

LEASE dated as of the 1st day of April 2003

With respect to

SWARTZ BAY

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 "Landlord")

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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 42.2 ;

“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 tenancy, 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 Thirty-one Million, Five Thousand Dollars (\$31,005,000.00) 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:



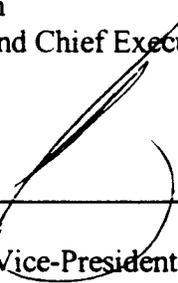
 per: Dan Doyle
 Chief Executive Officer

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: Swartz Bay			
Property Type	Number	P.I.D.	Legal Description
Lands Covered by Water: includes foreshore plus fill	0		See Plan VIP83112
Uplands –Titled	1	027-097-935	Lot 1, Sections 20, 21 and 22, Range 3E, North Saanich District, and District Lot 677, Cowichan District, and part of the Bed of Swartz Bay, Plan VIP83112
Highway Lands	0		
Air Space Parcel	0		
Unsurveyed Crown Land	0		

**Reference Plan of Consolidation of:
 Lot A, Plan VP 83110, Sections 20, 21 and 22, Range 3 East,
 North Saanich District and Cowichan District, And That Part of
 Sections 20 and 21, Range 3 East, North Saanich District,
 Shown As Closed Road On Plan VP 83111.**

Pursuant to Section 100 (1)(b) of the Land Title Act.

Scale = 1:1000
 B.C.S. 928.063

Distances are in meters unless otherwise indicated.
 All bearings are shown from observations referred
 to the magnetic meridian of 1972/73 at 49°30'N.
 Integrated Survey from the 50' (15m) at least boundary
 and the other Saanich Land Approval Certificate
 Plan to Determine of 1/2m. Coordinates
 provided by Saanich Plan 1089400.

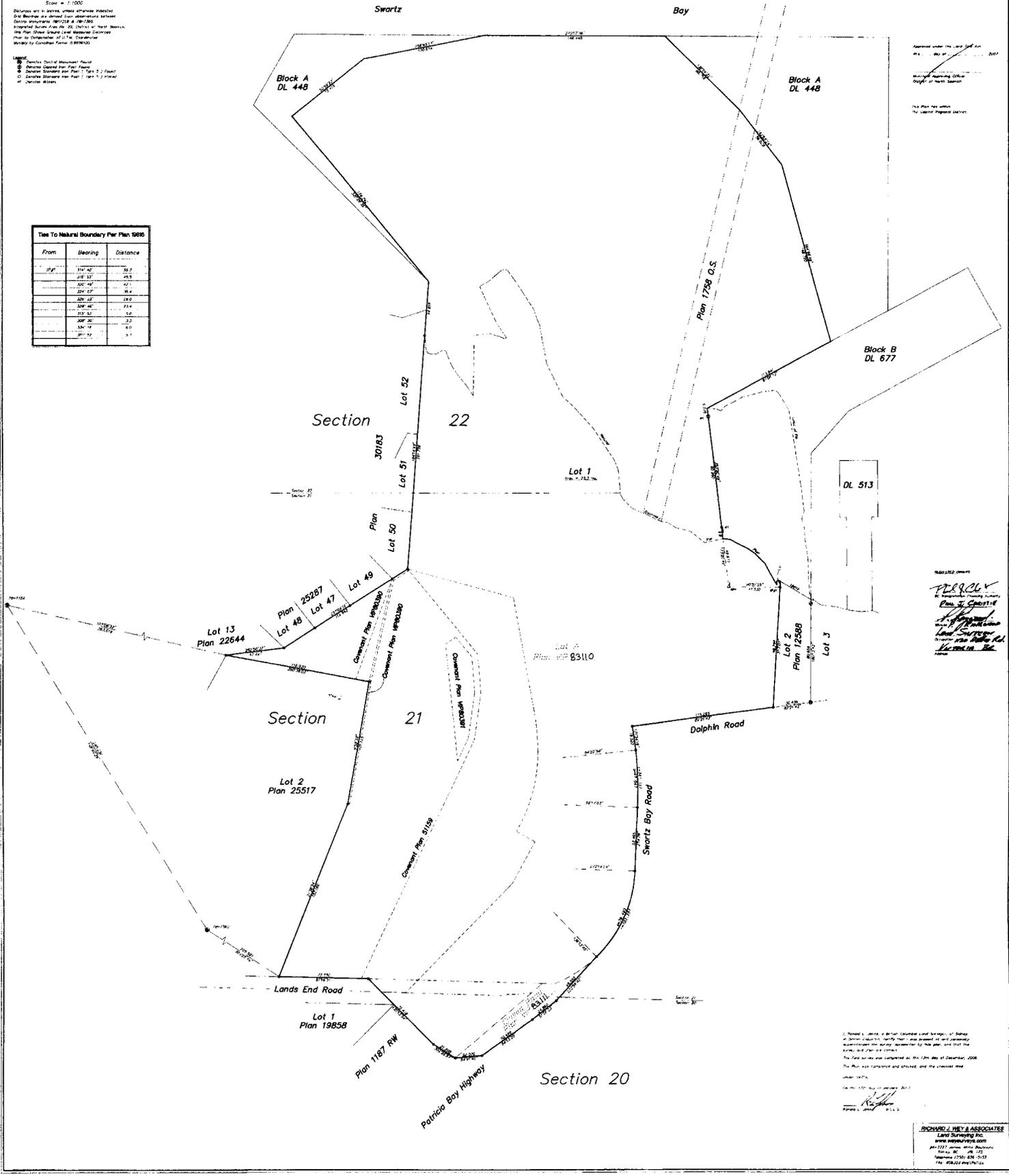
- Boundary Control Measurement Point
- Boundary Control Point (Not a Survey)

