ON TERMINATION

- 11.1 Except as otherwise provided herein, the Tenant agrees that it will, on the expiry of the Term, or any Renewal Term, or any earlier termination of this Lease, surrender to the Landlord vacant possession of the Ferry Terminal Properties, and all Leasehold Improvements, Existing Facilities and New Facilities then in existence in a state of good order, condition and repair, free and clear of any encumbrance of any kind including any Occupant Agreement, Development Agreement or Security Interest, other than the Existing Landlord Agreements, the Existing Tenant Agreements and the Development Agreements consented to by the Landlord in writing in accordance with Paragraph 9.4 .
- 11.2 Subject to the provisions of Paragraph 8.2(b), on the expiry of the Term, any Renewal Term or any earlier termination of this Lease, all Leasehold Improvements, Existing Facilities and New Facilities then in existence will become the absolute property of the Landlord without any payment being made therefor and free and clear of all mortgages, charges and encumbrances of any kind, other than the Existing Landlord Agreements, the Existing Tenant Agreements and the Development Agreements consented to by the Landlord in writing in accordance with Paragraph 9.4 .
- 11.3 Within ten (10) days of the expiry of the Term, any Renewal Term or any earlier termination of this Lease, the Tenant will deliver to the Landlord as-built drawings of all Leasehold Improvements, Existing Facilities and New Facilities which may exist at that time and may remove from the Ferry Terminal Properties:
- (a) any trade fixtures normally removable by tenants;
 - (b) all goods, chattels, supplies, articles, equipment, materials, effects or other moveable items;

and will repair and restore, on or before the expiry of the Term, any Renewal Term or any earlier termination of this Lease, any damage occasioned to the Ferry Terminal Properties

and remaining Leasehold Improvements, Existing Facilities or New Facilities resulting from such removal.

- 11.4 If the Tenant fails to remove any of the items that it is entitled or required to remove under Paragraph 11.3 on the expiry of the Term, any Renewal Term, or any earlier termination of this Lease, then the Landlord may, at its sole discretion, either take title to same, free and clear from all claims of any kind whatsoever, or remove same and repair any damage resulting from such removal in which case the Tenant will pay to the Landlord, on demand, all costs incurred by the Landlord as a result of such removal, repair and storage.

12. OVERHOLDING

- 12.1 If the Tenant remains in possession of all or part of the Ferry Terminal Properties after the expiry of the Term, or Renewal Term, if any, whether with or without the consent of the Landlord, and without executing and delivering a new lease, there will be no renewal or extension of this Lease or the Term. In this event, the Tenant will be deemed to be occupying the Ferry Terminal Properties as a monthly tenant, on the same terms as set forth in this Lease insofar as they are applicable to a monthly tenancy, except that monthly basic rent will be the then fair market value rent as determined by the Landlord acting reasonably, and the monthly tenancy can be terminated by either party upon thirty (30) days prior written notice to the other party.

13. BASIC RENT AND RENEWAL RENT

- 13.1 Basic Rent for the Ferry Terminal Properties will be the sum of Twenty-four Million, Four Hundred and Fifteen Thousand, One Hundred Dollars (\$24,415,100.00) for the Term.
- 13.2 The Tenant agrees that it will prepay the Basic Rent at the Commencement Date, without abatement. The Landlord agrees that the Tenant may pay the Basic Rent by providing the Landlord with a signed, interest-free, demand promissory note in favour of the Landlord for the total amount of the prepaid Basic Rent, or by set-off only against any monies owing by the Landlord to the Tenant under section 3.3 of the Master Agreement.
- 13.3 Renewal Rent for the Ferry Terminal Properties will be the sum of Twenty Dollars (\$20.00) for the Renewal Term, being a yearly rent of One Dollar (\$1.00) for each year of the Renewal Term.
- 13.4 The Tenant agrees that it will prepay the Renewal Rent at the commencement of the Renewal Term, without abatement.

14. ADDITIONAL RENT

- 14.1 The Tenant agrees to pay the Landlord, as Additional Rent, during the Term and any Renewal Term, any sums of money as set out in this Lease that may be or become owing to the Landlord from time to time, other than Basic Rent and Additional Rent.
- 14.2 If and so often as any Additional Rent is not paid when due, the Landlord has the same rights and remedies and may take the same steps for its recovery as for the recovery of Rent in arrears.
- 14.3 Subject to Paragraph 13.2, the Tenant covenants and agrees to pay all monies payable under this Lease to the Landlord, or as the Landlord may direct in writing, in lawful money of Canada, without any set off, compensation or deduction whatsoever on the days and at the times specified in this Lease.
- 14.4 If the Tenant fails to pay any Basic Rent or Additional Rent payable by the Tenant to the Landlord under this Lease promptly when due, then the Tenant will pay to the Landlord interest on any unpaid Basic Rent and Additional Rent at a rate equal to equal to 6% per annum above the then applicable prime rate established from time to time by the Landlord's bank from the date on which such Basic Rent and Additional Rent was due until actual receipt of payment of the unpaid Basic Rent, Additional Rent and the interest due hereunder.

15. TAXES PAYABLE BY TENANT

- 15.1 The Tenant agrees that it will promptly pay or cause to be paid when due:
- (a) any Taxes;
 - (b) any tax, rate, duty, assessment and fees with respect to any Leasehold Improvements, Existing Facilities, New Facilities, personal property and facilities on the Ferry Terminal Properties or any part thereof;
 - (c) any taxes and licence fees including any penalty, interest or cost imposed against the Tenant or its business or operations with respect to any business or undertaking carried on the Ferry Terminal Properties or any part thereof;
 - (d) any business transfer tax, value added tax, multi-stage sales tax, goods and services tax or any other tax relating to the Rent or lease of the Ferry Terminal Properties or any part thereof; and

- (e) any and all other taxes, fees or charges that in any way relate to the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities or any and all uses on the Ferry Terminal Properties.

16. UTILITY CHARGES PAYABLE BY TENANT

- 16.1 The Tenant agrees to pay or cause to be paid the amount of any water, garbage collection, electrical, gas, power, other fuel and any other similar service or utility charges, costs or expense rendered to the Ferry Terminal Properties, or assessed against the Leasehold Improvements, Existing Facilities or New Facilities or any business or undertaking carried on therein and further agrees that the Landlord will not be responsible or liable in any way for payment of any such charges, costs or expenses or for any losses suffered by the Tenant or any person as a result of the Tenant's failure to pay such charges, costs or expenses in a prompt manner.

17. LANDLORD'S RIGHT TO PAY

- 17.1 If the Tenant fails to pay or cause to be paid any Taxes, fees, fines, charges or other monies required to be paid pursuant to this Lease, then the Landlord may, but will not be obliged to, pay the same and the amount paid will be payable by the Tenant on demand and will be recoverable as Additional Rent.

18. TENANT TO PROVE PAYMENT

- 18.1 The Tenant will, upon the request of the Landlord, forthwith provide the Landlord with proof of payment of any matters described in Paragraphs 15 or 16.

19. RIGHT TO APPEAL

- 19.1 Each of the Landlord and the Tenant (provided the Tenant is legally entitled to do so) will have the right to contest in good faith the validity or amount of any Taxes or to appeal any assessment therefor. Notwithstanding anything to the contrary in this Lease, the Tenant may, if it is not then in default under the Tenant's Obligations and on giving the Landlord at least 15 days prior written notice, defer payment of any Taxes to the extent permitted by applicable Laws, provided that no contest by the Tenant will involve the possibility of forfeiture, sale or disturbance of the Landlord's interest in the Ferry Terminal Properties (or any part thereof) or the imposition of any penalty or interest, charge or lien and that, upon the final determination of any contest or appeal by the Tenant, the Tenant will immediately pay and satisfy the amount found to be due, together with any costs, penalties and interest. If as a result of any contest or appeal by the Tenant, any Taxes are increased, the Tenant will be responsible for the full amount of such increase in respect of the period to which the contest releases and to any subsequent tax periods which commence during the Term (or

any Renewal Term). If the Tenant contests any amount payable by it under this Paragraph 19.1 or appeals any assessment therefor, the Tenant will:

- (a) deliver to the Landlord any notices of appeal or other similar instrument immediately on the Tenant giving or receiving the same;
- (b) promptly and diligently prosecute the contest or appeal at its sole cost and expense; and
- (c) keep the Landlord fully informed thereof and forthwith provide the Landlord with such information as the Landlord may reasonably request in connection therewith.

20. USE, DEVELOPMENT AND REPAIRS

- 20.1 Provided that the Tenant first complies with all Laws and the provisions in the Coastal Ferry Services Contract, is a ferry operator (as defined in the *Coastal Ferry Act*) and obtains any and all applicable Permits, the Ferry Terminal Properties may only be used by the Tenant or by any Occupant, agent, permitted transferee or assign pursuant to any Transfer or Assignment Agreement consented to by the Landlord in accordance with Paragraph 34.6, or any customer of the Tenant, for any use or purpose consistent with provision of the ferry transportation services and ancillary services, as those terms are defined in the *Coastal Ferry Act* and in accordance with the provisions of the Coastal Ferry Services Contract.
- 20.2 Notwithstanding anything contained in this Lease, the Landlord agrees that the Tenant may, in the normal course of business and in compliance with the Coastal Ferry Services Contract, remove, demolish, construct or redesign any Existing Facilities, New Facilities or Leasehold Improvements at any time during the Term or the Renewal Term. The Tenant agrees that it will notify the Landlord in writing of details of any removal, demolition, construction or redesign that it intends to undertake which may require the Landlord to redesign any adjacent highway, may interfere with any established third party rights or may create a Work, in which case the Tenant must obtain the Landlord's prior written consent before proceeding with any such removal, demolition, construction or redesign. The Landlord, acting reasonably, will notify the Tenant whether it consents or not within ninety (90) days from the Landlord's receipt of the Tenant's notice given under this Paragraph. If the Landlord so consents, it may impose such terms and conditions as it sees fit and the Tenant will take all necessary steps to eliminate such impact of the removal, demolition, construction or redesign and will comply with any terms and conditions the Landlord may notify the Tenant of in writing. If the Tenant fails to comply with the foregoing in this Paragraph, it must not proceed with such removal, demolition, construction or redesign. In the event that the Landlord fails to so notify the Tenant of the Landlord's decision to consent or not within such ninety (90) day period, the Tenant may proceed with such substantial removal, demolition, construction or redesign without further notice to the Landlord.

- 20.3 In doing any maintenance, repairs, replacements, decorations, removal, demolition, construction or redesign, the Tenant will only use contractors or other workers qualified and licensed, where applicable.
- 20.4 The Tenant agrees that all removal, demolition, construction or redesign of Existing Facilities, New Facilities or Leasehold Improvements will be at its sole risk, cost and expense.
- 20.5 The Tenant covenants and agrees with the Landlord that the Tenant will, at the Tenant's sole cost and expense:
- (a) keep the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities and New Facilities in a clean and sanitary condition and will not place or leave, or permit to be placed or left in, on or under any part of the Ferry Terminal Properties outside of any building thereon any debris, garbage, trash or refuse, but will deposit the same in areas and at times and in a sanitary manner and in compliance with all applicable Laws and if there are any costs for removal of debris, garbage, trash or refuse additional to the removal service provided by the Authority or if the Authority charges for such service, then the Tenant will pay such costs;
 - (b) repair, maintain and keep the Ferry Terminal Properties in good order and repair, as a careful owner would do;
 - (c) repair, maintain and keep all buildings, improvements, equipment and fixtures in the Ferry Terminal Properties, including any Leasehold Improvements, Existing Facilities and New Facilities in good order and repair and replace them when necessary, as a careful owner would do, and keep any improvements now or hereafter made to the Ferry Terminal Properties, equipment and fixtures in good order and repair, as a careful owner would do, and the Tenant covenants to perform such maintenance, to effect such repairs and replacements at its own cost and expense as and when necessary;
 - (d) repair any damage caused to the Ferry Terminal Properties by reason of any structural or any other type of defect in any Leasehold Improvements, Existing Facilities or New Facilities;
 - (e) make whole all damaged glass, including plate glass, in or on the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities and New Facilities;
 - (f) cultivate, plant, keep free from weeds and keep in a neat, tidy and trimmed condition all landscaping on the Ferry Terminal Properties as a careful owner would do;
 - (g) keep the roadways and parking areas in the Ferry Terminal Properties free and clear of all ice and snow; and

- (h) conduct, at least once every seven (7) years, a survey, carried out by an accredited professional engineer, of the condition of the Marine Structures located on the Ferry Terminal Properties, provide the Landlord with a copy of the written report and promptly ensure that all steps are taken to correct any deficiencies in the Marine Structures.

21. OPERATION OF FERRY TERMINAL

- 21.1 The Tenant agrees that it will, throughout the Term and any Renewal Term, continuously, actively, diligently and carefully, manage, operate and maintain the services of the BC Ferry System on the Ferry Terminal Properties in accordance with the terms and conditions of the Coastal Ferry Services Contract.

