

THE CORPORATION OF THE CITY OF PENTICTON AGREEMENT

LICENCE TO USE

File: 4380.20

PARTICULARS: Use of City owned lands for the operation of a food concession and the sale and/ or rental of related recreational equipment located at 124 South Beach Drive, Penticton, B.C. (Skaha Lake Marina)

THIS AGREEMENT dated for reference January 1, 2017.

BETWEEN: **THE CORPORATION OF THE CITY OF PENTICTON**,
a duly incorporated City Municipality under the laws of
The Province of British Columbia, located at 171 Main Street
Penticton, BC V2A 5A9

(hereinafter called "the City")

OF THE FIRST PART

AND: **TRIO MARINE GROUP INC.** (Inc. No. BC1008060)
a company duly incorporated under the laws of the Province of British
Columbia, having its Registered and Records Office at c/o Pusher Mitchel
LLP, 301 – 1665 Ellis Street, Kelowna BC V1Y 2B3

(hereinafter called "the Licensee")

OF THE SECOND PART

AND:

THOMAS JOHN DYAS
202-3295 Lakeshore Rd, Kelowna, B.C. V1W 3S9

AND

THOMAS DONALD HEDQUIST
121 Uplands Court, Penticton, BC V2A 7Y1

(collectively the "Indemnifiers")

OF THE THIRD PART

WITNESSETH:

- A. The City is the owner of the lands and improvements known as 124 South Beach Drive and legally described as:
Lot A, DL 189, SDYD, Plan 9936 PID 009-630-929.
- B. The City has agreed to grant a non-exclusive Licence to the Licensee to enter on that portion of lands as shown outlined in Blue on the Aerial Photo attached hereto as Schedule, "A" (the "Land").

NOW THEREFORE, in consideration of the Licence Fee to be paid by, and the covenants of, the Licensee, the parties agree as follows:

Article I - Grant of Licence

- 1.01 The City, on the terms set forth herein, hereby grants to the Licensee a Non-exclusive Licence to enter onto the Land solely for the purpose of conducting the operation of a marina, cold beer and wine store, restaurant, sale of fuel, recreational items, rental of boats, personal watercraft, and other recreational equipment and accessories associated with the above noted.
- 1.02 The City agrees not to grant any lease, concession, other licence or any other interest in the Land.

Article II - Duration

- 2.01 The duration of the Licence and the rights herein granted shall be for a term of one years (1) commencing on the 1st day of January 2017, (herein called the "Commencement Date", through the 31st day of December 2018.

Article III – Licence Fee

- 3.01 The Licensee covenants to pay an annual fee in the sum of Thirty Three Thousand Dollars (\$33,000.00) plus GST per year for the Licence term commencing January 1, 2017 plus other amounts specifically provided for herein (the "Licence Fee"). The parties hereto acknowledge that the above-noted Licence Fee is inclusive of the fee for the Sub-licence Basic Fee, as defined in and payable pursuant to the terms of the companion Sub-licence.

3.02 Net Fees

- (a) The Licence Fees payable under this Licence shall be net and care free to the City, and will be payable without deduction or set-off by the Licensee throughout the Licence term. All costs incurred by the City in collecting any amounts payable hereunder or enforcing any right or obligation of the Licensee under this Licence, including services of a bailiff, agent, the City's solicitor's fees on his own client basis and any administrative costs of the City, will be payable by the Licensee on

demand and will be deemed to be Licence Fees for all purposes from the date demand therefor is made. In addition to Licence Fees hereunder, the Licensee will remit to the City any goods and services tax or other tax or imposition collectible by the City for the use of the Land by the Licensee or goods or services provided to the Licensee, and the City will be entitled to exercise all remedies in respect of any failure by the Licensee to pay such amounts as if they were Licence Fees in arrears. From the date any Licence Fees or other amounts payable under this Licence are due until they are actually paid, they will bear interest at the rate of ten percent (10%) per annum.

- (b) The Licensee acknowledges that the City shall not be responsible during the Licence term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Land and the Licensee acknowledges and agrees that it is intended this Licence shall be carefree for the City.

