

**SUB-LICENSE OF OCCUPATION**

THIS SUB-LICENSE dated for reference January 1, 2017

BETWEEN:

**THE CORPORATION OF THE CITY OF PENTICTON**

a Municipality duly incorporated under the laws of the Province of British Columbia located at 171 Main Street, Penticton, BC V2A 5A9

(the "Sub-licensor")

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

("the Sub-Licensee")

OF THE SECOND PART

AND:

THOMAS JOHN DYAS  
202-3295 Lakeshore Rd, Kelowna, BC, V1W 3S9

- and -

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

(collectively, the "Indemnifiers")

OF THE THIRD PART

WHEREAS:

- A. By a license of occupation dated for reference April 21, 2004 (the "Head License"), which is attached as Schedule B, Her Majesty the Queen in Right of the Province of

British Columbia (the "Head Licensor") licensed to the Sub-licensor upon and subject to the terms of the Head License that portion of the Land as shown Outlined in red on the aerial photograph shown in Schedule A which is a portion of the lands legally described in the Head License, (the "Sub-licensed Land") with a legal description of:

Part of DL 4048s, SDYD and DL 4017s, SDYD

- B. The Sub-licensor and the Sub-licensee have agreed to enter into this Sub-license on the terms hereinafter set forth.
- C. The Indemnifiers are officers and directors of the Sub-licensee.
- D. The Sub-licensor and the Sub-licensee have entered into a License to Use agreement dated for reference January 1, 2017 (the "License") of a part of the lands and premises described as:

Lot 1, DL 189, SDYD, Plan EPP50612

NOW THEREFORE in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree as follows:

### **1. CAPITALIZED TERMS**

Capitalized terms used in this Sub-license will have the meanings ascribed to them in the Head License unless otherwise defined herein.

### **2. GRANT OF SUB-LICENSE**

Subject to the consent of the Head Licensor, the Sub-licensor grants to the Sub-licensee a Sub-license of Occupation of the Land for the period January 1, 2017 to December 31, 2018 (the "Sub-license Term") provided that this Sub-license shall automatically terminate in the event that the Head License is terminated for whatever reason. The Sub-licensee acknowledges that this Sub-license does not grant the Sub-licensee exclusive use and occupancy of the Sub-licensed Land; provided that the City agrees not to grant any lease, concession, or other license or any other interest in the Sub-licensed Land. The Sub-licensee further acknowledges that this is a license only and shall not, under any Circumstances, constitute a partnership, lease or joint venture between the parties.

### **3. BASIC FEE AND ADDITIONAL FEE**

The Sub-licensee covenants to pay an annual basic fee ("Sub-license Basic Fee") in the sum of THIRTY-THREE THOUSAND DOLLARS (\$33,000.00) commencing and payable

on or before June 1 2017. The parties hereto acknowledge that payment of the Sub-license Basic Fee shall be deemed to be a payment on account of the License Fee payable pursuant to the terms of the License and payments of the License Fee pursuant to the License shall be deemed to be a payment on account of the Sub-license Basic Fee. (The one fee of \$33,000/year covers the lease rate for both agreements)

#### **4. NET FEES**

- 4.1 The Sub-license Basic Fee payable under this Sub-license shall be net and care free to the Sub-licensor, and will be payable without deduction or set-off by the Sub-licensee throughout the Sub-license Term. All costs incurred by the Sub-licensor in collecting any amounts payable hereunder or enforcing any right or obligation of the Sub-licensee under this Sub-license, including services of a bailiff, agent, the Sub-licensor's solicitor's fees on his own client basis and any administrative costs of the Sub-licensor, will be payable by the Sub-licensee on demand and will be deemed to be part of the Sub-license Basic Fee for all purposes from the date demand therefor is made. In addition to Sub-license Basic Fee the Sub-licensee will remit to the Sub-licensor any goods and services tax or other tax or imposition collectible by the Sub-licensor for the use of the Sub-licensed Land by the Sub-licensee or goods or services provided to the Sub-licensee, and the Sub-licensor will be entitled to exercise all remedies in respect of any failure by the Sub-licensee to pay such amounts as if they were part of the Sub-license Basic Fee in arrears. From the date any Sub-license Basic Fee or tax thereon payable under this Sub-license are due until they are actually paid, they will bear interest at the rate of ten percent (10%) per annum.
- 4.2 The Sub-licensee acknowledges that, except as otherwise provided herein, the Sub-licensor shall not be responsible during the Sub-license Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Sub-licensed Land and the Sub-licensee acknowledges and agrees that it is intended this Sub-license shall be carefree for the Sub-licensor.