Tie To Natural Boundary Per Plan 5985

From	Bearing	Distance
77.9	114° 42'	50.7
77.9	218° 33'	25.5
77.9	300° 45'	27.1
77.9	224° 07'	16.4
77.9	326° 22'	28.0
77.9	300° 45'	27.1
77.9	218° 33'	25.5
77.9	300° 45'	27.1
77.9	114° 42'	50.7

Plan WP 83112

Consolidated by the Land Title Office on
 October 24, 2012
 and 18 days of delay
 C. J. [Signature]
 Registrar
 FB 48601



Approved under the Land Title Act
 on 18 Oct 2012
 C. J. [Signature]
 Registrar
 FB 48601

[Handwritten Signature]
 [Signature]
 [Signature]
 [Signature]
 [Signature]

I, Richard J. Hest, a British Columbia Licensed Surveyor, of Saanich, B.C., Canada, certify that this plan was prepared by me personally, supervised and verified, approved by me, and that the survey and plan are correct.
 This Plan was completed on the 18th day of October, 2012.
 The Plan was completed and checked and the correct map
 made 10/18/12.
 R. J. Hest
 Surveyor
 10/18/12

RICHARD J. HEST & ASSOCIATES
 Land Surveying Inc.
 www.rjhst.com
 217 James Street West
 Victoria, BC V8V 1Y2
 Telephone: 779-626-5113
 Fax: 779-626-5114

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: Swartz Bay

1. Unregistered Statutory Right-of-Way between British Columbia Ferry Corporation and Microcell Connexions Inc. dated August 19, 1997
2. Right of Way through Plan 1758 O.S. in favour of BC Hydro as shown on drawing

TERMS OF INSTRUMENT - PART 2

STATUTORY RIGHT-OF-WAY
(Section 214(1) - *Land Title Act*)

COPY

This Agreement made effective this 17 day of Aug, 1997 is between:

BRITISH COLUMBIA FERRY CORPORATION, a corporation (Incorporation No. _____),
having an office at 1112 Fort Street, Victoria, British Columbia, V8V 4V2, herein acting and represented by

(hereinafter called the "Owner")

AND:

MICROCELL CONNEXIONS INC., a federal corporation (Registration No. A42703), in virtue of the
Canada Business Corporations Act, 20 Bay Street, 17th Floor, Toronto, Province of Ontario, M5J 2N8, and
having an office at 540-815 W. Hastings Street, Vancouver, BC, V6C 1B4, herein acting and represented
by Claude Brisson, Vice President, duly authorized to act on its behalf by virtue of a resolution of the board
of directors adopted on May 3, 1996.

(hereinafter called "Microcell")

WHEREAS,

A. The Owner is the registered and beneficial owner in fee simple of the lands and the premises situate thereon
civically described as **Box 2250, Sidney, BC**, and legally described as:

Parcel Identifier:

Legal Description: Lot 1 of Sections 21 and 22, Range 3 East, North Saanich District and of Part
of the Former Bed of Swartz Bay, Plan 19816.