Article IV - Covenants of the Licensee

4.01 The Licensee covenants with the City:

- (a) to pay the Licence Fees due to the City;
- (b) to pay and discharge when due all applicable taxes levies, charges and assessments now or hereafter assessed, levied or charged which relate to the Land or any improvements thereon (herein called "Realty Taxes");
- (c) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and improvements situate thereon, or their use and occupation;
- (d) not to commit or suffer any willful or voluntary waste, spoil or destruction on the Land or do or suffer to be done thereon anything that may be or become a nuisance or annoyance to owners or occupiers of adjoining land; provided that the proper use of the Land as permitted in paragraph 1.01 is not in contravention of this clause.
- (e) to deliver to the City from time to time, upon demand, proof of insurance required to be maintained by the Licensee, receipts or other evidence of payment of Realty Taxes, insurance premiums and other monetary obligations of the Licensee required to be observed by the Licensee pursuant to this Licence;
- (f) to indemnify, save harmless, release and forever discharge the City, its elected and appointed officials and employees from and against all manners of actions, causes of actions, claims, debts, suits, damages, demands and promises, at law or in equity, whether known or unknown, including without limitation for injury to persons or property including death, or any person directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Licensee in connection with or in a consequence of this agreement, save and

except to the extent caused by any act, omission, negligence or default of the City its elected and appointed officials and employees;

- (g) to keep the Land in a safe, clean, tidy and sanitary condition satisfactory to the City and to make clean, tidy and sanitary any portion of the Land or any improvement that the City may reasonably direct by notice in writing to the Licensee;
- (h) to permit the City, or its authorized representative, to enter upon the land and any improvements thereon, at any time to inspect, test, drill test holes or any other work reasonably required for the purpose of environmental or geotechnical testing of the Land;
- (i) on the expiration or at the earlier cancellation of this Licence to peaceably quit and deliver possession of the Land to the City, and to the extent necessary, this covenant shall survive the expiration or cancellation of the Licence;
- (j) to effect and keep in force during the term, insurance protecting the City and the Licensee (without any rights of cross-claim or subrogation against the City) against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the Land to an amount not less than \$2,000,000.00, and to name the City as a named insured on the policy and to deliver to the City written confirmation of the required insurance coverage upon execution of this agreement;
- (k) that notwithstanding subsection (j) of Section 4.01, the City may from time to time, acting reasonably, notify the Licensee that the amount of insurance posted by the Licensee pursuant to that subsection be changed and the Licensee shall, within sixty (60) days of receiving such notice, cause the amount of insurance posted, pursuant to subsection (j) of Section 4.01 to be changed to the amount specified in the notice and deliver to the City written confirmation of the change;
- (l) not to deposit on the Land or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land without the prior written consent of the City and any regulatory bodies that would have an interest in such works;
- (m) not to place any improvements on the Land without the prior written approval of the City;
- (n) not to cause or permit any unusual or objectionable noises, lights or odours to emanate from the Land which would be inconsistent with the authorized use referred to in paragraph 1.01 herein;
- (o) that at the expiration, cancellation or termination of the term of this Licence, upon written request of the City, the Licensee will remove its fixtures from the Land, leave the Land in good repair and restore the Land to its original condition at the commencement of the Licence except for capital improvements to the Land by the Licensee to which the City has consented or improvements to the Land by the City, none of which the Licensee shall be obligated to remove;

- (p) to observe and comply with all rules or regulations the City may make from time to time pertaining to the operation, reputation, safety, care or cleanliness of the Land and any use thereof as provided herein.

Article V - Non-exclusivity

- 5.01 (a) Subject to paragraph 1.01 hereof, the Licensee acknowledges and agrees that the Licence herein shall not entitle the Licensee to exclusive possession of the Land;
- (b) The parties hereto acknowledge that the Licence granted to the Licensee herein is a licence only and shall not, under any circumstances, constitute a partnership, lease or joint venture between the parties.

Article VI – Assignment

- 6.01 The Licensee shall not assign, sub-licence, mortgage or transfer this Licence or permit any person to use or occupy the Land without the written consent of the City which consent may be arbitrarily withheld.

