



**Special Council Meeting**  
to be held at  
**City of Penticton Council Chambers**  
**171 Main Street, Penticton, B.C.**

**Monday, June 29, 2015**  
**at 6:00 p.m.**

1. **Call Special Council Meeting to Order**
2. **Adoption of Agenda**
3. **Skaha Marina and Waterpark Development:**
  - 3.1 Update from Acting City Manager/Director of Operations
  - 3.2 Update from Trio Marine Group
  - 3.3 Public Comments (3 minutes maximum)
4. **Staff Reports:**

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| DO  | <div>4.1 Skaha Marina Area Development Agreements <span style="float: right;">1-176</span><br/><u>Staff Recommendation:</u> THAT Council receive this report for information; AND THAT Council after:<ul style="list-style-type: none"><li>• Reviewing the Amended Skaha Marina – Marina Development Agreement, contained in Attachment “A” to this Council Report;</li><li>• Reviewing the Amended Skaha Marina – Waterpark Development Agreement, contained in Attachment “B” to this Council Report;</li><li>• Listening to citizen comment regarding the proposed marina and waterpark development.</li></ul>Select one of the following alternatives:<ol style="list-style-type: none"><li>1. THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Marina Development Agreement and the Amended Skaha Marina – Waterpark Development Agreement as contained in Attachment “A” and “B”; or</li><li>2. THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Marina Development Agreement as contained in Attachment “A”; or</li><li>3. THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Waterpark Development Agreement as contained in Attachment “B”; or</li><li>4. THAT Council provide direction to staff regarding changes that they would like to see.</li></ol></div> |
| MED | <div>4.2 Fees and Charges Amendment Bylaw No. 2015-34 <span style="float: right;">177-181</span><br/><u>Staff Recommendation:</u> THAT Council give first, second and third reading to “Fees and Charges Amendment Bylaw No. 2015-34”, a bylaw to amend Appendix 7 of Fees and Charges Bylaw No. 2014-07 to address a housekeeping issue related to the Credit Score Requirements for the Electrical Service Payment Plan to set a separate credit score for individuals and businesses;</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

AND THAT Council amend the Electrical Service Payment Plan by removing Section 2 and replacing it with the following:

2. The Participant must meet the following eligibility requirements:
  - o Must be for a new or an upgrade to an Electrical Service;
  - o Minimum amount eligible for Payment Plan is \$5,000;
  - o Maximum amount eligible for Payment Plan is \$50,000
  - o Must be a City of Penticton Electric Utility customer;
  - o Must have a credit score of: 650 or greater for an individual, or less than 25 for a business;
  - o Must have a maximum of 19 City of Penticton Utility Credit Point;
  - o The customer must own both the land and building where the service is required.

DDS

4.3 Street Naming Bylaw No. 2015-36

182-194

Re: Road being created by the subdivision of 2750 Cedar Road

Staff Recommendation: THAT Council, after considering the information presented in this Council Report, select one of the following alternatives:

1. THAT Council give first reading to "Street Naming Bylaw 2015-36", a bylaw to name the new road created by the subdivision of 2750 Cedar Road "Avery Place"; or
2. THAT "Street Naming Bylaw 2015-36" not be given first reading and that the developer is instructed to choose a street name from list the created by the Heritage and Museum Advisory Committee." Or
3. THAT "Street Naming Bylaw 2015-36" be referred back to staff for work with the developer and the committee.

5. **Media and Public Question Period**

6. **Adjournment**



**Date:** June 29, 2015  
**To:** Mayor and Council  
**From:** Mitch Moroziuk, Acting City Manager  
**Subject:** **Skaha Lake Marina Development**

File No:

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### **Staff recommendation**

THAT Council receive this report for information;

AND THAT Council after:

- Reviewing the Amended Skaha Marina – Marina Development Agreement, contained in Attachment “A” to this Council Report;
- Reviewing the Amended Skaha Marina – Waterpark Development Agreement, contained in Attachment “B” to this Council Report;
- Listening to citizen comment regarding the proposed marina and waterpark development.

Select one of the following alternatives:

1. THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Marina Development Agreement and the Amended Skaha Marina – Waterpark Development Agreement as contained in Attachment “A” and “B”; or
2. THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Marina Development Agreement as contained in Attachment “A”; or
3. THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Waterpark Development Agreement as contained in Attachment “B”; or
4. THAT Council provide direction to staff regarding changes that they would like to see.

### **Strategic priority objective**

The proposed development and improvements to the Skaha Lake Marina area are supportive of the City of Penticton Strategic Priority of waterfront enhancement.

### **Background**

On May 17, 2013 the City of Penticton issued Expression of Interest (EOI) 2013-EOI-01 to elicit interest and ideas for developing the Skaha Lake Marina area. The EOI process closed on June 25, 2013 and four

submissions were received. These were reviewed by staff and on July 22, 2013 Council passed a resolution authorizing staff to undertake additional due diligence with Trademark Industries and BC Dock and Marine.

On September 5, 2013 an Invitational Request for Proposals (IRFP) was sent to Trademark Industries and BC Dock and Marine. On October 11, 2013 BC Dock and Marine submitted a letter withdrawing from the proposal call process. The proposal call closed on October 15, 2013 and one submission was received from Trademark Industries. The Trademark submission was reviewed by staff and following a presentation by Trademark to Council on December 2, 2013 Council passed a resolution authorizing staff to enter into direct negotiations with Trademark for a 29 year lease for a phased development of the Skaha Lake Marina area.

On April 7, 2014 staff concluded negotiations for a Term Sheet with Trademark; now Trio. The entering into the Term Sheet Agreement was endorsed by Council via resolution.

Following the execution of the Term Sheet Trio and City Staff spent the next year negotiating two Development Agreements that would see the Skaha Lake Lands developed into an upgraded marina and waterpark.

On May 19, 2015 the proposed Skaha Lake Development was brought to an open Council Meeting where the details of the proposed development agreements were set out and Council resolved to have Trio undertake public engagement and provide a venue at a Special Council meeting on June 29, 2015 for the public to come forward and express their thoughts on the proposed development.

During the period May 19, 2015 to June 18, 2015 Trio undertook public engagement with six specific groups, one local newspaper and the public at the Community Market and on site at the Marina. The public engagement process indicated that for the most part the public was positive and excited about the proposed development. The details of the public engagement are summarized in Attachment "C".

During the period May 19, 2015 to June 18, 2015 City staff and Trio further discussed the proposed development agreements and determined that a few changes were required in recognition of comments received and to address the time it has taken to get these agreements before Council:

1. Change the construction completion date of the Restaurant and Retail Area of the Marina from May of 2016 to May of 2017.
2. Change the construction completion dated of the Waterpark and Boat Trailer Parking Lot from May of 2017 to May of 2018.
3. Change the date on which Revenue Sharing Payments from the Marina Restaurant and Retail area are payable from 2020 to 2021.
4. Change the date on which Revenue Sharing Payments from the Waterpark are payable from 2020 to 2021.
5. Prorate the Lease Rent for Waterpark for 2017 to the period July 1, 2017 to December 31, 2017.
6. Change the date on which Revenue Sharing Payments from the Boat Trailer Parking area are payable from 2028 to 2029.
7. Create a separate set of conditions precedent for the Restaurant and Retail Area in the Marina Agreement.
8. Change the year in which the conditions precedent must be met for the Waterpark from 2016 to 2017.

9. Clarify that the Dragon Boat Club House has to be reconstructed at Trios cost prior to the existing Dragon Boat Club House being taken out of service and prior to November of 2017.
10. Clarify that the Splash Pad had to be reconstructed at Trios cost prior to the existing Splash Pad being taken out of service and prior to November of 2017.
11. Clarify that the Washroom Change Room had to be reconstructed at Trios cost prior to the existing Washroom Change Room being taken out of service and prior to November of 2017.
12. Adding Architectural Concept Drawings of the Dragon Boat Club House as a Schedule to the Agreement.
13. Adding a definition for the Dragon Boat Club House.

The above noted changes are shown in Attachment "A" and "B" using track changes.

### Financial implication

The Trio Marine Group Inc. will be making a capital investment as follows:

| Item                               | Investment<br>\$ |
|------------------------------------|------------------|
| Marina, Retail Area and Restaurant | \$1,500,000      |
| Marina Extended Parking Lot        | \$ 330,000       |
| Water Park                         | \$2,200,000      |
| Boat Trailer Parking               | \$ 300,000       |
| TOTAL                              | \$4,330,000      |

Based on the pro-forma revenue and expense statements provided by Trio and assuming the restaurant will be operated by them the revenue from the venture to the City could be as follows:

| Item            | MARINA             |                                  | WATERPARK          |                                  |                                  |
|-----------------|--------------------|----------------------------------|--------------------|----------------------------------|----------------------------------|
|                 | AVG 2016 -<br>2019 | Mid Point<br>Year 2020 -<br>2045 | AVG 2016 -<br>2019 | Mid Point<br>Year 2020 -<br>2027 | Mid Point<br>Year 2028 -<br>2045 |
| Land Rental     | \$ 31,139          | \$ 40,107                        | \$ 56,792          | \$ 63,976                        | \$ 76,491                        |
| Revenue Sharing | N/A                | \$ 193,259                       | N/A                | \$ 259,717                       | \$ 404,018                       |
| Option          | \$ 1,445           | N/A                              | N/A                | N/A                              | N/A                              |
| Taxes           | \$ 23,122          | \$ 28,908                        | \$ 42,171          | \$ 46,112                        | \$ 55,959                        |
| TOTAL           | \$ 55,706          | \$ 262,274                       | \$ 98,964          | \$ 369,806                       | \$ 536,468                       |

### Analysis

The development proposed by the Trio Marine Group strongly supports the City of Penticton Vision Statement for a *vibrant adventurous waterfront City* and directly ties to our Strategic Priority for *waterfront enhancement*.

The negotiating committee has developed two agreements that would see the City of Penticton, Trio Marine Group Inc. and the public benefit from the construction of marina and amusement facilities on the Skaha

Lake Waterfront. The agreements are acceptable to both negotiating committees and it would now be appropriate for Council to consider the comments received and decide how to best move forward.

### **Alternate recommendations**

#### Alternative 1

THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Marina Development Agreement and the Amended Skaha Marina – Waterpark Development Agreement as contained in Attachment “A” and “B”;; or

#### Alternative 2

THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Marina Development Agreement as contained in Attachment “A”; or

#### Alternative 3

THAT Council authorize the Mayor and Corporate Officer to execute the Amended Skaha Marina – Waterpark Development Agreement as contained in Attachment “B”;; or

#### Alternative 4

THAT Council provide direction to staff regarding changes that they would like to see.

### **Attachments**

Attachment “A” – Amended Skaha Marina – Marina Development Agreement

Attachment “B” – Amended Skaha Marina – Waterpark Development Agreement

Attachment “C” – Summary of Trio’s Public Engagement Sessions

Respectfully submitted,

Mitch Moroziuk P.Eng. MBA  
Acting City Manager

**SKAHA MARINA – MARINA DEVELOPMENT AGREEMENT**  
**FINAL2015 065 108**

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 2015

**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")

**GENERAL COMMENTS:**

**WHEREAS:**

- (A) Penticton is desirous of entering into a lease of the Leased Lands as covered by this Agreement and hereinafter defined as the Leased Lands adjacent to Skaha Lake in the City of Penticton and entering into a joint lease of Marina lands with Trio and Her Majesty the Queen in Right of the Province of British Columbia as covered by the Marina Agreement for the area hereinafter defined as the Leased Marina Lands as hereinafter defined, all for the purpose of upgrading the Leased Lands and the Leased Marina Lands into a modern marina including new pilings, wharves and docks and an upgraded marine gas dock, with a retail area, restaurant and additional parking area.
- (B) Trio wishes to acquire and Penticton wishes to grant to Trio, the use and occupancy of the Leased Lands and to enter into with Penticton a joint lease of Marina lands for the Leased Marina Lands from Her Majesty the Queen in Right of the Province of British Columbia and to enter into a management and capital improvement arrangement in relation to the Leased Lands and Leased Marina Lands for the redevelopment of the Lands as set out above and otherwise described in this Agreement.
- (C) On or about March 31, 2014, Penticton and Trademark Industries, now Trio, entered into a non-binding Term Sheet which set out specific requirements to be completed prior to the execution of a final agreement between the parties;
- (D) On or about September 16, 2014, Penticton and Trio entered into a one year License to Use Agreement dated for reference January 1, 2015 for a portion of the of the Leased Lands in conjunction with the operation of the existing Marina, a copy of which is attached as Schedule "K";
- (E) On or about September 16, 2014, Penticton and Trio entered into a one year Sub-License of Occupation Agreement dated for reference January 1, 2015, for the operation of the existing Marina, a copy of which is attached as Schedule "L"; and
- (F) On or about \_\_\_\_\_, 2015, Penticton has approved entering into this Agreement by resolution, a copy of which is attached as Schedule "J".

**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:

## **1.0 DEFINITIONS**

### **1.1 Definitions**

In this Agreement, unless there is something in the context inconsistent therewith, Penticton and Trio agree that:

- (a) **"Additional Rent"** means all payments required to be paid by Trio to Penticton under this Agreement, other than the Lease Rent and Marina Lease Rent;
- (b) **"Agreement"** means this agreement;
- (c) **"Commencement Date"** means January 1, 2016 in respect of the Leased Marina Lands and the Leased Lands;
- (d) **"CPI"** means the Consumer Price Index for all-items for British Columbia (or any index published in substitution for the Consumer Price Index or any other replacement index designated by Penticton acting reasonably, if it is no longer published) published by Statistics Canada (or by any successor thereof or any governmental agency including a Provincial agency). In the case of any required substitution, Penticton, acting reasonably, shall be entitled to make all necessary conversions for comparison purposes;
- (e) **"Environmental Laws"** means all applicable federal, provincial, municipal or local laws, statutes, regulations or ordinances, as they may be amended from time to time after the Commencement Date of the Term relating to the environment, occupational safety and the transportation or regulation of Hazardous Substances, and includes any judgments, orders, notices, of offence, or other notices, decrees, codes, rules, instructions, policies, guidelines, guides, authorizations, approvals, permits and licenses, issued by any governmental authority having jurisdiction;
- (f) **"Exclusion Area"** means those certain lands located at and bordering Skaha Lake in Penticton, owned by the City of Penticton as outlined on the plan attached hereto as Schedule "C"; and forming no part of either the Leased Marina Lands or the Leased Lands;
- (g) **"Extended Parking Lot"** means the extended parking lot set out in Section 14.1;
- (h) **"Governmental Requirement(s)"** means all requirements made or imposed pursuant to law by Federal, Provincial, Municipal or other local governments including requirements of Environmental Laws;
- (i) **"Hazardous Substance(s)"** means any substances that are defined or regulated as being waste, contaminants, pollutants, dangerous substances, industrial waste, special waste, toxic substances, hazardous waste, hazardous material or hazardous substance whether or not defined as such or pursuant to any law, regulation or order and without restricting any of the foregoing includes any potentially dangerous substance, corrosive substance, flammable material, explosive material, radioactive material and any other substance or material that when released into the natural environment is known to be likely to cause at some immediate or future time, material harm, adverse impact or degradation to the natural environment or material risk to human health;
- (j) **"Lands"** means Leased Lands and Leased Marina Lands together with all existing structures or portions thereof and improvements upon them;
- (k) **"Lease"** means the lease of the Leased Lands to Trio under the terms and conditions contained in this Agreement;

- (l) **"Leased Lands"** means Areas B and C within the Penticton Lands together with all existing structures, machinery and equipment of Penticton therein or thereon, all of which areas are outlined on the plan attached hereto as Schedule "A";
- (m) **"Leased Marina Lands"** means Area E outlined on the plan attached hereto as Schedule "A" held by Her Majesty the Queen in Right of the Province of British Columbia and all improvements thereon;
- (n) **"Lease Rent"** means the rent set out in Sections 5.1, 5.2 and 5.3;
- (o) **"License to Use"** means the one year agreement attached hereto as Schedule "K" executed between Trio and Penticton for the use of Area B within the Penticton Lands in conjunction with the operation of the Skaha Lake Marina in its existing form.
- (p) **"Marina"** means the marina set out in Section 12.1;
- (q) **"Marina Lease"** means the joint lease of the Leased Marina Lands from Her Majesty the Queen in Right of the Province of British Columbia and Penticton and Trio as jointly as the tenants to be executed by all parties prior to August 1, 2015;
- (r) **"Marina Lease Rent"** means the rent set out in Section 3;
- (s) **"Marketing Plan"** means that document attached hereto as Schedule "I";
- (t) **"Operating Plan"** means that document attached here to as Schedule "H";
- (u) **"Option"** means the option to lease further land as set out in Section 30 of this Agreement;
- (v) **"Option Area"** means Area G all of which areas are outlined on the plan attached hereto as Schedule "M";
- (w) **"Option Rent"** means the annual amount paid by Trio to Penticton for the Option as set out in Section 30.2 and 30.3;
- (x) **"Penticton Lands"** means those certain lands located near Skaha Lake in Penticton, owned by the City of Penticton and legally described as Parcel Identifier: 009-630-929, Lot A District Lot 189 Similkameen Division Yale District Plan 9936, ("Lot "A") and Parcel Identifier: 012-322-954, Amended Lot 4 (See 244321F) Block 209 District Lot 190 Similkameen Division Yale District Plan 466 ("Lot 4") a portion of which are impacted by Utilities as shown on Schedule "B" which may or may not be located within Statutory Rights of Way;
- (y) **"Per Square Meter Appraisal Rate"** means the per square meter appraisal value obtained from an appraisal pursuant to Section 5.3 of this Agreement;
- (z) **"Per Square Meter Rate"** means the per square meter rate for a specific year of the Term calculated in accordance with the formulas in Section 5.2 of this Agreement;
- (aa) **"Prime Rate"** means the rate of interest expressed as an annual rate, in effect from time to time, quoted by the Royal Bank of Canada as its prime rate for commercial loans to commercial borrowers in Canada, calculated monthly, not in advance;
- (bb) **"Rent"** means the Lease Rent, the Marina Lease Rent and the Additional Rent;
- (cc) **"Restaurant"** means the restaurant as set out in Section 13.1(b);
- (dd) **"Restaurant Area"** means the Restaurant area as set out in Section 13.1(b);
- (ee) **"Retail Area"** means the retail area set out in Section 13.1(a);
- (ff) **"Sub-License of Occupation"** means the one year agreement attached hereto as Schedule "L" executed between Trio and Penticton for the operation of the Skaha Lake Marina in its existing form.

(gg) **“Term”** means the term of years commencing on the Commencement Date as set out in Section 1.1(c) and ending on December 31, 2045;

(hh) **“Utilities”** means water lines, sanitary sewer lines, storm sewer lines, electrical lines, telephone lines cable TV lines and gas lines;

## 1.2 Interpretation

For the purpose of this Agreement, except as otherwise expressly provided or unless the context otherwise requires;

(a) the words, “herein”, “hereof”, and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular article, section or other subdivision;

(b) the headings and captions will be considered as provided for convenience only and not as forming part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions;

(c) the words “include” or “including” when following any general term or statement are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters, but rather as permitting it to refer to all other items or matters that could reasonably fall within its broadest possible scope;

(d) a reference to “currency” means Canadian currency unless specifically indicated otherwise;

(e) a reference to a “statute” includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation enforced from time to time and any statute or regulation that supplements or supersedes such statute or any such regulation;

(f) a reference to a “Bylaw” includes all amendments made to the Bylaw;

(g) a word importing the masculine gender includes the feminine or neutral and vice versa, a word importing the singular includes the plural and vice versa;

(h) a reference to “approval” or “authorization” or “consent” or “designation” or “notice” means written approval, authorization, consent, designation or notice unless specifically indicated otherwise;

(i) the language in all parts of this Agreement shall in all cases be construed as a whole and neither party is strictly for nor strictly against any of the parties to this Agreement; and

(j) all schedules to this Agreement are an integral part of this Agreement and form part of this Agreement.

## 1.3 Schedules

(a) Schedule “A” – Plan for the Lands;

(b) Schedule “B” – Utilities Plan

(c) Schedule “C” - Exclusion Area;

(d) Schedule “D” – Architectural Concept Drawings of the Marina;

(e) Schedule “E” – Architectural Concept Drawings of the Retail Area;

(f) Schedule “F” - Architectural Concept Drawings of the Restaurant Area;

- (g) Schedule "G" - Architectural Concept Drawings of the Extended Parking Lot;
- (h) Schedule "H" - Operating Plan 2016 – 2020;
- (i) Schedule "I" – Marketing Plan 2016 – 2020;
- (j) Schedule "J" – City of Penticton Council Resolution; and
- (k) Schedule "K" – License to Use Agreement.
- (l) Schedule "L" – Sub-License of Occupation Agreement.
- (m) Schedule "M " – Option Area

## **2.0 LEASE OF THE LEASED MARINA LANDS**

### **2.1 Leased Marina Lands**

Penticton, in consideration for the rents, covenants, agreements and conditions herein to be paid, observed and performed by Trio and subject to the fulfillment of the conditions precedent set out in Section 11 of this Agreement, will jointly enter into a Marina Lease of the Leased Marina Lands with Trio as contained in Schedule "M" to this Agreement to be executed concurrently with this Agreement for the Term. If for whatever reason the conditions precedent set out in Section 11 of this Agreement are not all waived or satisfied, and notwithstanding any other provision of this Agreement, Trio will fully cooperate with Penticton and the Province of British Columbia in the transfer, assignment or reissuance of the Marina Lease in the sole name of Penticton and will fully relinquish its rights under the Marina Lease.