#### **5. SUB-LICENSEE'S COVENANTS**

The Sub-licensee acknowledges having received and read a copy of the Head License (attached) and covenants and agrees with the Sub-licensor:

- (a) to perform all of the obligations of the Licensee under the Head License and to be bound by the terms of the Head License, in each case as they relate to this Sub-license except for those obligations in paragraphs 4.1 (a) (i), 4.1 (p), 4.1 (s) (iv) and 4.1 (s) (v) of the Head License which shall remain the obligation of the Sub-licensor;

- (b) to fulfill all of the obligations of the Sub-licensee under this Sub-license;
- (c) not to do or omit to do any act in or around the Sub-licensed Land which would cause a breach of the Sub-licensor's obligations as Licensee under the Head License;
- (d) to promptly pay when due to the authorities having jurisdiction taxes of any kind (whether imposed upon the Sub-licensee or otherwise) attributable to the personal property, trade fixtures, business, income, or occupancy of the Sub-licensee and to any improvements or fixtures within the Sub-licensed Land;
- (e) to indemnify and save harmless the Sub-licensor, its elected and appointed officials, employees and agents against and from any and all expenses, costs, damages, suits, actions, or liabilities arising or growing out of the failure of the Sub- licensee to perform any of its obligations hereunder and from all claims and demands of every kind and nature made by any person or persons to or against the Sub-licensor for all and every manner of costs, damages, or expenses incurred by or injury or damage to such person or persons or his, her, or their property, to the extent such claims or demands arise out of the use and occupation of the Sub-licensed Land by the Sub- licensee or its officers, employees, or any other person authorized or permitted by the Sub- licensee to be on the Sub- licensed Land and from all costs, counsel fees, expenses, and liabilities incurred by reason of any such claim or any action or proceeding brought thereon, except for claims caused by the negligence of the Sub-licensor or resulting from a breach by the Sub-licensor of its obligations under the Sub-license. To the extent necessary this clause extends for a period of 1 year from the date of termination of the agreement for any reason;
- (f) to keep the Sub-licensed Land and any improvements thereon in a safe, clean, tidy and sanitary condition to the satisfaction of the Sub- licensee or as the Sub-licensor may direct by notice in writing to the Sub- licensee from time to time. This includes but is not limited to routine maintenance of docks to an acceptable safety standard at all times.
- (g) to permit the Sub-licensor, or its authorized representative, to enter upon the Sub-licensed Land at any time to inspect the Sub-licensed Land and any improvements thereon;

- (h) not to deposit on the Sub-licensed Land or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Sub-licensed Land;
- (i) not to cause or permit any unusual or objectionable noises, lights or odours to emanate from the Sub-licensed Land which would be inconsistent with the authorized use referred to in paragraph 8 herein; and
- (j) to observe and comply with any reasonable rules or regulations the Sub-licensor may make from time to time pertaining to the operation, reputation, safety, care or cleanliness of the Sub-licensed Land and any use thereof as provided herein.

## **6. SUB-LICENSEE'S BREACH**

If the Sub-licensee fails to perform any of its obligations herein, the Sub-licensor will have all of the remedies against the Sub-licensee which the Head Licensor has under the Head License for a breach thereof, whether expressly set out in the Head License or arising in law or equity.

## **7. SUB-LICENSOR'S COVENANTS**

Subject to the Head Licensor first consenting to this Sub-license and the due performance by the Sub-licensee of its obligations herein, the Sub-licensor covenants and agrees with the Sub-licensee:

- (a) to enforce against the Head Licensor for the benefit of the Sub-licensee the obligations of the Head Licensor under the Head License which materially affect the Sub-licensed Land;
- (b) to perform all of the obligations of the Sub-licensor under this Sub-license; and
- (c) to perform all of the obligations of the Sub-licensor under the Head License, including without limitation the payment of Fees pursuant to the Head License.

## **8. USE**

The Sub-licensed Land will be used by the Sub-licensee solely for the purpose of conducting the business of a marina including sale of fuel, rental of boats, personal watercraft, and additional permitted uses for the building area shall include cold beer and wine store, restaurant, sales of recreational items and other recreational equipment and accessories associated with the above noted uses.

## **9. INSURANCE**

The Sub-licensee will take out and maintain throughout the Sub-license Term insurance with respect to the Sub-licensed Land providing for the coverages and upon the terms required in the Head License to be maintained by the Sub-licensor. The Sub-licensor and the Head Licensor will be shown as named insureds on all liability policies, with a cross liability and severability of interest endorsement, and each insurance policy will contain a waiver of subrogation with respect to the Head Licensor and the Sub-licensor. The Sub-licensee releases the Sub-licensor from any claim the Sub-licensee may have which is or would be insured against by the insurance policies which the Sub-licensee is required to maintain by this Sub-license.