22. OBSERVANCE OF LAW

- 22.1 The Tenant agrees to promptly comply with and observe, and will ensure that all Occupants comply with and observe, any applicable Laws now or hereafter in force including any regulation, order or requirement of any fire underwriters association or any similar body having similar functions or of any liability or fire insurance company by which the Landlord or the Tenant may be insured at any time during the Term, or any Renewal Term, and in so doing, the Tenant will be required to make any necessary alterations, repairs, improvements or replacements in, on or to the whole or any part of the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities.

23. RIGHT OF ACCESS

- 23.1 In the event of an emergency or in the event that the Landlord believes, acting reasonably or as a result of having been provided with information from a Competent Authority or insurer, that the Tenant is in breach of the provisions of this Lease or of the Coastal Ferry Services Contract, then the Landlord, its servants and agents, will have full and free access to the Ferry Terminal Properties or any part thereof, including Existing Facilities and New Facilities for examination purposes and to exercise any rights and remedies available to the Landlord under this Lease, at law, in equity or otherwise.
- 23.2 In addition to all rights of the Landlord under Paragraph 23.1, the Tenant agrees that the Landlord, its servants or agents, will, for a period of no more than ten (10) days per calendar year, have full and free access to the Ferry Terminal Properties, including Existing Facilities and New Facilities, for examination purposes. The Landlord agrees that such examination will take place in the presence of a representative of the Tenant and the Tenant agrees to make such representative available as required by the Landlord. The Landlord agrees to provide the Tenant with at least one (1) month's prior written notice of examination times and dates. The Landlord agrees that this right to examine under this Paragraph 23.2 is not

cumulative and that its failure to exercise its right in any calendar year does not entitle it to additional examination time in any following year.

- 23.3 Any entry onto the Ferry Terminal Properties, or any part thereof, by the Landlord under this Paragraph 23 will not be deemed to be a re-entry.

24. NOTICES OF NON-COMPLIANCE

- 24.1 The Tenant agrees that it will forthwith deliver to the Landlord a copy of any claim, writ, legal proceeding or written notice of non-compliance from any Competent Authority in relation to the Tenant, Occupant, Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities received by either the Tenant or by any Occupant and will ensure that such non-compliance is forthwith remedied.
- 24.2 The Tenant will provide to the Landlord, promptly upon any request by the Landlord, evidence of compliance with any provisions in this Lease.

25. TENANT TO INSURE

- 25.1 The Tenant will, at its own expense, throughout the Term and any Renewal Term, ensure the following insurance in forms and amounts as a prudent owner would obtain are in fact obtained:
- (a) comprehensive general liability insurance, including Sudden and Accidental Pollution, to cover the obligations contemplated under this Lease, as amended from time to time, which will include a cross-liability clause, in an amount of not less than Twenty Five Million Dollars (\$25,000,000), exclusive of interest and costs, per occurrence, the Landlord will be added as an additional insured as interests may appear;
 - (b) the Tenant will also place at its expense and for its benefit insurance upon property of every kind owned by the Tenant or for which the Tenant is legally responsible that is located on the Ferry Terminal Properties, including all Leasehold Improvements, Existing Facilities, New Facilities and stock in trade;
 - (c) this insurance shall be subject to regular review and agreement as to any increase in limits required given the nature and use of the Ferry Terminal Properties;

and the Tenant agrees to provide the Landlord with written evidence of insurance, upon the request of the Landlord.

- 25.2 The Landlord agrees that the Tenant may self-insure, subject to the consent of the Landlord, such consent not to be unreasonably withheld, with respect to the liabilities and hazards against which insurance is required under this Lease and in such case the Tenant agrees to fully indemnify and save the Landlord harmless against any claims, demands, suits or otherwise made against the Landlord with respect to such liabilities and hazards and for all

legal expenses incurred by the Landlord in the defence of same, on a solicitor and own client basis. The indemnity in this paragraph will survive the expiry of the Term, or any renewal thereof, or any earlier termination of this Lease.

- 25.3 In the event of any construction being carried out on the Ferry Terminal Properties, including the construction of any Work, the Tenant will ensure that the construction is diligently carried through to completion and that prior to the commencement of such construction, ensure appropriate insurance coverage to protect its assets, without right of subrogation against the Landlord:
- (a) against claims for personal injury, death or property damage or other third-party or public liability claims arising from any accident or occurrence upon, in or about the Ferry Terminal Properties and from any cause, including the risks occasioned by such construction, for any personal injury, death, property or other claims in respect of any one accident or occurrence;
 - (b) to the Work and all fixtures, equipment, improvements and building materials on the Ferry Terminal Properties from time to time, both during and after construction, against fire, earthquake and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners in an amount sufficient for rebuilding of the assets; and
 - (c) the Tenant will consider any other form or amended form of insurance in such amounts, and against such risks as the Landlord may, from time to time, reasonably require;

and the Tenant further agrees to provide the Landlord with written evidence of insurance, upon the request of the Landlord.

- 25.4 Each policy of insurance required to be carried by the Tenant hereunder will provide that the insurer will not have any right of subrogation against the Landlord on account of any loss or damage covered by such insurance or on account of payments made to discharge claims against or liabilities of the Landlord or Tenant covered by such insurance and an undertaking from such insurer to notify the Landlord in writing at least 30 days prior to any material change to, or cancellation of, the policy.
- 25.5 The Tenant will not do, permit to be done or omit to do anything in, on or about the Ferry Terminal Properties which causes or has the effect of causing the insurance on the whole or any part of the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities to be cancelled. If the Tenant receives notice that its insurance is going to be cancelled, then the Tenant will immediately advise the Landlord and the Tenant will work diligently to remedy the situation or to obtain replacement insurance.

26. LANDLORD'S RIGHT TO INSURE

26.1 In the event that the Tenant fails to comply with any of the provisions in paragraph 25.1 or there is a cancellation or threat of cancellation of any insurance required thereunder, then, if the Tenant fails to either remedy the situation or obtain replacement insurance within a reasonable period of time, the Landlord may place such coverage as the Landlord acting reasonably sees fit and the Tenant will pay the cost thereof as Additional Rent to the Landlord on demand.

27. LANDLORD NOT LIABLE

27.1 The Tenant agrees that the Landlord will not be liable for the following:

- (a) any injury or death occurring to any person while on the Ferry Terminal Properties;
- (b) any loss of or damage to any property of the Tenant or any other person located on the Ferry Terminal Properties;
- (c) any damage, loss of profits or consequential loss caused or contributed to by the condition of the Ferry Terminal Properties, of any Existing Facility or of any New Facility, Leasehold Improvements, or any utility, service or road, or any interruption or failure in any business located on the Ferry Terminal Properties;
- (d) any injury, loss or damage required to be insured against by the Tenant under this Lease;
- (e) anything for which the Tenant is in any way responsible under this Lease;
- (f) anything for which the Tenant has indemnified the Landlord under this Lease; and
- (g) any claim, action, loss, writ or legal proceeding by any person in any way related to the uses permitted or not by the Tenant or any Occupant under this Lease.

28. INDEMNITY

28.1 The Tenant hereby agrees to indemnify and save the Landlord, its servants, employees, heirs and assigns harmless, against any claims, losses, suits, proceedings, actions, causes of action, demands, judgments, executions, liabilities and responsibilities arising as a result of any loss advanced by any person or entity for an injury or damage of any nature caused, resulting or arising from or contributed to by reason of any one or more of the following:

- (a) the ownership of Existing Facilities, Leasehold Improvements or New Facilities, the occupancy or use of the Ferry Terminal Properties or any part thereof by the Tenant, any Occupant, or any person occupying or using the Ferry Terminal Properties or

any part thereof with the consent, express or implied, of the Tenant or of an Occupant;

- (b) the Ferry Terminal Properties, the Leasehold Improvements, Existing Facilities or New Facilities, or any part of any of them;
- (c) any claims or costs related to any dispute including the filing of any construction or builders liens, certificates of pending litigation or any other encumbrance against the Landlord or the Ferry Terminal Properties or any part thereof;
- (d) the presence of any Hazardous Substance or the existence of any Hazardous Substance on, in or about the Ferry Terminal Properties or any part thereof, including any Hazardous Substance for which the Tenant is responsible at law before the Commencement Date;
- (e) any act or omission of the Tenant, any Occupant, or any employee, agent, customer, contractor, sub-contractor, invitee or licensee of the Tenant;
- (f) any Development Agreements, Occupant Agreements, Leasehold Mortgages, or Existing Tenant Agreements;
- (g) any losses described in paragraph 17; and
- (h) any matter described in paragraph 27;

provided however, that such indemnity does not apply to any negligent acts or omissions, or to any acts or omissions done in bad faith, by the Landlord or by anyone acting on behalf of the Landlord.

- 28.2 Except for matters arising directly as a result of the Tenant's breach of its obligation to abide by and respect any Existing Landlord Agreement, the Landlord agrees to indemnify and save the Tenant, its directors, officers, agents and employees harmless from any claims, losses, suits, proceedings, actions, causes of action, demands, judgments, executions, liabilities and responsibilities, including negligence, arising as a result of any loss advanced by any person or entity for any injury or damage of any nature caused, resulting or arising from or contributed to by reason of any Existing Landlord Agreement.

29. INDEMNITIES SURVIVE TERMINATION

- 29.1 The indemnities set out in this Lease shall survive the expiry of the Term, the Renewal Term, if any, or any earlier termination of this lease.

30. TENANT TO DEFEND ACTION

- 30.1 The Tenant will, in any event in which the Landlord is made a party to any action, suit or proceeding in respect of a claim to which the Tenant's obligation to indemnify and hold the Landlord harmless arises, defend such action, suit or proceeding in the name of the Landlord and will pay all costs of the Landlord, excluding legal costs incurred by the Landlord, in connection with any litigation and the Tenant may, in its sole discretion, elect to compromise, pay or satisfy any such action, suit or proceeding.

31. LANDLORD NOT OBLIGED TO REPAIR, MAINTAIN OR PROTECT

- 31.1 The Tenant agrees that the Landlord is not obliged to furnish any utilities, services, equipment or facilities, to make repairs or alterations, or to perform any maintenance to the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities and New Facilities, and the Tenant agrees that it assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Ferry Terminal Properties and anything contained therein.

32. "AS IS" CONDITION

- 32.1 The Tenant agrees that it has fully inspected and is familiar with the physical attributes and condition (including environmental condition) of the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities and anything contained therein and accepts them on an "as is" condition, without any representations or warranties being given by the Landlord with respect thereto or to the utilities or any other services. Any additional work required to make the Ferry Terminal Properties, Leasehold Improvements or Existing Facilities suitable for the operations of the Tenant will be at the sole risk and expense of the Tenant.

33. LIENS AND CLAIM

- 33.1 The Tenant covenants that it will not permit, do or cause anything to be done, at any time which would allow any valid lien, certificate of pending litigation, judgment or certificate of any court, financial charge or encumbrance of any nature whatsoever to be imposed or to remain on the Ferry Terminal Properties, or any part thereof, excluding Security Interests which comply with the provisions in Paragraphs 34.1, 34.3 and 34.4.

- 33.2 At all times during the Term or any Renewal Term, the Tenant will, at its own expense, ensure that there is full workers' compensation coverage in respect of all workmen, employees, servants and others engaged in or on any work, non-payment of which may create a lien on the Ferry Terminal Properties or any part thereof. The Tenant will immediately notify the Landlord in writing of any dispute involving third parties which may arise in connection with obtaining and maintaining the workers' compensation coverage required under this Paragraph if such dispute results in the requisite coverage not being in place, and the Tenant will take all reasonable steps to ensure the resolution of such dispute forthwith. If the coverage required by this Paragraph is not in place within five (5) days of the date of the notice to the Landlord mentioned above, the Landlord will be entitled to have recourse to the remedies of the Landlord in this Lease, at law or in equity.
- 33.3 The Tenant agrees that the Landlord may, in its sole discretion and at its sole expense, without prior notice to the Tenant and at any time on or after the Commencement Date, file a Form 1 Notice of Interest under section 3(2) of the *Builders Lien Act*, S.B.C. 1997, c. 45, against title to all or any part of the Ferry Terminal Properties.