### **2.2 Term**

Subject to the terms and conditions of this Agreement and the Marina Lease Trio shall have and hold the Leased Marina Lands for the Term, and will make capital improvements, operate all facilities and manage the interest of Penticton in the Leased Marina Lands pursuant to the terms of this Agreement for the Term.

## **3.0 MARINA LEASE RENT**

### **3.1 Marina Lease Rent**

Subject to Section 3.2 herein Trio shall pay to Penticton the Marina Lease Rent as follows:

- (a) Annual payments equal to the amount charged by the Province of British Columbia in the Marina Lease, payable on July 1, 2016 and July 1st of every year of the Term thereafter; and
- (b) Penticton will in turn remit to the Province of British Columbia the rent charged by the Province under the Marina Lease.

### **3.2 Marina Lease Rent Increase**

Penticton and Trio agree that the Province of British Columbia may increase the amount charged to Penticton and Trio under the joint Marina Lease and should this occur, the increased amount will become the Marina Lease Rent and will be payable by Trio to Penticton.

### **3.3 Management of Leased Marina Lands**

Trio covenants and agrees with Penticton to manage and operate the Leased Marina Lands to assist the boating public in a safe, effective, responsive and courteous manner and as follows:

- (a) to manage and perform at the cost and expense of Trio all of the obligations of Penticton under the Marina Lease, and to exercise the tenants' interest under the Marina Lease in accordance with this Agreement;

- (b) to manage and perform at the cost and expense of Trio all of the obligations of Trio under this Agreement;
- (c) to perform all of Trio's obligations under the Marina Lease at the cost and expense of Trio;
- (d) not to do or omit to do any act in or around the Leased Marina Lands which would cause a breach of Penticton's and Trios' obligations as tenants under the Marina Lease;
- (e) not to do, suffer or permit any act which may in any manner, directly or indirectly, cause injury or damage to the Leased Marina Lands or which may be or become a nuisance to or interference with the owners, occupiers or users of other parts of adjoining lands or to the public, including the accumulation of rubbish or unused personal property of any kind; and
- (f) Trio and its agents and employees and all persons using the Leased Marina Lands shall strictly comply with any rules and regulations governing the Leased Marina Lands attached to the Marina Lease or this Agreement.

Trio and Penticton agree that Trio shall be entitled to retain any and all revenues generated from the management, use and occupation of the Leased Marina Lands subject to Trio paying the Marina Lease Rent, Lease Rent and Additional Rent and Revenue Sharing as set out in Sections 3.1, 3.2, 5.1, 5.2, 5.3, 6.1, 6.2, 7.1, 7.2 and 7.3.

#### **4.0 LEASE OF THE LEASED LANDS**

##### **4.1 Leased Lands**

Penticton, in consideration of the rents, covenants, agreements and conditions herein to be paid, observed and performed by Trio, will demise and lease to Trio the Leased Lands for the Term.

##### **4.2 Term**

Subject to the terms and conditions of this Agreement, Trio shall have and hold the Leased Premises for the Term.

#### **5.0 LEASE RENT**

##### **5.1 Lease Rent**

Subject to Section 5.2 herein Trio shall pay to Penticton the Lease Rent as follows:

- (a) annual payments equal to or greater than \$4.20 per square meter multiplied by the total number of square meters contained in the Leased Lands payable on July 1, 2016 and July 1st of every year of the Term thereafter.

##### **5.2 Per Square Meter Rate Increase**

Notwithstanding anything herein to the contrary, the \$4.20 per square meter per annum rate shall be increased as follows:

- (a) From January 1, 2016 to December 31, 2020 using the following formula:  
$$B_n \text{ (n=2016 to 2020)} = B_1$$

- (b) On January 1, 2021 using the following formula:  
$$B_{2021} = (B_1) \times (1 + ((CPI_{2020} - CPI_{2016}) / (CPI_{2016})))$$

- (c) January 1, 2022 to January 1, 2045 using the following formula:  
$$B_n \text{ (n=2022 to 2045)} = (B_{n-1}) \times (1 + ((CPI_{n-1} - CPI_{n-2}) / (CPI_{n-2})))$$

Subject to Section 5.3 herein, the values assigned to the characters in the formulas in Sections 5.2 (a), (b) and (c) above are as follows:

- (i)  $B_1$  = \$4.20 Base Lease Rent per annum pursuant to Section 5.1 of this Agreement.
- (ii)  $B_n$  = the per square meter lease rate for the year in question where  $n=2016$  is the year 2016 and so on.
- (iii)  $B_{2021}$  = the per square meter lease rate for the year 2021.
- (iv)  $CPI_{2020}$  = CPI for the year 2020.
- (v)  $CPI_{2016}$  = CPI for the year 2016.
- (vi)  $CCPI_{n-1}$  = CPI in the  $n-1$  year of the Agreement between the parties.
- (vii)  $CPI_{n-2}$  = CPI in the  $n-2$  year of the Agreement between the parties.

### 5.3 Per Square Meter Rate Increase Appraisal

Once every five years commencing in 2021, Penticton or Trio may obtain an appraisal from an Appraisal Institute of Canada Accredited Appraiser to determine a new market per square meter lease rate of the Leased Lands as follows:

- (a) The party obtaining the appraisal will be responsible for the full cost of the appraisal;
- (b) If the difference between the Per Square Meter Appraisal Rate and the Per Square Meter Rate of the Leased Lands is greater than 10%, the average of the Per Square Meter Appraisal Rate and the Per Square Meter Rate will be used to establish the new per square meter rate;
- (c) If the difference between the Per Square Meter Appraisal Rate and the Per Square Meter Rate of the Leased Lands is less than 10%, the Per Square Meter Appraisal Rate will be used to establish the new per square meter rate;
- (d) If a new per square meter rate is established in accordance with this Section 5.3, that per square meter rate will become the new Per Square Meter Rate from that point forward and will be incorporated into the formulas in Section 5.2 above.
- (e) If either party is unsatisfied with the first appraisal, the unsatisfied party may obtain a second appraisal from an Appraisal Institute of Canada Accredited Appraiser.
- (f) If a second appraisal is obtained in accordance with Section 5.3(e) above, the new per square meter rate will be calculated by averaging the Per Square Meter Rate and the appraisal that is closest to the Per Square Meter Rate.

### 5.4 Management of Leased Lands

Trio covenants and agrees with Penticton to manage and operate the Leased Lands at the cost and expense of Trio in accordance with all of the obligations of Trio under this Agreement.

## 6.0 ADDITIONAL RENT & REVENUE SHARING

### 6.1 Revenue Sharing

On or before July 1<sup>st</sup>, 2020~~1~~ and on or before July 1<sup>st</sup> of each year of the Term thereafter, and including July 1<sup>st</sup>, 2046 after the expiration of the Term, Trio shall pay to Penticton the Additional Rent as follows:

- (a) 7% of C where C is between \$0 and \$625,000; plus
- (b) 10% of C greater than \$625,001 to \$925,000; plus
- (c) 11% of C greater than \$925,001 to \$1,225,000; plus

- (d) 12% of C greater than \$1,225,001.

The value of C in Section 6.1 (a) to (d) above is the total gross revenue of Trio from the previous year from all operations on the Lands, saving and excepting gross revenue from the Restaurant, less the amount of net goods and services tax that is payable by Trio on such operations.

## 6.2 Restaurant Revenue Sharing

On or before July 1<sup>st</sup>, 2020~~1~~ and on or before July 1<sup>st</sup> of each year of the Term thereafter, and including July 1<sup>st</sup>, 2046 after the expiration of the Term, Trio shall pay to Penticton the Additional Rent for the previous year as follows:

- (a) If Trio operates the Restaurant, Trio shall pay to Penticton the following:

- (i) 3.5% of E where E is between \$0 to \$375,500; plus
- (ii) 5.0% of E greater than \$375,501 to \$506,250; plus
- (iii) 5.5% of E greater than \$506,251 to \$675,000; plus
- (iv) 6.0% of E greater than \$675,001.

The value of E in Section 6.2 (a) (i) to (iv) above is the total gross revenue from the previous year from all aspects of the Restaurant operation less the amount of net goods and services tax that is payable by Trio on such operations.

- (b) If Trio sub-leases the operation of the Restaurant, Trio shall pay to Penticton in accordance with the following formula:

$$50\% \times (F-G)$$

The value of F and G in Section 6.2(b) are as follows:

- (i) F is the total annual compensation in all forms in dollars received by Trio from sub-leasing the Restaurant.
- (ii) G is the Per Square Meter Lease Rate for the year in question from Section 5.0 multiplied by the area in square meters of the foot print occupied by the Restaurant.

## 7.0 OTHER PAYMENTS

### 7.1 Trio's Taxes and Other Charges

Trio shall pay, as and when due, to the authority or person to which the same are owing:

- (a) all taxes (including without limitation all goods and services tax), license fees, rates, duties and assessments imposed, assessed or levied by any lawful authority relating to:
- (i) the business carried on in and the use and occupancy of the Lands by Trio;
  - (ii) Rent payable by Trio for the Lands; and
  - (iii) personal property and business and trade fixtures and other improvements owned or installed by or on behalf of Trio in, on or affixed to the Lands.

whether any such taxes, license fees, rates, duties and assessments are payable by law by Trio or by Penticton and whether or not same are allocated separately in respect of the Leased Lands and Leased Marina Lands;

- (b) all charges, rates, levies and assessments imposed, assessed or levied by any lawful authority in respect of electricity, light, heat, power, water, sanitary sewer, telephone, cable TV and utilities of whatsoever nature or kind (including works and services in connection therewith) used in or supplied to the Lands and which shall be separately metered where possible with the cost of metering installation and utilities consumed by Trio to be borne by Trio.

## **7.2 Property Taxes**

Trio shall pay to the authority or person to which same are owing, as when due, property taxes as assessed by the British Columbia Assessment Authority on the Lands and as issued by the authority or person having jurisdiction and including without limiting the generality of the foregoing local improvement charges, school taxes, frontage taxes and all other special or extraordinary charges and whether or not same are allocated separately in respect of the Leased Lands and the Leased Marina Lands. Trio acknowledges that:

- (a) the property taxes may change from time to time; and
  - (b) the classification of use may change from time to time,
- depending on the assessment of the British Columbia Assessment Authority.

## **7.3 Late Payment Interest**

Trio shall pay interest at 2% per month on any amount payable by Trio pursuant to this Agreement and not paid when due, calculated from the due date to the date of payment and compounded monthly. Penticton shall have the same remedies for the collection of such interest as it has for the recovery of basic rent in arrears.

## **7.4 No Set-off**

Trio will pay to Penticton duly and punctually any and all Lease Rent, Marina Lease Rent and Additional Rent required to be paid by Trio pursuant to this Agreement without any deduction, abatement or set-off whatsoever.

## **8.0 TRIO'S REPORTING REQUIREMENTS**

### **8.1 Revenue Sharing Reporting**

On or before July 1<sup>st</sup> of each year Trio is required to pay Penticton Additional Rent in Sections 6.1 and 6.2 of this Agreement, Trio shall provide to Penticton documentation that provides a complete reconciliation of how the Additional Rent was calculated for the previous year for which the payment is made.

### **8.2 Updated Plans and Statements**

On or before November 1, 2016 and on November 1 of every 5 year period thereafter, Trio is required to prepare and provide to Penticton for review and discussion the following:

- (a) an updated 5 year Marketing Plan;
- (b) an updated 5 year Operating Plan; and
- (c) an updated 5 year Revenue and Expense Statement done on a January 1 to December 31 time basis.

### **8.3 Updated 5 year Marketing Plan**

Trio shall include the following details in an updated 5 year Marketing Plan referred to in Section 8.2 (a) above:

- (a) how Trio intends to market the Marina, including but not limited to the following details:
  - (i) The target market;
  - (ii) Ongoing marketing to be undertaken on a seasonal and regular basis following opening;
  - (iii) Rates to be charged including: a surcharge for the right to obtain a slip, annual, monthly, weekly and daily rates;
  - (iv) How the facility will be “freshened up” and on what frequency to maintain customer appeal;
  - (v) Marketing budgets for ongoing annual marketing; and
  - (vi) Details supporting assumptions made.
- (b) how Trio intends to market the Restaurant, including but not limited to the following details:
  - (i) The target market;
  - (ii) Menu type and meal rates;
  - (iii) Ongoing marketing to be undertaken on a seasonal and regular basis following opening;
  - (iv) Type of marketing to be undertaken on a seasonal and regular basis following the opening;
  - (v) Types of special events and how they will be marketed;
  - (vi) How the facility will be “freshened up” and on what frequency to maintain customer appeal;
  - (vii) Marketing budgets for ongoing annual marketing; and
  - (viii) Details supporting assumptions made.

#### 8.4 Updated 5 Year Operating Plan

Trio shall in an updated 5 year Operating Plan referred to in Section 8.2 (b) above, include the operating and service methods to be implemented, including but not limited to the following details:

- (a) An organization chart detailing the proposed management, seasonal, hourly and on-call positions;
- (b) Anticipated staffing requirements and minimum staff certifications and guidelines for various types of positions that will exist in the Marina, Restaurant and Extended Boat/Trailer Parking Lot;
- (c) Service methodology to be employed to deliver quality service;
- (d) Staff hiring and training programs including those related to customer service, water quality, life safety, equipment maintenance and fuel handling;
- (e) The implementation of measurable quality control programs;
- (f) Trio's Emergency Preparedness Plans to address incidents on the Leased Lands and Leased Marina Lands including but not limited to fuel spills and boating accidents.

#### 8.5 Updated 5 Year Revenue and Expense Statement

Trio shall include the following in an updated 5 year Revenue and Expense Statement referred to in Section 8.2 (c) above in a pro forma format showing projected revenues and expenses and how capital improvements will be addressed for each of the separate elements of the proposed development, including:

- (a) details of the Marina, including but not limited to revenues from the following:
  - (i) Slip rentals and anticipated number of slips rented for each category of slip or rental created;
  - (ii) Water craft rental;
  - (iii) Fuel sales;
  - (iv) Boat Storage;
  - (v) Retail sales; and
  - (vi) Beer and wine sales.
- (b) All operating expenses of the Marina including but not limited to all Marina Lease Rent, Lease Rent, revenue sharing costs, and taxes and other charges;
- (c) Details of the Restaurant, including but not limited to revenues from the following:
  - (i) Meals;
  - (ii) Beer, wine and spirit sales; and
  - (iii) Special events.
- (d) All operating expenses of the Restaurant including but not limited to all Lease Rent, Marina Lease Rent, revenue sharing costs and taxes and other charges.
- (e) Any other revenues and expenses not specifically noted in Section 8.5 (a) to (d).
- (f) Details supporting assumptions made.
- (g) A sensitivity analysis that shows the impact of gross revenues being 10% higher, 10% lower and 20% lower.

#### 8.6 Financial Statements

Trio shall, from and including 2016 to 2020, upon request of Penticton, submit to Penticton financial statements for each financial year of Trio coinciding with each such calendar year , prepared in accordance with generally accepted accounting principles on a review engagement basis by an accredited chartered accountant, certified general accountant or chartered professional accountant that include the gross revenue generated and all expenses incurred from all aspects of the development and operations on the Leased Land and Leased Marina Lands including but not limited to a break-down of the following details:

- (a) Marina and slip rental revenue;
- (b) Marina expenses;
- (c) Restaurant revenue;
- (d) Restaurant expenses;
- (e) Parking revenue from the Extended Parking Lot;
- (f) Parking expenses from the Extended Parking Lot;
- (g) Any other revenues not noted above; and
- (h) Any other expenses not noted above.

Beginning in 2021, Trio shall, upon request of Penticton, submit financial statements prepared in accordance with generally accepted accounting principles, either on a review engagement basis or on an audit engagement basis as requested by Penticton, by an accredited chartered accountant, certified general accountant or chartered professional accountant that include the gross revenue generated and all expenses incurred from all aspects of the development on the Lands in substantially the same form as the previous financial statements received for the years 2016 to 2020.

## **9.0 PENTICTON RESPONSIBILITIES**

### **9.1 Park and Amenity Contribution**

Penticton shall deposit 50% of the Additional Rent received from Trio pursuant to Sections 6.1 and 6.2 of this Agreement in an interest bearing account that shall be used as a park and amenity contribution to:

- (a) purchase additional park land; and/or
- (b) purchase park and waterfront amenities,

in the City of Penticton as and when determined by Penticton in its sole discretion.

Penticton will recognize Trio, in a form and manner acceptable to Penticton, as a good community partner for their contribution to the purchase of additional park lands or park and waterfront amenities.

## **10.0 EXTENSION REQUEST**

### **10.1 First Extension Request**

Trio may, no earlier than two years prior to the end of the Term of this Agreement and no later than one year prior to the end of the Term of this Agreement, provide a written request to Penticton for a five (5) year extension to the Term. Upon receiving a written request for a five (5) year extension, Penticton may enter into discussions with Trio for an extension of the Term and may grant the 5 year extension, subject to Penticton determining and being satisfied at that time, in its sole discretion, with the following:

- (a) the Provincial Government of British Columbia providing a sufficient extension of the term of the Marina Lease;
- (b) Trio has duly and punctually performed the covenants, agreements, conditions and provisos of this Agreement on the part of Trio to be performed;
- (c) Trio has satisfactorily operated the Marina, Retail Area, Restaurant and Extended Parking lot for every year of the Term;
- (d) Trio has improved and maintained the Leased Marina Lands and the Leased Lands to a standard acceptable to Penticton;
- (e) Trio has completed the initial capital expenditures required by Sections 15.1 and 15.2 of this Agreement;
- (f) Trio has completed the capital expenditures to freshen the facilities as noted in Section 15.3; and
- (g) Agreement by Penticton with Trio's further proposed capital and operating improvements to areas developed by Trio on the Lands.

## 10.2 Second Extension Request

If Penticton grants the 5 year extension in Section 10.1 above, Trio may, no earlier than two years prior to the end of the first five year extension and no later than one year prior to the end of the first five year extension, provide a written request to Penticton for a second 5 year extension to the Term of this Agreement. Upon receiving a written request for a second five year extension, Penticton may enter into discussions with Trio and may grant the five (5) year extension to Trio, subject to Penticton determining and being satisfied at that time in its sole discretion of the same factors as are set out in Section 10.1 above.

## 11.0 CONDITIONS PRECEDENT

### 11.1 Penticton Conditions Precedent

Penticton and Trio agree that the obligations of Penticton herein are subject to the following conditions being satisfied on or prior to the date identified for each item or prior to the start of construction by Trio, which ever shall occur first:

For the Marina area referenced in Section 12 and the Extended Parking Lot referenced in Section 14

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- (a) By October 1<sup>st</sup>, 2015, Penticton must receive from Trio and acknowledge in writing receipt of a detailed financing plan from Trio. The plan must contains details showing approved financing sufficient to pay for all aspects of the capital expenditures set out in Section 15 and approved financing to cover the operating expenses associated with the first two years of operation.
- (b) By November 1<sup>st</sup>, 2015 Penticton approving in writing the detailed financing plan submitted by Trio.
- (c) By November 15, 2015 Trio must provide Penticton with a written copy of its lender's loan commitment, including full particulars sufficient in the opinion of Penticton to meet the financial requirements of Trio contained in its detailed financial plan set out in Section 11.1(a) above.
- (d) By December 1, 2015 Penticton approving in writing the lender's loan commitment.
- (e) By October 1, 2015 Penticton, Trio and the Province of British Columbia all executing a joint lease for the Leased Marina Lands.

For the Restaurant and Retail area referenced in Section 13

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(f) By July 1<sup>st</sup>, 2016, Penticton must receive from Trio and acknowledge in writing receipt of a detailed financing plan from Trio. The plan must contains details showing approved financing sufficient to pay for all aspects of the capital expenditures set out in Section 15 and approved financing to cover the operating expenses associated with the first two years of operation.

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(g) By August 1<sup>st</sup>, 2016 Penticton approving in writing the detailed financing plan submitted by Trio.

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(h) By August 15, 2016 Trio must provide Penticton with a written copy of its lender's loan commitment, including full particulars sufficient in the opinion of Penticton to meet the financial requirements of Trio contained in its detailed financial plan set out in Section 11.1(a) above.

(i) By September 1, 2016 Penticton approving in writing the lender's loan commitment.

These conditions are for the sole benefit of Penticton. If Penticton wishes to waive any of these conditions or declare them fulfilled, then Penticton will do so by giving written notice (the "Notice") to Trio on or prior to the date indicated for each item or prior to the start of construction by Trio, which ever shall occur first. If the Notice is not given, then this Agreement and the Marina Lease Agreement are terminated and neither party will have any further obligations under this Agreement or the Marina Lease Agreement.

#### 11.2 Trio Conditions Precedent

Penticton and Trio agree that the obligations of Trio herein are subject to the following conditions being satisfied on or prior to the date identified for each item or prior to the start of construction by Trio, which ever shall occur first:

For the Marina area referenced in Section 12 and the Extended Parking Lot referenced in Section 14

- (a) By November 10, 2015 Trio must have received lender's loan commitments for financing.
- (b) By October 1, 2015 Penticton, Trio and the Province of British Columbia all executing a joint lease for the Leased Marina Lands.

For the Restaurant and Retail area referenced in Section 13

- (a) By August 10, 2016 Trio must have received lender's loan commitments for financing.

These conditions are for the sole benefit of Trio. If Trio wishes to waive any of these conditions or declare them fulfilled, then Trio will do so by giving written notice (the "Notice") to Penticton on or prior to the date indicated for each item or prior to the start of construction by Trio, which ever shall occur first. If the Notice is not given, then this Agreement and the Marina Lease Agreement are terminated and neither party will have any further obligations under this Agreement or the Marina Lease Agreement.