(hereinafter collectively called the "Lands");

B. Section 214 of the *Land Title Act* (British Columbia) enables the Owner to grant in favour of Microcell an
easement without a dominant tenement to be known as a statutory right-of-way.

C. The Owner has agreed to grant to Microcell a statutory right-of-way over the Right-of-Way Area (hereinafter
defined), being a part of the Lands, for the uses and purposes set out in paragraph 4.1 of this Agreement; and

D. The statutory right-of-way is necessary for the operation and maintenance of Microcell's undertaking

DEED AS FOLLOWS:

DEFINITIONS:

"Antennas and Mounts" means transmitting and receiving antennas, antenna mounts and antenna support structures;

"Equipment" means all equipment, equipment enclosures, apparatus, fixtures, attachments, and connections to a transmission facility operated by a telecommunications common carrier serving the Right-of-Way Area required or necessary to permit the construction, operation and maintenance of the Antennas and Mounts, including, without limitation, those items identified in Schedule "B";

"Fee" means the fee payable by Microcell to the Owner as described in Article 3.

"Right-of-Way Area" means that part of the Lands as shown outlined in heavy black on the Reference Plan prepared by _____, BCLS and certified correct on _____, 199____, a photo reduced copy of which is attached hereto as Schedule "A", and if no such Reference Plan is presently available that part of the Lands shown in heavy black on the sketch plan attached hereto as Schedule "A" pending final survey as contemplated by paragraph 4.3.

ARTICLE 1 - DESCRIPTION OF THE STATUTORY RIGHT-OF-WAY

1. Statutory Right-of-Way. The Owner hereby grants to Microcell, its servants, agents, employees, contractors, licensees and invitees the full, free, uninterrupted, unobstructed and right, privilege, easement and right-of-way on the terms and conditions hereinafter set out, in, over, under, along, through, or across the Right-of-Way Area for the purposes described in paragraph 4.1.

2. Amendment to Schedule "A". If, in the opinion of Microcell, the Right-of-Way Area no longer meets the selection criteria which Microcell has established for the efficient operation of its network, then Microcell may, after having received the prior written consent of Owner, which consent shall not be unreasonably withheld, relocate the Right-of-Way Area within the Lands at no cost to the Owner. Should such a relocation of the Right-of-Way Area occur, the Plan attached hereto as Schedule "A" shall be amended to reflect the revised Right-of-Way Area and the Owner agrees to execute an amending agreement confirming the relocation of the pre-existing Right-of-Way Area, such amending agreement to be prepared by Microcell at its sole cost and expense. Microcell undertakes to return the Right-of-Way Area to a condition of good repair, save and except for reasonable wear, tear and to take all reasonably necessary measures when relocating the Right-of-Way Area in order not to disturb the quiet enjoyment of occupiers of the Lands.

ARTICLE 2 - TERM

1. Initial term. Subject to Article 2.2 and Article 11, this Agreement shall be for a term of 5 years (the "Term") commencing on the earlier of:

(a) the date on which Microcell commences installation of the Antennas and Mounts or the Equipment on the Right-of-Way Area; or

(b) the first day of December 1997 (the "Commencement Date").

COPY

Right to Renew. The Owner hereby irrevocably grants to Microcell the right to extend the Initial Term for 2 other and consecutive periods of 5 years each. The rights to renew shall be deemed to have been exercised by Microcell unless Microcell gives notice in writing to the Owner at least 30 days prior to the expiry of the Initial Term or any renewal period, as the case may be, stating it elects not to exercise such right.

3. Renewal terms and conditions. All renewals shall be upon the same terms and conditions as the Initial Term, except that there shall be no further renewal right following the expiry of the last renewal period as provided in paragraph 2.2, and that the Fee during the renewal period (or periods as the case may be), shall be as set out in paragraph 3.2.

ARTICLE 3 - FEE

1. Fee. Microcell shall pay to the Owner a total fee (the "Fee") of **twenty-five thousand dollars (\$25,000.00)** during the Initial Term, to be paid annually in advance, in 5 equal and consecutive instalments of **five thousand dollars (\$5,000.00)** commencing on the Commencement Date and thereafter on each anniversary date thereof.