34. MORTGAGES, TRANSFERS, ASSIGNMENTS AND SUBLETTING

- 34.1 Provided that any rights granted to a third party do not exceed those granted to the Tenant by this Lease, and subject to the provisions of Paragraph 34.4 and 34.5, the Tenant may enter into an Occupant Agreement or Security Interest without the prior consent of the Landlord. In the event that the Tenant wishes to grant rights to a third party that do exceed those granted to the Tenant by this Lease, the Tenant must obtain the prior written consent of the Landlord, which consent may, in the Landlord's sole and absolute discretion, be withheld without having to give any reason.
- 34.2 The Tenant will provide the Landlord with either the names and addresses of any third parties to, or true copies of, any Occupant Agreement or Security Interest within ten (10) days of the Landlord's request for the same from time to time.
- 34.3 The Landlord acknowledges that the Tenant will be entering into one or more Security Interests to secure borrowings, which Security Interest will:
- (a) contain a mortgage of the Tenant's property interests and a fixed charge on all of the other assets of the Tenant, and
 - (b) grant to Her Majesty the Queen in Right of the Province of British Columbia the right in its absolute discretion to purchase all of the issued and outstanding bonds under the Security Interests at any time at a price established under the Coastal Ferry Services Contract.
- 34.4 The Landlord agrees to enter into an acknowledgement agreement directly with the mortgagees or trustees under any Security Interest acknowledging that:

- (a) the mortgagees or trustees will have the right on default, under the Security Interest, to take possession of all the assets of the Tenant and to appoint a receiver to operate the BC Ferry System in accordance with the terms of the Coastal Ferry Services Contract only for so long as they comply with the provisions of this Lease, the Coastal Ferry Services Contract and the *Coastal Ferry Act*; and
 - (b) without limiting the rights of the Province described in section 2.04(b) of the Coastal Ferry Services Contract, the Landlord will not exercise the rights and remedies that it may have under Paragraph 35.2 of this Lease, at law or in equity for so long as the mortgagee or trustee and its receiver comply with the provisions of this Lease, the Coastal Ferry Services Contract and the *Coastal Ferry Act*, however, in the event of their failure to do so, the Landlord may proceed with the exercise of its rights and remedies.
- 34.5 Notwithstanding any Occupant Agreement, Security Interest, Development Agreement, or Transfer or Assignment Agreement, or any consent of the Landlord thereto, but subject only to the rights of mortgagees or trustees under any acknowledgement agreement made pursuant to Paragraph 34.4, the Tenant will remain bound to the Landlord for the fulfillment of all of the terms, covenants, agreements or conditions contained in this Lease for the entire Term and any Renewal Term.
- 34.6 The Tenant agrees that it will not enter into a Transfer or Assignment Agreement without the prior consent of the Landlord, which consent may not be unreasonably withheld. The Landlord acknowledges and agrees that the conversion of the Tenant to a company, as more specifically described in Paragraph 3.9, neither constitutes a Transfer or Assignment nor requires the prior consent of the Landlord.
- 34.7 The rights of the Landlord under this Lease may be transferred or assigned to the Crown, any agent of the Crown or any Crown corporation and in the event of such transfer or assignment, the Tenant agrees to become the Tenant of such transferee or assignee under the terms of this Lease and to the extent that the transferee or assignee has assumed the covenants and obligations of the Landlord under this Lease, then the Landlord will, without further written agreement, be freed and relieved of all liability on such covenants and obligations. The Tenant will, from time to time at the request of the Landlord, certify or acknowledge to any actual or proposed transferee or assignee, the status and validity of this Lease, the state of the Landlord's and the Tenant's account under this Lease and any other information reasonably requested by the Landlord.

35. EVENTS OF DEFAULT

35.1 If the Tenant fails to keep, perform or observe any of the Tenant's Obligations or its obligations under the Coastal Ferry Services Contract and:

- (a) such failure continues for a period of thirty (30) business days after written notice thereof has been given by the Landlord to the Tenant; or
- (b) if any such failure because of its nature would reasonably require more than thirty (30) business days to rectify, the Tenant has not commenced rectification within the thirty (30) day notice period and, thereafter, promptly, effectively and continuously proceeds with the rectification of the failure;

then and in every such case, it will be lawful for the Landlord at any time thereafter to enter into and on the Ferry Terminal Properties or any part thereof in the name of the whole and the Landlord to have again, repossess and enjoy as of its former estate, notwithstanding anything to the contrary in this Lease. Whenever the Landlord is entitled to re-enter the Ferry Terminal Properties, it may, at its option and without limiting its other rights and remedies, terminate this Lease in which case all prepaid Rent will remain the property of the Landlord and the provisions in Paragraph 11 will apply.

35.2 Subject to the provisions of the Coastal Ferry Services Contract and to any acknowledgement agreement made in accordance with the provisions of Paragraph 34.4, upon the occurrence of an "Event of Default" as that term is defined under the provisions of the Coastal Ferry Services Contract, by the Tenant, this Lease will, at the sole option of the Landlord, cease and determine at which time the Term will immediately become forfeited and void and the Landlord may

- (a) immediately claim Rent together with any arrears then unpaid and any other amounts owing to the Landlord by the Tenant under this Lease; and
- (b) without notice or any form of legal process, forthwith re-enter on and take possession of the Ferry Terminal Properties and remove the Tenant's effects therefrom;

without prejudice to, and under reserve of, all other rights, remedies and recourses of the Landlord.

35.3 If at any time an action is brought for recovery of possession of the Ferry Terminal Properties, for the recovery of Rent or any other amount due under this Lease, or because of a breach by act or omission of any Tenant's Obligations, the Tenant will pay to the Landlord all costs and expenses incurred by the Landlord in obtaining professional advice regarding the same and in the exercise or enforcement of its rights and remedies under this Lease, including legal costs on a solicitor and own client basis.

- 35.4 If, at any time and so often as it happens, the Tenant fails to keep, perform or observe any of the Tenant's Obligations, then the Landlord may, but is not obligated so to do, without waiving or releasing the Tenant from the Tenant's obligations, itself observe and perform the Tenant's Obligations in respect of which the Tenant has made default or make payment of the moneys the Tenant has failed to pay; and the Tenant will promptly pay all costs and expenses reasonably incurred by the Landlord, excluding the costs of any salary, wages and benefits payable by the Landlord to any of its employees but including legal costs as between solicitor and own client, in the observance or performance of such Tenant's Obligations.
- 35.5 Any money paid by the Landlord as provided in Paragraph 35.4 will, be payable by the Tenant to the Landlord and the Tenant covenants to pay the Landlord forthwith on demand, with interest accruing on that money from the date of demand at a rate equal to 6% per annum above the prime rate established from time to time by the Landlord's bank, and all money payable under this Paragraph will be treated as Rent due and payable to the Landlord under this Lease and the Landlord will have the same rights and remedies and may take the same steps for their recovery as for the recovery of Rent in arrears.
- 35.6 Except as otherwise provided in this Lease, all rights and remedies of the Landlord in this Lease contained will be cumulative and not alternative and will be in addition to all rights and remedies available to the Landlord at law, in equity or otherwise.

36. BINDING UPON PERMITTED SUCCESSORS AND ASSIGNS

- 36.1 This Lease will enure to the benefit of and be binding on the Landlord, its successors and assigns, the Tenant, and the Tenant's permitted successors and assigns.

37. WAIVER

- 37.1 The failure of either party to insist on the strict performance of any provisions in this Lease or the failure of either party to exercise any right, option or remedy will not be construed as a waiver of any continuing or subsequent default or breach; and no waiver will be inferred from or implied by anything done or omitted by either party except if there is an express waiver in writing by that party.

38. FORCE MAJEURE

- 38.1 No party will be liable to another for any delay, interruption or failure in the performance of their respective obligations under this Lease if caused by an Event of Force Majeure, in which case the time period for the performance or completion of any such obligation will be automatically extended for the duration of such Event of Force Majeure.

39. NOTICES

39.1 Any notices to be given pursuant to this Lease will be sufficiently given if delivered or sent by fax as follows:

To the Landlord: BC Transportation Financing Authority
300 – 940 Blanshard Street
Victoria, British Columbia V8W 3E6
Attention: Director, Land Management Branch

FAX NO: 250.356.6970

And to the Tenant: British Columbia Ferry Corporation
1112 Fort Street
Victoria, British Columbia
V8V 4V2
Attention: Manager of Properties and Planning

FAX NO: 250.388.7481

and any notice will be deemed to have been given and received on the business day immediately following delivery or successful facsimile transmission.

39.2 Either party may change its address or fax number for notices by giving the other notice of such change in one of the manners set out herein.

40. AMENDMENTS

40.1 Except as otherwise provided herein, this Lease may only be modified or amended by a subsequent agreement in writing signed by both parties.

41. NO PARTNERSHIP, JOINT VENTURE OR AGENCY

41.1 The parties agree that nothing in this Lease creates any relationship between the parties of partnership, joint venture or of principal and agent and that the relationship is only one of landlord and tenant. The Tenant covenants and agrees that it will cause all third parties under any and all Occupant Agreements, Security Interests and Development Agreement to acknowledge and agree that there is no partnership, joint venture or principal and agent relationship between the Landlord and the Tenant under this Lease.

42. SURVEYS AND REGISTERED TITLE

- 42.1 The Landlord agrees that legal surveys of the exterior boundaries of the Ferry Terminal Properties where the Landlord and Tenant have agreed to do so, will be completed by the Tenant as soon as possible and, in any event, by March 31, 2004 and the parties agree that the description of Ferry Terminal Properties in Schedule "1" will be amended accordingly. The Tenant agrees to pay for all costs and expenses of such surveys incurred by the Landlord or the Province forthwith upon its receipt of any invoice therefor. If any of the Ferry Terminal Properties are not registered at the appropriate land title office as at March 31, 2004, the Landlord may cause them to be so registered and the Tenant will promptly pay all costs and expenses incurred by the Landlord in so doing.
- 42.2 Nothing in this Lease will be construed so as to prevent or restrict the parties from agreeing to alter the boundaries of the Ferry Terminal Properties in accordance with the *Coastal Ferry Act* by deleting portions of the Ferry Terminal Properties or adding other adjacent lands in order to correct any lands or water lot areas which were incorrect descriptions of any of the Ferry Terminal Properties in Schedule "1". When and so often as such addition or deletion is made pursuant to this Paragraph, the reference in this Lease to "Ferry Terminal Properties" will mean and refer to the lands after such deletion or addition.

43. REGISTRATION OF LEASE

- 43.1 The Tenant may, at its own expense, take any steps required to register this Lease although, upon the expiry of the Term (or any Renewal Term) or any earlier termination of this Lease, the Tenant will forthwith, at its own expense, remove and discharge any such registration, and provide the Landlord with a copy of such discharge with registration particulars thereon, and an updated title search, if available, of the Ferry Terminal Properties evidencing registration of such discharge.

44. QUIET ENJOYMENT

- 44.1 For so long as the Tenant pays all monies owing under this Lease and complies with all the Tenant's Obligations, the Landlord agrees that the Tenant will be entitled to quiet enjoyment of the Ferry Terminal Properties, without interruption or hindrance by the Landlord or by anyone acting on behalf of the Landlord.

45. SCHEDULES

- 45.1 Each Schedule to this Lease is an integral part of this Lease.

46. PERFORMANCE

- 46.1 Each party will, upon the request of the other, do or cause to be done all lawful acts and execute and deliver such documents and assurances necessary for the performance of the provisions of this Lease.

47. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 47.1 Each of the Landlord and the Tenant will treat as confidential and will not, without the prior written consent of the other of them, disclose or permit to be disclosed, any information supplied to, obtained by or which comes to the knowledge of the party as a result of this Lease, except insofar as the disclosure is necessary for registration under Paragraph 43.1, to enable the party to fulfill its obligations under this Lease or the Coastal Ferry Services Contract, to their respective legal counsel or as required by Law.
- 47.2 Any documentation relating to this Lease or the Coastal Ferry Services Contract that is in the custody or under the control of the Landlord is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

48. DISPUTE RESOLUTION

- 48.1 If at any time and so often as a Dispute occurs, then the Landlord and the Tenant will use their commercially reasonable efforts to resolve such Dispute by amicable negotiations and, in this regard, will provide frank, candid and timely disclosure of all relevant facts, information and documents pertaining to any Dispute.
- 48.2 Either the Landlord or the Tenant may refer any Dispute for resolution to the Landlord's Director, Land Management Branch, Ministry of Transportation, Partnerships, and to the Tenant's Manager of Properties and Planning. Either party may designate a replacement or equivalent representative by giving the other party prior written notice of such designation.
- 48.3 If any Dispute is not resolved by the persons in Paragraph 48.2 within one month of such Dispute being referred to them, or such longer time as the Landlord and the Tenant may agree, then either the Landlord or the Tenant may elect in writing to refer the Dispute for resolution to the Landlord's Vice-President (or if not available, then to an Assistant Deputy Minister, Ministry of Transportation) and to a Vice-President of the Tenant. Either party may designate a replacement or equivalent representative by giving the other party prior written notice of such designation.
- 48.4 If any Dispute is not resolved by the persons in Paragraph 48.3 within one month of such Dispute being referred to them, or such longer time as the Landlord and the Tenant may agree, then either the Landlord or the Tenant may elect in writing to refer the Dispute for resolution to the Landlord's President, or if not available, then the Deputy Minister, Ministry

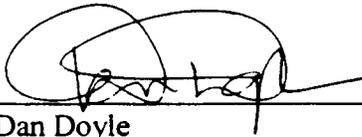
of Transportation (or any replacement or equivalent representative) and to the Tenant's President.

48.5 In any Dispute is not resolved by the persons in Paragraph 48.4 within one month of such Dispute being referred to them, or such longer time as the Landlord and the Tenant may agree, then either the Landlord or the Tenant may elect in writing to refer the Dispute to arbitration in accordance with the provisions of the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55.

WHEREFOR the parties have hereunto, by their duly authorized signatories, executed this Lease as set out below.