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#### 11.3 Penticton Non-Revocation of Acceptance

In consideration of the non-refundable payment of \$10.00 by Trio to Penticton, receipt of which is acknowledged, Penticton agrees not to revoke its acceptance of the terms of this Agreement while this Agreement remains subject to the condition precedent of Trio contained in Section 11.2 of this Agreement.

#### 11.4 Trio Non-Revocation of Acceptance

In consideration of the non-refundable payment of \$10.00 by Penticton to Trio, receipt of which is acknowledged, Trio agrees not to revoke its acceptance of the terms of this Agreement while this Agreement remains subject to the condition precedent of Penticton contained in Section 11.1 of this Agreement.

#### 11.5 Creation of Lease

Upon the conditions precedent in favor of Penticton set out in Section 11.1 above and the conditions precedent in favor of Trio set out in Section 11.2 above all being satisfied or waived by the applicable party, and the Marina Lease being executed by both Penticton and Trio, a lease of the Leased Lands shall come into existence, on the terms and conditions set out in this Agreement, *mutatis mutandis*.

### 12.0 MARINA DESIGN, CONSTRUCTION AND OPERATION

#### 12.1 Construction of Marina

On or before May 1, 2016, Trio shall construct on the Lands a new 100 slip marina with two different slip sizes for seasonal, weekly and daily rentals on Area E as depicted in Schedule "A" attached hereto.

The completed Marina shall reasonably appear as depicted in the Architectural Concept Drawings of the Marina attached as Schedule "D" to this Agreement and shall including a slip for the City of Penticton Marine Rescue Boat. The slip shall be provided by Trio at no cost. The cost to design and construct the slip shall be paid for by Trio.

#### 12.2 **Design of Marina**

Prior to the construction of the Marina and after the completion of their own due diligence, Trio shall deliver to Penticton such drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and decoration and designs of the Marina more or less as depicted on Schedule "D" for Penticton's approval which approval Penticton agrees not to unreasonably withhold. As part of the design process Trio shall coordinate and work with the Penticton Fire Department on the design of a slip for the City of Penticton Marine Rescue Boat. Upon receipt of Penticton's approval, after securing a building permit and all other approvals necessary from applicable authorities and Penticton acknowledging full and sufficient receipt of the Letter of Credit noted in Section 16.2, Trio shall construct the Marina, expeditiously and in good, workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including the materials to be used), location on the premises and decoration and design, all upon which the issuance of the building permits and other approvals are based. Any changes to the drawings, specifications, locations, exterior decoration, design or exterior appearance of the buildings and improvements to be constructed for and in connection with the Marina on the Lands must be first approved by Penticton and thereafter by any other relevant statutory authority.

#### 12.3 **Operation of the Existing Marina**

Trio shall:

- (a) under the Sub-License of Occupation and License to Use assume possession of and responsibility for the existing marina on January 1, 2015 and shall operate the existing marina until at least December 31, 2015 as specified in the Sub-License of Occupation;
- (b) extend the date under the Sub-License of Occupation and License to Use from December 31, 2015 to December 31, 2016 and once Penticton Conditions Precedent and Trio Condition Precedent have been removed under this Agreement the Marina will be operated under the terms and condition of this Agreement and the City will ensure that Trio only pays once for the use of land for the marina.
- (c) on or before July 15 1, 2015 Trio and Penticton shall undertake a joint inspection of the existing marina and create a list of safety repairs that must be completed;
- (d) on or before August 1, 2015 Trio shall complete the safety repairs to the satisfaction of Penticton;
- (e) on or before August 1, 2015 Trio shall provide an invoice to Penticton for the safety repairs complete with all back up documentation in a form acceptable to Penticton;
- (f) Penticton shall review the invoice, seek any clarification and if satisfied pay the invoice, up to an upset maximum of \$10,000, by September 1, 2015; and
- (g) for certainty should Trio elect to make any other improvements to the existing marina for non-safety reasons they shall be completed at the sole cost of Trio.

#### 12.4 **Operation of Marina**

On or before January 1, 2016, Trio shall assume possession of and responsibility for the Marina under this Agreement and shall operate the Marina for the Term. The Marina shall be open to the

public at least between May 1<sup>st</sup> and September 30<sup>th</sup> of each year thereafter for the Term. Trio's operation of the existing marina and the Marina includes, but is not limited to the operation of a gas dock, moorage rental and boat refueling.

The Marina is to be marketed in accordance with the Marketing Plan attached hereto as Schedule "I" and as modified by the updated 5 Year Marketing Plan as noted in Section 8.3.

The Marina is to be operated in accordance with the Operating Plan attached hereto as Schedule "H" and as modified by the updated 5 Year Operating Plan as noted in Section 8.4.

**12.5 Costs of Design, Construction and Operation for Marina**

Trio shall pay all costs associated with the design, construction and operation of the Marina referred to in Sections 12.1, 12.2, 12.3 and 12.4 herein.

**12.6 Marina Rates**

Trio shall review marina rates in the Okanagan Valley on an annual basis and ensure that the rates that Trio is charging are competitive with those charged by the equivalent facilities in the Okanagan Valley. These reviews, as well as the current year's proposed lease rates, are to be shared and discussed with Penticton prior to the final rates being set for each year of the Term by February 1<sup>st</sup> of each year. Provided, however, that Trio shall have the final determination of the rates.

**12.7 Marina Operation Where Conditions Precedent Not Satisfied**

In the event any of Penticton's conditions precedent set out in Section 11.1 or Trio's conditions precedent set out in Section 11.2 are not satisfied, Trio shall nevertheless assume possession of and responsibility for and operate the existing marina under the License to Use and the Sub-License of Occupation as set out in Schedule "K" and "L".

**13.0 RETAIL AREA AND RESTAURANT DESIGN, CONSTRUCTION AND OPERATION**

**13.1 Construction of Retail Area and Restaurant**

On or before May 1, 2017, Trio shall construct on Area B as depicted in Schedule "A" attached hereto of the Lands:

- (a) a Retail Area of not less than TWO HUNDRED AND FIFTY FIVE (255) square feet and not more than ONE THOUSAND (1000) square feet of building area for boating, beach related items and a cold beer and wine store. Should Trio wish to increase the amount of Retail Area square footage they must first obtain the written approval of Penticton and such approval will not be unreasonably withheld;
- (b) a Restaurant of not less than ONE THOUSAND THREE HUNDRED AND SIXTY (1,360) square feet and not more than ONE THOUSAND EIGHT HUNDRED AND FORTY (1,840) square feet of building area and seating for at least EIGHTY FIVE (85) customers and not more than ONE HUNDRED AND FIFTEEN (115) customers. Should Trio wish to increase the amount of Restaurant Area square footage they must first obtain the written approval of Penticton and such approval will not be unreasonably withheld;

The completed Retail Area and Restaurant shall reasonably appear as depicted in the Architectural Concept Drawings of the Retail Area and Restaurant attached as Schedule "E" and "F" to this Agreement.

**13.2 Design of Retail Area and Restaurant**

Prior to the construction of the Retail Area and Restaurant and after the completion of their own due diligence, Trio shall deliver to Penticton such drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and decoration and designs of the Retail Area and Restaurant more or less as depicted on Schedule "E" and "F" for Penticton's approval which approval Penticton agrees not to unreasonably withhold. Upon receipt of Penticton's approval, after securing a building permit and all other approvals necessary

from applicable authorities and Penticton acknowledging full and sufficient receipt of the Letter of Credit noted in Section 16.2, Trio shall construct the Retail Area and Restaurant, expeditiously and in good, workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including the materials to be used), location on the premises and decoration and design, all upon which the issuance of the building permits by Penticton are based. Any changes to the drawings, specifications, locations, exterior decoration, design or exterior appearance of the buildings and improvements to be constructed for or in connection with the Retail Area and Restaurant on the Leased Lands and Leased Marina Lands must be first approved by Penticton and thereafter by any other relevant statutory authority.

### **13.3 Operation of Retail Area and Restaurant**

On or before May 1, 2017, Trio shall begin operating the Retail Area and Restaurant and shall operate and maintain the Retail Area and Restaurant until at least September 30, 2017, and every year thereafter for the Term shall operate the Retail Area and Restaurant at least between May 1<sup>st</sup> and September 30<sup>th</sup> of each year.

The Retail Area and Restaurant is to be marketed in accordance with the Marketing Plan attached hereto as Schedule "I" and as modified by the updated 5 Year Marketing Plan as noted in Section 8.3.

The Retail Area and Restaurant is to be operated in accordance with the Operating Plan attached hereto as Schedule "H" and as modified by the updated 5 Year Operating Plan as noted in Section 8.4

### **13.4 Costs of Design, Construction and Operation for Retail Area and Restaurant**

Trio shall pay all costs associated with the design, construction and operation of the Retail Area and Restaurant referred to in Sections 13.1, 13.2 and 13.3 herein.

## **14.0 EXTENDED PARKING LOT DESIGN CONSTRUCTION AND OPERATION**

### **14.1 Construction of Extended Parking Lot**

On or before May 1, 2016, Trio shall construct on Area C as depicted in Schedule "A" attached hereto of the Leased Premises an Extended Parking Lot of at least 86 parking stalls.

The completed Extended Parking Lot shall reasonably appear as depicted in the Architectural Concept Drawings of the Extended Parking Lot attached as Schedule "G" to this Agreement.

### **14.2 Design of Extended Parking Lot**

Prior to the construction of the Extended Parking Lot and after the completion of their own due diligence, Trio shall deliver to Penticton such drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and decoration and designs of the Extended Parking Lot more or less as depicted on Schedule "G" for Penticton's approval which approval Penticton agrees not to unreasonably withhold. Upon receipt of Penticton's approval, after securing a building permit and all other approvals necessary from applicable authorities and Penticton acknowledging full and sufficient receipt of the Letter of Credit noted in Section 16.2, Trio shall construct the Extended Parking Lot, expeditiously and in good, workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including the materials to be used), location on the Leased Premises and decoration and design, all upon which the issuance of the building permits and other approvals are based. Any changes to the drawings, specifications, locations, decoration, design or appearance of the improvements to be constructed for or in connection with the Extended Parking Lot on the Leased Premises must be first approved by Penticton and thereafter by any other relevant statutory authority.

**14.3 Operation of Extended Parking Lot**

Trio shall operate, maintain and retain all revenues from the Extended Parking Lot from May 1, 2016 and for the remainder of the Term.

The Extended Parking Lot is to be marketed in accordance with the Marketing Plan attached hereto as Schedule "I" and as modified by the updated 5 Year Marketing Plan as noted in Section 8.3.

The Extended Parking Lot is to be operated in accordance with the Operating Plan attached hereto as Schedule "H" and as modified by the updated 5 Year Operating Plan as noted in Section 8.4

**14.4 Costs of Design, Construction and Operation for Extended Parking Lot**

Trio shall pay all costs associated with the design, construction and operation of the Extended Parking Lot referred to in Sections 14.1, 14.2 and 14.3 herein.

**15.0 CAPITAL EXPENDITURES**

**15.1 Marina, Retail Area and Restaurant**

Trio shall invest and expend not less than ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00), in aggregate, for the construction of and improvements to the following:

- (a) The Marina referred to in Section 12.1 herein;
- (b) The Retail Area referred to in Section 13.1(a) herein; and
- (c) The Restaurant referred to in Section 13.1(b) herein,

in accordance with the determination of the quantity surveyor as noted in Section 16.2 of this Agreement.

**15.2 Extended Parking Lot**

Trio shall invest and expend not less than THREE HUNDRED AND THIRTY THOUSAND (\$330,000.00) for the construction of the Expanded Parking Lot referred to in Section 14.1 of this Agreement, in accordance with the determination of the quantity surveyor in Section 16.2 of this Agreement.

**15.3 Additional Capital Expenditures**

Throughout the Term of this Agreement Trio shall make sufficient capital investments to freshen up the facilities and create new attractions.

**16.0 GENERAL CONSTRUCTION PROVISIONS**

**16.1 Fire and Liability Insurance During Construction**

Trio shall effect or cause all of its contractors and sub-contractors to effect prior to the commencement of any construction whatsoever on the Lands and including, without limiting the generality of the foregoing, the construction as referred to in Sections 12.1, 13.1 and 14.1 herein and shall maintain and keep in force until the insurance required under Sections 24.1, 24.2, 24.3, 24.4 and 24.5 herein shall be effected, insurance:

- (a) protecting both Trio and Penticton and Penticton's servants and agents (without any rights of cross-claim or subrogation against Penticton) 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 Leased Lands and Leased Marina Lands and from any cause, including the risk occasioned by the construction of the improvements, and to any amount reasonably satisfactory to Penticton, for any personal injury, death, property, or other claims in respect of any one accident or occurrence;

- (b) protecting both Trio and Pentiction and Pentiction's servants and agents from loss or damage (without any rights of cross-claim or subrogation against Pentiction), to the improvements, equipment, building materials on the Lands from time to time both during and after construction, (but which may be by policies effected from time to time covering the risk during different phases of construction of the improvements) against fire, earthquake and all other perils from time to time customarily included in the usual all risk builders' form of policy applicable to similar properties under construction and effective in the Province of British Columbia by prudent owners, and such other perils as Pentiction may reasonably require to be insured against the full insurable value thereof at all times and in any event the amount sufficient to prevent Pentiction or Trio being deemed co-insurer.

#### 16.2 **Quantity Surveyor and Letter of Credit**

No less than 60 days prior to the commencement of construction as referred to in Sections 12.1, 13.1 and 14.1 of this Agreement, Trio shall provide all plans of the proposed works to Pentiction. Pentiction shall engage Spiegel Skillen Quantity Surveyors or another quantity surveyor as determined by Pentiction, at Pentiction's sole cost, to estimate the cost of the proposed work. Trio shall then provide Pentiction with an irrevocable letter of credit, in a form acceptable to Pentiction, drawn on a Canadian Schedule I chartered bank or a British Columbia credit union regulated under the laws of the Province of British Columbia in the amount of the Spiegel Skillen estimate. The letter of credit shall form security against default by Trio under the terms of this Agreement and/or the Marina Lease and Pentiction will have the ability to draw on the letter of credit in the following events:

- (a) a lien is filed on the Leased Lands or the Leased Marina Lands that Trio does not discharge within 30 days written notice from Pentiction to do so;
- (b) construction ceases on the Lands or is reduced to such a level that in the opinion of Pentiction, acting reasonably, Trio will be unable to meet the timelines established in this Agreement for the full completion and operation of the intended improvements and facilities;
- (c) Trio fails to fully invest and expend the required monetary amounts mandated by Section 15 of this Agreement as determined by Pentiction's quantity surveyor; or
- (d) Trio is otherwise in default of its obligations under this Agreement.

Trio may submit multiple letters of credit to Pentiction which may be reduced as elements of construction are completed.

The letter of credit shall be renewed 30 days prior to its expiry date unless specified in writing by Pentiction that it is not required. In the event that the letter of credit is not renewed within 30 days of the expiry date, Pentiction will be within its rights to and may draw down on the letter of credit and apply the proceeds against the outstanding deficiency/ies.

#### 16.3 **Security**

Any mortgage, encumbrance, charge, pledge or other grant of any security interest of any nature in the interest of Trio in the Lands shall be at the sole cost and expense of Trio. Pentiction shall not

be required to mortgage, encumber, charge, pledge or otherwise grant any security interest of any nature in the Lands. Provided, however, that Penticton shall use reasonable commercial efforts in providing Trio's lender with the security it requires including an assignment of this Agreement and a mortgage of Trio's interest in the Lease and/or Trio's interest in the Marina Lease if permitted under the Marina Lease.

**16.4 Notice of Interest**

Penticton shall register a Notice of Interest under the *Builders Lien Act* on the Lands. Trio shall be required to disclose in writing to any person they contract with in relation to the Lands the existence of the Notice of Interest of Penticton and shall note in all of Trio's contracts the existence of the same.

**16.5 Statutory Declaration of Payment**

Trio shall provide to Penticton a statutory declaration within 15 days of the end of each month so long as any aspect of the project is under construction confirming that each contractor, subcontractor, workman and material supplier working on or in relation to the Lands have been fully paid.

**16.6 Notification of Claims**

Trio shall immediately notify Penticton of any claims of builders' liens that arise from third parties from construction or work performed on or materials supplied to the Lands

**16.7 Utilities, Levelton Reports and Existing Irrigation Lines**

Trio confirms and acknowledges that it is fully aware of the existence and location of the Utilities as noted in Schedule "B" and they will not disturb or construct in the area of such Utilities, except to the extent permitted by any right of ways or easements and in the case where there are no right of ways or easements exist to the extent permitted by the authority having jurisdiction over the Utility in question.

Trio further confirms and acknowledges that it is aware of and has studied the following reports:

- (a) The Levelton Preliminary Geotechnical Assessment Report Skaha Lake Development Lands dated August 29, 2012;
- (b) The Levelton Stage 1 Preliminary Site Investigation East Skaha Lake – City Lease Assembly Portion of 124 South Beach Drive dated June 2012;
- (c) The Levelton Stage 1 Preliminary Site Investigation East Skaha Lake – City Lots Portion of 124 South Beach Drive and 3915 Lakeside Road dated June 2012;
- (d) The Levelton Stage 2 Preliminary Site Investigation 124 South Beach Drive dated April 2013; and
- (e) The Levelton Hazardous Materials Management Survey 124 South Beach Drive dated October 4, 2012.

and will incorporate the findings of all of such reports in its planning, design, construction and operation of its improvements and operations on the Lands.

There are irrigation lines located throughout the Lands as noted in Schedule "B" and Trio covenants and agrees to work with Penticton and shall install at their cost all required by pass lines and connections to ensure that the existing irrigation system continues to operate to the satisfaction of Penticton after the construction of the items referred to in Sections 12.1, 13.1 and 14.1.

**17.0 EXTENSION OF DEADLINES**

- 17.1 If Penticton or Trio determines that it will not be possible to meet a deadline set out in this Agreement, Penticton or Trio shall notify the other party in writing and provide a date by which the respective item can be completed. The deadline may only be changed upon mutual written acceptance of such change.

**18.0 REPAIRS, MAINTENANCE AND ALTERATIONS**

**18.1 Repair and Maintenance**

Trio, at its own expense, will improve, repair and maintain the Lands and all improvements, appurtenances and equipment therein and thereon (including, without limitation, repairing and maintaining all fueling facilities, all plumbing, heating, and electrical systems, repairing and maintaining the roof, floors, foundations, bearing beams and the internal and external walls including all structural aspects thereof, replacing all broken windows and maintaining the landscaping of the Lands, excepting from such standard of repair and maintenance reasonable wear and tear to the extent only that such reasonable wear and tear is not inconsistent with maintenance in good order and condition of the Lands generally. In this Section 18.1, "repair" will include replacement and renewals when necessary. Trio will be responsible for all damage or destruction to the Lands and for promptly complying with all requests or orders of any applicable government authority with respect to upgrading of the Lands and for the investigation and remediation of any Hazardous Substance in, under or affecting the Lands .

**18.2 Inspection and emergencies**

Penticton, by its representatives may enter upon the Lands at all reasonable times and during any emergency to inspect the state of repair and maintenance.

**18.3 Utilities**

Trio shall at all times during the Term allow the unobstructed and unrestricted access to the Utilities as shown in Schedule "B" to Penticton or to the applicable right of way or easement holder to undertake maintenance, repair and/or replacement of such Utilities, whether held by or for the benefit of Penticton or otherwise.

**18.4 Repairs by designated trades people**

Trio, when necessary and whether upon receipt of notice from Penticton or not, will effect and pay for maintenance and repairs for which it is responsible and in so doing will use appropriated ticketed subcontractors, contractors and trades people.

**18.5 Repair according to notice**

Without restricting the generality of this Section 18.5, Trio, promptly upon notice by Penticton, will make and do all repairs and maintenance for which it is responsible in a good and workmanlike manner. If Trio fails to repair or maintain within what Penticton considers to be a reasonable time, then Penticton may cause such repairs and maintenance to be undertaken (and may cause its representatives to enter on the Lands for such purpose). Should Penticton deem it necessary to undertake such repairs or maintenance, then Trio will pay to Penticton a fee for supervision for carrying out Trio's obligations an amount equal to ten percent (10%) of the cost of repairs or maintenance carried out by Penticton, which amount will be in addition to the cost of such repairs or maintenance.

**18.6 Alterations**

Notwithstanding anything to the contrary in this Agreement, Trio will not make to or erect in the Lands any installations, alterations, additions or partitions without having received the prior written approval of Penticton to the plans and specifications and any variations or amendments thereof, such approval not to be unreasonably withheld, and all necessary approvals of any relevant statutory authority.

**18.7 Construction and alteration**

Trio will construct any such installations, alterations, additions and partitions only in accordance with the approved plans and specifications and in a good and workmanlike manner and will proceed diligently to completion. All such construction will be as contemplated in this Agreement. Trio will pay for all expenses incurred for labor performed upon, and materials incorporated into, the Lands for which it is responsible as same fall due.

**18.8 Repair and maintenance by Penticton**

Penticton shall not be obliged to furnish any services or facilities or to make repairs, replacements or alterations in or to the Lands. Trio hereby assumes the full and sole responsibility for the condition, operation, repair, replacement and maintenance of the Lands.

**18.9 Maintenance by Trio**

Trio covenants and agrees at its own expense to maintain the Lands and all improvements, appurtenances and equipment therein or thereon in accordance with all applicable building codes, bylaws, the laws and regulations of Canada, the laws and regulations of British Columbia and manufacturers specifications and using fully trained personnel. Trio further covenants and agrees to promptly comply with all reasonable concerns and recommendations which Penticton may provide, but is under no obligation to do so, to Trio in writing to ensure the safety and health of the boating public and related facilities as well as the aesthetic appearance of the Lands.