Article VII - Cancellation

- 7.01 In the event that the Licensee ceases to use the Land for the purposes permitted herein, the City may on thirty (30) days prior written notice to the Licensee, cancel this Licence and the rights herein granted, in whole or in part and the Licensee agrees that the City shall not be responsible for payment of any costs, compensation, reimbursement or any monies whatsoever as a result of a notice pursuant to this paragraph 7.01.
- 7.02 If the Licensee is in default in the observance of any covenants, agreements, provisions or other conditions contained herein and such failure continues for a period of thirty (30) days after the giving of written notice by the City to the Licensee of the nature of the failure, or where such default cannot reasonably be cured within 30 days, if the Licensee fails to commence and diligently continue to remedy the default promptly after the Licensee receives such notice from the City, then the City may cancel this Licence, without prejudice to any rights to which the City has accrued under this Licence before the said cancellation.
- 7.03 In the event the Licensee is in default and such default has not been remedied within the time required with respect to any other agreement or contract between the City and the Licensee such default will be deemed to be a default under this Licence and the Licensee will, at the option of the City, terminate and cancel the Licensee's right to use and occupy the Land will cease without prejudice to any rights to which the City has accrued under this Licence before the said termination.
- 7.04 Thirty (30) days after the expiration, termination or cancellation of this Licence, any improvements of the Licensee or fixtures that remain on the Land shall be absolutely forfeited and become the property of the City and the City may remove them from the Land and the Licensee shall, on demand, compensate the City for all costs incurred by

the City respecting their removal of such improvements except for those in existence at the commencement of the Licence term and those constructed or placed on the Land with the consent of the City.

Article VIII - General

- 8.01 (a) The terms and provisions of the Licence shall extend to, be binding upon and tenure to the benefit of the parties, hereto and their successors and permitted assigns.
- (b) This Licence and all the terms and conditions of it may be inspected by the public at such times and at such places as the City may determine.
- (c) Time is of the essence in this agreement.
- (d) In this Licence, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- (e) Any waiver or acquiescence by the City of or in any breach by the Licensee of any covenant or condition shall not be deemed to be a waiver of the covenant or condition of any subsequent or other breach of any covenant or condition of this Licence.
- (f) If the Licensee continues to exercise the Licence granted after the expiration of the term of it without objection by the City and without any written agreement providing otherwise, the Licensee shall be deemed to be a Licensee from month to month, and subject to the provisions of this Licence insofar as applicable, but it shall be lawful for the City to cancel and determine the Licence granted by delivering to the Licensee notice to that effect, and upon delivery of such notice the Licence shall cease without prejudice to any rights of the City under this Licence accrued before the cancellation.
- (g) Any notice required to be given hereunder by the Licensee shall be in accordance with the provisions of the Community Charter of British Columbia and if by the City to the Licensee and/or the Indemnifiers any notice hereunder shall be deemed to have been well and sufficiently given if mailed, by prepaid registered mail, or telefaxed to or delivered:

to the Licensee at:

c/o Pusher Mitchel LLP
301 – 1665 Ellis Street
Kelowna BC V1Y 2B3

to the Indemnifiers at:

c/o Pusher Mitchel LLP
301 – 1665 Ellis Street
Kelowna BC V1Y 2B3

or such other address as the Licensee and/or the Indemnifiers may from time to time direct in writing, and any such notice by the City to the Licensee and/or the Indemnifiers shall be deemed to have been received, if mailed, five (5) days after the time of mailing, or if telefaxed seventy-two (72) hours after the time of telefaxing and if delivered upon the date of delivery. If normal mail service, telefax service is interrupted by strike, slow down, force majeure or other cause, a notice sent by the impaired means of communication will not be deemed to have been received until actually received, and the City may utilize any such services which have not been so interrupted.

(h) The parties agree that there are no representations, covenants, agreements, warranties, or conditions in any way relating to the subject matter of this Licence or the occupation or use of the Land, whether express or implied, or otherwise, this Licence.

8.02 The Licensee covenants and acknowledges that the City shall not be responsible during the term hereof or any renewal thereof for any costs, charges, expenses and outlays of any nature whatsoever arising from or related to the Land or in the contents thereof, save and except as expressly set out herein. Except as otherwise provided, the Licensee shall pay, in the manner more particularly described in this Licence all reasonable charges, impositions and costs of every nature and kind related to the Land whether or not referred to in this Licence and whether or not of a kind now existing or contemplated by the parties.

Article IX - Capital Works

9.01 The City may, during the term hereof, undertake additional capital expenditures for the benefit of the Land during the term hereof, provided however, the City shall exercise its best efforts to provide reasonable notice to the Licensee and to minimize the disruption to the Licensee's business.