BC TRANSPORTATION FINANCING AUTHORITY

by its duly authorized signatory:



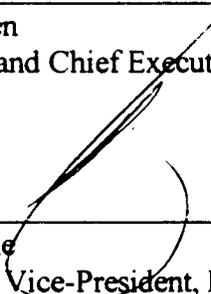
per: Dan Doyle
Chief Executive Officer

BRITISH COLUMBIA FERRY CORPORATION

by its duly authorized signatory:



per: Doug Allen
President and Chief Executive Officer



per: Rob Clarke
Executive Vice-President, Finance
and Chief Financial Officer

SCHEDULE "1" (Ferry Terminal Properties)
SCHEDULE "2" (Existing Landlord Agreements)
SCHEDULE "3" (Existing Tenant Agreements)

SCHEDULE "1"

DESCRIPTION OF FERRY TERMINAL PROPERTIES

Terminal Name: Departure Bay, Nanaimo			
Property Type	Number	P.I.D.	Legal Description
Lands Covered by Water: includes foreshore plus fill	2	025-709-810	Block H of District Lot 227 Nanaimo District Plan VIP75206
		025-709-828	District Lot 442, Nanaimo District as shown on Plan VIP75207
Uplands –Titled	5	000-148-695	That Part of Section 1, Nanaimo District shown outlined in red on Plan 1023R, except that part in Plan 11762; more particularly shown in Plan 1402 RW, and except Part in Plan VIP69889
		009-540-695	Lot A, Section 1, Nanaimo District, Plan 46150
		000-296-457	That Part of Section 1, Nanaimo District shown in red on Plan 1023-R, except Parts in Plans 11762, 1402RW and 42141
		000-141-429	That Part of Lot 1, Section 1, Nanaimo District, Plan 11762, in Plan 1402 RW, except Part in Plan VIP69889
		008-872-171	Lot A, Section 1, Nanaimo District, Plan 45495
Highway Lands	0		
Air Space Parcel	0		
Unsurveyed Crown Land	0		

SCHEDULE "2" - EXISTING LANDLORD AGREEMENTS

All portions of the Ferry Terminal Properties which were highway or road immediately before they were at any time transferred to BCTFA under the Coastal Ferry Act are subject to all agreements or privileges, verbal or written, which exist on the Commencement Date which permit any person rights to use, an interest or access onto such portions of the Ferry Terminal Properties for any of the following purposes:

- (a) public and private utilities, improvements for the transmission of communications or optical energy or electrical energy, natural gas lines, artificial gas lines, lines for oil and other gaseous or liquid hydrocarbons, sanitary sewers, water lines, water conduit pipes, water mains, water distribution systems, storm sewers, pump stations, drainage ways, ditches, culverts, cat basins, signal distribution and processing equipment, and any other similar systems;
- (b) to gain access to lands, docks, boat launch ramps or water adjacent to any of the Ferry Terminal Properties, and
- (c) all systems, equipment, facilities and improvements related or ancillary to any of the foregoing.

SCHEDULE "3"

Terminal Name: Departure Bay

1. License Agreement between British Columbia Ferry Corporation and the City of Nanaimo dated July 22, 2002

BETWEEN:

BRITISH COLUMBIA FERRY CORPORATION
1112 Fort Street
Victoria, British Columbia
V8V 4V2

(hereinafter called the "Grantor")

OF THE FIRST PART

AND:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, British Columbia
V9R 5J6

(hereinafter called the "Grantee")

OF THE SECOND PART

LICENSE AGREEMENT

LICENSE AGREEMENT

In Pursuance Of
Ferry Corporation Act, R.S.B.C. 1996, c.137

THIS AGREEMENT is dated for reference the 22nd day of July, 2002.

BETWEEN:

BRITISH COLUMBIA FERRY CORPORATION
1112 Fort Street
Victoria, British Columbia
V8V 4V2

(hereinafter called the "Grantor")

OF THE FIRST PART

AND:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, British Columbia
V9R 5J6

(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS:

- A. The Grantor is a Provincial Crown Corporation providing passenger and vehicle ferry service at ports of call throughout British Columbia, including at Departure Bay in the City of Nanaimo, in the Province of British Columbia.
- B. The Grantor is the registered and beneficial owner in fee simple of lands situate in the Province of British Columbia and utilized by the Grantor for ferry shipping and related purposes pursuant to Section 6(b) of the *Ferry Corporation Act* including the Lands (as hereinafter defined) situate at the Grantor's Terminal (as hereinafter defined).
- C. The Grantee is desirous of completing the northerly extension of its Trailway (as hereinafter defined), *inter alia*, over part of the Lands.

- D. During the course of the Grantor's negotiations with the Grantee for the implementation of initiatives in the Grantor's ten year capital plan pertaining to the City of Nanaimo, including the upgrading of the Terminal, the Grantor orally agreed, for ferry shipping and related purposes, to permit the northerly extension of the Trailway over part of the Lands.
- E. The Grantor has agreed with the Grantee to construct the northerly extension of the Trailway to the specifications of the Grantee over part of its Lands aforesaid and in addition over the Ministry of Transportation Lands and Crown Foreshore (hereinafter defined) pursuant to a cost sharing Agreement between the Grantor and the Grantee which limits the Grantor's contribution to the Construction Costs (as hereinafter defined) to the maximum sum of Five Hundred Thousand (\$500,000.00) Dollars with the balance of the Construction Costs to be paid by the Grantee.
- F. The Grantor has agreed to grant to the Grantee and the Grantee has agreed to accept from the Grantor a non-exclusive license to take effect upon the completion of the construction of the Trailway with respect to the use and occupation thereof on part of the Grantor's Lands aforesaid in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual covenants hereinafter contained and the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged) the Parties hereto covenant and agree as follows:

1. **DEFINITIONS**

1.1 In this Agreement:

- (a) "**Adjacent Lands**" means that portion of the Lands immediately adjacent to the License Area.
- (b) "**Commencement Date**" the date upon which all of the following conditions have been fulfilled:
 - (i) the Grantee has notified the Grantor in writing that the construction of the Installation has been completed to the Grantee's satisfaction;

- (ii) all construction equipment, construction materials and debris have been removed from the License Area and the Lands and the access barriers removed;
 - (iii) this Agreement has been executed by both parties.
- (c) **“Construction Costs”** means the cost of construction of the Trailway on the License Area, the Ministry of Transportation Lands and the Crown Foreshore including, without limitation:
- (i) the sum of Four Hundred and Eighty-Four Thousand, Four Hundred and Seventy-Four Dollars and Fifty-One Cents (\$484,474.51) payable to Windley Contracting Ltd. pursuant to the change order to be executed between the Grantor and Windley Contracting Ltd.;
 - (ii) such other moneys, if any, as are required to be paid by the Grantee to Windley Contracting Ltd. for completion of the construction of the Trailway on the License Area, the Ministry of Transportation Lands and the Crown Foreshore;
 - (iii) the Soft Costs of the Grantor and the Grantee.
- (d) **“Contaminant”** means:
- (i) any hazardous, toxic, dangerous and potentially dangerous material or substance, any liquid or gaseous material and any other substance which is reasonably capable of causing pollution or contamination to air, land or water which is regulated and prohibited by law, and
 - (ii) all substance and materials defined as “waste” in the *Waste Management Act*, R.S.B.C. 1996, Chapter 482, or in any other legislation including Federal, Provincial and Municipal statutes, regulations, standards, codes, requirements and the like.
- (e) **“Crown Foreshore”** means the lands owned by Her Majesty the Queen in Right of the Province of British Columbia as represented by Land and Water British Columbia Inc., more particularly described in paragraph 16.1 hereof.
- (f) **“Environmental Directives”** means the directives that may be issued by the Grantor, acting reasonably, from time to time in respect of environmental

protection or preservation arising from the Grantee's use and occupation of the License Area and the Lands.

- (g) "**Expiry Date**" means the day before the tenth anniversary of the Commencement Date of this Agreement.
- (h) "**Fee**" means the annual amount payable by the Grantee provided for in paragraph 5 hereof.
- (i) "**Grantee**" means the City of Nanaimo.
- (j) "**Grantee's Representative**" means the person designated from time to time by the Grantee for the purpose of the administration of this Agreement;
- (k) "**Grantor**" means the British Columbia Ferry Corporation.
- (l) "**Grantor's Representative**" means the person designated from time to time by the Grantor for the purpose of the administration of this Agreement.
- (m) "**Installation**" means the pedestrian walkway and bicycle path constructed on the surface of the License Area by the Grantor for public use and including, as applicable, lighting, signage, drainage, benches, retaining walls, landscaping, handrails and the like.
- (n) "**Interest**" means the prime rate of interest of the Grantor in effect from time to time, plus three per cent (3%) calculated semi-annually, not in advance.
- (o) "**Lands**" means the lands of the Grantor described in Schedule "A" hereto.
- (p) "**License Area**" means that part of the Lands described in Schedule "B" hereto.
- (q) "**Ministry of Transportation Lands**" means the lands owned by Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation forming part of the southeasterly portion of the Trailway.
- (r) "**Notice of Renewal**" means a written request for a renewal of this Agreement for a renewal term delivered by the Grantee to the Grantor not earlier than one hundred and eighty (180) days and not later than ninety (90) days prior to the Expiry Date.

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- (s) **"Renewal Expiry Date"** means the day before the ~~five~~ ^{ten} anniversary of the Renewal Term.
- (t) **"Renewal Term"** means the ~~five~~ ^{ten} year period commencing on the day after the Expiry Date of this Agreement.
- (u) **"Soft Costs"** means those costs incurred, or to be incurred, by each of the Grantor and the Grantee associated with the establishment of the Trailway on the License Area, the Ministry of Transportation Lands and the Crown Foreshore including, without limitation, costs of engineering, management, survey, legal fees and disbursements, and the like.
- (v) **"Subsisting Rights"** means:
 - (i) any prior dispositions, and all subsisting grants to or rights of any person made or acquired under the *Land Act*, R.S.B.C. 1996, Chapter 245; the *Coal Act*, R.S.B.C. 1996, Chapter 51; the *Forest Act*, R.S.B.C. 1996, Chapter 157; the *Mineral Tenure Act*, R.S.B.C. 1996, Chapter 292; or any extension or renewal of such grants or rights, whether or not the Grantee has actual notice of them; and
 - (ii) the exceptions and reservations of rights, interests, privileges and titles referred to in Section 50 of the *Land Act*.
- (w) **"Taxes"** means all taxes, rates, levies, duties, charges and assessments now or hereafter assessed, levied or charged by any competent governmental authority relating to the establishment and operation of the Installation on the License Area by the Grantee including, without limitation, the maintenance, repair, improvement, renewal, replacement and inspection thereof and including the use and operation of the Installation and the License Area by the Grantee.
- (x) **"Term"** means the time period set out in paragraph 4 of this Agreement.
- (y) **"Terminal"** means the Grantor's terminal at Departure Bay, in the City of Nanaimo, in the Province of British Columbia.
- (z) **"Trailway"** means the existing City of Nanaimo Harbour trailway.
- (aa) **"Waste Management Act"** means the *Waste Management Act*, R.S.B.C. 1996, Chapter 482, as amended from time to time, and the regulations enacted under it, as amended from time to time.

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- (bb) "**Working Days**" means Monday to Friday inclusive, of each week excluding statutory holidays.

2. **REPRESENTATIONS AND WARRANTIES OF THE GRANTEE**

- 2.1 The Grantee represents and warrants to the Grantor on the execution of this Agreement and at all times thereafter during the Term that:
 - (a) the Grantee has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
 - (b) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Grantee; and,
 - (c) this Agreement has been legally and properly executed by the Grantee and is legally binding upon and enforceable against the Grantee in accordance with its terms.

3. **GRANT**

- 3.1 The Grantor agrees to grant to the Grantee during the Term of this Agreement a non-exclusive license with respect to the License Area for the following purposes:
 - (a) to enter upon the License Area for the purpose of maintaining, repairing, improving and replacing the Installation, together with the right to enter upon the Adjacent Lands reasonably required for the purpose of maintaining, repairing, improving and replacing the Installation provided that the right of entry upon the Adjacent Lands for the purposes aforesaid shall not interfere with the Grantor's operations on the Lands and further provided that the Grantee shall have obtained the prior written approval of the Grantor with respect to such entry upon the Adjacent Lands for such purpose;
 - (b) subject to the limitations as to access to the Adjacent Lands contained in paragraph 3.1(a) hereof for the officers, servants, agents, employees, contractors, sub-contractors and workmen of the Grantee to enter upon the License Area and Adjacent Lands, together with machinery, vehicles, equipment and materials for the purpose of maintaining, repairing, improving and replacing the Installation;
 - (c) for the Grantee's invitees and licensees including, without limitation, members of the public to pass and re-pass on the License Area on foot, bicycle or non-motorized transport.

(d) subject to the limitations as to access to the Adjacent Lands contained in paragraph 3.1(a) hereof, for the Grantee, its officers, servants, agents, employees, contractors, sub-contractors and workmen to enter upon the License Area and the Adjacent Lands, together with machinery, vehicles, equipment and materials for the purpose of constructing, maintaining, repairing, improving and replacing that portion of the Trailway to be established by the Grantee in the future on Crown foreshore between the existing northwest terminus of the License Area and Departure Bay Beach including, without limitation, on the Crown Foreshore more particularly described in paragraph 16.1 hereof.