**18.10 Inspection by Penticton**

Notwithstanding any other provisions of this Agreement and without limiting the rights and powers that Penticton may exercise under the bylaws of the Corporation of the City of Penticton, Penticton will at any time, on 24 hours written notice to Trio, be granted access to the Lands and Penticton may inspect the for safety and health-related issues and using its own personnel or experts of its own choosing. Provided, however, that the inspection shall be conducted in such a manner as to interfere with the business of Trio as little as is possible.

**19.0 SURRENDER AND CONDITION OF LEASED LANDS AND LEASED MARINA LANDS**

**19.1 Surrender**

Subject to any contrary term in this Agreement, upon any termination of this Agreement or the Marina Lease prior to the end of the Term, Trio will surrender to Penticton possession of the Leased Lands and the Leased Marina Lands and fixtures and improvements therein, all of which will become the property of Penticton without any claim by or compensation to Trio, all in good order, condition and repair in accordance with Trio's obligation to repair and maintain, and free and clear of all encumbrances and all claims of Trio or of any person claiming by or through or under Trio and all the rights of Trio under this Agreement will terminate save as herein expressly set out and Trio will work with and assist Penticton and the Province of British Columbia to transfer the Marina Lease into the sole name of Penticton.

**19.2 End of Term Requirements**

At any time between 12 and 18 months prior to the expiration of the Term or any renewal thereof, the Penticton will, on 24 hours written notice, be granted access to enable it to extensively inspect the Lands and all facilities thereon to the extent that Penticton requires, using its own personnel or experts of its own choosing. Penticton shall then provide the Trio with written notice, not later than 6 months prior to the expiration of the Term or any renewal thereof, to Trio to remove all structures,

improvements and fixtures on the Lands excepting only those designated to remain at the end of the Term or any renewal thereof as are set out in Penticton's notification to Trio, and to otherwise restore the Lands to a landscaped condition similar to the condition of the Lands at the commencement of the Term, all at the sole cost and expense of Trio.

## **20.0 QUALITY AND USE OF THE LANDS**

### **20.1 Quality of Lands**

Trio has inspected the Lands prior to execution of this Agreement and acknowledges that it is licensing and leasing the same respectively on a "where is, as is" basis in accordance with the provisions of this Agreement. Trio specifically acknowledges that Penticton has made no representations, agreements or warranties with respect to the Lands as to their fitness respectively for the uses referred to in Sections 12.1, 12.3, 12.4, 13.1, 13.3, 14.1 and 14.3 of this Agreement.

### **20.2 Use**

Trio shall not use the Lands and all improvements thereon other than for the operation of the following:

- (a) Marina;
- (b) Restaurant and Retail Area; and
- (c) Expanded Parking Lot;

without the consent in writing from Penticton, which consent may be arbitrarily withheld in the sole discretion of Penticton.

### **20.3 Marina Use**

Trio acknowledges that the use of the Leased Marina Lands is restricted pursuant to the terms of the Marina Lease from the Province of British Columbia to Penticton and Trio.

### **20.4 No Nuisance or Waste**

At no time during the Term will Trio carry on or permit or suffer to be carried on in or from the Lands or elsewhere surrounding the same anything which is noxious or offensive or which would constitute a public or private nuisance. Trio will not cause any waste or damage to the Lands.

### **20.5 Signs**

Trio will not erect, paint, display, place, affix or maintain or permit to be erected, painted, displayed, placed, affixed or maintained any sign, decoration, picture, lettering, symbol or notice of any nature or kind whatsoever (herein called "Signs") either on the walls, fences or structures on the Leased Marina Lands or Leased Lands that can be viewed from off such premises unless it is in conformance with City of Penticton Sign Regulation Bylaw 2013-17 and with the written mutual agreement of Penticton and Trio. Trio will cause any Signs to be maintained in a proper state of repair and will indemnify and save harmless Penticton from all personal injuries or property damage or loss to any person caused by the existence of any such Signs.

### **20.6 Continued Use of Pathways**

Trio shall not impede or restrict the continued use, without charge, of the existing hard-surfaced pathways for general public pedestrian and cyclist purposes which run into or through a portion of the Leased Lands, and including any future replacement of such pathways, for the Term.

### **20.7 Suppression of Weeds**

Trio will keep the Lands clean, landscaped and free from noxious weeds and brush growth at its expense.

**20.8 Contour of the Lands**

Trio shall not deposit on the Lands any earth, fill or other material for the purpose of filling in or raising the level of any part of the Lands or take any steps whatsoever to change the contour of the either of such premises without the prior written consent of Penticton, such consent not to be unreasonably withheld.

**20.9 Conditions of Premises**

Trio will not permit the Lands to become untidy or unsightly and will not permit waste or refuse to accumulate therein.

**20.10 Garbage and Recycling**

Trio will be responsible for ensuring that the areas around all garbage and recycling bins on the Lands are kept neat and tidy at all times.

**20.11 Service and Training**

Trio shall throughout the Term provide employees, agents and any sub-tenant of Trio with the level of training required, reasonably considering the position to be filled by the employee, agent or sub-tenant, to maintain and operate the Marina, Retail Area and Restaurant, and Extended Parking Lot and to assist the clientele and visitors to these facilities and the boating public in a safe, effective, responsive and courteous manner. Trio shall keep records of such training and those records will be made available upon request for inspection by Penticton.

**21.0 ASSIGNING AND SUB-LETTING**

**21.1 Assigning and sub-letting Leased Lands**

Trio shall not assign, sub-let or part with possession of the whole or any part of the Leased Lands for the whole or any part of the Term, unless the assignment, sub-letting or parting with possession is mutually agreed to in writing by Penticton and Trio. Such consent may not be unreasonably withheld provided the assignee, transferee or sub licensee agrees to assume Trio's obligations under this Agreement and Penticton is reasonably assured the assignee, transferee or sub licensee is of good character and has the business and financial ability to manage and operate all components of Trio's planned operation addressed in this Agreement. No assignment, sub-letting or parting with possession of the whole or any part of the Leased Lands shall extend beyond the Term of this Agreement or any exercised renewal thereof at the time of such assignment, sub-letting or parting with possession. Provided, however, that Penticton will reasonably co-operate with Trio and its bank to allow the bank to take security including a mortgage over Trio's interest in this Agreement or in the Lease. Subject to the provisions of Section 21.3 below, any sale or transfer of Trio's interest under this Agreement or the Lease pursuant to the security of Trio's bank shall require written mutual agreement between Penticton and the bank.

**21.2 Assigning and sub-licensing Leased Marina Lands**

Trio shall not assign its interest in the Marina Lease or sub-let or assign or part with possession of the whole or any part of the Marina Lease for the whole or any part of the Term unless such sub-letting or assignment is provided for in the Marina Lease and unless the sub-letting, assignment or parting with possession is mutually agreed to in writing by Penticton and Trio. Such consent may not be unreasonably withheld provided the assignee, transferee or sublicensee agrees to assume Trio's obligations under this Agreement and Penticton is reasonably assured the assignee, transferee or sub licensee is of good character and has the business and financial ability to manage and operate all components of Trio's planned operation addressed in this Agreement. Provided, however, that if the Marina Lease allows, Penticton will reasonably co-operate with Trio and its bank to allow the bank to take security including a mortgage over Trio's interest in the Marina Lease. Any sale or transfer of Trio's interest in the Marina Lease pursuant to the security of Trio's bank shall require written mutual agreement between the Province of BC, Penticton and the bank and will be subject to the terms of the Marina Lease.

**21.3 Default of Trio's Bank Financing**

If in the event of default by Trio under Trio's bank financing secured in any way against Trio's interest in the Lands, the applicable bank shall continue to operate the facilities located on the Lands in compliance with the term and conditions of this Agreement and the Marina Lease. Should the bank not operate the facilities located on the Lands for a 24 month period any time after default or within a 36 month period after default should the bank not have transferred all of Trio's businesses conducted on or from the Lands together with the then remaining Term of the Lease and Trio's interest in the Marina Lease to a replacement tenant mutually agreed to in writing by the Province of BC, Penticton and the bank in accordance with Sections 21.1 and 21.2 hereto, Trio's rights under this Agreement and the Marina Lease, but none of its outstanding obligations hereunder, shall, at the option of Penticton, terminate and, without limiting the generality of the foregoing, the Marina Lease shall henceforth be for the sole use and benefit of Penticton and its future assignees. Trio agrees to fully cooperate with Penticton in such circumstances to the transfer of the entirety of its interest in the Marina Lease to Penticton or as otherwise directed by Penticton.

**21.4 Penticton Conveyance**

Should Penticton convey or assign or otherwise divest itself of its interest in the Leased Lands or Marina Lease, it will be relieved of all obligations under this Agreement, and the Marina Lease from and after the effective date of such conveying, assigning or divesting, save and except for the obligation to account to Trio for any monies due and payable to Trio by Penticton pursuant to this Agreement up until the date of such conveyance, assignment or divestiture provided however Penticton agrees in the event of such conveyance, assignment or divestiture of its interest in the Lands, that a condition of such conveyance, assignment or divestiture shall be that the assignee of the interest of Penticton agrees to be bound by the terms of this Agreement.

**21.5 Exclusion Area**

Penticton will not issue an expression of interest, request for proposal or grant any form of license or lease for commercial operations related to water or lake activities within the Exclusion Area as shown on the plan attached hereto as Schedule "C" until January 1, 2019, save and except any existing types of such commercial operations operating prior to the execution of this Agreement including temporary or intermittent commercial operations for reoccurring annual or more frequent

events or commercial operations which occur through 3rd party renters of Penticton park land under a rental agreement with Penticton. For the period January 2, 2019 to January 1, 2024 Penticton will only use a competitive process to seek expressions of interest, requests for proposals or grant any form of license or lease for commercial operations related to water or lake activities operating within the Exclusion Area.

## **22.0 COMPLIANCE WITH LAWS**

### **22.1 Compliance with laws**

Trio, at its own expense, will promptly comply with all applicable requirements of all governmental, judicial and administrative authorities which relate, directly or indirectly to the use and occupation of the Lands and, without limiting the generality of the foregoing, including, all requirements pursuant to the statutes and regulations of the Province of British Columbia, all Environmental Laws, all bylaws of the City of Penticton, all applicable building codes and the requirements of all building permits issued in connection with the improvement, maintenance and operation of the intended facilities on the Lands.

### **22.2 Notice of non-compliance**

Trio will deliver promptly to Penticton a copy of any notice, request, order, demand or claim of any nature, and any documentation ancillary thereto, pertaining to any actual or alleged failure by Trio or others with regard to the Lands to comply with any common law obligation or any applicable requirement of any governmental, judicial and or administrative authorities which relate, directly or indirectly to the Lands, and including, without limiting the generality of the foregoing, any actual or alleged presence or discharge of any Hazardous Substance(s) on, under or affecting the Lands.

## **23.0 LIABILITY AND INDEMNIFICATION**

### **23.1 Non-Liability of Penticton**

Penticton will not be liable or responsible in any way for any personal injury that may be sustained by Trio or any invitee or licensee of Trio, or of any other person who may be upon the Lands or of any person who or for any loss of or damage or injury to, property belonging to or in the possession of Trio or any invitee or licensee of Trio or any other person, unless caused by gross negligence of Penticton or those for whom it is in law responsible, or resulting from a breach of this Agreement.

### **23.2 Indemnification of Penticton**

Trio will indemnify and save harmless Penticton, its elected and appointed officials, employees and agents from and against any and all liabilities, damages, costs, expenses, causes of actions, actions, claims, suits, legal expenses on a solicitor and own client basis and judgments which Penticton may incur or suffer or be put to by reason of or in connection with or arising from:

- (a) any breach, violation or non-performance by Trio of any obligation contained in this Agreement and the Marina Lease to be observed or performed by Trio;
- (b) any damage to the Lands by Trio, or any person claiming through or under Trio, or damage to any other property howsoever occasioned by the condition, use, occupation, repair or maintenance of the Lands ,unless caused by the gross negligence of Penticton or those for whom it is in law responsible, or caused by a breach of this Agreement by Penticton;
- (c) any injury to any person, including death resulting at any time therefrom, occurring in or about the Lands unless caused by the gross negligence of Penticton or those for whom it is in law responsible, or caused by a breach of this Agreement by Penticton;
- (d) any wrongful act or neglect of Trio, its invitees and licensees, in and about the Lands;
- (e) any request or order made by any government authority requiring investigation or remediation of any Hazardous Substance on, under or affecting the Lands unless caused

by the gross negligence of Pentiction or those for whom it is in law responsible, or by a breach of this Agreement by Pentiction;

- (f) any and all liabilities, claims, damages, costs, loss, suits, or actions of any nature whatsoever (including legal fees incurred by Pentiction in any related proceedings on a solicitor and own client basis) arising out of any release of a Hazardous Substance(s) in on or from the Lands or in, on, above or below the surface of the Lands as a result of the construction or operation of the Lands or any other activity carried out in, on, above or below the Lands by Trio or its servants, or contractors or any person for whom Trio is in law responsible.

Provided that this indemnity shall be reduced where and to the extent that the same is caused by the gross negligence of Pentiction or by a breach of this Agreement by Pentiction.

This indemnification provision shall survive any termination or expiration of this Agreement and the Marina Lease.

### **23.3 Indemnification of Trio**

Pentiction will indemnify and save harmless Trio, its directors, officers, shareholders, employees and agents from and against any and all liabilities, damages, costs, expenses, causes of actions, actions, claims, suits and judgments which Trio may incur or suffer or be put to by reason of or in connection with or arising from:

- (a) any breach, violation or non-performance by Pentiction of any obligation contained in this Agreement or the Marina Lease to be observed or performed by Pentiction, excepting those obligations Trio is to fulfill on behalf of Pentiction under the this Agreement.
- (b) any damage to the Lands caused by Pentiction;
- (c) any request or order made by any government authority requiring investigation or remediation of any Hazardous Substance on, under or affecting the Lands resulting from events prior to January 1, 2016.

provided that this indemnity shall be reduced where and to the extent that the same is caused by the negligence of Trio or those for whom it is responsible or by a breach of this Agreement by Trio.

This indemnification provision shall survive any termination or expiration of the Agreement and the Marina Lease.

## **24.0 INSURANCE**

### **24.1 Trio's Insurance**

Trio, at its cost, will obtain and keep in force throughout the Term:

- (a) replacement cost fire, earthquake and all other perils insurance, including Pentiction as a named insured, of all buildings, structures and improvements located and subsequently constructed on the Lands, including extended coverage endorsement and water damage insurance (including, if applicable, sprinkler leakage) as well as all Trio's property in or on the Lands, including, without limitation, its improvements, furniture, equipment, fittings, fixtures and stock-in-trade, in an amount adequate to cover fully any loss that Trio or Pentiction could sustain. Such coverage shall include a stated amount co-insurance clause;
- (b) comprehensive general liability insurance (including, without limitation, tenant's fire, legal liability and contractual liability to cover the responsibilities assumed under Section 23 and under this Section 24 hereof) against claims for personal injury, death, property loss and

damage arising out of or in connection with the business activities, use and operations of Trio and whether occurring upon or in or about the Lands or as a result of the business activities, use and operations conducted therefrom and environmental damage coverage, all in an amount of not less than \$5,000,000.00 per occurrence or such greater amount as Penticton may reasonably require from time to time. Such coverage shall contain no exclusions for host liquor liability;

- (c) boiler and machinery insurance on such boilers and pressure vessels as may be installed by, or be under the exclusive control of, Trio on the Lands;
- (d) Trio's legal liability insurance in such amount as would a prudent tenant carry;
- (e) business interruption insurance;
- (f) marina operators liability insurance to cover all marina related operations of Trio on or from the Lands with inclusive limits of not less than \$5,000,000 per occurrence;
- (g) protection and indemnity liability insurance covering the ownership and operation of marine vessels owned or leased by the named insured with an inclusive limit of not less than \$5,000,000 per occurrence;
- (h) environmental impairment liability insurance providing coverage for death, bodily injury, property loss and damage, remediation and all other losses arising out of or in connection with the business activities, use and occupation of the Lands in an amount of not less than \$5,000,000 per occurrence;
- (i) any other insurance required pursuant to the terms of the License of Occupation; and
- (j) such other insurance or increased insurance coverage as Penticton might reasonably require from time to time.

#### 24.2 Policies

All insurance required to be maintained by Trio hereunder shall be on terms and with insurers, carrying an A or higher rating with A.M. Best or with Standard & Poors, to which Penticton has no reasonable objection. Trio shall furnish to Penticton certificates or other evidence acceptable to Penticton as to the insurance from time to time required to be effective by Trio and its renewal or continuation in force, either by means of a certified copy of the policy or policies of insurance with all amendments and endorsements or a certificate from Trio's insurer which shall provide such information as Penticton reasonably requires. If Trio fails to take out, renew and keep in force such insurance Penticton may do so as the agent of Trio and Trio shall repay to Penticton any amounts paid by Penticton as premiums forthwith upon demand.

#### 24.3 Terms of insurance

Trio will cause each of the policies for the insurance referred to in Section 24.1 to contain an undertaking by the insurer(s) to notify Penticton at least thirty (30) days prior to cancellation or any other change material to Penticton's interests. The liability policy will include Penticton as an additional named insured with a cross-liability clause and shall protect Penticton in respect of claims by Trio as if Penticton were separately insured. Trio will cause any insurance policy obtained by it pursuant to this Agreement to contain a waiver of subrogation clause in favor of Penticton.

In regards to the insurance required pursuant to Section 24.1(a) herein such insurance shall provide that any proceeds recoverable in the event of loss shall be payable to Penticton, provided however Penticton agrees to make available such proceeds towards the repair or replacement of the insured property if this Agreement and the Marina Lease are not terminated under any other provision hereof. Provided, however, that Trio can make its bank the first loss payee on any policy of insurance if required by the terms of a loan from its bank for the purposes of fulfilling its obligations under Sections 12.1, 13.1, 14.1, 15.1 and 15.2.

If any of the policies to be obtained by Trio pursuant to its obligations herein contain any co-insurance clauses, Trio shall maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent Pentiction or Trio from becoming a co-insurer under the terms of such policy or policies and to permit full recovery from the insurance in the event of loss.

**24.4 Release of Pentiction from Liability for Insured Loss or Damage**

Trio hereby releases Pentiction, its elected and appointed officials, employees and agents from any and all liability for loss or damage caused by any of the perils against which Trio shall have insured or pursuant to the terms of this Agreement and the Marina Lease and is obligated to insure as provided herein.

**24.5 Workers' Compensation Coverage**

At all times during the Term, Trio shall at its own expense procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage in respect of all workmen, employees, servants, and others engaged in or upon any work on or in relation to the Lands non-payment of which could create a claim of any nature against Pentiction or against the Lands, this Agreement or the Marina Lease.

**25.0 DAMAGE OR DESTRUCTION**

**25.1 Damage to the Lands**

Without qualification for the amount of insurance proceeds, Trio covenants and agrees with Pentiction that in the event of damage to or partial destruction of leasehold improvements, including any buildings or structures, Trio, subject to the regulations and requirements of any governmental authority having jurisdiction, shall repair, replace or restore any part of the improvements, buildings or structures so destroyed.

25.2 Without qualification for the amount of insurance proceeds, Trio covenants and agrees with Pentiction that in the event of complete or substantially complete destruction of the leasehold improvements including any buildings and structures, Trio, subject to the regulations and requirements of any governmental authority having jurisdiction, shall reconstruct or replace the said leasehold improvements including buildings and structures, with replacements and structures comparable to those being replaced.

**26.0 QUIET ENJOYMENT**

**26.1 Quiet enjoyment**

If Trio duly and punctually pays the Rent and Additional Rent and complies with its obligations under this Agreement and the Marina Lease Trio will be entitled to peaceably possess and enjoy the Lands as provided herein during the Term without any unreasonable interruption or disturbance from Pentiction.

**27.0 PERFORMANCE OF TRIO'S COVENANTS, DEFAULT AND BANKRUPTCY**

**27.1 Pentiction may perform covenants**

If Trio is in default of any of its obligations under this Agreement or the Marina Lease then Pentiction, without limiting any other remedy which it may have, will have the right to remedy any such default and for such purpose may at any time enter upon the Lands. No entry for such purpose will be deemed to cause a forfeiture or termination of this Agreement or the Marina Lease in order to cure such default. Pentiction may do such things as are necessary to cure the default and such things as may be incidental thereto (including without limitation, the right to make repairs and to expend monies). Trio will reimburse and indemnify Pentiction for the aggregate of all expenses incurred by Pentiction in remedying any such default. Pentiction will be under no obligation to remedy any default of Trio and will not incur any liability to Trio for any action or

omission in the course of its remedying or attempting to remedy any such default unless such act amounts to intentional misconduct or gross negligence on the part of Penticton or a breach of this Agreement by Penticton. In the event that Trio is in default of its covenants under this Agreement or the Marina Lease, Trio will forthwith assign their interest in the Marina Lease to Penticton and will fully relinquish its rights under the Marina Lease.