2. Renewal Fee. The Fee applicable to each renewal of the Initial Term shall be:

Years 6 - 10	\$ 8,000.00	per annum.
Years 11 - 15	\$ 8,000.00	per annum.

to be paid annually in advance in five (5) equal and consecutive instalments on the first day of the renewal of the Initial Term and thereafter on each anniversary date thereof.

G.S.T. INTENTIONALLY DELETED.

4. Signing Bonus. If the Landlord executes this Lease prior to August 22, 1997, then as compensation for the time, expenses incurred (including any legal costs), and any inconveniences resulting from entering into this Lease, Microcell shall pay to the Landlord a one-time fee of twenty-five hundred dollars (\$2,500.00) upon the execution of this Lease by all parties.

ARTICLE 4 - USE OF RIGHT-OF-WAY AREA

1. Microcell uses. Microcell, its servants, agents, employees, contractors, licensees and invitees may enter, upon, in, under, along, through or across the Right-of-Way Area and utilize the Right-of-Way Area for the following purposes:

- (a) to erect, according to plans submitted by Microcell and approved by the Owner, which approval shall not be unreasonably withheld, and to operate, maintain and replace the Antennas and Mounts;
- (b) to install, according to plans submitted by Microcell and approved by the Owner, which approval shall not be unreasonably withheld, and to operate, maintain and replace the Equipment;
- (c) the transmission, emission or reception of signals; and
- (d) any other purposes incidental to the above purposes.

use. The Owner grants to Microcell, its servants, agents, employees, contractors, licensees and invitees, a exclusive license for the purposes of:

- (a) ingress to and egress over the Lands at any time and from time to time for all purposes necessary or incidental to the exercise and enjoyment of the rights granted herein, and access is conditional upon notice to the owner and if access is to be had during those times when the Lands do not have personnel of the Owner on site, then it would be conditional on Microcell paying for the time of an employee of the Owner to oversee access at the employee's current hourly overtime rate and minimum call-out period; provided, Microcell takes all reasonably necessary measures in order not to disturb the quiet enjoyment of the occupiers of the Land.
- (b) installing, in accordance with plans submitted by Microcell and approved by the owner which approval shall not be unreasonably withheld and, operating, and maintaining such equipment, exterior grounding electric power and communications lines, as may be necessary for the exercise and enjoyment of the rights granted herein which shall include, without restricting the foregoing, the rights:
 - (i) to lay down and construct conduits for wires and cables of all kinds including, without limitation, fiber optic cables in, under and upon the Lands;
 - (ii) to transmit over or through the lines or conduits or any parts thereof all manner and kinds of telecommunications, electric energy and for each and every such purpose the further right at any time and from time to time to bring on the Lands any equipment, reasonably necessary or convenient to carry out any of the foregoing purposes.

Final Survey. The Owner authorizes Microcell to enter onto the Right-of-Way Area prior to the Commencement Date and to proceed with any test, inspection or examination which it judges to be necessary to the objectives of this Agreement, including site surveying, and analysis of site for placement of Equipment, at Microcell's expense. If Schedule "A" constitutes a sketch plan, the Owner authorizes Microcell to replace the sketch plan forming Schedule "A" with the Reference Plan prepared in the final survey of the Right-of-Way Area, and to incorporate the particulars of the reference plan in the definition of "Right-of-Way Area".

ARTICLE 5 - MICROCELL'S OBLIGATIONS

1. Microcell's Obligations. Microcell shall throughout the Initial Term and any renewal thereof:
 - (a) pay the Fee and all taxes, whether federal, provincial or municipal, applicable to the Fee and all taxes, duties, levies, assessments, and license fees that are levied, rated, charged or assessed by a Municipal government with respect to any and every business carried on by Microcell on the Right-of-Way Area, as they become due and payable; and
 - (b) pay all sums required pursuant to paragraphs 8.1 and 4.2(a);
 - (c) observe all laws, orders, decrees and regulations applicable to the Antennas and Mounts and the Equipment and their operation and, if need be, to obtain any authorization required by any governmental authority having jurisdiction over the Right-of-Way Area, the Antennas and Mounts or the Equipment, for the construction, installation and operation of same.

...ding that in the exercise of its rights under this Agreement, Microcell shall not interfere with the Owner's transmission facilities and/or signals, nor interfere in any way with the transmission of telecommunications, electric energy and the like either to the Owner or any other occupiers of the Lands.