3.2 The grant of the non-exclusive license in paragraph 3.1 hereof by the Grantor to the Grantee is expressly limited to the purposes set out in paragraphs 3.1(a) to (d) hereof inclusive. In addition the Grantor makes no representations or warranties regarding the License Area and the use and occupation of the License Area for the purposes aforesaid and the Grantee accepts and shall use and occupy the License Area on an "as-is" condition for the sole purposes aforesaid.

4. TERM

4.1 The Term of this Agreement will be for a period of ten years commencing on the Commencement Date and expiring on the Expiry Date, unless cancelled or otherwise terminated or renewed in accordance with the terms of this Agreement and if this Agreement is renewed, then the Agreement will expire on the Renewal Expiry Date unless cancelled or otherwise terminated during the Renewal Term in accordance with the terms of this Agreement.

4.2 If the Grantee is not in default of its obligations pursuant to this Agreement, it may deliver to the Grantor not earlier than one hundred and eighty (180) days and not later than ninety (90) days prior to the Expiry Date the Notice of Renewal and the Grantor and the Grantee mutually agree that upon receipt of the Notice of Renewal from the Grantee the Grantor will grant to the Grantee a renewal of this Agreement for the Renewal Term on the terms and conditions of this Agreement. In addition, if the Grantee is not in default of its obligations pursuant to this Agreement the Grantee shall be entitled to a second Renewal Term on the terms and conditions aforesaid *mutatis mutandis* save and except for any entitlement to a further Renewal Term.

4.3 Subject to paragraph 4.2 hereof the Grantor will be under no obligation to renew, extend or renegotiate the terms of this Agreement and there will be no further option to request a renewal of the Term following the cancellation, termination or expiration of this Agreement.

- 4.4 In the event that the Grantee remains in possession of the License Area after the end of the Expiry Date and without the delivery of a Notice of Renewal by the Grantee to the Grantor, there shall be no tacit renewal of this Agreement and the Grantee shall be deemed to be in unauthorized occupation of the License Area.
- 4.5 The parties hereby agree that nothing contained in this Agreement obligates or requires the Grantor to notify the Grantee of the requirement to deliver the Notice of Renewal and that the acceptance by the Grantor of any future payment of the Fee for the Renewal Term shall in no way be deemed to constitute a waiver of the Grantee's obligation to deliver the Notice of Renewal within the time period set out in this Agreement.
- 4.6 Notwithstanding paragraphs 4.1 and 4.2 of this Agreement, the Grantor and the Grantee agree that this Agreement shall be construed and interpreted as being for a period of five years commencing on the Commencement Date and expiring the day before the fifth anniversary of the Commencement Date, with no provision for renewal of this Agreement until the following conditions are satisfied:
- (a) the Grantee provides a counter-petition opportunity, under the provisions of the *Local Government Act*, R.S.B.C. 1996, Chapter 323, with respect to the Grantee's intention to incur certain liabilities under this Agreement beyond a term of five years; and
 - (b) the Grantee thereafter gives notice in writing to the Grantor that at the conclusion of the counter-petition process it has all necessary legal authority to enter into this Agreement for a period of more than five years.

The Grantor and the Grantee further agree that upon fulfilment of the aforementioned conditions, the provisions of paragraphs 4.1 and 4.2 shall have full effect and shall fully govern the rights and obligations of the Grantor and the Grantee with respect to the Term and Renewal Term of this Agreement.

- 4.7 The parties agree, on or before the fifth anniversary of the Commencement Date, to review the terms and conditions of this Agreement for the purpose of exploring modifications to this Agreement, the implementation of which may be considered to be in the mutual interests of the Grantor and the Grantee. For greater certainty, but not so as to limit the generality of the foregoing, the parties agree to address the possibility of replacing this Agreement with a statutory right of way, pursuant to Section 218 of the *Land Title Act*, R.S.B.C. 1996, Chapter 250, to be granted by the Grantor in favour of the Grantee over the License Area and Adjacent Lands on similar terms and conditions to those contained in this Agreement.

5. **FEE**

5.1 In consideration of the non-exclusive license granted by the Grantor to the Grantee in this Agreement, the Grantee will pay to the Grantor an annual Fee of Ten (\$10.00) Dollars throughout the Term or any Renewal Term hereof.

6. **LIMITATION ON THE GRANT**

6.1 The Grantee acknowledges and agrees with the Grantor that this Agreement is a personal contract between the Grantor and the Grantee and that the non-exclusive license aforesaid does not grant to the Grantee any proprietary or property rights or interests in the License Area or the Lands and that specifically the grant of non-exclusive license aforesaid does not constitute an interest in the Lands, and that no part of the title in the fee simple to the License Area or the Lands shall be passed to or vested in the Grantee under and by virtue of this Agreement, and that this Agreement does not run with the Lands. Furthermore, the Grantee acknowledges and agrees that the Grantor may fully use and occupy the License Area and the Lands, subject only to the rights and conditions herein contained.

6.2 The non-exclusive license granted by the Grantor to the Grantee in this Agreement is subject to all Subsisting Rights.

6.3 The Grantee acknowledges and agrees with the Grantor that:

(a) any interference with the rights of the Grantee under this Agreement by virtue of the exercise or operation of any of the Subsisting Rights will not constitute a breach of the obligations of the Grantor under this Agreement and the Grantee releases and discharges the Grantor from and against any claim for loss, damage, costs, expenses or compensation arising directly or indirectly out of any such interference; and,

(b) the Grantee will not commence or maintain proceedings under Section 65 of the *Land Act* in respect of any interference with the rights of the Grantee under this Agreement arising directly or indirectly out of the exercise or operation of any of the Subsisting Rights.

7. Deleted

8. Deleted

9. **MAINTENANCE AND OPERATION OF THE INSTALLATION**

- 9.1 The Grantee shall at its cost and expense keep, maintain, repair, renew and replace the Installation and all parts thereof in a good and workmanlike manner and in a structurally sound and safe condition in order that, *inter alia*, the existence and use of the Installation shall not interfere with the Grantor's use of its Lands adjoining the License Area and its operations thereon, and shall do all such maintenance, repairs, renewals and replacements at the cost and expense of the Grantee in all respects to a standard at least equal in quality of material and workmanship to the original material and work comprising the construction of the Installation.
- 9.2 The Grantee shall carry out the maintenance, repair, renewal, replacement and inspection of the Installation so as not to cause damage, including environmental pollution, damage or degradation upon the License Area and the Lands, and in the event thereof shall forthwith repair such damage and restore the License Area or the Lands, as the case may be, to the standard prevailing at the commencement of this Agreement to the satisfaction of the Grantor, and in the case of environmental pollution, damage or degradation, to a standard equal in such base environmental audit report, if any, as may have been obtained by the Grantor with respect to the License Area and the Lands prior to the commencement of this Agreement.
- 9.3 The Grantee shall at its cost and expense maintain, repair, renew and replace the fence separating the License Area from the Lands and all parts thereof in good order and condition and so that it is structurally sound to a standard at least equal in quality of material and workmanship to the original material and work with respect to the construction of the said fence.
- 9.4 The Grantee shall not, without the prior written consent of the Grantor, make, cause, permit or suffer to be made any alteration, improvement or addition to the Installation other than the alterations, improvements or additions required for the purpose of the maintenance and operation of the Installation. For greater certainty, but not so as to limit the generality of the foregoing, where the Grantee contemplates changes to the Installation that are, in the sole discretion of the Grantor, substantially different than the configuration of the Installation as of the Commencement Date, the Grantee shall not commence any such changes without the prior written consent of the Grantor first had and obtained.
- 9.5 The Grantee shall be responsible to obtain such permits, licenses and approvals, if any, as may be required from all relevant governmental and regulatory bodies in connection with the maintenance and operation of the Installation during the Term of this Agreement and in connection with the Grantee's performance of its

obligations under this Agreement. The Grantee shall deliver copies of any such permits, licenses and approvals to the Grantor following written request therefor by the Grantor.

- 9.6 The Grantee shall be responsible for such third party inspections, if any, required in connection with the maintenance, repair, improvement, renewal, replacement and operation of the Installation and the License Area by utilities, agencies, authorities and other persons, organizations and entities whatsoever having jurisdiction over the Installation and the License Area. The Grantee shall be responsible for coordinating and bearing all costs associated with these inspections.
- 9.7 The Grantee shall comply with all laws, regulations, policies and standards affecting the Installation and the Grantee's use and operation thereof including, without limitation, all Federal, Provincial and Municipal statutes, regulations, standards, codes, by-laws, requirements and the like pertaining to the Grantee's obligations under this Agreement. Any penalties, fines, financial assessments and the like resulting from any failure on the part of the Grantee to comply with the provisions of this paragraph shall be paid forthwith by the Grantee when due. The Grantee agrees to indemnify and save harmless the Grantor with respect thereto.
- 9.8 For greater certainty, but not so as to restrict the generality of paragraph 9.7 hereof, the Grantee shall comply with all terms, conditions and regulations under the *Workers' Compensation Act*, R.S.B.C. 1996, Chapter 492, which are its responsibility. In addition, the Grantee shall be responsible for all assessments and levies which may be made under the *Workers' Compensation Act* in respect of the Installation and the License Area pertaining to the Grantee's responsibilities aforesaid. Furthermore, the Grantee shall comply with all terms, conditions and regulations under the *Employment Standards Act*, R.S.B.C. 1996, Chapter 113, which are its responsibility and shall, in addition, be responsible for collective bargaining and labour matters related to the maintenance, repair, improvement, inspection, renewal, replacement and operation of the Installation.
- 9.9 In accordance with the *Builder's Lien Act*, R.S.B.C. 1997, Chapter 45, the Grantee shall pay all accounts and expenses for labour performed or material or design and consulting services provided pertaining to the maintenance, repair, improvement, renewal, replacement and inspection of the Installation or pertaining to the northerly extension by or on behalf of the Grantee of the Trailway on lands other than those of the Grantor's. In addition, the Grantee shall indemnify the Grantor with respect to any claims made under the *Builder's Lien Act*, in connection with the matters hereinbefore referred to in this paragraph, it being understood that the Grantor shall not be responsible for the cost of labour, services or materials performed or supplied to the Lands pursuant to this Agreement relative to the maintenance,

repair, improvement, renewal, replacement and inspection of the Installation nor performed on or supplied to any other lands in connection with the northerly extension of the Trailway by or on behalf of the Grantee. The Grantee shall forthwith remove and discharge or cause to be removed and discharged at its cost and expense any lien, encumbrance or charge upon the Lands arising out of the use of the License Area or the Lands hereunder by the Grantee or by reason of labour, material or design and consulting services furnished or claimed to have been furnished with respect to any maintenance, repair, improvement or replacement of the Installation on the Lands or the License Area or for any construction, maintenance, repair, improvement or replacement of the northerly extension of the Trailway on lands other than the Lands of the Grantor.

- 9.10 The Grantee shall ensure that all its officers, servants, agents, employees, contractors, sub-contractors, invitees and licensees requiring access to the Lands other than the License Area to perform services on behalf of the Grantee in connection with the maintenance, repair, improvement, renewal and replacement of the Installation shall comply with the Grantor's Contractor's Safety Guidelines And Work Permit And Access Log Book. The Grantor has instituted a log-in/log-out policy for all contract and/or service providers entering the Grantor's Lands to perform services thereon.
- 9.11 The Grantee shall indemnify and save harmless the Grantor of and from any and all charges otherwise payable by the Grantor pertaining to the establishment, maintenance and operation of the Installation on the License Area including, without limitation, Taxes.
- 9.12 The Grantee shall, during the Term of this Agreement, ensure that as to its maintenance, repair, improvement, renewal, replacement and operation of the Installation that:
- (a) all environmental issues are identified, addressed and resolved satisfactorily;
 - (b) all required environmental permits are obtained and all relevant environmental standards and regulations are complied with;
 - (c) all Environmental Directives are complied with.
- 9.13 The Grantee shall be solely responsible for all matters of every nature and kind whatsoever pertaining to the use and operation of the Installation and the License Area pursuant to this Agreement including, without limitation:

- (a) establishing and enforcing rules, regulations, policies and procedures with respect to the utilization of the Installation and the License Area by its officers, servants, agents, employees, contractors, sub-contractors, invitees and licensees including, without limitation, members of the public;
- (b) risk management including the identification of hazards or potential hazards.

9.14 The Grantee shall provide the Grantor monthly with copies of its regular inspection and maintenance reports pertaining to the repair and maintenance of the Installation and the License Area, as well as the operation thereof including, without limitation, hazard identification, risk management and the like. In addition, the Grantee shall promptly notify the Grantor in writing of the material particulars of any event occurring on the Installation or the License Area giving rise to the possibility of a claim or potential claim in excess of One Thousand (\$1,000.00) Dollars against the Grantee and/or the Grantor. Furthermore, the Grantee shall promptly notify the Grantor in writing of any and all claims made against the Grantee in connection with the occurrence of any such event. In each such case the Grantee shall also advise the Grantor of what steps, if any, it has taken to minimize the reoccurrence of any such event. Provided, however, that no such report or notification aforesaid shall in any way oblige the Grantor to assume the responsibility for any aspect of the repair and maintenance of the Installation and the License Area or the operation thereof including, without limitation, risk management which said responsibility shall at all times during the Term of this Agreement be that of the Grantee.

