

This Settlement Agreement dated for reference the ____ day of December 2016

BETWEEN:

THE CORPORATION OF THE CITY OF PENTICTON,

a municipal corporation having its business office at 171 Main Street, Penticton,
British Columbia V2A 5A9

("Penticton")

AND:

TRIO MARINE GROUP INC.,

a company duly incorporated under the laws of the Province of British Columbia,
having its registered and records office at c/o Pushor Mitchell LLP, 301 -1665 Ellis
Street, Kelowna, B.C., V1Y 2B3

("Trio")

WHEREAS:

- A. Penticton and Trio are parties to a Skaha Marina - Marina Development Agreement dated August 4, 2015 (the "Marina Agreement");
- B. Penticton and Trio are parties to a Skaha Marina - Waterpark Development Agreement dated August 4, 2015 (the "Waterpark Agreement");
- C. Penticton issued an RFP and negotiated the Waterpark Agreement and Marina Agreement with Trio in compliance with its purchasing policy but in light of significant public opposition to the Waterpark Agreement, the City has pursued negotiations with Trio to arrive at a compromise that would help address concerns voiced by some members of the public;
- D. In addition Penticton and Trio have come into disagreement over their respective rights and obligations under the Waterpark Agreement and Marina Agreement; and
- E. Penticton and Trio wish to terminate all liabilities and obligations under the Marina Agreement and the Waterpark Agreement on the terms set out herein and in the Termination Agreement between the parties dated the ____ day of December, 2016 (the "Termination Agreement").

THIS AGREEMENT WITNESSES that in consideration of the mutual covenants, conditions and agreements herein contained, Penticton and Trio intending to be legally bound, agree as follows:

**1 TERMINATION OF MARINA AND WATERPARK AGREEMENT AND
 RELEASE OF OBLIGATIONS**

- 1.1 Penticton and Trio hereby terminate all rights and obligations under the Marina Agreement and the Waterpark Agreement.

- 1.2 Subject to and excepting the terms and obligations under this Agreement, the Enhanced Marina Agreement (as defined below) and the Termination Agreement, each of Penticton and Trio unconditionally releases the other and its parent, subsidiary, affiliated and related companies and each of their respective directors, officers, councilors, shareholders, employees, servants, agents, ministers, trustees, successors and assigns, both present and former, of all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, claims and demands for damages, money, losses, indemnity, profits, restitution, disgorgement, costs, interest or injury arising from the Marina Agreement and/or the Waterpark Agreement and all prior Licenses to Use and Sub-Licenses to Occupy over the same period.

2 ENTRY INTO ENHANCED MARINA AGREEMENT

- 2.1 Penticton and Trio shall enter into a Skaha Marina – Enhanced Marina Agreement (the “Enhanced Marina Agreement”) in the form exhibited to this Agreement as Schedule “A”.

- 2.2 The parties shall execute the Enhanced Marina Agreement at the same time they execute this Agreement.

- 2.3 Given the unique and lengthy history of this matter, Penticton agrees to waive its Purchasing Policy with respect to this Settlement Agreement and the Enhanced Marina Agreement as it relates to the Marine Proposal, the Skaha Lake East Concession and the Boathouse Concession Amenity Building.

- 2.4 Again, given the unique and lengthy history of this matter, Penticton further agrees that any new policy with respect to Commercial Operations in Parks will not apply retroactively to this Settlement Agreement or the Enhanced Marina Agreement.

3 COMPENSATION

- 3.1 Penticton shall within seven days of execution of this Agreement pay Trio:
- (1) the all-inclusive sum of \$20,000 in relation to Trio's claims in relation to the Waterpark Agreement and Marina Agreement and;
 - (2) a further \$20,000 in full and final satisfaction of Penticton's obligations to contribute to any further safety related repairs by Trio to the marina docks during the term that Trio holds the License to Use and Sub-License of Occupation.
- 3.2 For greater clarity, the sums payable under this Article 3 is net of all debts due between Penticton and Trio immediately prior to execution of this Agreement. The City is agreeing to forego rent and property taxes otherwise payable to it with respect to the Licence to Use and Sub License of Occupation for 2016 and Trio is foregoing reimbursement for marina repairs and all other expenses it incurred and all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, claims and demands for damages, money, losses, indemnity, profits, restitution, disgorgement, costs, interest or injury with respect to the Marina Agreement and/or the Waterpark Agreement and all prior Licenses to Use and Sub-Licenses to Occupy over the same period.