ARTICLE 6 - OWNER'S OBLIGATIONS

1. Owner's Obligations. The Owner will:

- (a) not do or permit to be done any act or thing which in the reasonable opinion of Microcell, might interfere with, injure, impair the operating efficiency of, or obstruct access to or the use of the Right-of-Way Area, the Antennas and Mounts or the Equipment;
- (b) to provide to Microcell any required information in regard to access to the Right-of-Way Area and the Lands, as contemplated by this Agreement; and
- (c) execute, at the expense of Microcell, all further documents and perform all reasonable acts for the better assuring Microcell's peaceable right to enjoy the statutory right-of-way granted by this Agreement, such documents to be prepared at Microcell's sole cost and expense.

ARTICLE 7 - NON-INTERFERENCE

1. Non-interference. The Owner agrees that during the Initial Term or any renewal thereof, it will not lease, license or permit anyone to use any part of the Lands for the purposes of the transmission, emission or reception of signals by wire, radio, visual or other systems and any other purpose incidental thereto if such leasing, licensing or permission to use, interferes with the use and operation of the Equipment. The Owner agrees to notify Microcell of any proposed leasing, licensing or permission to use, in order to permit Microcell to take all action reasonably necessary to determine whether such proposed additional use interferes with Microcell's use of the Right-of-Way Area, including its use and operation of the Equipment. Without limiting the restriction set out above, if Microcell reasonably determines as evidence, by the report of a qualified R F Engineer, that such additional use will interfere with Microcell's use of the Right-of-Way Area, then Microcell agrees to meet with the Owner to attempt to achieve an agreement between the parties identifying a solution, acceptable to both parties, to minimize or eliminate such interference and, accordingly, to permit the Owner to proceed with the proposed leasing, licensing or permission to use.

ARTICLE 8 - ELECTRICITY

1. Payment by Microcell. The cost of Microcell's electrical consumption is to be in addition to the Fee and to be paid semi-annually in advance, the first payment to be made concurrent with the Fee. The advance payment for the first six-month period shall be \$450.00, plus taxes. Microcell shall install a meter at its cost to record its electrical consumption, and the cost of Microcell's electrical consumption shall be adjusted between the parties every six months based upon a reading of the meter.

2. Connection. Microcell shall have the right at all times during the Initial Term and any renewal thereof to connect, at its own cost and expense, and to draw power from the Owner's electrical power supply, including the emergency back-up generator, to meet its electrical requirements. In addition, upon receipt of notice for the annual maintenance (including repairs) of the emergency generator, Microcell shall pay the cost of its portion of such costs. The maintenance and repair costs shall be allocated evenly between all parties having access to the use of the emergency generator.

Electrical Capacity. If, at the time of construction of Microcell's Equipment, it is identified that the Owner is required to upgrade the transformer in the Building to accommodate Microcell's anticipated electric load, then Microcell shall bear the cost of upgrading the transformer, including any work, material, installations or consents, as required by reason of Microcell's operations on the Right-of-Way Area.

ARTICLE 9 - INDEMNITY

1. Indemnity. Save for the negligence or wilful acts of the Owner, its servants, agents, employees, contractors, licensees, invitees, and those persons authorized by the Owner to be on the Lands, Microcell shall indemnify and save harmless the Owner against all actions, suits, claims, direct damages, costs and liabilities arising out of or as a result of:

- (a) any breach, violation or non-performance of the terms and obligations on the part of Microcell set out in this Agreement;
- (b) any damage to the Lands, or any injury to or death of any person occasioned by the use of the Lands by Microcell, its servants, agents, employees or contractors

ARTICLE 10 - INSURANCE

1. General Requirements

- (a) Without affecting Microcell's rights and obligations under the Agreement, Microcell shall provide the insurance specified herein.
- (b) Insurance shall be placed with reliable insurers registered and licensed to issue insurance in the Province of British Columbia and shall be in a form acceptable to the Owner.
- (c) Before starting the work and for the initial term and any renewals thereof under this Agreement, Microcell shall give the Owner proof of all specified insurance in the form of a certificate of insurance.
- (d) Loss or damage covered by an insurance policy shall not affect the Owner's or Microcell's rights and obligations under this Agreement. Microcell's insurance is Primary.
- (e) If Microcell fails to provide the specified insurance, the Owner may do so at the expense of Microcell.
- (f) All policies shall state that:
 - (i) The Owner shall receive at least thirty (30) working days prior written notice of intended cancellation or material change.
 - (ii) The inclusion of more than one Insured shall not affect the rights of any other Insured.
- (g) Microcell shall not operate or allow entry onto the Owner's property any unlicensed motor vehicles. Unlicensed mobile equipment will be insured by Microcell for physical damage and liability.