## 27.2 Rights of termination

If and whenever:

- (a) the Lands are not available or in use for any of the purposes herein permitted and required continuously during the periods referred to in Sections 12.3, 12.4, 13.3 and 14.3 herein during the Term;
- (b) any Rent or Additional Rent remains unpaid after any of the days on which the same ought to have been paid and following five (5) days written notice of non-payment by Penticton to Trio;
- (c) Trio has on more than two (2) occasions in any one calendar year of the Term not paid Rent or Additional Rent on the day on which same is due;
- (d) there is a breach of any of Trio's obligations under the this Agreement or the Marina Lease (other than as set out in the other clauses of this Section 27.2) which is not cured within 15 days after delivery of written notice by Penticton to Trio specifying such breach, provided that if any default of Trio can only be cured by the performance of work or the furnishing of materials and if such work cannot reasonably be completed or such materials reasonably obtained and utilized within said 15 days, then such default will not be deemed to continue if Trio proceeds promptly with such work as may be necessary to cure the default and continues diligently to complete such work;
- (e) the Term or any goods and chattels on the Lands or are at any time seized or taken in execution or attachment; or
- (f) Trio assigns, sub-lets, or parts with possession of the Leased Lands or the Leased Marina Lands or any part thereof without the written mutual consent of Penticton and Trio as required herein;
- (g) the Province of British Columbia cancels or otherwise terminates the Marina Lease;
- (h) if Trio is in breach or default during the Term of any obligation pursuant to this Agreement which is not cured in accordance with the terms of the Agreement;
- (i) if Trio is in breach of its obligations under the Marina Lease;
- (j) Trio fails to fully invest and expend the required monetary amounts mandated by Sections 15.1 and 15.2 of this Agreement as determined by Penticton's quantity surveyor;

then in any of the said cases (and notwithstanding any prior waiver of a similar or other breach of covenant) Penticton, at its option, may (and without prejudice to any other right or remedy it may then have or be entitled to) immediately or at any time thereafter and without notice or any form of legal process take possession of the Lands or any part thereof in the name of the whole and expel Trio and those claiming through or under it and remove its or their effects (forcibly if necessary) without being deemed guilty of any manner of trespass, any statute or law to the contrary notwithstanding.

## 27.3 Bankruptcy

If and whenever:

- (a) a receiver, guardian, trustee in bankruptcy or any other similar officer is appointed to take charge of all or any substantial part of Trio's property by a court of competent jurisdiction;

- (b) a petition is filed for the re-organization of Trio under any provision of the Bankruptcy Act or any law of Canada or any province thereof or of the jurisdiction in which Trio is incorporated relating to bankruptcy or insolvency, then in force;
- (c) Trio becomes insolvent;
- (d) Trio files a petition for such re-organization or for arrangements under any provision of the Bankruptcy Act or any law of Canada or any province thereof or of the jurisdiction in which Trio is incorporated relating to bankruptcy or insolvency then in force and providing a plan for a debtor to settle, satisfy or to extend the time for the payment of debts; or
- (e) if any application or petition or certificate or order is made or granted for the winding up or dissolution of Trio voluntarily or otherwise;

then in any of the said cases (and notwithstanding any prior waiver of breach of covenant) Penticton, at its option, may (and without prejudice to any other right or remedy it may then have or be entitled to) immediately or at any time thereafter and without notice or any form of legal process take possession of the Lands or any part thereof in the name of the whole and expel Trio and those claiming through or under it and remove its effects (forcibly if necessary) without being deemed guilty of any manner of trespass, any statute or law to the contrary notwithstanding.

**27.4 Waiver with respect to re-entry**

Trio hereby waives any present or future requirement that notice of Penticton's intention to re-enter be served or that Penticton commence legal proceedings in order to re-enter.

**27.5 Waiver of benefit of legislation and seizure**

Trio irrevocably waives and renounces the benefit of any present or future law taking away or diminishing Penticton's privilege on the property of Trio and right of distress and agrees with Penticton, notwithstanding any such law, that Penticton may seize and sell all Trio's goods and property, whether within the Lands or not, and apply the proceeds of such sale upon Rent and Additional Rent and upon the cost of the seizure and sale in the same manner as might have been done if such law had not been passed. If Trio vacates the Lands leaving any Rent or Additional Rent unpaid, Penticton, in addition to any remedy otherwise provided at law or in equity, may seize and sell the goods and chattels of Trio at any place to which Trio or any other person may have removed them in the same manner as if such goods and chattels had remained on the Lands. If Penticton, being entitled to do so, levies distress against Trio's goods and chattels, Penticton may use such force as Penticton may deem necessary for the purpose and for gaining admission to the Lands without Penticton being liable for any loss or damage caused thereby.

**27.6 Re-entry and damages**

If and whenever Penticton is entitled to re-enter the Lands, or does re-enter the Lands, Penticton may terminate this Agreement and/or seek the termination of Trio's interest under the Marina Lease by giving written notice of termination to Trio, or by posting notice of termination on the Lands, and in such event Trio and or any persons that Trio may have sublet to will forthwith vacate and surrender the Lands, or alternatively, Penticton may from time to time without terminating Trio's obligations under this Agreement make alterations and repairs considered by Penticton necessary to facilitate a further subletting or assignment including changing the door locks (without this being deemed to be a termination of the Agreement or Marina Lease, and assign and sublet the Lands, or any part thereof as agent of Trio for such term or terms and at such rental or rentals and upon such other terms and conditions as Penticton in its reasonable discretion considers advisable. Upon such assigning or subletting all rent and other monies received by Penticton from assigning or subletting will be applied first to the payment of costs and expenses of the assigning or subletting including brokerage fees and solicitors' fees and costs of the alterations and repairs, second to the payment of indebtedness other than Rent due hereunder from Trio to Penticton and third to the payment of Rent due and unpaid hereunder. The residue, if any, will be held by Penticton and applied in payment of future Rent as it becomes due and payable. If the Rent received from the assigning or subletting during a rental period is less than the Rent to be paid during that rental period by Trio, Trio will pay the deficiency to Penticton. The deficiency will be calculated and paid monthly. No re-entry by Penticton will be construed as an election on its part to terminate the Agreement or Marina Lease unless a written notice of that intention is given to Trio. Despite an assignment or subletting without termination, Penticton may elect at any time to terminate this Agreement and/or seek the termination of Trio's interest under the Marina Lease for a previous breach. If Penticton terminates this Agreement and/or seeks the termination of Trio's interest under the Marina Lease for any breach and elects to claim damages for such breach, Trio will pay to Penticton on demand therefor:

- (a) Rent to the date of termination;
- (b) all additional charges and Additional Rent payable by Trio pursuant to the provisions hereof to the date of termination;
- (c) such expenses as Penticton may incur or have incurred in connection with re-entering or terminating, and assigning or re-letting, collecting sums due or payable by Trio and realizing upon assets seized, including brokerage expense, legal fees and disbursements determined on a solicitor-client basis, keeping the Lands in good order and repairing and maintaining the same, and preparing the Lands for assigning or re-letting; and
- (d) as liquidated damages for the loss of Rent and other income of Penticton expected to be derived from this Agreement and the Marina Lease during the period which would have constituted the unexpired portion of the Term had it not been terminated, the amount, if any, by which the rental value of the Lands for such period established by reference to the terms and provisions of this Agreement exceeds the rental value of the Lands for such period established by reference to the terms and provisions upon which Penticton assigns or re-lets them, if such assignment or re-letting is accomplished within a reasonable time after termination of the Agreement and/or Trio's interest under the Marina Lease and otherwise with reference to all market and other relevant circumstances.

**27.7 Remedies of Penticton are cumulative**

The remedies of Penticton in this Agreement and the Marina Lease are cumulative and are in addition to any remedies of Penticton at law or in equity. No remedy will be deemed to be

exclusive and Penticton may from time to time have recourse to one or more of all the available remedies specified herein or at law or in equity.

**27.8 Payment of Penticton Expenses**

If at any time an action is brought where Penticton is otherwise required to employ the services of a bailiff, an agent, or its solicitors because of the breach by an act or omission of any covenant herein contained on the part of Trio, Trio shall pay to Penticton all expenses incurred by Penticton in the enforcement of its rights and remedies hereunder, including Penticton's administrative costs and legal fees on a solicitor and his own client basis in connection therewith, together with interest at the Prime Rate plus two percent (2%) per month, calculated monthly, not in advance, from the date of demand until paid.

**28.0 ABILITY TO PERFORM**

**28.1 Ability to Perform**

Except as herein otherwise expressly provided, if and whenever to the extent that either Penticton or Trio shall be prevented, delayed, or restricted in the fulfillment of any of its obligations hereunder other than the payment of Rent by reason of civil commotion, warlike operation or like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any significant and substantial material, service, utility, or labor required to fulfill such obligation, or by reason of any statute, law, or regulation of, or inability to obtain any permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfillment, or by reason of other unavoidable occurrence, other than the lack of funds, the time for fulfillment of such obligations shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfillment thereof, and the other party to the Agreement or Marina Lease shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned but nevertheless in the event the delay for any one occurrence exceeds a period of thirty (30) days, the Term of the Agreement shall be deemed to be extended for the period of such delay without additional payment of Rent payable to Penticton. The Term of the Marina Lease shall be dealt with as contemplated in the Marina Lease.

**28.2 Ability to Perform Zebra and Quagga Mussels**

In the event that the Marina is impacted by Zebra or Quagga Mussels the City and Trio agree that they will review the impact on Trio's operating costs and its corresponding effect on Additional Rent & Revenue Sharing as noted in Section 6.0.

**29.0 OVERHOLDING**

**29.1 Overholding**

If Trio remains in possession of the Lands after the expiration of the Term and without the execution and delivery of a new Agreement and Marina Lease or subject to renewal in accordance with Sections 10.1 and 10.2, Penticton may re-enter and take possession of the Lands and remove Trio therefrom and Penticton may use such force as it may deem necessary for that purpose without being liable in respect thereof or for any loss or damage occasioned thereby. While Trio remains in possession of the Lands after the expiration of the Term, the tenancy, in the absence of written agreement, will be from month to month only at a Rent equal to two times the Rent payable in respect of the rental period immediately preceding expiration of the Term, payable, on a pro-rata basis, in advance on the first day of each month and Trio will be subject to all terms of the Agreement, Lease and Marina Lease, except that the tenancy will be from month to month only and a tenancy from year to year will not be created by implication of law or otherwise.

**30.0 OPTION TO LEASE**

**30.1 Option to Lease Further Area**

Provided that Trio duly and regularly pays the Option Rent and performs all of its other obligations under this Agreement and under the Lease and Marina Lease to the date it exercises this option, (the "Option"), Penticton grants to Trio an option to lease for the balance of the Term that parcel of land as designated as Area "G" on Schedule "M" for the rent and on the terms set out below:

### 30.2 Option Rent

Subject to Section 30.3 Trio shall pay to Penticton the Option Rent as follows:

- (a) Annual payments equal to or greater than \$0.63 per square meter multiplied by the total number of square meters contained in the Option Area payable on July 1, 2016 and July 1st of every year up to and including July 1, 2020.

### 30.3 Per Square Meter Option Rate Increase

Notwithstanding anything herein to the contrary, the \$0.63 per square meter per annum Option Rent rate shall be increased annually as follows:

- (a) From January 1, 2017 to December 31, 2020 using the following formula:

$$H_n \text{ (n=2017 to 2020)} = H_{(n-1)} \times (1 + ((CPI_n - CPI_{(n-1)}) / CPI_{(n-1)}))$$

The values assigned to the characters in the formulas in Sections 30.3 (a) above are as follows:

- (i)  $H_n$  = the per square meter Option Rent rate for the year in question where n=2017 is the year 2017 and so on. For clarity  $H_{(n-1)}$  or  $H_{(2016)}$  = \$0.63
- (ii)  $CPI_{n-1}$  = CPI in the n-1 year of the time frame that the Option is valid for.
- (iii)  $CPI_{n-2}$  = CPI in the n-2 year of the time frame that the Option is valid for.

### 30.4 Exercise

This Option may be exercised by delivery of written notice by Trio to Penticton at any time up to and including 4:00 p.m. December 31, 2020. This Option will be irrevocable within the time provided for its exercise unless this Agreement, the Lease or the Marina Lease is terminated, surrendered or otherwise determined prior to the exercise date. If this Option is not exercised within the time and in the manner described above, this Option will be null and void and no longer binding upon the parties.

### 30.5 Terms

Upon this Option being exercised, the City and Trio will draft an amendment to this Agreement to incorporate the Option Area as follows:

- (a) The term of the lease of the Option Area will commence on January 1 of the year after the amending agreement is executed;
- (b) Uses on the Option Area will be limited to amusement activities and additional parking;
- (c) The rent paid for the Option Area will be equivalent to the per square meter rent then in effect and applicable to Areas B and C under the Lease determined in accordance with Section 5 of this Agreement and will be subject to further rent increases determined in accordance with Section 5;
- (d) Additional Rent will be negotiated and form part of the amendment to this agreement between Trio and Penticton and will depend on the exact nature of the intended use of the Option Area;
- (e) As part of creating the amending agreement Trio will be required to submit pro forma financial statements showing all revenue and expenses they expect to incur over the remaining Term of the Agreement that will flow from the proposed use of the Option Area;

- (f) As part of creating the amending agreement Trio will be required to submit a capital improvement plan showing all capital improvements they plan to make over the remaining Term of the Agreement on the Option Area;
- (g) Trio will pay all legal costs of the City associated with creating the amending agreement;
- (h) Trio will pay all cost of the City associated with any required legal survey of the Option Lands; and
- (i) Trio will receive occupancy of the Option Area on an "as is, where is" basis.

### **31.0 INSPECTION SALE AND LEASE**

#### **31.1 Penticton's sign**

Penticton may, during the last 12 months of the Term, place upon the Lands a notice of reasonable dimensions and reasonably placed so as not to interfere with the business of Trio stating that the Lands are to be sub-leased and re-let.

#### **31.2 Inspection**

Penticton or its representatives may exhibit the Lands and at reasonable times to prospective tenants during the last twelve (12) months of the Term of this Agreement and the Marina Lease.

### **32.0 LEGAL COSTS & COMMUNICATION TO PUBLIC**

#### **32.1 Legal Costs Associated with This Agreement**

Penticton shall be responsible for paying the first TEN THOUSAND (\$10,000.00) in Penticton legal fees associated with creating the Term Sheet, this Agreement and the Skaha Marina – Waterpark Development agreement. Any Penticton legal fees over and above TEN THOUSAND (\$10,000.00) shall be shared on an equal basis between Penticton and Trio.

#### **32.2 Communications to the Public**

Penticton and Trio agree that it would be beneficial to work together on communicating the benefits of this Agreement to the public and shall work collaboratively in all communications to the public about this Agreement.

### **33.0 MISCELLANEOUS**

#### **33.1 Waiver**

No waiver of any default will be binding unless acknowledged in writing by Penticton.

#### **33.2 Condoning**

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.

#### **33.3 Severability**

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.

#### **33.4 Headings**

All headings in this Agreement are inserted for convenience of reference only and will not affect the construction and interpretation of this Agreement.

#### **33.5 Representations and entire agreement**

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 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.

### 33.6 Notices

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:

(a) To Penticton at:

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

(b) To Trio at:

c/o Pusher Mitchel 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 Section 33.6 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.

### 33.7 Time of essence

Time will be of the essence of this Agreement.

### 33.8 Governing Law

This Agreement, Lease and Marina Lease will be construed and governed by the laws of the Province of British Columbia.

## 34.0 ENVIRONMENTAL MATTERS

### 34.1 Hazardous Substance(s)

Trio covenants with Penticton that if, as a consequence of any release of a Hazardous Substance(s) in, on or from the Lands or below the surfaces of either resulting from the construction on or the operation of the Lands or any other activity carried out, on or in the vicinity of the Lands by Trio or its servants, agents, or contractors or any person for whom Trio is in law responsible, any actions required to be taken in order to comply with any Governmental Requirement(s) applicable to the presence or removal of any Hazardous Substance(s) on or from the Lands (including any Governmental Requirement(s) relating to testing for or identification of

Hazardous Substance(s), and if Trio has received notice in writing of such Governmental Requirement(s) from the relevant authority or from Penticton, then Trio shall at its expense take such action as required by the Governmental Requirement(s) (or alternatively such other action as may be acceptable to the relevant authority after discussions with Trio).

- 34.2 If Trio fails to take any action required to be taken by Trio pursuant to Section 34.1, Penticton may (but shall not be obligated to) take such action after giving five (5) days written notice or lesser period of notice in the event of emergency to Trio of its intention to do so, unless within such five (5) day period or lesser period in the event of emergency, Trio has taken the required action or has commenced in and is continuing diligently to carry out such action, and Penticton shall, for that purpose, be permitted to enter the Lands with appropriate equipment. Trio covenants to reimburse Penticton for all reasonable costs incurred by Penticton in taking such action pursuant to this Section 34.2 within thirty (30) days after receiving from Penticton an invoice and reasonable supporting details relating to such costs.
- 34.3 Notwithstanding anything herein to the contrary, Penticton acknowledges that Trio will not be responsible for any remediation to the Lands in respect of Hazardous Substance(s) documented in the Levelton Reports listed in Section 16.7 of this Agreement.
- 34.4 Trio waives the requirement, if any, for Penticton to provide a site profile for the Lands under the *Environmental Management Act*, S.B.C. 2003, c. 53 or any regulations pursuant to that Act, as amended or replaced from time to time.

#### **35.0 PENTICTON AND TRIO ONLY**

It is understood and agreed that nothing contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between the said parties, other than the relationship of landlord and tenant and co-tenants with respect to this Agreement and the Marina Lease respectively.

#### **36.0 DISPUTE RESOLUTION**

##### **36.1 Dispute Resolution**

Except for the exercise of termination remedies available to Penticton under this Agreement and in any subsequent agreements between Penticton and Trio, if the parties to this Agreement are unable to agree on the interpretation or application of any provision herein or are unable to resolve any other issue in dispute pertaining to this Agreement, on notice by either party to the other, the parties agree:

- (a) Firstly, to promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement in dispute;
- (b) Secondly, if the parties are unable to negotiate a resolution pursuant to Section 36.1 (a) above, within 60 days of the notice of dispute or disagreement, to request the assistance of a skilled commercial mediator, such mediator to be mutually agreed upon by the parties within 30 days of a receipt by a party of written notice requiring the mediation, failing which the mediator will be appointed by the British Columbia International Commercial Arbitration Centre (BCICAC). Any mediator selected must be qualified and experienced in the subject matter of the Agreement. Such mediation will be conducted under the Commercial Mediation Rules of the BCICAC to resolve a dispute unless otherwise agreed by the parties. If a mediator is appointed under this provision, the mediated negotiations will be terminated 60 days after the appointment unless the parties agree otherwise; and
- (c) Thirdly, if the negotiations in Section 36.1 (b) are terminated without resolution, to request the assistance of a single arbitrator by consent or if the parties cannot agree on the selection of an arbitrator within 30 days, the arbitrator will be appointed pursuant to the *Commercial Arbitration Act* of British Columbia and the decision of the arbitrator will be binding on both parties and final.

**36.2 Costs of Dispute Resolution**

The parties agree that each party will bear its own costs and expenses incurred in respect of the dispute resolution processes in Section 36.1 above and neither party will seek recovery against the other party for any of those costs and expenses.

**37.0 BINDING NATURE**

**37.1 Enuring Effect**

This Agreement and everything herein contained will enure to the benefit of and be binding upon the parties hereto and each of their respective heirs, executors, administrators, successors and permitted assigns as the case may be.