4 SEASONAL LICENSE OF CONCESSION

- 4.1 In January 2018, Penticton and Trio will enter into seasonal license (the "Concession License") for the right to operate the Skaha Lake East Concession, which is identified as item Y on the plan attached as Schedule "B" (the "Concession").
- 4.2 The License will be on terms and conditions not materially different from the license entered into between Penticton and the licensee who operated the Concession during summer of 2016 and will be operating it during the summer of 2017, save and except that it will be adjusted to reflect CPI changes and shall be subject to modification to reflect the mandatory terms below.

- 4.3 The Concession License will include the following terms (the “Mandatory Terms”)
- (1) The term of the Concession License will be the same as the term of the Enhanced Marina Agreement.
 - (2) The Concession License will terminate without notice or further obligation on any party if and when the Enhanced Marina Agreement is terminated in accordance with its terms.
 - (3) The annual lease payment plus taxes shall be payable by Trio on July 1 of each year, with Trio paying all utility charges on a monthly basis. The lease rate shall be adjusted annually by an amount equal to the change in the previous calendar year’s CPI.
 - (4) The Concession License will permit Trio to operate a kiosk for sales of admission, and ancillary goods and services, to any amenities that Trio may undertake pursuant to article 5 or 6 of this Agreement.
 - (5) The Concession License may be cancelled by Penticton or Trio in the event that the Concession structure is demolished in order to accommodate construction of a revenue generating amenity pursuant to article 5.13 of this Agreement.

5 MARINE AMENITY CONSULTATION PROCESS

- 5.1 Beginning not later than January 15, 2018, Penticton and Trio, acting in good faith, will use all commercially reasonable efforts to jointly develop a proposal (the “Marine Proposal”) for presentation to the citizens of Penticton not later than May 15, 2018.
- 5.2 The Marine Proposal will include a description and rendering of a seasonal aquatic play structure (the “Marine Amenity”) to be located on the foreshore of Skaha Lake Park, generally opposite the Concession and the boathouse (the “Boathouse”) identified as item X on the plan attached as Schedule “B”
- 5.3 Penticton and Trio will work cooperatively to define the Marine Proposal, including the particular features, location, appearance and amenities of the Marine Amenity, provided always that Trio may charge admission for entry to the Marine Amenity.
- 5.4 During development of the Marine Proposal, Trio will at its sole expense prepare renderings of the Marine Amenity and surrounds.

- 5.5 On or before April 15, 2018, Penticton and Trio, acting in good faith, will determine whether they agree on the Marine Proposal and the Marine Amenity.
- 5.6 In the event that Penticton and Trio agree on the Marine Proposal and the Marine Amenity:
- (1) Trio will, at its sole expense, prepare materials for publicly presenting the Marine Proposal, including a website (or, alternatively, materials suitable for incorporation into Penticton’s website) and poster boards.
 - (2) At its sole expense, Penticton will conduct a public consultation process commencing not later than May 15, 2018 for addition of an aquatic play structure located on the foreshore of Skaha Lake Park (the “Marine Process”). In the Marine Process, Penticton will:
 - (a) present the Marine Proposal, determined as set out above, to the citizens of Penticton by such means as Penticton in its sole discretion deems appropriate;
 - (b) solicit feedback and input from the citizens of Penticton by such means as Penticton in its sole discretion deems appropriate; and
 - (c) identify a concept for an aquatic play structure located on the foreshore of Skaha Lake (the “Marine Concept”) that, in Penticton’s sole discretion, best balances the interests of Penticton in revitalizing the Skaha Lake waterfront and the expressed desires and concerns of the citizens of Penticton.
- 5.7 On or before October 15, 2018, Penticton will report the results of the Marine Process and offer exclusively to Trio the terms of an agreement (the “Marine Agreement”) to construct and operate the aquatic play structure included in the Marine Concept.
- 5.8 It is agreed and understood that in the event that the Marine Concept determined pursuant to article 5.6 does not include an aquatic play structure, Penticton will be under no obligation to offer to Trio an agreement to construct and operate an aquatic play structure.
- 5.9 The Marine Agreement will be on terms and conditions no less advantageous to Trio than those of the agreement entered into between Penticton and the licensee who

operates the marine amenity on the Okanagan Lake foreshore, subject to modification to reflect the mandatory terms below.