## **10. ASSIGNING OR SUBLETTING BY THE SUB-LICENSEE**

The Sub-licensee agrees that it may not sub-sub-license, assign, mortgage or transfer this agreement or permit any person to use or occupy the Sub-licensed Land without the prior written consent of the Sub-licensor which consent may be arbitrarily withheld.

## **11. TERMINATION**

In addition to any rights of termination of the Sub-licensor as provided herein in the event the Sub-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 Sub-licensor and the Sub-licensee such default will be deemed to be a default under this Sub-license and this Sub-license will, at the option of the Sub-licensor, with or without entry, terminate and the Sub-licensee's right to use and occupy the Sub-licensed Land will cease without prejudice to any rights to which the Sub-licensee has accrued under the Sub-license before the said termination.

## **12. PARAMOUNTCY OF HEAD LICENSOR**

The Sub-licensee acknowledges and agrees that it has no greater interest in the Sub-licensed Land than the Sub-licensor under the Head License. To the extent that any right or benefit conferred by this Sub- license contravenes or is incompatible with the Head License, such right or benefit will be amended or modified so as not to contravene or be incompatible with the Head License.

## **13. NOTICES**

Any notice required to be given hereunder by the Sub-licensee shall be in accordance with the provisions of the Community Charter of British Columbia and if by the Sub-licensor to the Sub-licensee and the Indemnifiers any notice hereunder shall be deemed to have been well and sufficiently given if mailed by prepaid express mail, telefaxed, 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 Sub-licensee and Indemnifiers may from time to time direct in writing, and any such notice by the Sub-licensor to the Sub-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, or if delivered, upon the date of delivery. If normal mail service, or 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 Sub-licensor may utilize any such other services which have not be so interrupted.

#### **14. SUCCESSORS AND ASSIGNS**

Except as otherwise provided herein, all of the rights and obligations of a party enure to the benefit of and are binding upon the heirs, executors, administrators, successors and assigns, as the case may be, of that party.

#### **15. FURTHER ASSURANCES**

Each party agrees to execute such further assurances as may be reasonably required from time to time by any other party to more fully affect the true intent of this Sub-license.

#### **16. ENTIRE AGREEMENT AND "AS IS"**

This Sub-license merges and supersedes all prior negotiations, representations, and agreements between the parties relating in any way to the Sub-licensed Land. The parties agree that there are no representations, covenants, agreements, warranties, or conditions in any way relating to the subject matter of this Sub-license or the occupation or use of the Sub-licensed Land, whether express or implied, or otherwise, except as set forth in this Sub-license.

## **17. WAIVER**

No waiver by the Sub-licensor of a condition or the performance of an obligation of the Sub-licensee hereunder binds the Sub-licensor unless in writing and executed by it, and no waiver given by the Sub-licensor will constitute a waiver of any other condition or performance by the Sub- licensee of its obligations hereunder in any other case.

## **18. SUB-LICENSE EXECUTION AND HEAD LICENSOR'S CONSENT REQUIRED**

This Sub-license and all subsequent amendments thereto are only binding on the Sub-licensor, the Sub-licensee and the Indemnifiers respectively, if in writing and executed by the authorized signatories of the Sub-licensor and the Sub-licensee and signed and witnessed by the Indemnifiers and executed copies thereof have been delivered to each party. It is a condition precedent to this Sub-license and all obligations of the Sub-licensor, Sub-licensee and Indemnifiers hereunder that the Head Licensor consents to this Sub-license. The parties agree to use their commercially reasonable best efforts to obtain the consent of the Head Licensor to this Sub-license, and to provide all such information and assurances (other than third-party guarantees or covenants or additional security) as the Head Licensor may reasonably require in this regard.

## **19. INDEMNITY**

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 Sub-licensor is hereby acknowledged by the Indemnifiers) indemnifiers hereby jointly and severally covenant and agree with the Sub-licensor as follows:

19.1 The Indemnifiers shall:

- (a) make or cause to be made the due and punctual payment of the Sub-license Basic Fee and all monies and charges expressed to be payable under this Sub-licence;
- (b) effect prompt and complete performance of all the terms, covenants, conditions and provisions in this Sub-license, and
- (c) indemnify and save harmless the Sub-licensor from any and all loss, costs, damages or liability whatsoever arising out of any failure by the Sub-licensee to pay the Sub- license Basic Fee, any monies, and charges payable hereunder by the Sub-licensee, or the failure of the Sub-licensee to perform any and all of the terms, covenants, conditions and provisions in this Sub-licence.