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:

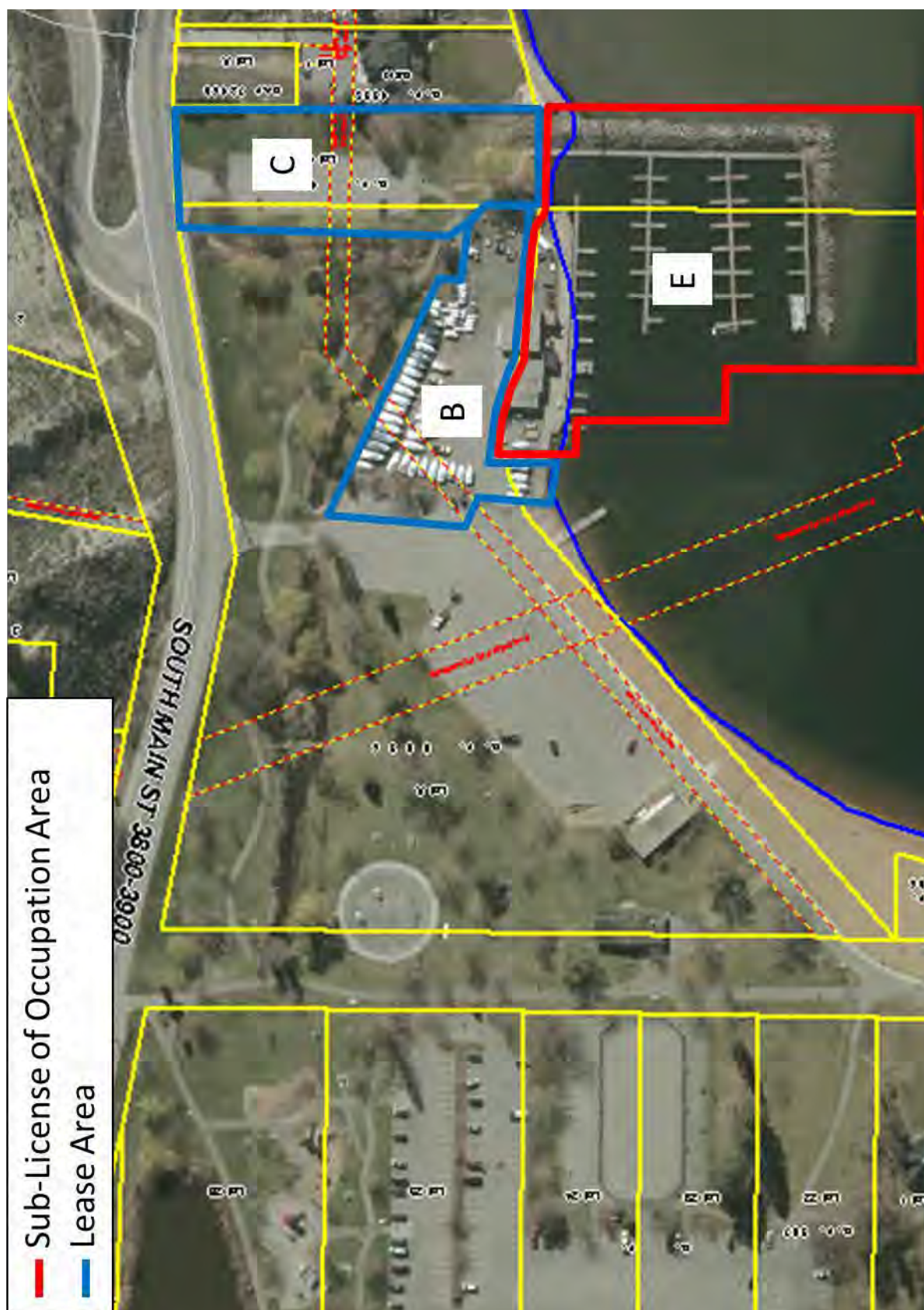
\_\_\_\_\_  
Thomas John Dias

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Donald Thomas Hedquest

\_\_\_\_\_  
Witness

Schedule "A" – Plan for the Lands



**Schedule "B" – Utilities Plan Electrical**



**Schedule "B" – Utilities Plan Gas**



**Schedule "B" – Utilities Plan Irrigation**



**Schedule "B" – Utilities Plan Sanitary**



## Schedule "B" – Utilities Plan Storm



**Schedule "B" – Utilities Plan Water**



Schedule "C" - Exclusion Area



# Schedule "D" – Architectural Concept Drawings Marina







NORTH ELEVATION



NORTH ELEVATION



SOUTH ELEVATION



EAST ELEVATION



**Schedule "E" – Architectural Concept Drawings Retail Area**



Schedule "F" – Architectural Concept Drawings Restaurant Area



**Schedule "G" – Architectural Concept Drawings Extended Parking Lot**





# Skaha Lake Marina and Waterpark

Operational Plan 2015

TRIO MARINE GROUP



Regarding the operations of the Skaha Lake Marina and Waterpark please refer to the attached organizational charts. TRIO Marine Group will be the umbrella company under which all operations will be monitored. The Operating Manager will be responsible for the day-to-day operations of both the Marina and the Waterpark. The Marina will have four key personnel in the positions of Marine Rental Manager, Chef, Retail Sales Manager, and Administration Supervisor. The Waterpark will have two key personnel in the positions of Waterpark Supervisor and Food & Beverage Service Supervisor. Each supervisor will be responsible for their staff, training and certifications, scheduling and job descriptions.

The Marina will operate from May 1 to September 30, weather depending. The Waterpark will operate from May 15 to September 15, weather depending. The Restaurant will be operational, but will be dependent on weather and traffic.

### STAFF ORGANIZATIONAL CHART – SKAHA LAKE MARINA



#### Marina

- a. Refer to Organizational Chart above
  - b. Staff requirements for Marina:
    1. One full time General Manager (shared with Waterpark)
    2. One Operations Manager (shared with Waterpark)
    3. One Marine Rentals Manager
    4. One Chef
    5. One Retail Sales Manager
    6. One Administration Supervisor, one Bookkeeper (shared with Waterpark)
    7. Seven seasonal, hourly paid staff
    8. One seasonal, hourly 'On Call' staff on rotational basis
    9. One seasonal, hourly Maintenance/Janitorial staff
    10. Electrician/Plumber: on call contractors
- We will provide Environmental training for fuel handling as well as First Aid training

### STAFF ORGANIZATIONAL CHART – SKAHA LAKE WATERPARK



#### Waterpark

- a. Refer to Organizational Chart above
- b. Staff requirements for Waterpark
  1. One full time General Manager (shared with Marina)
  2. One Operations Manager (shared with Marina)
  3. One Waterpark Supervisor
  4. One Food & Beverage Service Supervisor
  5. Fourteen seasonal, hourly Lifeguards/Ride Operators
  6. Two 'On Call' Lifeguards (rotational)
  7. Four seasonal, hourly cashiers
  8. Ten seasonal, hourly concession staff (cooks/cashiers)
  9. Two seasonal, hourly 'On Call' concession staff
  10. One seasonal, hourly Maintenance/Janitorial Supervisor (shared with Marina)
  11. One seasonal, contract Water Maintenance Technician
  - Lifeguards will be fully certified including First Aid
  - Food Concession staff will have Food Safe Certification
  - Water Maintenance Technician certified

### Service Methodology

We will endeavour to deliver quality customer service by employing the following:

- a. World Host Training for our Supervisors
- b. Weekly Staff meetings (additional staff meetings as required)
- c. On-site customer comment/satisfaction surveys and comment cards.  
Administered by the General Manager
- d. Online customer contact, comment, and information page, including review and response to online reviews
- e. Provide staff training on updates as required, including Serving it Right for staff handling alcohol sales

### Staff Hiring

Staff hiring and training programs will be administered by the General Manager. These training programs will include: Lifeguard certifications, First Aid certifications, Environmental and Fuel handling, Water Quality certifications, Food Safe certifications, and World Host Training.

### Measurable Quality Control Programs

The General Manager will incorporate the following:

1. Ongoing staff performance reviews. This will include self-assessment interviews and final performance rating.
2. Customer Surveys re:
  - a. Quality of Customer experience
  - b. Quality of Staff experience
  - c. Quality of Facilities experience
  - d. Overall Customer satisfaction
  - e. Review of online / social media comments



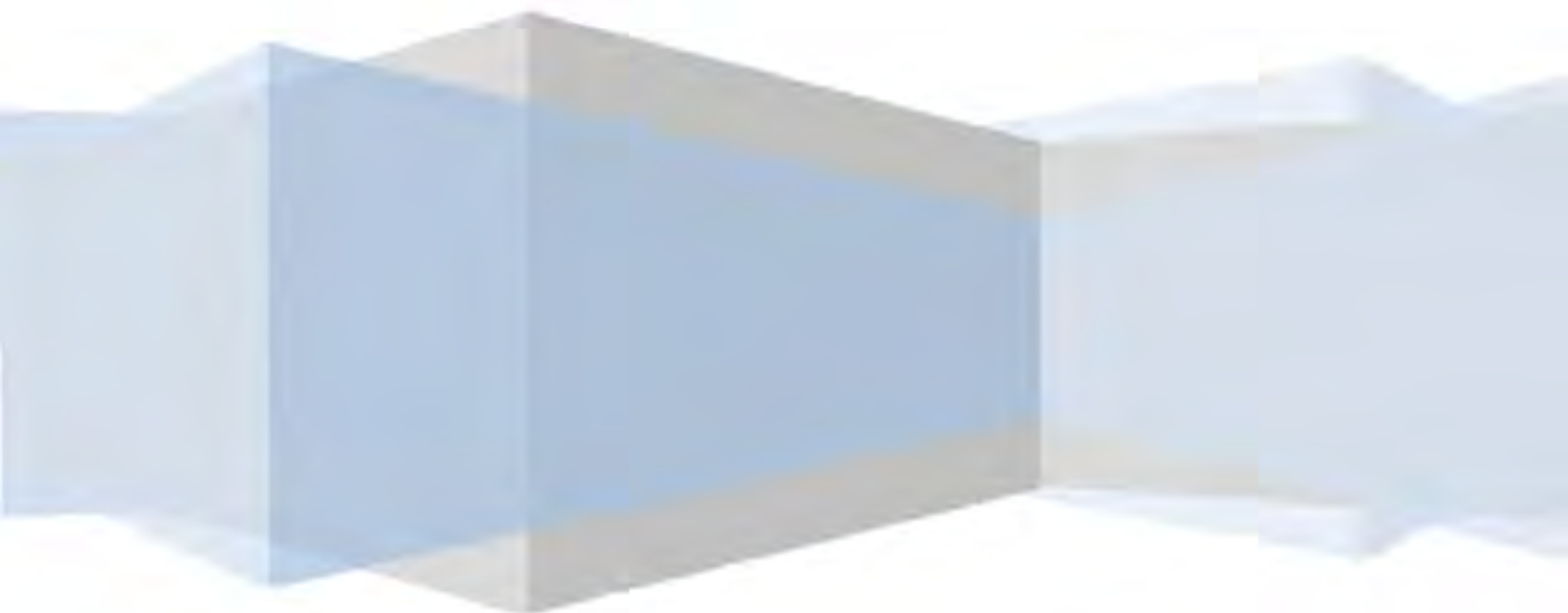
**TRIO MARINE GROUP**  
Skaha Lake Marina and Waterfront

TRIO MARINE GROUP



# Skaha Lake Marina and Waterpark

## Marketing Plan 2015





## INTRODUCING THE CONCEPT

Welcome to the Skaha Lake Marina and Waterpark, a multi-use gateway to Penticton's iconic Skaha Lake, already renowned for its wide and expansive beach, some of the warmest summertime water in British Columbia, and home to a variety of waterborne entertainment options from family to personal fitness to organized competition.

The Skaha Lake Marina and Waterpark addresses a critical need at the south end of Penticton, providing a number of services and options for locals and visitors alike, including:

- a destination marina with public and private slips, providing seasonal service for launch and/or storage, as well as seasonal services and rentals for visitors;
- a family-friendly waterpark, filling a missing niche in Penticton to provide a safe and exciting activity for a younger demographic, in addition to families, as well as school-aged children;
- a new mid-end restaurant, taking full advantage of stunning views of the surrounding mountains and Skaha Lake, servicing a growing food and wine sector in the South Okanagan;
- an overall new lake side experience in Penticton with the potential to draw business from the immediate area, the region, as well as certain traveler types identified in regional marketing strategies.

As the City of Penticton continues to build and uphold its brand as a vibrant, waterfront community, the development of the Skaha Lake Marina and Waterpark property provides a welcome addition to what is quickly becoming a more accessible, exciting, and lively neighbourhood on the city's southern border. The Skaha Lake area has the potential to become its own "pocket destination" within the city, growing economic activity and tourism opportunities focused on markets critical to the South Okanagan as a desired destination.

### Key Messages

- a full-service waterfront destination, the Skaha Lake Marina and Waterpark gives a warm welcome to every guest;
- the Skaha Lake Marina and Waterpark provides excellent service and a safe environment where beachfront and water-based activities can be enjoyed and shared with friends and family;
- the Skaha Lake Marina and Waterpark is a vibrant waterfront property for recreational and competitive water-sport enthusiasts;
- the Skaha Lake Marina and Waterpark invites you to experience a full day of fun, from the beach to the water to the patio, in one of the most beautiful settings in the Okanagan;
- Potential tagline: spend the day at play (at the Skaha Lake Marina and Waterpark).

### Market Reach: Local

A waterfront city, Skaha Lake is one of two water and beach areas addressing a number of local service gaps, with the potential to expand market reach, providing essential services for the following targets:

- boat and equipment owners seeking launch sites and/or storage facilities;
- recreational water sport enthusiasts requiring rentals, equipment storage, and access to areas around Skaha Lake;
- local families searching for warm weather entertainment options, including waterslides and lake activities;
- nearby residents seeking a new destination restaurant option in the south end of Penticton;
- local accommodations operators seeking opportunities to create packages and partnerships to keep visitors in the area, increasing room nights;
- local event planners and organizations seeking facilities for festivals and events to draw visitors to the region.

### Market Reach: Regional

The surrounding communities to the south and west – Okanagan Falls, Oliver, Keremeos and Cawston – lack the full-service amenities provided by the Skaha Lake Marina and Waterpark, and are all within a 45 minute drive, which traveler studies show is a minimal barrier to reach a "day tripper" destination. In addition, the development of packages to draw regional visitors can extend their stay to a brief getaway, filling room nights in the area.

Specifically, regional targets include:

- area boat and equipment owners seeking seasonal launch and storage facilities;
- those seeking a day-long getaway, with the convenience of a "stay in place" full-service area encompassing activities, entertainment and food;
- travellers to Penticton in search of a one-stop beach destination offering waterfront activity options for a multitude of traveler types (see below).

### Market Reach: Traveler Types | Tourism

As part of its regional destination marketing plan, the Thompson Okanagan Tourism Association has adopted the Explorer Quotient model of tourism marketing, based on extensive market research conducted both regionally and with the Canadian Tourism Commission. "EQ" marketing is based on what kind of experiences a traveler is seeking, based on psychographic and demographic measurements including purchasing habits, age and gender, income level, and more. Most destination marketing organizations in the Okanagan have adopted EQ marketing, creating the potential for packages that include accommodations, culinary tours, adventure and sports travel.

While the home area of a traveler does, to a degree, dictate what experiences they are more likely to seek, the more important aspect of EQ marketing is to create an experience that entices a traveler to seek out an authentic destination with appropriate activities.

Key external target areas include:

- the Okanagan from the border to Kelowna, expanding on the regional targets;
- "just over the border" northern Washington communities within a two to five hour driving radius, or a 90 minute flight radius;
- the metro Vancouver, Seattle, and Calgary areas, specifically weekend and extended (long) weekend travelers, as well as seasonal summer travelers such as families, and wine and culinary travelers drawn by Okanagan wine events or touring packages;
- Northern Alberta, including oil patch workers seeking a getaway, or a convenient Okanagan location to store and then use boating and water sport equipment when visiting the area.

NOTE: as marketing expands, special attention must be paid to the addition of WestJet flights into Penticton (which began on October 2014), as well as Air North flights servicing Kelowna – Whitehorse (currently in service), and airlines servicing the oil patch to Kelowna (currently in service), for potential target market expansion and the development of partnerships and/or packages to entice these flyers to Penticton. There will be an increased amount of tourists coming into the Penticton region due to a favourable current exchange rate.

### Traveler Type Markets: EQ

These are traveler types identified by Thompson Okanagan tourism as the most likely travelers to come to the South Okanagan:

Free Spirits - this group seeks an experience that is generally close to nature, provides access to outdoor activities, and is hassle free, possibly near to amenities such as spas or related activities.

"A thrill-seeking hedonist, travel satisfies an insatiable need for the exciting and the exotic. Free spirits like the best of everything and want to be surrounded by others who feel the same way."

Cultural Explorers - this group seeks activity that is authentic to the location (reflecting the history or culture), and near cultural activities; note, these activities do not necessarily include structured visual or performing arts, but activities that are reflective of a sense of place.

"Seeking constant opportunities to embrace, discover, and immerse oneself in the entire experience of the culture, people and settings of the places visited."

Authentic Experiencers - related to cultural explorers, this group seeks activity that is reflective of the location, is not ostentatious, is hassle free, and provides an experience that closely reflects the area.

"Appreciative of the understated beauty of natural and cultural environments, and enjoy using all senses when exploring, and getting to know the places visited."

### MARKETING AND COMMUNICATIONS TACTICS: Project Announcement

It is critical that the local and regional markets and stakeholders are involved in the initial public conversations to generate support and excitement for the Skaha Lake Marina and Waterpark. The focus of marketing activities for the project announcement will target citizens of Penticton, particularly the residents and neighbourhoods in the South end, as well as regional stakeholders and businesses that benefit from the addition of the property to Penticton.

Targets:

- citizens of Penticton and the immediate surrounding areas, including Okanagan Falls, residential areas along Skaha Lake, and Kaleden;
- surrounding businesses that will benefit from economic activity generated by the Skaha Lake Marina and Waterpark, including members of the Penticton and Wine Country Chamber of Commerce and the Downtown Penticton Association;
- Regional stakeholders including local governments (City of Penticton, Regional District of the South Okanagan), and regional destination marketing (tourism) organizations;
- Tourism stakeholders, including Tourism Penticton, the Penticton Hospitality Association, area winery associations (Naramata Bench, Okanagan Falls, Summerland).

Tactics:

- to control misinformation, detailed information will be sent to current slip holders, and an invite only meeting will be held for this audience;
- initial press release announcing approval of the project, sent to all Okanagan media, for release immediately upon approval of the project;
- press conference on the project site, tentatively scheduled for June or July 2015;
- multiple public information forums tentatively scheduled for each month of June 2015/July 2015 to keep targets informed as the project progresses.

### MARKETING AND COMMUNICATIONS TACTICS: Grand Opening

The "grand opening" of the Skaha Lake Marina and waterpark will be a key component of the marketing plan in order to generate excitement, as well as sales for the property as a whole. The grand opening

will be a fun, exciting, community-based event showcasing everything the project has to offer. An appropriate events plan and budget will be produced.

The targets are similar to those for the initial project announcement, with some expansion, but in this case they will be invited to a celebratory event, rather than simply receiving information:

- Citizens of Penticton and the immediate surrounding areas, including Okanagan Falls, residential areas along Skaha Lake, Kaleden, Oliver;
- Surrounding businesses that will benefit from economic activity generated by the Skaha Lake Marina and Waterpark, including members of the Penticton and Wine Country Chamber of Commerce and the Downtown Penticton Association;
- Regional stakeholders including local governments (City of Penticton, regional district of the South Okanagan), and regional destination marketing (tourism) organizations;
- Tourism stakeholders, including Tourism Penticton, the Penticton Hospitality Association, area winery associations (Naramata Bench, Okanagan Falls, Summerland, Oliver - Osoyoos).

Tactics:

- Personalized invites to current slip holders;
- Targeted invitations to business organizations in the South Okanagan for distribution to their members;
- Personal invitations to all members of City Council, including an invitation to the mayor for an official opening ceremony, such as a ribbon-cutting;
- Press invite sent to all Okanagan media;
- Media kits, including press release, background information, and professional photos prepared for on-site media at the event, as well as distribution for absent media, including a digital version for website download;
- Multiple print advertising in South Okanagan outlets as budget allows, including potential pro bono advertising from local Penticton papers, including giveaways;
- Inclusion of event details on all local media events calendars, including Shaw TV and Global TV;
- Invitation to a select radio outlet (Bell Media) to conduct live radio broadcast during the opening event, including giveaways;

### MARKETING AND COMMUNICATIONS TACTICS: ANNUAL PLAN

A detailed month to month marketing plan will be developed as the project moves forward, with specific targets and detailed tactics depending on month-to-month activity, both internally at the Skaha Lake Marina and Waterpark, and externally in the region.

The opportunities to promote the facility may range from key points in the development and construction, including alerting the media to photo opportunities as the building progresses, to partnering with local businesses, such as accommodations and major festivals and events, to create enticing promotional opportunities or packages to both engage the local community as well as potential visitors.

At a base point, the ongoing annual marketing tactics will include:

- Development and optimization of a comprehensive and mobile friendly website(s) which will include mobile friendly booking options;
- A social media footprint including Facebook, Twitter, and Instagram, to be adjusted as networks fluctuate, including a content strategy;
- Digital ads in targeted, well trafficked websites, including Castanet, Destination BC, large-scale accommodation and travel websites;
- Print advertising in regional and provincial visitor guides as budget allows;
- Print advertising in local and regional newspapers and publications as budget allows;
- Print advertising in in-flight magazines servicing Penticton and Kelowna, as budget allows;
- The development of a standard rack card to be distributed by a provincial racking system (which includes parts of Alberta and Washington, as well as specific airports and BC Ferries); a distribution plan will be developed for the rack card;
- The development of a special events plan for peak use months, as well as the shoulder season months, to entice guests to visit the campus either for internal special events (such as a wine tasting in the restaurant, or a water sports festival), as well as external events that are executed by another organization seeking to use the Skaha Marina and Waterpark facilities (such as the Penticton Dragon Boat Festival).



## THE MARINA

While there are current marina services on Skaha Lake, the project will expand these options for the local and regional markets, as well as visitors desiring either permanent or temporary services. The marina is a full-service facility adding to current options on Skaha Lake, which allows for potential economic activity as use of all of the amenities along Skaha Lake expands.

Specific marketing targets:

- Current local slip leasees
- Slip renters and new local slip leasees
- Tourists seeking temporary storage or equipment rental
- Current and future boat owners, including those from areas outside of Penticton needing services in the Okanagan

Specific tactics:

- Direct print contact with current slip leasees to ensure clear communication;
- Invitation only event to current slip owners to an information session.



## THE WATERPARK

The Waterpark fills a missing amenity in Penticton, which has been without water slides for some time. Providing a family-friendly, safe environment for interactive play, it lends itself to specific targets both locally and from the incoming seasonal tourist population each summer. The addition of the Waterpark to the Skaha Lake Marina property provides value added entertainment for guests coming to Skaha Lake. Users of the Waterpark may not use the full facilities of the property, but would add secondary sales activity. In addition, gift certificates or other reward programs can be developed to specifically target the younger market, such as a "10th visit free" punch card, or a season's pass.

Specific marketing targets:

- Local and visiting families seeking water-based entertainment;
- Independent teenagers (13+) seeking group activities away from family supervision;
- Local and regional elementary schools needing year end/summer field trips.

Specific tactics:

- Themed events, or themed event days, targeting the younger demographic, including family days (kids play free);
- rewards program for repeat use (punch card);
- rewards program for locals, targeted to increase use during the shoulder season;
- discount packages and partnerships with nearby and regional accommodations to encourage visits, including guest coupons



## THE RESTAURANT

Currently, under the working title of the "Skaha Lake Grill", the concept behind this new establishment is a mid-end, upscale casual restaurant appealing to families enjoying the Skaha Lake Marina and Waterpark campus who may need a convenient break for sustenance and hydration, generally at lunch and in the afternoon to early evening. In addition, it offers an opportunity to take full advantage of the spectacular views as an evening to late-night destination for the more sophisticated diners.