5.10 The Marine Agreement will include the following terms:

- (1) The term of the Marine Agreement will be the same as the term of the Enhanced Marina Agreement.
- (2) The Marine Agreement will terminate without notice or further obligation on any party if and when the Enhanced Marina Agreement is terminated in accordance with its terms.
- (3) The initial lease rate in the Marine Agreement shall be the lease rate paid under the agreement between Penticton and the licensee who operates the marine amenity on the Okanagan Lake foreshore adjusted for CPI and size and shall thereafter be adjusted annually by an amount equal to the change in the previous calendar year's CPI and may be adjusted upwards in the event that the structure is larger than the Marine Amenity that currently exists on Okanagan Lake.
- (4) Trio shall pay the Province of BC on an annual basis, within 30 days of receipt from the City the Provincial Licence of Occupation Fee.
- (5) Trio shall, at its own cost, be responsible for obtaining all required permits, licenses and approvals from the Federal Government, Provincial Government, Penticton Indian Band and the City to occupy and use the foreshore as contemplated in the Marine Agreement.
- (6) Penticton shall be able to terminate the Marine Agreement on 14 days' notice in the event that Trio fails to pay Penticton the annual payment (unless the full annual payment is received by Penticton prior to the end of the Notice period) or upon 30 days' notice if Trio is in continuing material default of its other obligations under the Marine Agreement (unless said material default is rectified immediately if the matter relates to safety or within 21 days of Penticton providing Trio with Notice of any other material default).

5.11 Trio will elect to accept or decline the Marine Agreement within six months of the date it receives same from Penticton.

5.12 Penticton and Trio may agree to modify the Marine Agreement offered by Penticton pursuant to article 5.7, and such agreed modification will not extend the time under article 5.11.

5.13 Penticton will not endorse, sanction or agree to installation or operation of an aquatic play structure on the foreshore of Skaha Lake prior to April 15, 2028 unless and until:

- (1) Penticton and Trio fail to agree on the Marine Proposal and the Marine Amenity pursuant to Article 5.5;
- (2) the Marine Concept determined pursuant to article 5.6 does not include an aquatic play structure; or
- (3) Trio declines the Marine Agreement or fails to accept same within six months of the date it receives same from Penticton.

6 BOATHOUSE AND CONCESSION RENEWAL OR REPLACEMENT CONSULTATION PROCESS

6.1 At its sole expense, Penticton will conduct a public consultation process (the “Public Process”) commencing not later than April 1, 2019 for the renewal and/or replacement, always within Area F shown on the plan attached as Schedule “B”, of the Boathouse and the Concession. In the Public Process, Penticton will:

- (1) solicit feedback and input from the citizens of Penticton by such means as Penticton in its sole discretion deems appropriate; and
- (2) identify a concept for the renewal and/or replacement of the Boathouse and Concession (the “Boathouse Concession Amenity Building Concept”) that, in Penticton’s sole discretion, best balances the interests of Penticton in revitalizing the Skaha Lake waterfront and the expressed desires and concerns of the citizens of Penticton.

6.2 It is understood and agreed that the Boathouse Concession Amenity Building Concept, when completed, will not include a waterpark and will not result in any net loss of green space in Skaha Lake Park, after accounting for the additional green space that may result from returning all or part of the area presently occupied by the Boathouse and Concession to a natural state, and excepting temporary impacts to green space incidental to construction that are reversed upon completion of such construction.

6.3 It is further understood and agreed any loss of boat-trailer parking caused by the encroachment of the Boathouse Concession Amenity Building onto the existing boat-trailer parking area must be offset by additional of boat-trailer parking elsewhere on the Lands without any loss of existing green space.

- 6.4 On or before August 31, 2019, Penticton will report the results of the Public Process and offer exclusively to Trio a Request for Proposal (the "Request For Proposal") for constructing and operating any revenue-generating amenities and/or facilities in or ancillary to the Boathouse Concession Amenity Building Concept located within Area F shown on the plan attached as Schedule "B" (the "Revenue-Generating Amenities", each a "Revenue-Generating Amenity").
- 6.5 It is understood and agreed that if the Boathouse Concession Amenity Building Concept does not include any Revenue Generating Amenities, Penticton will be under no obligation to offer to Trio the Request For Proposal, provided however that in this event, Penticton will not solicit, endorse, or agree to the construction or operation of any new Revenue Generating Amenity in the area identified in Article 6.1 prior to April 15, 2028.
- 6.6 Trio may respond to the Request For Proposal within six months of the date it receives same from Penticton (the "Acceptance Period").
- 6.7 It is understood and agreed that Penticton may not issue any other requests for proposals to other third parties for constructing or operating any Revenue Generating Amenity in Area F shown on the plan attached as Schedule "B" until Trio has either declined in writing to pursue the Request For Proposal within the Acceptance Period or failed to respond to the Request For Proposal by the end of the Acceptance Period.
- 6.8 Penticton and Trio may agree to modify the Request For Proposal offered by Penticton pursuant to article 6.4 and 6.3, and such agreed modification will not extend Trio's time deadline for responding the Request For Proposal under article 6.6.
- 6.9 If Trio elects to pursue the Request For Proposal, and does so with a business proposal (the "Business Proposal") that meets the criteria of the Request For Proposal, Penticton and Trio will negotiate and enter into a binding contract based substantially on the terms of the Business Proposal within 3 months.
- 6.10 If Trio expressly in writing declines the Request For Proposal or Trio has not responded to the Request for Proposal by the end of the Acceptance Period, Penticton:
- (1) may offer the same Request for Proposal to third parties with a deadline of not later than six months from the earlier of the date that Trio expressly

declined to pursue the Request for Proposal or the end of the Acceptance Period; and

- (2) may accept any business proposal from a third party (the “Proponent”) received by Penticton not later than six months from the earlier of the date that Trio expressly declined to pursue the Request for Proposal or the end of the Acceptance Period, provided that the terms of such business proposal meet the criteria of the Request For Proposal and are not more favourable to the Proponent than those Trio could have obtained under the Request For Proposal.