2. Comprehensive General Liability Insurance

- (a) Named Insured: Microcell, Owner, separate and joint.

- (b) Risks Insured: Personal injury, death and property damage including loss of use thereof, including third parties.
- (c) Scope of Coverage to include but not limited to:
 - (i) Premises and Operations Liability.
 - (ii) Products and Completed Operations Liability
 - (iii) Blanket Contractual Liability.
 - (iv) Cross Liability for each Named Insured both separately and jointly.
 - (v) Contingent Employer's Liability.
 - (vi) Personal Injury Liability arising out of false arrest, detention or imprisonment or malicious prosecution; libel, slander or defamation of character; invasion of privacy, wrongful eviction or wrongful entry.
 - (vii) Liability with respect to non-owned licensed vehicles.
 - (viii) Broad Form property damage.
- (d) Minimum Limit: Ten million (\$10,000,000) dollars inclusive, each occurrence.
- (e) Coverage shall be continual during the Initial Term and any renewals thereof.
- (f) This policy shall be endorsed to provide Contingent Employer's Liability coverage if Workers Compensation Insurance exists as described below.

3. Automobile Liability Insurance

- (a) Risks Insured: Personal injury, death and property damage
- (b) Scope of Coverage: All licensed vehicles owned, hired, leased, operated or licensed by Microcell.
- (c) Minimum Limit: Five million (\$5,000,000.00) dollars inclusive, each occurrence
- (d) 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 licensed vehicles owned or operated for Microcell.

ARTICLE 11 - TERMINATION

1. Termination by Microcell. Microcell may terminate this Agreement by giving 30 days prior written notice to the Owner in any of the following events:

prior to the Commencement Date for any reason whatsoever, including commercial or technological reasons. Microcell concludes, in its sole discretion, that the Right-of-Way Area no longer meet the selection criteria which it has established for Microcell's network; or

- (b) Microcell fails to obtain and secure all necessary consents, approvals, permits and authorizations of Industry Canada, the Department of Transport or of the city, municipality or other local authority where the Lands are situate and other governmental authorities having jurisdiction with respect to the construction, operation and use of the Antennas and Mounts and the Equipment; or
- (c) any building, structure, trees or other works of any nature or kind whatsoever, interferes in any manner with the transmission, emission or reception of signals from or to the Antennas and Mounts or the Equipment; or
- (d) the operation of the Antennas and Mounts or the Equipment, in the opinion of Microcell, should be or become commercially or technologically impractical; or
- (e) the operation of the Antennas and Mounts or the Equipment should be or become impossible by reason of government decision, law, by-law or regulation or because of damage to or destruction of the Antennas and Mounts, the Equipment, the Lands or the Right-of-Way Area; or
- (f) the structural integrity or stability of the Lands is or becomes unsatisfactory, as determined by Microcell in its sole discretion, to accommodate the Antennas and Mounts or the Equipment; or
- (g) Microcell has not used the Right-of-Way Area, for whatever reason, for a consecutive period of one year at any time following the Commencement Date; or

in the event that Microcell terminates this Agreement, then the Owner shall be entitled to retain the Fee paid for the current year of the Term or renewal term, as the case may be

2. **Termination by Owner.** The Owner may terminate this Agreement, if and whenever the Fee or any part thereof shall be unpaid after it shall have become due and payable as herein provided. Microcell is otherwise in default of its obligations hereunder including without limitation, operating the Equipment, Antennas and Mounts in violation of laws, in a manner which constitutes a danger to occupiers of the Lands, or a failure to maintain the Equipment, Antennas and Mounts, and such default shall continue for sixty (60) days following receipt of a written notice to the Owner or if Microcell becomes bankrupt or insolvent. Upon expiration of such sixty (60) days the Owner may terminate this Agreement.

3. **Removal.** Upon termination of this Statutory Right-of-Way, Microcell shall be entitled to and shall remove the Antennas and Mounts and the Equipment, at its own expense, and return the Right-of-Way Area to a condition of good and substantial repair, save and except for reasonable wear and tear of the Lands.