10. INDEMNITY

- 10.1 The Grantee shall indemnify and hold harmless the Grantor and its directors, officers, employees, agents and representatives from and against all claims, damages, losses, costs and expenses suffered or incurred by the Grantor or its directors, officers, employees, agents or representatives, including, without limitation, third party claims and claims by employees of the Grantee or the Grantor for injuries arising directly or indirectly:
- (a) from any accident, loss or injury that occurs or is sustained within the License Area;
 - (b) from any contamination or pollution of the Lands or any adverse effect on the natural environment, (including but not limited to any damage to any harbours, streams or other water courses or any water surrounding the Terminal or any bird or fish habitat) arising directly or indirectly out of or in connection with the performance or non-performance of this Agreement by

the Grantee its officers, servants, agents, representatives, employees, contractors, sub-contractors, workmen, and licensees;

- (c) from any negligent or willful act or omission, or breach or non-performance of this Agreement of the Grantee its officers, servants, agents, representatives, employees, contractors, sub-contractors, workmen, and licensees or of anyone for whose acts the Grantee may be liable;

provided that claims, damages, losses, costs and expenses arising out of the independent negligent acts of the Grantor are exempt from the indemnification provisions set out above.

- 10.2 Subject to paragraph 10.1 hereof, if the Grantee has caused damage to a third party in respect of the Grantee's use and occupation of the License Area under this Agreement, the Grantee agrees that it will take reasonable steps to settle any claim advanced by that third party, if that third party will so settle on a reasonable basis, and if the Grantee, acting reasonably, determines that settlement of the claim is in the best interests of the Grantee. The obligations of the Grantee shall be subject to any restrictions or conditions contained in the provisions of, or otherwise arising from, the liability insurance policy(ies) required to be maintained by the Grantee under paragraphs 11.1 to 11.3 inclusive of this Agreement. If such third party sues the Grantor on account of damages alleged to have been so sustained the Grantor shall notify the Grantee and may require the Grantee to defend the action at the Grantee's expense provided that nothing in this paragraph 10.2 shall be intended or interpreted so as to create conflict with the Grantee's insurance coverage hereinbefore referred to or the Grantee's obligations to its insurer in effect from time to time during the Term of this Agreement.
- 10.3 If the Grantee becomes liable to pay or satisfy a final Order, judgment, or award against the Grantor, then the Grantee upon undertaking to indemnify the Grantor against any and all liability for costs shall have the right to appeal in the name of the Grantor such final Order, judgment or award to any and all courts of competent jurisdiction.
- 10.4 Notwithstanding any other provisions herein, paragraphs 10.1 to 10.3 inclusive hereof shall survive the expiration or earlier termination of this Agreement for a period of twelve (12) months following such expiration or earlier termination, as the case may be. The expiration of this indemnity provision shall be without prejudice to the Grantor's right at law and in equity to claim contribution and indemnity against the Grantee including, without limitation, under the British Columbia Supreme Court Rules of Court and under the *Negligence Act*, R.S.B.C. 1996, Chapter 333.

11. **INSURANCE REQUIREMENTS**

11.1 The Grantee shall adhere to the following general requirements with respect to the implementation of insurance coverage:

- (a) without affecting the Grantee's rights and obligations under this Agreement, the Grantee shall provide the insurance specified herein during the Term of this Agreement;
- (b) insurance shall be placed and maintained with reliable insurers registered and licensed to issue insurance in the Province of British Columbia;
- (c) insurance shall be on an occurrence basis and shall run continuously from the commencement of the Term of the Agreement until the expiration of the Term or the earlier termination of the Agreement, as the case may be, and shall be effective to cover all risks insured against until the expiration of the Term or earlier termination of the Agreement aforesaid notwithstanding that claims in connection therewith may not be made until after the expiration of the Term or earlier termination of the Agreement;
- (d) the Grantee shall be responsible for all deductibles under policies and insurance provided by the Grantee;
- (e) loss or damage covered by an insurance policy shall not affect the Grantor's or the Grantee's rights and obligations under this Agreement. The Grantee's insurance is primary;
- (f) at least ten (10) days before the commencement of the Term, the Grantee shall give the Grantor proof of all insurance hereinafter specified in the form of a Certificate of Insurance;
- (g) the Grantee shall not operate and shall use its best efforts not to allow entry onto the License Area or the Lands of any unlicensed motor vehicle;
- (h) all policies shall contain a cross-liability clause stating that it protects each named insured/additional insured separately and jointly without imposed limitations as though a separate policy had been issued to each named insured/additional insured.

11.2 The Grantee shall implement Commercial General Liability Insurance as follows:

- (a) Named/Additional Insured: Grantee as named insured, Grantor as additional insured, separately and jointly;
- (b) Risks Insured: Damages for bodily injury and death as well as property damage including loss of use thereof;
- (c) Minimum Limit of Commercial General Liability Insurance to be Ten Million (\$10,000,000) Dollars inclusive each occurrence.

11.3 The Grantee shall implement the following Automotive Liability Insurance:

- (a) Named Insured: Grantee;
- (b) Risk Insured: Damages for bodily injury and death as well as property damage and including Environmental Impairment Liability;
- (c) Scope of Coverage: All vehicles owned, hired, leased, operated or licensed by the Grantee;
- (d) Minimum Limit: Ten Million (\$10,000,000) Dollars inclusive, each occurrence;
- (e) Forms:
 - (i) Standard Non-owned Automobile Policy including Standard Contractual Liability Endorsement;
 - (ii) Standard Owner's Form Automobile Policy providing Third Party Liability and Accident Benefits Insurance and covering all vehicles owned or operated for the Grantee.

12. COVENANTS OF THE GRANTEE

12.1 In addition to its agreements and covenants hereinbefore contained the Grantee further covenants with the Grantor:

- (a) not to erect, paint, display, place, affix or maintain or permit to be erected, painted, displayed, placed, affixed or maintained any sign, decoration, picture, lettering, symbol or notice of any nature or kind whatsoever on the Installation, the License Area or the Lands without the prior written permission of the Grantor first had and obtained unless the same is reasonably required in order for the Grantee to perform its covenants under this Agreement. For greater certainty, nothing in this Agreement shall be

interpreted to prevent the Grantee from erecting within the License Area the following categories of signs, declarations, pictures, letterings, symbols or notices:

- (i) regulatory signs concerning permitted and prohibited uses of the License Area and rules of use of the License Area that the Grantee may from time to time determine are reasonably required for the operation and use of the Trailway;
 - (ii) warning and/or cautionary signs respecting hazards or potential hazards within the License Area, whether erected on a permanent or temporary basis;
 - (iii) signs, plaques, symbols or pictures of a commemorative or educational purpose that the Grantee may in its discretion determine are necessary or beneficial to the operation of the Trailway;
- (b) to permit the authorized representatives of the Grantor to enter upon the License Area at any time for any purpose that does not unreasonably interfere with the Grantee's rights under this Agreement;
 - (c) not to interfere with the activities of any person authorized by the Grantor to enter upon the License Area so long as those activities do not unreasonably interfere with the Grantee's enjoyment of its rights under this Agreement;
 - (d) not to commit or suffer any wilful or voluntary waste, spoil or destruction on the License Area or the Lands, nor to do or suffer to be done on the License Area or Lands anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land;
 - (e) not to require the Grantor to deliver to the Grantee an instrument creating this Agreement in a form registrable under the *Land Title Act*, as amended;
 - (f) not to interfere with any person's exercise of the Subsisting Rights on the License Area or the Lands;
 - (g) to permit the Grantor from time to time, on no less than 48 hours prior written notice, to close temporarily all or part of the License Area for such period as may be reasonably necessary from time to time in the Grantor's sole discretion in connection with the operation of its Terminal on the Lands. Provided that, notwithstanding the foregoing, if in the opinion of the Grantor acting reasonably the use of the Installation on the License Area constitutes

a level of risk of the nature provided for in paragraph 14.5(b) hereof, then the Grantor shall, with concurrent notice to the Grantee, be entitled to temporarily close all or part of the License Area until such time as the Grantor, following consultation with the Grantee, determines in its sole discretion acting reasonably that the risk of the nature aforesaid has been satisfactorily resolved;

- (h) notwithstanding anything to the contrary hereinbefore contained, in the event of an emergency on the License Area or the Lands, as determined in the sole discretion of the Grantor, the Grantor, its officers, servants, agents, employees, contractors, sub-contractors, workman and the like, together with machinery, vehicles, equipment and materials shall be entitled to immediate access to the Installation and the License Area without notice to the Grantee to carry out all acts necessitated by the emergency;
- (i) to ensure that during the maintenance, repair and operation of the Installation, neither it, nor its officers, servants, agents, employees, contractors, sub-contractors, invitees and licensees, including members of the public, shall interfere in the day to day operations of the Terminal or cause delays in the scheduled sailings of any vessels. The Grantee shall instruct all such officers, servants, agents, employees, contractors, sub-contractors, invitees and licensees to obey the instructions of the Grantor's staff in this regard;
- (j) to keep the Installation and the License Area in a neat and clean condition free and clear of waste material, debris and rubbish including, without limitation, the collection and removal of garbage on the Installation and the License Area on a regular basis.

12.2 The Grantee acknowledges and agrees that the Grantor's commitment to contribute a maximum of Five Hundred Thousand (\$500,000.00) Dollars on account of the northerly extension of the Trailway, referred to in its Agreement with the Grantee dated the 29th day of January, 1996, (the "1996 Agreement") shall be fully paid and satisfied by:

- (a) payment by the Grantor of the Soft Costs which it has incurred or will incur in connection with the establishment of the Trailway on the License Area, the Ministry of Transportation Lands and Crown Foreshore;
- (b) payment by the Grantor to Windley Contracting Ltd. ("Windley") when due of the balance of the said maximum sum of Five Hundred Thousand (\$500,000.00) Dollars net of the Grantor's Soft Costs, in reduction of the

change order executed between the Grantor and Windley (the "Change Order") providing for the construction of the Trailway on the License Area, the Ministry of Transportation Lands and the Crown Foreshore on the terms and conditions therein specified for the sum of Four Hundred and Eighty-four Thousand, Four Hundred and Seventy-four Dollars and Fifty-one Cents (\$484,474.51).

The Grantee shall be responsible for and shall pay when due to Windley in accordance with the Change Order the difference between the cost of the Change Order of Four Hundred and Eighty-four Thousand, Four Hundred and Seventy-four Dollars and Fifty-one Cents (\$484,474.51) and the Corporation's payment pursuant to paragraph 12.2(b) hereof.

The Grantor shall have no obligation to pay and shall not pay any moneys whatsoever, related in any way to the establishment of the Trailway, save and except for payment of the maximum sum of Five Hundred Thousand (\$500,000.00) Dollars as provided for in paragraphs 12.2(a) and (b) hereof.

All Construction Costs in excess of the Corporation's maximum contribution of Five Hundred Thousand (\$500,000.00) Dollars referred to in paragraphs 12.2 (a) and (b) hereof shall be solely for the account of the Grantee and paid promptly by the Grantee when due. This obligation on the part of the Grantee shall include, without limitation, payment by the Grantee to the Grantor of any amount by which the aggregate of the moneys paid by the Grantor to Windley in accordance with the Change Order and the moneys paid by the Grantor for its Soft Costs exceeds the sum of Five Hundred Thousand (\$500,000.00) Dollars aforesaid.

The Grantee acknowledges and agrees that upon payment of the said sum of Five Hundred Thousand (\$500,000.00) Dollars by the Grantor as aforesaid and the execution of this Agreement, the Grantor shall have and be deemed to have fulfilled and completely discharged all obligations of every nature and kind whatsoever on its part contained and arising directly or indirectly out of the 1996 Agreement. For greater certainty, but not so as to limit the generality of the foregoing, the Grantor by payment of the said sum of Five Hundred Thousand (\$500,000.00) Dollars in the manner aforesaid shall have fulfilled its obligation referred to in paragraph 1 of the 1996 Agreement to contribute a maximum of Five Hundred Thousand (\$500,000.00) Dollars on account of the northerly extension of the Trailway.

13. **ENVIRONMENTAL PROVISIONS**

- 13.1 The Grantee covenants with the Grantor that neither the Grantee nor its servants, agents, employees, contractors, workmen, licensees and invitees shall cause, bring,

permit or suffer to be brought Contaminants on the License Area or Lands or any part thereof for the purpose of storage or disposal of Contaminants.