6.11 Apart from offers of the Request for Proposal contemplated in Article 6.10, Penticton will not solicit, endorse, or agree to the construction or operation of any Revenue Generating Amenity in the area identified in Article 6.1 prior to April 15, 2028.

6.12 It is understood and agreed that nothing in this Settlement Agreement prevents Penticton from replacing or reconstructing the Boathouse, or having the Boathouse replaced or reconstructed, without Revenue-Generating Amenities.

7 TERMINATION

7.1 Penticton will have the right to terminate the Settlement Agreement and Enhanced Marina Agreement, in the event that the issues spoken to in the confidential Termination Agreement come to pass and the City elects to proceed with termination. If Penticton exercises its right to terminate, Penticton will pay Trio the sum of \$200,000 without set off or deduction. For clarity, the Termination Right will not terminate the Sub-License of Occupation and License to Use provided under the Enhanced Marina Agreement.

8 REVENUE REINVESTMENT

8.1 Penticton will invest all revenue obtained from Trio pursuant to the profit sharing terms of:

- (1) the Enhanced Marina Agreement, and
- (2) any further profit sharing agreements or terms that may arise between Penticton and Trio pursuant to this Settlement Agreement (the “Eligible Revenue”) for upgrading or improving Skaha Lake Park.

9 GENERAL PROVISIONS

- 9.1 No waiver of any default will be binding unless acknowledged in writing by Penticton.
- 9.2 Any condoning, excusing or overlooking by Penticton of any default by Trio will not operate as a waiver of Penticton's rights hereunder in respect of any subsequent default.
- 9.3 If any provision of this Agreement is found to be illegal or invalid or unenforceable at law it will be deemed to be severed from this Agreement and the remaining provisions will continue to have full force and effect.
- 9.4 All headings in this Agreement are inserted for convenience of reference only and will not affect the construction and interpretation of this Agreement.
- 9.5 Trio acknowledges and agrees that Penticton has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with Trio other than those contained in this Agreement, the Enhanced Marina Agreement and the Termination Agreement with respect to the Lands, that no agreement collateral hereto will be binding upon Penticton unless made in writing and signed by Penticton and that this Agreement and the Marina Lease constitutes the entire agreement between Penticton and Trio with respect to the Leased Lands and the Leased Marina Lands.
- 9.6 Any notice or other communication to be given under the provisions of this Agreement by any party will be deemed sufficiently given if signed by or on behalf of the party giving such notice and delivered or mailed by prepaid registered post (except during mail disruption in which case notice will not be deemed to be received until actually received), or telefaxed, as addressed as follows:

To Penticton at:

171 Main Street
Penticton, British Columbia
V2A 5A9
Attention: Corporate Officer
Fax No: (250) 490-2402

To Trio at:

c/o Pushor Mitchell LLP

301– 1665 Ellis Street
Kelowna, British Columbia
V1Y 2B3
Attention: Bradley Cronquist
Fax No: (250)762-9115

Any such notice mailed shall be deemed to have been received on the fifth (5th) business day following the date of mailing. Any such notice telefaxed shall be deemed to have been received on the first (1st) business day following the date of transmission. Each of the parties may by notice in writing to the other from time to time designate any other address to which the notices may be sent. For the purposes of this article 9.6 the term "business day" shall mean Monday to Friday inclusive of each week, excluding days which are statutory holidays in the Province of British Columbia.

9.7 Time will be of the essence of this Agreement.

9.8 This Agreement, Lease and Marina Lease will be construed and governed by the laws of the Province of British Columbia. The parties shall comply with all federal, provincial and local government laws and by laws.

10 EXECUTION

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

THE CORPORATION OF THE CITY OF PENTICTON

by its authorized signatories:

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

TRIO MARINE GROUP INC

by its authorized signatories:

Thomas John Dyas

Witness

Donald Thomas Hedquist

Witness

Schedule "A" – Enhanced Marina Agreement

Schedule "B" – Boathouse Concession Amenity Area

Schedule "B" – Boat House Concession Amenity Area