- 19.2 In the event of a default under this Sub-license, the Indemnifiers hereby waive any right to require the Sub-licensor:
- (a) to proceed against the Sub-licensee or pursue any rights or remedies with respect to this Sub-license;
  - (b) to pursue any other remedy whatsoever in the Sub-licensor's power or otherwise available to the Sub-licensor.
- 19.3 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 Sub-licensee of the terms, covenants, conditions and provisions of the Sub-license.
- 19.4 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 Sub-licensee in any receivership bankruptcy, winding up or other creditors' proceedings, or the rejection, surrender, disaffirmation or disclaimer of the Sub-license 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 Sub-license Term and any renewals thereof. The liability of the Indemnifiers shall not be affected by any repossession of the Sub-licensed Land by the Sub-licensor, provided however, that the net payments received by the Sub-licensor after deducting all costs and expenses of repossession and re-licensing the same, shall be credited from time to time by the Sub-licensor to the account of the Indemnifiers and the Indemnifiers shall pay any balance owing to the Sub-licensor from time to time immediately upon ascertainment.
- 19.5 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 Sub-licensee named in this Sub-license.
- 19.6 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 Sub-licensor, its successors and assigns.

## **20. ADDITIONAL RIGHTS OF TERMINATION**

- 20.1 In the event that the Sub-licensee ceases to use the Sub-licensed Land for the uses permitted herein the Sub-licensor may on thirty (30) days prior written notice to the Sub-licensee, cancel this Sub-license and the rights herein granted, in whole or in part and the Sub-licensee agrees that the Sub-licensor shall not be responsible for

payment of any costs, compensation, reimbursement or any monies whatsoever as a result of notice pursuant to this paragraph.

- 20.2 If the Sub-licensee is in default in the observance of any covenant, 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 Sub-licensor to the Sub-licensee of the nature of the failure, or where such default cannot reasonably be cured within 30 days, if the Sub-licensee fails to commence and diligently continue to remedy the default promptly after the Sub-licensee receives such notice from the Sub-licensor, then the Sub-licensor may cancel this Licence without prejudice to any rights to which the Sub-licensor has accrued under this Sub-license before the said cancellation.

## **21. FIXTURES**

Save and except for any wharfs or docks, the Sub-licensee may, for a period of Thirty (30) days after the expiration or cancellation of this Sub-license, remove any improvements or fixtures made by the Sub-licensee to the Sub-licensed Land during the term of this Sub-license, failing which any improvements or fixtures that remain on the Sub-licensed Land shall be absolutely forfeited and become the property of the Sub-licensor.

## **22. GOVERNING LAW**

This Sub-license will be governed in accordance with laws applicable in the province of British Columbia, and the parties irrevocably agree to the non-exclusive jurisdiction of the courts of British Columbia.

## **23. GENERAL**

- 23.1 The terms and provisions of this Sub-license shall extend to, be binding upon and enure to the benefit of the parties hereto and their heirs, executors, administrators, successors and permitted assigns, as the case may be.
- 23.2 This Sub-license and all terms and conditions of it may be inspected by the public at such times and at such place as the Sub-licensor may determine.
- 23.3 Subject to any renewal of the Head Lease if the Sub-licensee continues to exercise the Sub-license granted after the expiration of the term of it without objection by the Sub-licensor and without any written agreement providing otherwise, the Sub-licensee shall be deemed to be a Sub-licensee from month to month, and subject to the provisions of this Sub-license insofar as applicable, but it shall be lawful for the Sub-licensor to cancel, and determine this Sub-license by delivering to the Sub-licensee notice to the effect and upon delivery of such notice this Sub-license shall cease without prejudice to any rights of the Sub-licensor under this Sub-license accrued before the cancellation.

23.4 Upon completion and execution by all parties of the revised head lease between the Province, the City of Penticton and Trio Marine Group Inc., this agreement will be superceded by the new agreement and this agreement will be null and void.

**24. RENEWAL**

This Sub-license is not subject to renewal.

**25. ENTIRE AGREEMENT**

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.

IN WITNESS WHEREOF the parties have duly executed this Sub-license as of the date set out above.