- 13.2 The Grantee shall promptly upon becoming aware of any deposit, spill, discharge or release of a Contaminant on the License Area or the Lands or of any event on or affecting the License Area or the Lands, which is the result of the actions of the Grantee or any person or persons claiming under the Grantee which constitutes an offence or breach or is reportable under any laws, by-laws or regulations relating to Contaminants and the protection of the environment give written notice to the Grantor of the deposit, spill, discharge or release or any such event on or affecting the License Area or the Lands and:
- (a) comply with all Environmental Directives and all other lawful orders or requests from the Grantor or any government authority relating to the deposit, spill, discharge, release or any such event; and
 - (b) undertake and complete all removal and remedial actions necessary to contain, remove and clean up any Contaminant that may have been deposited or spilled in, under or upon the License Area or the Lands as a result of that event and that removal shall be to the reasonable satisfaction of the Grantor;
 - (c) notwithstanding paragraph 13.2(a) hereof, the Grantor may undertake, but shall not be obliged to carry out the lawful orders or requests of any government authority or carry out the remedial actions and complete the removal of any Contaminant referred to in paragraph 13.2(b) of this Agreement, which are the result of the actions of the Grantee or any person(s) claiming under the Grantee and the Grantee shall pay to the Grantor on demand all costs and expenses incurred by the Grantor in so doing, together with Interest thereon, from the date of the incurring of such costs and expenses.
- 13.3 The Grantee covenants with the Grantor that the Grantee shall indemnify and save harmless the Grantor from any fines, penalties or expenses levied or charged against the Grantor or the Grantee by any governmental authority, court or board pursuant to any law, by-law or regulation for the protection of the environment as a result of the use or occupation of and the activities of the Grantee or its servants, agents, representatives, employees, contractors, sub-contractors, workmen, invitees and licensees in connection with the License Area or the Lands during the term of this Agreement.

13.4 These environmental provisions shall survive the expiry or earlier termination of this Agreement.

14. **DEFAULT/TERMINATION PROVISIONS**

- 14.1 Notwithstanding anything to the contrary hereinbefore contained, in the event of breach of any of the terms and provisions of this Agreement by the Grantee, which breach is not remedied by the Grantee within thirty (30) days from receipt of written notice by the Grantee, the Grantor may at its option terminate this Agreement without notice to the Grantee, initiate a claim for damages, or avail itself of any other remedy which it may have under this Agreement at law or in equity with respect to any such breach by the Grantee without further notice; provided always that if the Grantee commences to remedy the breach within seven (7) days of receipt of such notice aforesaid and thereafter diligently and continuously proceeds with the remedial action, the Grantor shall not terminate the Agreement or bring any claim for damages or exercise any other remedies which it may have in respect of such breach as aforesaid.
- 14.2 Notwithstanding anything to the contrary hereinbefore contained, in the event of the Grantee breaching any of its covenants and agreements herein contained, the Grantor shall be entitled at its option (but shall not be obliged) to cause such breach to be rectified and the cost to the Grantor of such rectification shall be a debt due from the Grantee to the Grantor together with Interest thereon, from the date of the incurring of such cost and the Grantee shall pay such cost and Interest to the Grantor forthwith upon demand.
- 14.3 For greater certainty, but not so as to limit the generality of paragraph 14.2 hereof, if the Installation is damaged such that it is rendered non-operational or inadequately operational for the purposes of this Agreement, the Grantee shall forthwith following occurrence of the damage initiate all requisite repairs, reconstruction and renewal to restore the Installation to its condition prior to the damage to the Installation. If the Grantee does not initiate the repair, reconstruction and renewal of the Installation forthwith following the damage aforesaid, or having commenced such repair, reconstruction and renewal does not proceed to complete the same with reasonable dispatch, then the Grantor shall be entitled to give seven (7) days notice in writing to the Grantee to comply with the provisions of this paragraph and in the event of the Grantee's failure to so comply, the Grantor shall have the right to terminate this Agreement forthwith without further notice following the expiration of the seven (7) day period aforesaid. Furthermore, the Grantor shall be entitled to remove the Installation from the License Area and restore the License Area and Adjacent Lands to a neat, clean and level condition, free and clear of all waste material including landscaping, trees, debris and rubbish and the Grantee

shall pay to the Grantor, on demand, all costs and expenses incurred by the Grantor in that regard, together with Interest thereon from the date of the incurring of such expense.

- 14.4 Upon the expiration or earlier termination of the this Agreement, the Grantee shall leave the Installation in good condition, reasonable wear and tear excepted, and if requested in writing by the Grantor shall remove all signage installed on the Installation by the Grantee during the Term of this Agreement. In addition, the Grantee shall leave the Installation, the License Area and the Adjacent Lands neat, clean and free and clear of all waste materials, debris and rubbish, all to the satisfaction of the Grantor.
- 14.5 Notwithstanding anything hereinbefore or hereinafter contained, in the event that the Grantor acting reasonably determines that:
- (a) the License Area or Adjacent Lands are required for ferry, shipping and related purposes;
 - (b) the establishment and use of the Installation on the License Area constitutes a level of risk unacceptable to the Grantor including, without limitation, affecting the integrity of the Terminal or the efficient and/or safe operation of the Terminal, and the procedures for temporary closure of the Installation and consultation with the Grantee described in section 12.1(g) have not resolved the said risk to the reasonable satisfaction of the Grantor;

the Grantor shall have the right to require the Grantee to relocate the Installation to another area within the Grantor's Lands that is to the mutual satisfaction of the parties, and that will permit the continuance of the Trailway system upon the Grantor's Lands. Provided that if the Grantor directs the Grantee to a substitutional area of its Lands, and the Grantee determines to construct its Trailway thereon, the cost of construction thereof shall be solely for the account of the Grantee.

- 14.6 Termination of this Agreement by the Grantor shall be without prejudice to any other rights and remedies under this Agreement at law or in equity which the Grantor may have as a result of the Grantee's failure to observe and perform the terms and conditions of this Agreement as aforesaid.
- 14.7 In the event of termination of this Agreement by the Grantor pursuant to the provisions of this Agreement the Grantor shall have no further obligation or liability whatsoever to the Grantee and the Grantee expressly releases and discharges the Grantor from and against any claim for loss, damage, cost, expense or

compensation arising directly or indirectly out of any such termination by the Grantor.

- 14.8 The rights, powers and remedies conferred on the Grantor under this Agreement are not intended to be exclusive and each will be cumulative, and in addition to and not in substitution for every other right, power and remedy existing or available to the Grantor under this Agreement, any other agreement at law or in equity and the exercise by the Grantor of any right, power or remedy will not preclude the simultaneous or later exercise by the Grantor of any other right, power or remedy.

15. **COVENANTS OF THE GRANTOR**

- 15.1 The Grantor covenants and agrees that, subject to the exercise or operation of Subsisting Rights, the Grantor will not, nor permit any other person, without the written consent of the Grantee first had and obtained, which consent shall not be unreasonably withheld, to:

- (a) make, place, erect, install or maintain after the date hereof any building, structure, excavation, pile of material or other obstruction in, under or over the License Area so that it in any way interferes with or damages or prevents access along or over the Installation;
- (b) do any act or thing which will interfere with or injure the Installation including any improvement constituting part of the Installation.

- 15.2 The Grantor covenants and agrees with the Grantee that provided the Grantee shall not be in default of this Agreement the Grantee may peaceably hold and enjoy the rights hereby granted subject to the terms and conditions of this Agreement and the Subsisting Rights.

16. **GENERAL PROVISIONS**

- 16.1 The Grantee acknowledges that the Grantor has de facto occupation of an area of Crown Foreshore immediately adjacent to the east of the Lands and forming part of the Terminal. The Grantee also acknowledges that this area of Crown Foreshore includes both filled foreshore and aqueous lands which are more particularly described as "original water lot" in Schedule "C" hereto (the "Crown Foreshore"). The Grantee further acknowledges and agrees that the Crown Foreshore shall for the purposes of this Agreement be included within the definitions of "Lands", "License Area", and "Adjacent Lands" as referred to in paragraph 1.1 hereof to the extent that the terms and provisions of this Agreement are applicable thereto. For greater certainty, but not so as to limit the generality of the foregoing, the parties

acknowledge that part of the northerly terminus of the Installation is situate on the Crown Foreshore. The parties covenant and agree that such area of Crown Foreshore shall constitute part of the License Area.

- 16.2 Notwithstanding any rule of law or equity to the contrary, the Installation including any improvement brought onto, erected upon or buried under the License Area by the Grantee, pursuant to this Agreement, shall be and remain the property of the Grantee during the Term of this Agreement notwithstanding that the same may be annexed to or affixed to the freehold of the License Area. From and after the expiration or earlier termination of this Agreement the ownership of the Installation shall vest in the Grantor and shall form part of the License Area and Lands. Provided, however, that the parties acknowledge that ownership of any part of the Installation situate on the Crown Foreshore vests in the Provincial Crown.
- 16.3 The Grantee covenants and agrees that it shall be a condition precedent to Windley Contracting Ltd. commencing construction:
- (a) of that part of the Trailway situate on the Ministry of Transportation Lands that the Grantee shall have obtained written permission from the Ministry of Transportation Lands for the construction of the Trailway on those lands and have provided the Grantor with a copy thereof;
 - (b) of that part of the Trailway including, without limitation, an access stairway, situate on the Crown Foreshore, that the Grantee shall have obtained written permission from Land and Water British Columbia Inc. for the construction of the Trailway on the Crown Foreshore and have provided the Grantor with a copy thereof.
- 16.4 The Grantor covenants and agrees, if required by Land and Water British Columbia Inc., to provide a letter of consent to the trespass over the riparian rights of its Lands constituted by the establishment of that portion of the Trailway situate on Crown Foreshore as aforesaid.
- 16.5 The parties covenant and agree that the License Area shall exclude that portion of the Trailway situate on Ministry of Transportation Lands and that the terms and conditions of this Agreement shall have no application thereto in any manner whatsoever, save and except the terms and conditions which pertain to the construction of the Trailway thereon, the payment of the cost thereof.

- 16.6 The parties covenant and agree that the License Area shall, as aforesaid, include that portion of the Trailway situate on Crown Foreshore and that the terms and conditions of this Agreement shall apply with respect thereto accordingly.
17. **MISCELLANEOUS**
- 17.1 The Grantee designates the **Director of Parks, Recreation & Culture** as the Grantee's Representative and where this position is discontinued or changed by the Grantee the Grantee will designate another position as the Grantee's representative and advise the Grantor of such change. The Grantor hereby designates the **Manager, Properties and Planning**, as the Grantor's representative under this Agreement.
- 17.2 This Agreement and the covenants herein contained are, as hereinbefore specified, personal only as between the Grantor and Grantee, are not assignable and shall immediately terminate and be of no further force and effect at the option of the Grantor in the event, inter alia, of the sale of the Lands by the Grantor or in the event of the purported assignment or other disposition directly or indirectly by the Grantee of any of its rights and privileges contained in this Agreement.
- 17.3 All disputes and issues arising out of or in connection with this Agreement, or in respect of any defined legal relationship associated therewith or derived therefrom shall be referred to and finally resolved by arbitration by the British Columbia International Commercial Arbitration Centre pursuant to the *Commercial Arbitration Act*, R.S.B.C. 1996, Chapter 55. In any such case the place of arbitration shall be Victoria, British Columbia.
- 17.4 The Grantee will treat as confidential and will not, without the prior written consent of the Grantor, publish, or disclose or permit to be published, or disclosed either before or after the expiration or sooner termination of this Agreement, any information supplied to, obtained by, or which comes to the knowledge of the Grantee as a result of this Agreement except insofar as such publication or disclosure is required by law or is necessary to enable the Grantee to fulfil the obligations of the Grantee under this Agreement. Public disclosure of this Agreement and any documents or other records pertaining to this Agreement will be governed by the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, Chapter 165.
- 17.5 Nothing contained herein or done hereunder shall be construed as constituting either party hereto the agent, partner or co-venturer of the other in any sense of the word whatsoever, and unless expressly authorized in writing by the other party hereto, or expressly stated in this Agreement, neither party hereto shall have the

right or authority to assume or create any responsibility, express or implied, on behalf of or in the name of the other party hereto, or to bind the other party hereto in any manner whatsoever or to accept payment from any party on behalf of the other party hereto.

- 17.6 This Agreement shall enure only to the benefit of and be binding upon the parties hereto.
- 17.7 The parties hereto shall execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.
- 17.8 This Agreement may not be modified or amended except by an instrument in writing signed by the parties hereto.
- 17.9 No failure or delay on the part of the Grantor to complain of an act or failure of the Grantee or to declare the Grantee in default irrespective of how long such act or failure continues will constitute a waiver by the Grantor of its rights hereunder.
- 17.10 No condoning, excusing or waiver by either party hereto of any default, breach or non-observance by the other party hereto at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of that party's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of that party in respect of any such continuing or subsequent default breach or non-observance and no waiver shall be inferred from or implied by anything done or omitted to be done by the party having those rights.
- 17.11 Any notice, direction or other instrument required or permitted to be given under this Agreement shall be in writing and may be given by delivering same or mailing same by registered mail or sending same by telex, telecommunication device or other similar form of communication to the following address:

If to the Grantor: BRITISH COLUMBIA FERRY CORPORATION
 1112 Fort Street
 Victoria, British Columbia
 V8V 4V2

Attention: Manager, Properties and Planning

Fax: (250) 388-6483

If to the Grantee: CITY OF NANAIMO
500 Bowen Road
Nanaimo, British Columbia
V9R 1Z7

Attention: Director, Department of Parks, Recreation & Culture

Fax: (250) 753-7277

Any notice, direction or instrument aforesaid shall:

- (a) if delivered, be deemed to have been given or made at the time of delivery;
- (b) if mailed by registered mail in Canada and properly addressed be deemed to have been given or made on the third day following the day on which it was so mailed; provided that if mailed, should there be, at the time of mailing or between the time of mailing and the third day following the day on which it was so mailed, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall be only effective if actually delivered; and
- (c) if sent by telex, telecommunication device or other similar form of communication, be deemed to have been given or made on the day following the day on which it was sent.