As the project progresses, options are being explored to outsource the management of the restaurant to a third-party with a strong focus in food and wine service. This may result in the third-party choosing a specific name and brand for the restaurant, as well as adjusting the concept, however the overall concept will remain as outlined below.

The restaurant will service guests with lunch and dinner menus that are elevated grill dishes, with the possibility of brunch options in the high season, as well as a limited kid's menu to appeal to families. While the menu is uncomplicated and accessible, the quality will be high to entice the casual diner, building up repeat business from the local market in the off and shoulder seasons.

Guests will find it a convenient stop to recharge during a day of activity. At the same time, the restaurant will become a destination spot for upscale casual dining in the south end of Penticton, offering a new choice for residents in the area as well as for tourists staying in local accommodations.

Specific marketing tactics are in place working within the changes in regulation brought into effect by the new liquor laws in British Columbia. Licensing will allow children to be on the premises while their parents enjoy a glass of fine Okanagan wine or local craft beer. Special events will be developed to showcase the food and wine culture of the South Okanagan, including partnering on events with local wineries, breweries, and chefs.

### Specific marketing targets:

- Local diners seeking a new lakeside option in Penticton for lunch and dinner;
- Guests of nearby accommodations that may or may not have their own food services;
- Wine and food travelers to the Okanagan;
- Wine tour operators that need access to a restaurant option as part of wine tours in the South Okanagan, either as part of a day trip or a longer package.

### Specific tactics:

- Menu preview event prior to the official opening, inviting key food and wine writers and bloggers for a sneak preview of the offerings;
- Specific advertising in regional food and wine publications;
- The development of special events, particularly in the shoulder and off seasons to attract guests;
- Developing partnerships with festivals and events to offer special themed menu items or other enticements to bring festival attendees to the restaurant.

| Skaha Marina and Waterpark: Suggested Marketing 2014 |                               |            |
|------------------------------------------------------|-------------------------------|------------|
| <b>Key Assets</b>                                    |                               |            |
| <b>Logo/Brand Development</b>                        |                               | \$1,000.00 |
| <b>Website</b>                                       |                               |            |
|                                                      | Design                        | \$2,500.00 |
|                                                      | Programming                   | \$2,500.00 |
|                                                      | SEO                           | \$500.00   |
|                                                      | Hosting Fees                  | \$350.00   |
| <b>Rack Card</b>                                     |                               |            |
|                                                      | Design                        | \$500.00   |
|                                                      | Printing                      | \$750.00   |
|                                                      | Distribution                  | \$1,000.00 |
| <b>Social Media</b>                                  |                               |            |
|                                                      | Facebook                      | \$1,000.00 |
|                                                      | Twitter                       | \$500.00   |
|                                                      | Instagram                     | \$500.00   |
| <b>Annual Activities</b>                             |                               |            |
|                                                      | Visitor Guide – Penticton     | \$800.00   |
|                                                      | Visitor Guide – Summerland    | \$300.00   |
|                                                      | Visitor Guide – Oliver        | \$300.00   |
|                                                      | TOTA Experiences Guide        | \$1,000.00 |
|                                                      | Air North In Flight Magazine  | \$1,000.00 |
| <b>Memberships</b>                                   |                               |            |
|                                                      | Tourism Penticton             | \$500.00   |
|                                                      | Penticton Chamber of Commerce | \$300.00   |
|                                                      | Other                         | \$200.00   |
|                                                      |                               |            |
| <b>Project Announcement: June 2015</b>               |                               |            |
| Press Release                                        |                               | \$325.00   |
| Open House                                           |                               | \$1,500.00 |
| <b>Advertising</b>                                   |                               |            |
|                                                      | Print                         | \$1,500.00 |
|                                                      | Radio                         | \$750.00   |
|                                                      | Digital                       | \$100.00   |
|                                                      |                               |            |
| <b>Grand Opening</b>                                 |                               |            |
| Open House                                           |                               |            |
|                                                      | Catering                      | \$1,500.00 |
|                                                      | Entertainment                 | \$500.00   |
|                                                      | On-site radio                 | \$500.00   |
|                                                      | Signage                       | \$100.00   |
|                                                      | Staffing                      | \$500.00   |
|                                                      | Equipment                     | \$1,000.00 |
| <b>Advertising</b>                                   |                               |            |
|                                                      | Print                         | \$2,500.00 |
|                                                      | Radio                         | \$1,000.00 |
|                                                      | Digital                       | \$150.00   |
| <b>Printing</b>                                      |                               |            |
|                                                      | Invitations                   | \$250.00   |
|                                                      | Mailing                       | \$100.00   |
|                                                      | Media Kits                    | \$750.00   |

**Schedule "J" – City of Penticton Council Resolution**

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THE CORPORATION OF THE CITY OF PENTICTON AGREEMENT

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LICENCE TO USE

File: 4380.20

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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)

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THIS AGREEMENT dated for reference January 1, 2015.

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: **ROBERT ALLEN CAMPBELL**  
5831 Columbia Avenue, Peachland, B.C. V0H 1X4

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 2015, (herein called the "Commencement Date", through the 31st day of December 2015.

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, 2015 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 work with the City, Penticton Yamaha Marine and the existing and new boat storage clients to ensure off season storage of boats is maintained on the Land for the 2014/2015 off season.
- (q) 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 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

**Trio Marine Group Inc. - Licence to Use**

**2015**

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) This Licence merges and supersedes all prior negotiations, representations, and agreements between the parties relating in any way to the Land. 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 baillif, 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

Trio Marine Group Inc. - Licence to Use

2015

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.

- (i) 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.

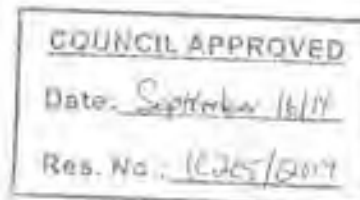
IN WITNESS WHEREOF the parties hereto have hereunto executed this agreement as of the date and year first above written.

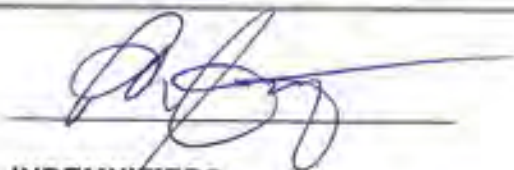
THE CORPORATION OF THE CITY OF PENTICTON

GARRY LITKE, Mayor

DANA SCHMIDT, Corporate Officer

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





**INDEMNIFIERS**

Signed, Sealed and Delivered  
in the presence of:

  
Witness signature  
Witness signature  
Witness signature  
ROBERT ALLEN CAMPBELL  
THOMAS JOHN DYAS  
~~DONALD THOMAS HEDQUEST~~  
Thomas O Hedqvist

## 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)



**SUB-LICENSE OF OCCUPATION**

THIS SUB-LICENSE dated for reference January 1, 2015

BETWEEN:

**THE CORPORATION OF THE CITY OF PENTICTON**

a duly incorporated municipality under the laws of the Province of British Columbia  
located at 171 Main Street, Penticton, B.C. V2A 5A9

(the "Sub-licensor")

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 Pushar Mitchel LLP, 301 – 1665  
Ellis Street, Kelowna BC V1Y 2B3

("the Sub-Licensee")

AND:

**ROBERT ALLEN CAMPBELL**

5831 Columbia Avenue, Peachland, B.C. V0H 1X4  
And

**THOMAS JOHN DYAS**

202-3295 Lakeshore Rd, Kelowna, B.C. V1W 3S9  
And

**THOMAS DONALD HEDQUIST**

121 Uplands Crt, Penticton, BC V2A 7Y1

(collectively the "Indemnifiers")

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, 2015 (the "License") of a part of the lands and premises described as:

Parcel Identifier 009-630-929  
Lot A, DL 189, SDYD, Plan 9936

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, 2015 to December 31, 2015 (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 2015. 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 both agreements)

**(4) Net Fees**

- (a) 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.
- (b) 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 Mitchell LLP  
301 – 1665 Ellis Street  
Kelowna BC V1Y 2B3

to the Indemnifiers at:

c/o Pusher Mitchell 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:

(a) The Indemnifiers shall:

- i) 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-license;

- ii) effect prompt and complete performance of all the terms, covenants, conditions and provisions in this Sub-license, and
  - iii) 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-license.
- (b) In the event of a default under this Sub-license, the Indemnifiers hereby waive any right to require the Sub-licensor:
  - i) to proceed against the Sub-licensee or pursue any rights or remedies with respect to this Sub-license;
  - ii) to pursue any other remedy whatsoever in the Sub- licensor's power or otherwise available to the Sub- licensor.
- (c) 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.
- (d) 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.

- (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 Sub-licensee named in this Sub-license.

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**

- (a) 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.
- (b) 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**

- (a) 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;
- (b) 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;
- (c) 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.
- (d) 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**

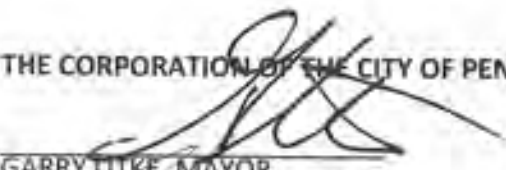
This Sub-license is not subject to renewal.

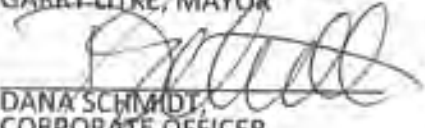
**(25) Entire Agreement**

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.

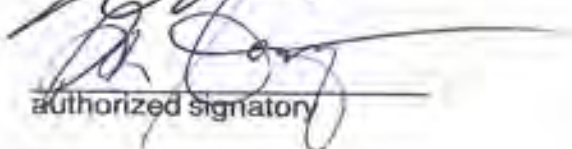
THE CORPORATION OF THE CITY OF PENTICTON

  
GARRY LITKE, MAYOR

  
DANA SCHMIDT,  
CORPORATE OFFICER

TRIO MARINE GROUP INC

  
authorized signatory

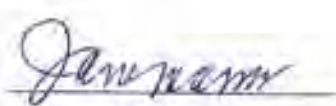
  
authorized signatory

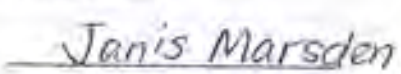
INDEMNIFIERS

Signed, Sealed and Delivered  
in the presence of:

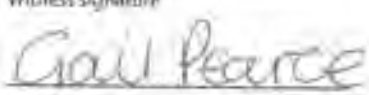
  
Witness signature:

  
Print Name:

  
Witness signature:

  
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Print Name:

COUNCIL APPROVED

Date: September 16/14

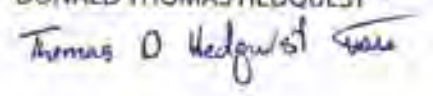
Res. No.: 1C205/2014

  
\_\_\_\_\_

  
ROBERT ALLEN CAMPBELL

  
THOMAS CHINOYAS

  
DONALD THOMAS HEDQUEST

  
Thomas O Hedquist

#### **SCHEDULE A\***

That part of the District Lot 4048s together with that part of District Lot 4017s both of Similkameen Division Yale District, containing 1.05 hectares, more or less PLUS a portion of unsurveyed foreshore.

The area under this Sub Licence is shown outlined in red in the aerial photograph below



Schedule "M" – Option Lands



**SKAHA MARINA – WATERPARK DEVELOPMENT AGREEMENT**  
**FINAL 2015 06 185-08**

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 2015

**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 is desirous of entering into a lease of the Leased Lands as hereinafter defined as the Leased Lands adjacent to Skaha Lake in the City of Penticton, all for the purpose of the redevelopment of the Penticton Lands into a first-class Water Park and to provide relocated boat trailer parking.
- (B) Trio wishes to acquire and Penticton wishes to grant to Trio, the use and occupancy of the Leased Lands and to enter into a management and capital improvement arrangement with Penticton in relation to the Leased Lands for the redevelopment of the Leased Lands as set out above and otherwise described in this Agreement.
- (C) On or about March 31, 2014, Penticton and Trademark Industries, now Trio, entered into a non-binding Term Sheet which set out specific requirements to be completed prior to the execution of a final agreement between the parties;
- (D) On or about \_\_\_\_\_, 2015, Penticton has approved entering into of this Agreement by resolution, a copy of which is attached as Schedule "KJ".

**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:

**1.0 DEFINITIONS**

**1.1 Definitions**

In this Agreement, unless there is something in the context inconsistent therewith, Penticton and Trio agree that:

- (a) **"Additional Rent"** means all payments required to be paid by Trio to Penticton under this Agreement, other than the Lease Rent;
- (b) **"Agreement"** means this agreement;
- (c) **"Lease Rent"** means the rent set out in Section 3;
- (d) **"Boat/Trailer Parking Lot"** means the boat/ trailer parking lot set out in Section 11.1;
- (e) **"Commencement Date"** means January 1, 2017 in respect of the Leased Lands;

~~(f)~~ **"CPI"** means the Consumer Price Index for all-items for British Columbia (or any index published in substitution for the Consumer Price Index or any other replacement index designated by Pentiction acting reasonably, if it is no longer published) published by Statistics Canada (or by any successor thereof or any governmental agency including a Provincial agency). In the case of any required substitution, Pentiction, acting reasonably, shall be entitled to make all necessary conversions for comparison purposes;

~~(f)(g)~~ **"Dragon Boat Club House"** means the replacement for the existing dragon boat storage shed as set out in Section 12.1 (c);

~~(g)(h)~~ **"Environmental Laws"** means all applicable federal, provincial, municipal or local laws, statutes, regulations or ordinances, as they may be amended from time to time after the Commencement Date of the Term relating to the environment, occupational safety and the transportation or regulation of Hazardous Substances, and includes any judgments, orders, notices, of offence, or other notices, decrees, codes, rules, instructions, policies, guidelines, guides, authorizations, approvals, permits and licenses, issued by any governmental authority having jurisdiction;

~~(i)~~ ~~(h)~~ **"Exclusion Area"** means those certain lands located at and bordering Skaha Lake in Pentiction, owned by the City of Pentiction as outlined on the plan attached hereto as Schedule "C"; and forming no part of the Leased Lands;

~~(i)(j)~~ **"Governmental Requirement(s)"** means all requirements made or imposed pursuant to law by Federal, Provincial, Municipal or other local governments including requirements of Environmental Laws;

~~(j)(k)~~ **"Hazardous Substance(s)"** means any substances that are defined or regulated as being waste, contaminants, pollutants, dangerous substances, industrial waste, special waste, toxic substances, hazardous waste, hazardous material or hazardous substance whether or not defined as such or pursuant to any law, regulation or order and without restricting any of the foregoing includes any potentially dangerous substance, corrosive substance, flammable material, explosive material, radioactive material and any other substance or material that when released into the natural environment is known to be likely to cause at some immediate or future time, material harm, adverse impact or degradation to the natural environment or material risk to human health;

~~(k)(l)~~ **"Pentiction Lands"** means those certain lands located near Skaha Lake in Pentiction, owned by the City of Pentiction and legally described as Parcel Identifier: 009-630-929, Lot A District Lot 189 Similkameen Division Yale District Plan 9936, ("Lot "A") and Parcel Identifier: 012-322-954, Amended Lot 4 (See 244321F) Block 209 District Lot 190 Similkameen Division Yale District Plan 466 ("Lot 4") a portion of which are impacted by Utilities as shown on Schedule "B" which may or may not be located within Statutory Rights of Way;

~~(l)(m)~~ **"Lands"** means the Leased Lands;

~~(m)(n)~~ **"Lease"** means the lease of the Leased Lands to Trio under the terms and conditions contained in this Agreement;

~~(n)(o)~~ **"Leased Lands"** means Areas A and D within the Pentiction Lands together with all existing structures, machinery and equipment of Pentiction therein or thereon, all of which areas are outlined on the plan attached hereto as Schedule "A";

~~(o)(p)~~ **"Lease Rent"** means the Lease Rent for each specific year of the Term as noted in Sections 3.1, 3.2 and 3.3;

~~(p)(q)~~ **"Marketing Plan"** means that document attached hereto as Schedule "I";

~~(q)(r)~~ **"Operating Plan"** means that document attached here to as Schedule "II";

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- ~~(s)~~ **"Per Square Meter Appraisal Rate"** means the per square meter appraisal value obtained from an appraisal pursuant to Section 3.3 of this Agreement;
- ~~(t)~~ **"Per Square Meter Rate"** means the per square meter rate for a specific year of the Term calculated in accordance with the formulas in Section 3.2 of this Agreement;
- ~~(u)~~ **"Prime Rate"** means the rate of interest expressed as an annual rate, in effect from time to time, quoted by the Royal Bank of Canada as its prime rate for commercial loans to commercial borrowers in Canada, calculated monthly, not in advance;
- ~~(v)~~ **"Rent"** means the Lease Rent and the Additional Rent;
- ~~(w)~~ **"Splash Pad"** means the splash pad as set out in Section 12.1(a);
- ~~(x)~~ **"Term"** means the term of years commencing on the Commencement Date as set out in Section 1.1(e) and ending on December 31, 2045;
- ~~(y)~~ **"Utilities"** means water lines, sanitary sewer lines, storm sewer lines, electrical lines, telephone lines cable TV lines and gas lines;
- ~~(z)~~ **"Water Park"** means the water park as set out in Section 10.1; and
- ~~(aa)~~ **"Washroom/Change Room"** means the washroom/change room as set out in Section 12.1(b).

## 1.2 Interpretation

For the purpose of this Agreement, except as otherwise expressly provided or unless the context otherwise requires;

- (a) the words, "herein", "hereof", and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section or other subdivision;
- (b) the headings and captions will be considered as provided for convenience only and not as forming part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions;
- (c) the words "include" or "including" when following any general term or statement are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters, but rather as permitting it to refer to all other items or matters that could reasonably fall within its broadest possible scope;
- (d) a reference to "currency" means Canadian currency unless specifically indicated otherwise;
- (e) a reference to a "statute" includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation enforced from time to time and any statute or regulation that supplements or supersedes such statute or any such regulation;
- (f) a reference to a "Bylaw" includes all amendments made to the Bylaw;
- (g) a word importing the masculine gender includes the feminine or neutral and vice versa, a word importing the singular includes the plural and vice versa;
- (h) a reference to "approval" or "authorization" or "consent" or "designation" or "notice" means written approval, authorization, consent, designation or notice unless specifically indicated otherwise;

- (i) the language in all parts of this Agreement shall in all cases be construed as a whole and neither party is strictly for nor strictly against any of the parties to this Agreement; and
- (j) all schedules to this Agreement are an integral part of this Agreement and form part of this Agreement.

### 1.3 Schedules

- (a) Schedule "A" – Plan for the Lands;
- (b) Schedule "B" – Utilities Plan
- (c) Schedule "C" - Exclusion Area;
- (d) Schedule "D" - Architectural Concept Drawings of the Water Park;
- (e) Schedule "E" - Architectural Concept Drawings of the Boat/Trailer Parking Lot;
- (f) Schedule "F" – Architectural Concept Drawings of the Splash Pad;
- (g) Schedule "G" - Architectural Concept Drawings of the Washroom/Change Room;
- ~~(g)(h)~~ Schedule "H" – Architectural Concept Drawing of the Dragon Boat Club House;
- ~~(h)(i)~~ Schedule "I" - Operating Plan 201~~8~~7 – 202~~2~~4;
- ~~(i)(j)~~ Schedule "J" – Marketing Plan 201~~8~~7 – 202~~2~~4; and
- ~~(j)(k)~~ Schedule "K" – City of Penticton Council Resolution.

## 2.0 LEASE OF THE LEASED LANDS

### 2.1 Leased Lands

Penticton, in consideration of the rents, covenants, agreements and conditions herein to be paid, observed and performed by Trio, will demise and lease to Trio the Leased Lands for the Term.

### 2.2 Term

Subject to the terms and conditions of this Agreement and Lease, Trio shall have and hold the Leased Lands for the Term, and will make capital improvements, operate all facilities and manage the pursuant to the terms of this Agreement for the Term.

## 3.0 LEASE RENT

### 3.1 Lease Rent

Subject to Section 3.2 herein Trio shall pay to Penticton the Lease Rent as follows:

- (a) annual payments equal to or greater than \$4.20 per square meter multiplied by the total number of square meters contained in the Leased Lands payable on July 1, 2017 and July 1st of every year of the Term thereafter. The Lease Rent for the year 2017 shall be prorated to represent the period July 1, 2017 to December 31, 2017.

### 3.2 Per Square Meter Rate Increase

Notwithstanding anything herein to the contrary, the \$4.20 per square meter per annum rate shall be increased as follows:

- (a) From January 1, 2017 to December 31, 2020 using the following formula:  
$$B_n (n=2017 \text{ to } 2020) = B_1$$
- (b) On January 1, 2021 using the following formula:

$$B_{2021} = (B_1) \times (1 + ((CPI_{2020} - CPI_{2017}) / (CPI_{2017})))$$

(c) January 1, 2022 to January 1, 2045 using the following formula:

$$(B_{n \text{ (n=2022 to 2045)}}) = (B_{n-1}) \times (1 + ((CPI_{n-1} - CPI_{n-2}) / (CPI_{n-2})))$$

Subject to Section 3.3 herein, the values assigned to the characters in the formulas in Sections 3.2 (a), (b) and (c) above are as follows:

- (i)  $B_1$  = \$4.20 Base Lease Rent per annum pursuant to Section 3.1 of this Agreement.
- (ii)  $B_n$  = the per square meter lease rate for the year in question where n=2017 is the year 2017 and so on.
- (iii)  $B_{2021}$  = the per square meter lease rate for the year 2021.
- (iv)  $CPI_{2020}$  = CPI for the year 2020.
- (v)  $CPI_{2017}$  = CPI for the year 2017.
- (vi)  $CPI_{n-1}$  = CPI in the n-1 year of the Agreement between the parties.
- (vii)  $CPI_{n-2}$  = CPI in the n-2 year of the Agreement between the parties.