Article X - Payment of City's Expenses

10.01 If at any time an action is brought or the City is otherwise required to employ the services of a bailiff, an agent, or its solicitors because of a breach by an act or omission of any covenant herein contained on the part of the Licensee, the Licensee shall pay to the City all expenses incurred by the City in the enforcement of its rights and remedies hereunder (including the City's administrative costs and legal fees on a solicitor and his own client basis in connection therewith) together with interest thereon at the rate equivalent to the prime rate of the Bank of Montreal plus three percent (3%) per annum calculated monthly not in advance from the date due until paid. For the purposes of this paragraph the prime rate shall mean the annual percentage rate of interest established from time to time by the Bank of Montreal, Main Branch, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian Dollar loans to customers in Canada and designated by the Bank of Montreal as the prime rate.

Article XI - Indemnity

11.01 In consideration of the presents and the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration (the receipt and sufficiency whereof from the City is hereby acknowledged by the Indemnifiers) the Indemnifiers hereby jointly and severally covenant and agree with the City as follows:

- (a) The Indemnifiers shall:
 - i) make or cause to be made the due and punctual payment of all Licence Fees, monies and charges expressed to be payable by the Licensee under the Licence during the period of the term and any renewals
 - ii) effect prompt and complete performance of all and singular the terms, covenants, conditions and provisions in the Licence contained on the part of the Licensee to be kept, observed and performed during the period of the term and any renewals thereof, and
 - iii) indemnify and save harmless the City from any and all loss, costs, damages or liability whatsoever arising out of any failure by the Licensee to pay any Licence Fees, monies, and charges, or the failure of the Licensee to perform any and all of the terms, covenants, conditions and provisions in the Licence.
- (b) In the event of a default under the Licence, the Indemnifiers hereby waive any right to require the City:
 - i) to proceed against the Licensee or pursue any rights or remedies with respect to the Licence;
 - ii) to proceed against or exhaust any security from the Licensee held by the City; or
 - iii) to pursue any other remedy whatsoever in the City's power or otherwise available to the City.
- (c) The City shall have the right to enforce this Indemnity regardless of the acceptance of additional security from the Licensee by the City or by others, or by operation of any law.
- (d) The Indemnifiers hereby expressly waive notice of the acceptance of this Indemnity and all notice of non-performance, non-payment or non-observance on the part of the Licensee of the terms, covenants, conditions and provisions of the Licence.
- (e) This indemnity is absolute and unconditional and without limiting the generality of the foregoing, the liability of the Indemnifiers under this Indemnity shall not be deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of the Licensee in any receivership, bankruptcy, winding up or other creditors' proceedings, or the rejection, surrender, disaffirmation or disclaimer of the Licence by any party or in any action or proceeding, and shall continue with respect to the periods prior thereto and thereafter for and with respect to the term of the Licence and any renewals thereof. The liability of the

Indemnifier shall not be affected by any repossession of the Land by the City, provided however, that the net payments received by the City after deducting all costs and expenses of repossession and re-licensing the same, shall be credited from time to time by the City to the account of the Indemnifiers and the Indemnifiers shall pay any balance owing to the City from time to time immediately upon ascertainment.

- (f) The Indemnifiers shall, without limiting the generality of the foregoing, be bound by this Indemnity in the same manner as though the Indemnifiers were the Licensee named in this Licence.

All of the terms, agreements and conditions of this Indemnity shall extend to and be binding upon the Indemnifiers, their respective heirs, executors, administrators, and assigns, and shall enure to the benefit of and may be enforced by the City, its successors and assigns.

Article XII - Entire Agreement

- 12.01 This Agreement constitutes the entire Agreement between the parties hereto and supercedes all prior agreements and understandings, oral or written, by and between the parties hereto with respect to the subject matter hereof.

Article XIII - Execution

- 13.01 This document may be executed in any number of counterparts, each of which so executed shall be deemed an original and the counterparts together form a valid and binding document which may be sufficient evidence by any one such original counterpart.

IN WITNESS WHEREOF the parties hereto have hereunto executed this agreement as of the date and year first above written.

THE CORPORATION OF THE CITY OF PENTICTON

Andrew Jakubeit, Mayor

Dana Schmidt , Corporate Officer

TRIO MARINE GROUP INC.
By its authorized signatory(ies):

Schedule "A"

Portion of Lot A, DL 189, SDYD, Plan 9936 PID 009-630-929 as shown outlined in Blue in the aerial photograph below. (The building footprint also extends into the portion of the untitled filled foreshore that is included under the companion Sub Licence dated January 1, 2012)