Any party hereto may give written notice of change of address in the same manner, in which event such notice shall thereafter be given to it as above provided at such changed address.

17.12 Time shall be of the essence of this Agreement.

17.13 The parties acknowledge and agree that the recitals hereinbefore contained on pages 1 and 2 of this Agreement are true, correct and accurate and in addition shall have the force and effect of contractual terms.

18. INTERPRETATION

18.1 This Agreement shall be governed by and construed exclusively in accordance with the laws of the Province of British Columbia which shall be deemed to be the proper law hereof. Provided that this Agreement shall be governed by and construed in

accordance with the laws of Canada where the same are applicable and not in conflict with the laws of the Province of British Columbia.

- 18.2 The provisions of this Agreement constitute the entire agreement between the parties hereto and supersede all previous communications, representations and agreements whether verbal or written between the parties hereto with respect to the subject matter hereof.
- 18.3 Should any part of this Agreement be declared or held invalid for any reason, such invalidity shall not affect the validity of the remainder, which shall continue in force and effect and be construed as if this Agreement had been executed without the invalid portion and it is hereby declared the intention of the parties hereto that this Agreement would have been executed without reference to any portion which may, for any reason, be hereafter declared or held invalid.
- 18.4 All references to the singular shall be construed to include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.
- 18.5 The captions and headings contained in this Agreement are for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope, meaning or intent of any provision of this Agreement.
- 18.6 In this Agreement the words "including" and "includes," when following any general term or statement, are not to be construed as limiting the general term or statement to the specific item or matter set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- 18.7 Where there is reference to an enactment of the Province of British Columbia or of Canada in this Agreement that reference will include a reference to every amendment to it, every regulation made under it, and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 18.8 Unless the context otherwise requires, any reference to "this Agreement" means this instrument and all of the Schedules attached to it and any reference to any paragraph by number is a reference to the appropriate paragraph of this Agreement.

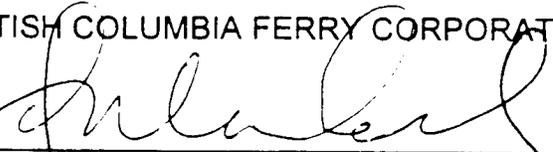
18.9 The signatories hereto warrant that they have authority to execute this Agreement on behalf of the entity for whom they sign.

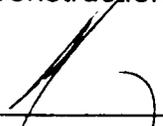
18.10 This Agreement may be executed in two (2) counterparts and such counterparts so executed shall constitute one agreement which shall be binding on the parties hereto, notwithstanding that the parties are not signatory to the original or the same counterpart. The execution of a facsimile transmission of this Agreement or the execution of two (2) facsimile transmissions counterparts of this Agreement shall constitute due execution hereof and be binding upon the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and executed this Agreement as of the day and year first above written.

BRITISH COLUMBIA FERRY CORPORATION

Per:



Authorized Signatory
David Marshall, Vice-President
Engineering and Construction

Authorized Signatory
Rob Clarke, Vice-President
Finance and Corporate Services

CITY OF NANAIMO

Per:

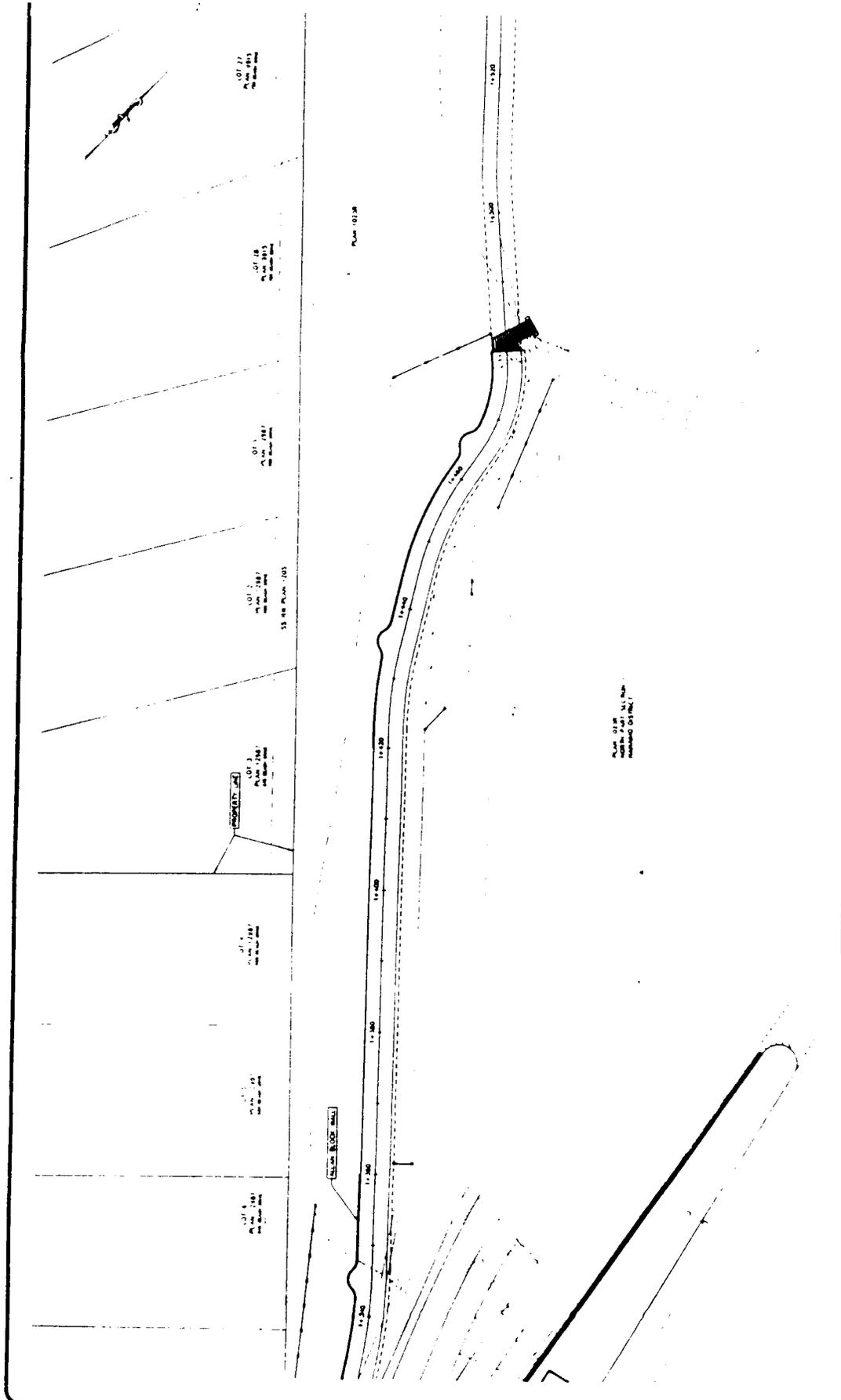


Authorized Signatory

Authorized Signatory

SCHEDULE "A"

1. That part of Section 1, Nanaimo District shown outlined in red on Plan 1023R, except that part in Plan 11762; more particularly shown in Plan 1402 RW, and except part in Plan VIP69889. Parcel Identifier: 000-148-695.
2. That part of Section 1, Nanaimo District shown in red on Plan 1023-R, except parts in Plans 11762 and 1402 RW. Parcel Identifier: 000-296-457.
3. That part of Lot 1, Section 1, Nanaimo District, Plan 11762, in Plan 1402 RW, except part in Plan VIP69889. Parcel Identifier: 000-141-429.



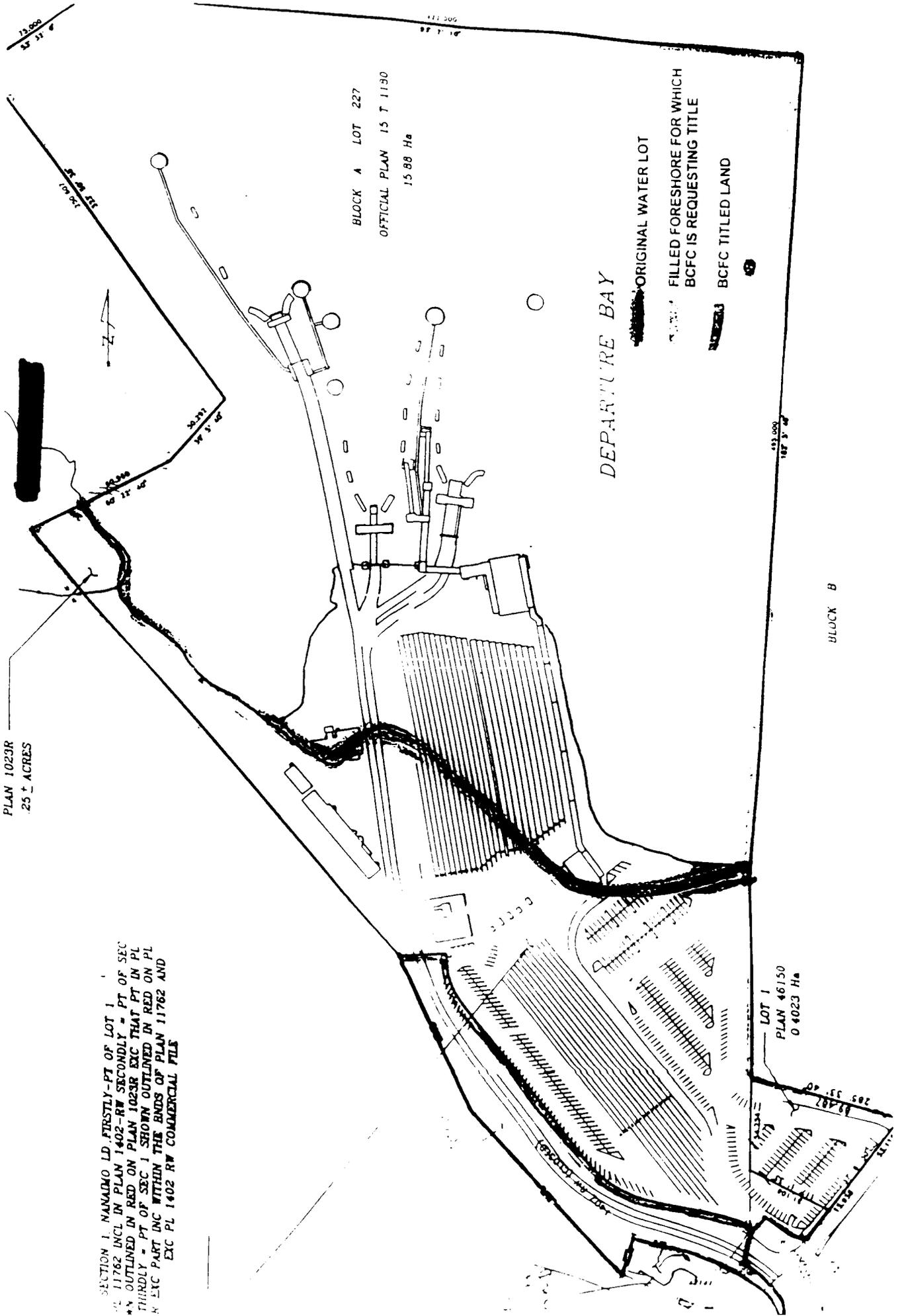
Project: 017-061
DEPARTURE BAY TRAILWAY
 The
 S.K.S. - TRAILWAY
 S.P.A. - 1994-1995 - 1996

City of
 Nanaimo

HEROLD
ENGINEERING LIMITED
 Consulting Engineers
 450-371 Street, Nanaimo, B.C. V9R 4G6
 Telephone: 250-751-0881 Facsimile: 250-751-0880

Prepared by: _____ Date: _____
 Checked by: _____ Date: _____
 Drawn by: _____ Date: _____

SCHEDULE "C"



PLAN 1023R
.25 ± ACRES

BLOCK A LOT 227
OFFICIAL PLAN 15 T 1190
15.88 Ha

DEPARTURE BAY

ORIGINAL WATER LOT
FILLED FORESHORE FOR WHICH
BCFC IS REQUESTING TITLE
BCFC TITLED LAND

BLOCK B

SECTION 1, NANAIMO LD FIRSTLY - PT OF LOT 1
IN PLAN 11762 INCL IN PLAN 1402 - RW SECONDLY - PT OF SEC
*N OUTLINED IN RED ON PLAN 1023R EXC THAT PT IN PL
THIRDLY - PT OF SEC 1 SHOWN OUTLINED IN RED ON PL
N EXC PART INC WITHIN THE BND OF PLAN 11762 AND
EXC PL 1402 RW COMMERCIAL FILE

LOT 1
PLAN 46150
0.4023 Ha

END OF DOCUMENT