**THE CORPORATION OF THE CITY OF PENTICTON**

by its authorized signatory(ies)

\_\_\_\_\_  
Andrew Jakubeit, Mayor

\_\_\_\_\_  
Dana Schmidt, Corporate Officer

**SIGNED** by the authorized signatories of )  
the Licensee in the presence of: )

\_\_\_\_\_  
Witness Signature )

\_\_\_\_\_  
Print Name )

\_\_\_\_\_  
Address )

**AUTHORIZED SIGNATURES**

\_\_\_\_\_  
Signature

THOMAS DYAS  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

THOMAS HEDQUIST  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**SIGNED** by the Indemnifier, THOMAS )  
JOHN DYAS, in the presence of: )  
)  
)

\_\_\_\_\_  
Witness Signature )  
)  
)

\_\_\_\_\_  
Print Name )  
)  
)

\_\_\_\_\_  
Address )  
)  
)

\_\_\_\_\_  
**THOMAS JOHN DYAS**

**SIGNED** by the Indemnifier, THOMAS )  
DONALD HEDQUIST, in the presence )  
of: )  
)  
)

\_\_\_\_\_  
Witness Signature )  
)  
)

\_\_\_\_\_  
Print Name )  
)  
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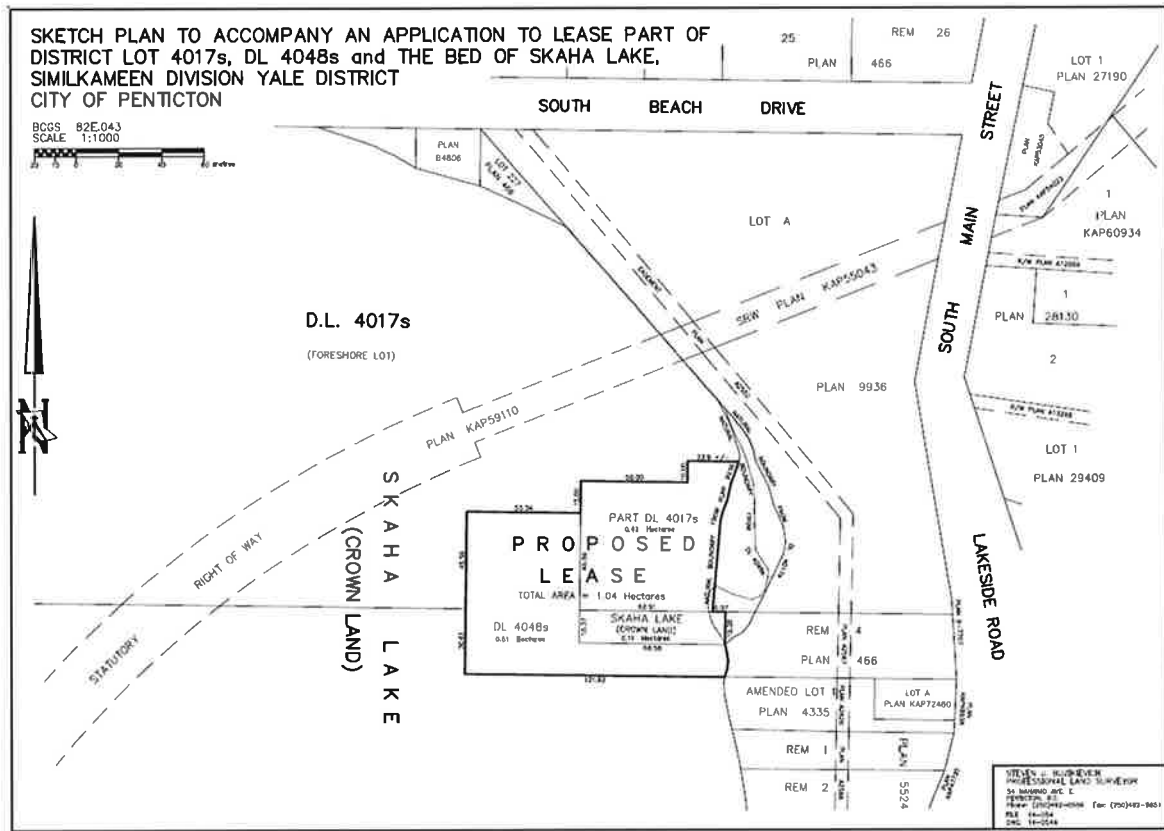
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**THOMAS DONALD HEDQUIST**

## SCHEDULE A

### SUB-LICENSED OF OCCUPATION AREA

#### 1. Legal

Proposed lease as shown outlined in bold black representing 1.04 ha. (also approximately shown outlined in red in the aerial photograph on the following page. The building footprint also extends into the portion of the untitled foreshore that is included under the companion License dated January 1, 2017)



2. **Aerial View**