4. **Property of Antennas and Mounts and Equipment.** The Antennas and Mounts and Equipment shall at all times remain the property of Microcell notwithstanding that such items may be annexed or affixed to the Lands and may at any time and from time to time be removable in whole or in part by Microcell.

ARTICLE 12 - REGISTRATION OF STATUTORY RIGHT-OF-WAY

1. **Registration.** Microcell agrees not to register this Agreement.

ARTICLE 13 - ASSIGNMENT AND TRANSFER

Prior consent. Microcell shall not assign this Agreement without the prior written consent of the Owner, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Microcell may assign its rights and obligations under this Agreement to:

- (a) a person or any other entity that directly or indirectly controls, is controlled by or is under common control with Microcell;
- (b) a purchaser of all or substantially all of Microcell's assets; or
- (c) a lender as security for financing arrangements of the Owner.

2. Control. Notwithstanding paragraph 13.1, a change of control of Microcell shall not be considered an assignment of this Agreement. For the purposes of this Article hereof, the term "control" has the meaning ascribed to it in the *Canada Business Corporations Act*.

3. Transfer of Lands. The Owner agrees not to sell, convey, dispose or otherwise transfer the Lands, unless the purchaser, transferee or other acquiring party, as the case may be, executes an agreement with Microcell to observe and perform the obligations of the Owner hereunder.

ARTICLE 14 - NOTICE

1. Notice by tender or facsimile. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission, to Microcell at the following address:

Address: 4th Floor, 1250 Rene-Levesque Boulevard West, Montreal, Quebec H3B 4W8
Attention: National Lease Coordinator
Tel Fax No.: (514) 846-6961 / (514) 937-7987

and to the Owner at the following address:

Address: 1112 Fort Street, Victoria, BC V8V 4V2
Attention: Ellis Meads, Vice President - Terminal Development and Construction
Tel Fax No.: (250) 381-1411 / (250) 361-4922

2. Notice by registered mail. Any notice shall also be given by prepaid registered mail, mailed within Canada. Such notice shall be effective on the fifth (5th) day following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effected by personal delivery or a facsimile transmission as stated above.

COPY

15 - OTHER PROVISIONS

Invalidity of provisions. If any clause, obligation or agreement of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any Court of law having jurisdiction, the remainder of this Agreement or the application of such clause, obligation or agreement to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each clause, obligation or agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

2. Entire agreement. This Agreement including Schedule "A", and "B" hereto and any other documents referred to in this Agreement constitute the entire agreement of the parties and may not be amended or modified except by a written instrument executed by both parties.

3. Successors and assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. If the Owner constitutes more than one person, every representation, covenant and agreement on the part of the Owner will be a joint and several representation, covenant, and agreement of the persons constituting the Owner.

4. Confidentiality. The Owner hereby recognizes the confidential nature of the information contained herein as it relates to Microcell competition and it hereby undertakes not to disclose such information to any third party, except to mortgagees, prospective purchasers, banks, real estate appraisers, auditors and accountants or other consultants which reasonably need to know such information, provided the same have undertaken to maintain the confidential nature of the information contained herein or except if legally compelled to do so.

Governing law. This Agreement shall be governed by the laws of British Columbia.

6. Language. The parties hereto have expressly required that this Agreement and any documents related thereto be drafted in English. Les parties aux présentes ont expressement requis que le présent Bail et tout autre document s'y rapportant soit rédigé en langue anglaise.

7. Cooperation. The Owner agrees and accepts to cooperate with Microcell, at Microcell's expense, in order to obtain all necessary authorizations from the municipality, the Department of Communications, the Department of Transport and any other governmental authority possessing jurisdiction over the construction, operation, maintenance, repair and replacement of the Antennas and Mounts and the Equipment. The Owner shall sign all necessary and reasonable authorizations to allow Microcell to obtain construction permits, approval of the implementation plan, amendments to the regulations and/or minor derogations and to obtain all pertinent information concerning the Right-of-Way Area or the property of the Owner of which the Right-of-Way Area forms a part, and to permit Microcell to obtain the plans or technical documents of the municipality or the architect or engineer.

8. Burden of Statutory Right-of-Way. The Statutory Right-of-Way shall be construed as running with and binding upon the Lands and all parts thereof. Provided however, neither the Owner nor any successor in title of the Lands will be liable under any of the covenants contained herein where liability arises after the Owner or his successor in title ceases to have any further interest in the Lands.

OPY

WITNESS WHEREOF the parties hereto have executed this Statutory Right-of-Way at the place and on the
hereinabove mentioned.

MICROCELL CONNEXIONS INC.

WITNESS

By: _____
Claude Brisson
Vice President

Date: _____

BRITISH COLUMBIA FERRY CORPORATION

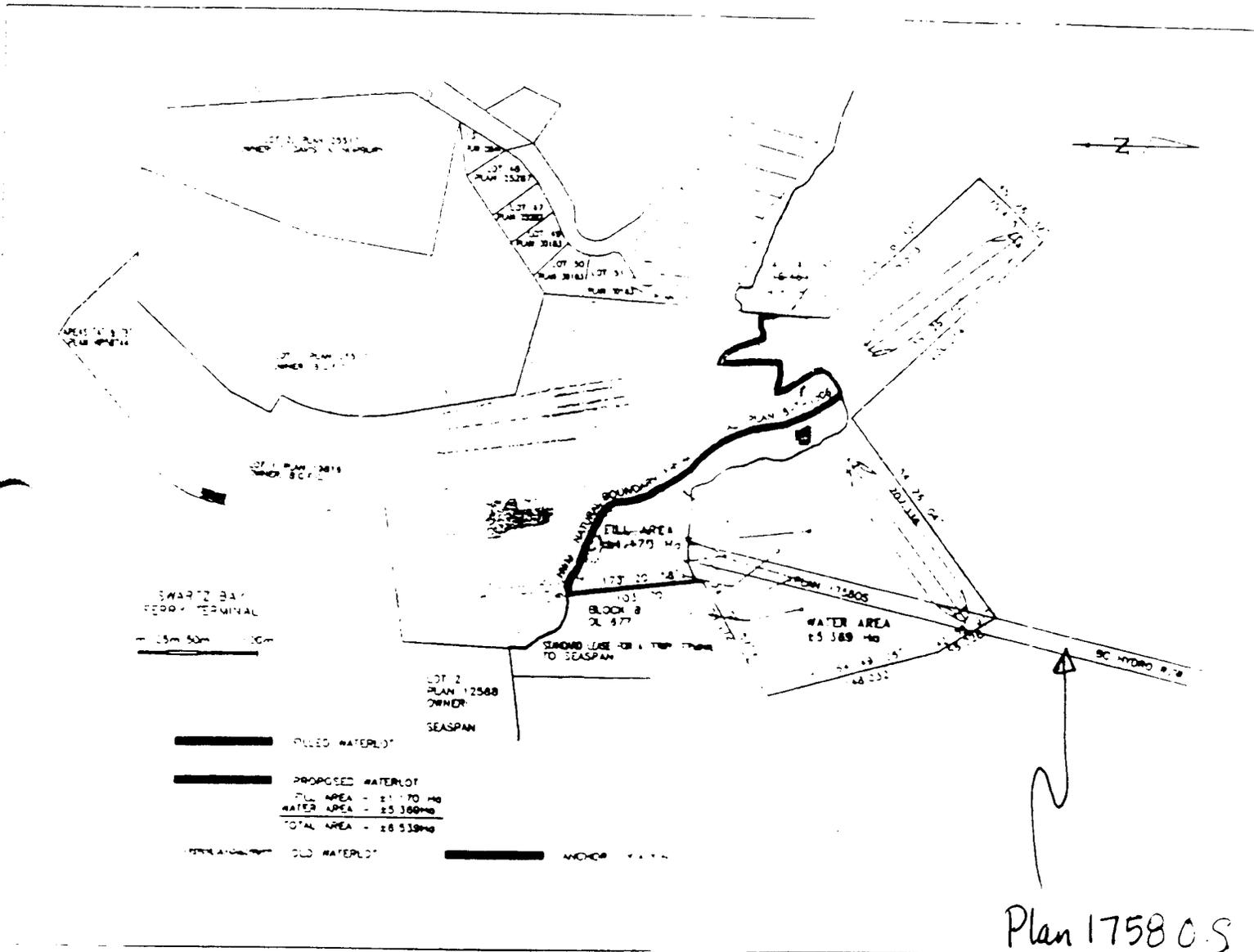
WITNESS

By: 
Authorized signatory
Name/Position

Date: Aug 19/97

Ellis Meads
Vice President
Terminal Development and Construction

COPY



END OF DOCUMENT