### 3.3 Per Square Meter Rate Increase Appraisal

Once every five years commencing in 2021, Penticton or Trio may obtain an appraisal from an Appraisal Institute of Canada Accredited Appraiser to determine a new market per square meter lease rate of the Leased Lands as follows:

- (a) The party obtaining the appraisal will be responsible for the full cost of the appraisal;
- (b) If the difference between the Per Square Meter Appraisal Rate and the Per Square Meter Rate of the Leased Lands is greater than 10%, the average of the Per Square Meter Appraisal Rate and the Per Square Meter Rate will be used to establish the new per square meter rate;
- (c) If the difference between the Per Square Meter Appraisal Rate and the Per Square Meter Rate of the Leased Lands is less than 10%, the Per Square Meter Appraisal Rate will be used to establish the new per square meter rate;
- (d) If a new per square meter rate is established in accordance with this Section 3.3, that per square meter rate will become the new Per Square Meter Rate from that point forward and will be incorporated into the formulas in Section 3.2 above.
- (e) If either party is unsatisfied with the first appraisal, the unsatisfied party may obtain a second appraisal from an Appraisal Institute of Canada Accredited Appraiser.
- (f) If a second appraisal is obtained in accordance with Section 3.3(e) above, the new per square meter rate will be calculated by averaging the Per Square Meter Rate and the appraisal that is closest to the Per Square Meter Rate.

## 4.0 ADDITIONAL RENT & REVENUE SHARING

### 4.1 Revenue Sharing

On or before July 1<sup>st</sup>, 2021~~9~~ and on July 1<sup>st</sup> of each year of the Term thereafter, and including July 1<sup>st</sup>, 2046 after the expiration of the Term, Trio shall pay to Penticton the Additional Rent as follows:

- (a) 7% of C where C is between \$0 and \$1,375,000; plus
- (b) 10% of C greater than \$1,375,001 to \$2,075,000; plus

(c) 11% of C greater than \$2,075,001 to \$2,775,000; plus

(d) 12% of C greater than \$2,775,001.

The value of C in Section 4.1 (a) to (d) above is the total gross revenue of Trio from the previous year from all operations on the Lands less the amount of net goods and services tax that is payable by Trio on such operations and saving and excepting parking revenue from the relocated Boat Trailer Parking Area.

#### **4.2 Boat Trailer Parking Revenue Sharing**

On or before July 1<sup>st</sup>, 2029~~98~~ and on July 1<sup>st</sup> of each year of the Term thereafter, and including July 1, 2046 after the expiration of the Term, Trio shall pay to Penticton the Additional Rent for the previous year as follows:

(a) 50% of F

where F is the total net revenue (total revenue from the Boat Trailer Parking Area less total expenditures on the Boat Trailer Parking Area not including interest payments on debt for the construction of the Boat Trailer Parking Area) of Trio from the previous year from paid parking operations at the relocated Boat Trailer Parking Area.

### **5.0 OTHER PAYMENTS**

#### **5.1 Trio's Taxes and Other Charges**

Trio shall pay, as and when due, to the authority or person to which the same are owing:

(a) all taxes (including without limitation all goods and services tax), license fees, rates, duties and assessments imposed, assessed or levied by any lawful authority relating to:

(i) the business carried on in and the use and occupancy of the Lands by Trio;

(ii) Rent payable by Trio for the Lands; and

(iii) personal property and business and trade fixtures and other improvements owned or installed by or on behalf of Trio in, on or affixed to the Lands.

whether any such taxes, license fees, rates, duties and assessments are payable by law by Trio or by Penticton.

(b) all charges, rates, levies and assessments imposed, assessed or levied by any lawful authority in respect of electricity, light, heat, power, water, sanitary sewer, telephone, cable TV and utilities of whatsoever nature or kind (including works and services in connection therewith) used in or supplied to the Lands and which shall be separately metered where possible with the cost of metering installation and utilities consumed by Trio to be borne by Trio.

#### **5.2 Property Taxes**

Trio shall pay to the authority or person to which same are owing, as when due, property taxes as assessed by the British Columbia Assessment Authority on the Lands and as issued by the authority or person having jurisdiction and including without limiting the generality of the foregoing local improvement charges, school taxes, frontage taxes and all other special or extraordinary charges. Trio acknowledges that:

(a) the property taxes may change from time to time; and

(b) the classification of use may change from time to time,

depending on the assessment of the British Columbia Assessment Authority.

**5.3 Late Payment Interest**

Trio shall pay interest at 2% per month on any amount payable by Trio pursuant to this Agreement and not paid when due, calculated from the due date to the date of payment and compounded monthly. Pentiction shall have the same remedies for the collection of such interest as it has for the recovery of basic rent in arrears.

**5.4 No Set-off**

Trio will pay to Pentiction duly and punctually any and all Lease Rent and Additional Rent required to be paid by Trio pursuant to this Agreement without any deduction, abatement or set-off whatsoever.

**6.0 TRIO'S REPORTING REQUIREMENTS**

**6.1 Revenue Sharing Reporting**

On or before July 1<sup>st</sup> of each year Trio is required to pay Pentiction Additional Rent in Section 4 to 6.3 of this Agreement, Trio shall provide to Pentiction documentation that provides a complete reconciliation of how the Additional Rent was calculated for the previous year for which the payment is made.

**6.2 Updated Plans and Statements**

On or before November 1, 2018~~7~~ and on November 1 of every 5 year period thereafter, Trio is required to prepare and provide to Pentiction for review and discussion the following:

- (a) an updated 5 year Marketing Plan;
- (b) an updated 5 year Operating Plan;
- (c) and updated 5 year Revenue and Expense Statement done on a January 1 to December 31 time basis; and

**6.3 Updated 5 year Marketing Plan**

Trio shall include the following details in an updated 5 year Marketing Plan referred to in Section 6.2 (a) above:

- (a) how Trio intends to market the Water Park, including but not limited to the following details:
  - (i) The target market;
  - (ii) Ongoing marketing to be undertaken on a seasonal and regular basis following opening;
  - (iii) Rates to be charged including: annual, monthly, daily rates and family rates;
  - (iv) Discounting or coupon process to be used in joint hotel/motel marketing;
  - (v) Types of special events and how they will be marketed;
  - (vi) How the facility will be "freshened up" and on what frequency to maintain customer appeal;
  - (vii) Marketing budgets for ongoing annual marketing; and
  - (viii) Details supporting assumptions made.

**6.4 Updated 5 Year Operating Plan**

Trio shall in an updated 5 year Operating Plan referred to in Section 6.2 (b) above, include the operating and service methods to be implemented, including but not limited to the following details:

- (a) An organization chart detailing the proposed management, seasonal, hourly and on-call positions;
- (b) Anticipated staffing requirements and minimum staff certifications and guidelines for various types of positions that will exist in the Water Park and Boat/Trailer Parking Lot;
- (c) Service methodology to be employed to deliver quality service;
- (d) Staff hiring and training programs including those related to customer service, water quality, life safety, equipment maintenance and fuel handling;
- (e) The implementation of measurable quality control programs;
- (f) Trio's Emergency Preparedness Plans to address incidents on the Lands including but not limited to a waterpark accident.

**6.5 Updated 5 Year Revenue and Expense Statement**

Trio shall include the following in an updated 5 year Revenue and Expense Statement referred to in Section 6.2 (c) above in a pro forma format showing projected revenues and expenses and how capital improvements will be addressed for each of the separate elements of the proposed development, including:

- (a) Details of the Water Park, including but not limited to revenues from the following:
  - (i) annual passes;
  - (ii) daily gate;
  - (iii) locker, towel, life jacket and water toy rentals;
  - (iv) concession;
  - (v) arcade;
  - (vi) retail sales; and
  - (vii) parking.
- (b) All operating expenses of the Water Park including but not limited to all Lease Rent, revenue sharing costs, and taxes and other charges;
- (c) Any other revenues and expenses not specifically noted in Section 6.5 (a) and (b);
- (d) Details supporting assumptions made; and
- (e) A sensitivity analysis that shows the impact of gross revenues being 10% higher, 10% lower and 20% lower.

**6.6 Financial Statements**

Trio shall, from and including 201~~8~~<sup>7</sup> to 202~~1~~<sup>9</sup>, upon request of Penticton, submit to Penticton financial statements for each financial year of Trio coinciding with each such calendar year, prepared in accordance with generally accepted accounting principles on a review engagement basis by an accredited chartered accountant, certified general accountant or chartered professional accountant that include the gross revenue generated and all expenses incurred from all aspects of the development and operations on the Leased Lands including but not limited to a break-down of the following details:

- (a) Water Park revenue;
- (b) Water Park expenses;
- (c) Parking revenue from the Boat/Trailer Parking Lot and the Extended Parking Lot;
- (d) Parking expenses from the Boat/Trailer Parking Lot and the Extended Parking Lot;

- (e) Any other revenues not noted above; and
- (f) Any other expenses not noted above.

Beginning in 2022, Trio shall, upon request of Penticton, submit financial statements prepared in accordance with generally accepted accounting principles either on a review engagement basis or on an audit engagement basis as requested by Penticton, by an accredited chartered accountant, certified general accountant or chartered professional accountant that include the gross revenue generated and all expenses incurred from all aspects of the development on the Lands in substantially the same form as the previous financial statements received for the years 201~~8~~<sup>7</sup> to 2021.

## **7.0 PENTICTON RESPONSIBILITIES**

### **7.1 Park and Amenity Contribution**

Penticton shall deposit 50% of the Additional Rent received from Trio pursuant to Sections 4.1 and 4.2 of this Agreement in an interest bearing account that shall be used as a park and amenity contribution to:

- (a) purchase additional park land; and/or
- (b) purchase park and waterfront amenities,

in the City of Penticton as and when determined by Penticton in its sole discretion.

Penticton will recognize Trio, in a form and manner acceptable to Penticton, as a good community partner for their contribution to the purchase of additional park lands or park and waterfront amenities.

## **8.0 EXTENSION REQUEST**

### **8.1 First Extension Request**

Trio may, no earlier than two years prior to the end of the Term of this Agreement and no later than one year prior to the end of the Term of this Agreement, provide a written request to Penticton for a five (5) year extension to the Term. Upon receiving a written request for a five (5) year extension, Penticton may enter into discussions with Trio for an extension of the Term and may grant the 5 year extension, subject to Penticton determining and being satisfied at that time, in its sole discretion, with the following:

- (a) Trio has duly and punctually performed the covenants, agreements, conditions and provisos of this Agreement on the part of Trio to be performed;
- (b) Trio has satisfactorily operated the Water Park and Boat Trailer Parking lot for every year of the Term;
- (c) Trio has improved and maintained the Leased Lands to a standard acceptable to Penticton;
- (d) Trio has completed the initial capital expenditures required by Sections 13.1 and 13.2 of this Agreement;
- (e) Trio has completed the capital expenditures to freshen the facilities as noted in Section 13.3; and
- (f) Agreement by Penticton with Trio's further proposed capital and operating improvements to areas developed by Trio on the Lands.

## 8.2 Second Extension Request

If Penticton grants the 5 year extension in Section 8.1 above, Trio may, no earlier than two years prior to the end of the first five year extension and no later than one year prior to the end of the first five year extension, provide a written request to Penticton for a second 5 year extension to the Term of this Agreement. Upon receiving a written request for a second five year extension, Penticton may enter into discussions with Trio and may grant the five (5) year extension to Trio, subject to Penticton determining and being satisfied at that time in its sole discretion of the same factors as are set out in Section 8.1 above.

## 9.0 CONDITIONS PRECEDENT

### 9.1 Penticton Conditions Precedent

Penticton and Trio agree that the obligations of Penticton herein are subject to the following conditions being satisfied on or prior to the date identified for each item or prior to the start of construction by Trio, which ever shall occur first:

- (a) By ~~March~~~~June~~<sup>1<sup>st</sup></sup>, 201~~7~~<sup>6</sup>, the Penticton must receive from Trio and acknowledge in writing receipt of a detailed financing plan from Trio. The plan must contains details showing approved financing sufficient to pay for all aspects of the capital expenditures set out in Section 13 and approved financing to cover the operating expenses associated with the first two years of operation.
- (b) By ~~July~~~~April~~<sup>1<sup>st</sup></sup>, 201~~7~~<sup>6</sup> Penticton approving in writing the detailed financing plan submitted by Trio.
- (c) By ~~July~~~~May~~ 15, 201~~7~~<sup>6</sup> Trio must provide Penticton with a written copy of its lender's loan commitment, including full particulars sufficient in the opinion of Penticton to meet the financial requirements of Trio contained in its detailed financial plan set out in Section 9.1(a) above.
- (d) By ~~August~~~~June~~ 1, 201~~7~~<sup>6</sup> Penticton approving in writing the lender's loan commitment.

These conditions are for the sole benefit of Penticton. If Penticton wishes to waive any of these conditions or declare them fulfilled, then Penticton will do so by giving written notice (the "Notice") to Trio on or prior to the date indicated for each item or prior to the start of construction by Trio, which ever shall occur first. If the Notice is not given, then this Agreement is terminated and neither party will have any further obligations under this Agreement.

### 9.2 Trio Conditions Precedent

Penticton and Trio agree that the obligations of Trio herein are subject to the following conditions being satisfied on or prior to the date identified for each item or prior to the start of construction by Trio, which ever shall occur first:

- (a) By ~~July~~~~May~~ 10, 201~~7~~<sup>6</sup> Trio must have received lender's loan commitment for financing.

These conditions are for the sole benefit of Trio. If Trio wishes to waive any of these conditions or declare them fulfilled, then Trio will do so by giving written notice (the "Notice") to Penticton on or prior to the date indicated for each item or prior to the start of construction by Trio, which ever shall occur first. If the Notice is not given, then this Agreement is terminated and neither party will have any further obligations under this Agreement.

**9.3 Penticton Non-Revocation of Acceptance**

In consideration of the non-refundable payment of \$10.00, by Trio to Penticton, receipt of which is acknowledged, Penticton agrees not to revoke its acceptance of the terms of this Agreement while this Agreement remains subject to the condition precedent of Trio contained in Section 9.2 of this Agreement.

**9.4 Trio Non-Revocation of Acceptance**

In consideration of the non-refundable payment of \$10.00 by Penticton to Trio, receipt of which is acknowledged, Trio agrees not to revoke its acceptance of the terms of this Agreement while this Agreement remains subject to the condition precedent of Penticton contained in Section 9.1 of this Agreement.

**9.5 Creation of Lease**

Upon the conditions precedent in favour of Penticton set out in Section 9.1 above and the conditions precedent in favour of Trio set out in Section 9.2 above, all being satisfied or waived by the applicable party, a lease of the Leased lands shall come into existence on the terms and conditions set out in the Agreement, *mutatis mutandis*.

**10.0 WATER PARK DESIGN, CONSTRUCTION AND OPERATION**

**10.1 Construction of Water Park**

On or before May 1, 201~~87~~ Trio shall construct on Area A and Area D as depicted in Schedule "A" attached hereto of the Leased Lands, but excluding the replacement Boat/Trailer Parking Lot to be constructed in the eastern-most portion of Area A, a Water Park with the following:

- (a) A minimum of 4 large slides;
- (b) A children's slide area;
- (c) An aqua play facility;
- (d) A food and beverage concession utilizing the current concession and washroom structure on Area A accessible to the public from outside without having to gain access through the Water Park;
- (e) Between May 1 201~~98~~ and May 1 202~~76~~, Trio shall construct on Area A as depicted in Schedule "A" attached hereto of the Leased Lands one or more additional attractions.

The completed Water Park shall reasonably appear as depicted in the Architectural Concept Drawings of the Water Park attached as Schedule "D" to this Agreement.

Construction on the Waterpark cannot start until after the Commencement Date.

## **10.2 Design of Water Park**

Prior to the construction of the Water Park and after the completion of their own due diligence, Trio shall deliver to Penticton such drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and decoration and designs of the Water Park more or less as depicted on Schedule "D", including effective and esthetically attractive perimeter fencing, for Penticton's approval which approval Penticton agrees not to unreasonably withhold. Upon receipt of Penticton's approval, after securing a building permit and all other approvals necessary from applicable authorities and Penticton acknowledging full and sufficient receipt of the Letter of Credit noted in Section 14.2, Trio shall construct the Water Park, expeditiously and in good, workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including the materials to be used), location on the Leased Lands and decoration and design, all upon which the issuance of the building permits and other approvals are based. Any changes to the drawings, specifications, locations, exterior decoration, design or exterior appearance of the buildings or improvements to be constructed as part of the Water Park on the Leased Lands must be first approved by Penticton and thereafter by any other relevant statutory authority.

## **10.3 Operation of Water Park**

On or before May 15, 2018<sup>7</sup>, Trio shall begin operating the Water Park and shall operate the Water Park until at least September 15, 2017, and every year thereafter for the Term shall operate and maintain the Water Park at least between May 15<sup>th</sup> and September 15<sup>th</sup> of each year and beyond these minimum dates as demand suggests.

The Water Park is to be marketed in accordance with the Marketing Plan attached hereto as Schedule "J" and as modified by the updated 5 Year Marketing Plan as noted in Section 6.3.

The Water Park is to be operated in accordance with the Operating Plan attached hereto as Schedule "H" and as modified by the updated 5 Year Operating Plan as noted in Section 6.4

## **10.4 Costs of Design, Construction and Operation for the Water Park**

Trio shall pay all costs associated with the design, construction and operation of the Water Park referred to in Sections 10.1, 10.2 and 10.3 herein.

## **10.5 Use of Existing Washroom/ Change Room/ Concession**

Penticton and its invitees shall have the continued and unimpeded use of the existing washroom/change room and food and beverage concession building and surrounding grounds located in Area A of Schedule "A" attached hereto of the Leased Lands until the Washroom/ Change Room described in Section 12.0 has been constructed, accepted by the City and is operational.

## **10.6 Use of Newly Constructed Washroom/ Change Room**

Penticton and its invitees shall have continued and unimpeded use for the Term of the Agreement of the newly constructed Washroom / Change Room described in Section 12.0.

## **11.0 BOAT/TRAILER PARKING LOT DESIGN CONSTRUCTION AND OPERATION**

### **11.1 Construction of Boat/Trailer Parking Lot**

On or before May 1, 2018<sup>7</sup>, Trio shall construct within the eastern-most portions of Area A as depicted in Schedule "A" attached hereto of the Leased Lands a Boat/Trailer Parking Lot in replacement of the existing trailer parking in Area D as depicted in Schedule "A" attached hereto the Leased Lands.

The completed Boat/Trailer Parking Lot shall reasonably appear as depicted in the Architectural Concept Drawings of the Boat/Trailer Parking Lot attached as Schedule "E" to this Agreement.

#### 11.2 Design of Boat/Trailer Parking Lot

Prior to the construction of the Water Park and Boat/Trailer Parking Lot and after the completion of their own due diligence, Trio shall deliver to Penticton such drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and decoration and designs of the Boat/Trailer Parking Lot more or less as depicted on Schedule "E" and able to accommodate turning and backing movements of trucks with boat trailers for Penticton's approval which approval Penticton agrees not to unreasonably withhold. Upon receipt of Penticton's approval, after securing a building permit and all other approvals necessary from applicable authorities and Penticton acknowledging full and sufficient receipt of the Letter of Credit noted in Section 14.2, Trio shall construct the Boat/Trailer Parking Lot, expeditiously and in good, workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including the materials to be used), location on the premises and decoration and design, all upon which the issuance of the building permits and other approvals are based. Any changes to the drawings, specifications, locations, exterior decoration, design or appearance of the improvements to be constructed as part of the Boat/Trailer Parking Lot on the Leased Lands must be first approved by Penticton and thereafter by any other relevant statutory authority.

#### 11.3 Operation of Boat/Trailer Parking Lot

Trio shall operate and maintain the Boat/Trailer Parking Lot for the Term of the Agreement and retain all revenues derived from May 1, 2018~~7~~ to September 30, 2028~~7~~. After September 30, 2028~~7~~, shall pay the City Additional Rent for the Boat Trailer Parking area as noted in Section 4.2.

The Boat/Trailer Parking Lot is to be marketed in accordance with the Marketing Plan attached hereto as Schedule "~~J~~" and as modified by the updated 5 Year Marketing Plan as noted in Section 6.3.

The Boat/Trailer Parking Lot is to be operated in accordance with the Operating Plan attached hereto as Schedule "~~I~~" and as modified by the updated 5 Year Operating Plan as noted in Section 6.4

#### 11.4 Costs of Design, Construction and Operation for Boat/Trailer Parking Lot

Trio shall pay all costs associated with the design, construction, operation and maintenance of the Boat/Trailer Parking Lot referred to in Sections 11.1, 11.2 and 11.3 herein for the Term of the Agreement.

#### 12.0 ~~SPLASH PAD, AND WASHROOM/CHANGE ROOM~~ AND DRAGON BOAT CLUB HOUSE DESIGN CONSTRUCTION AND OPERATION

##### 12.1 Construction of Splash Pad~~, and~~ Washroom/Change Room and Dragon Boat Club House

- (a) On or before ~~May-December~~ 31, 2017, Trio shall re-construct on an area to be determined by Penticton outside of the Leased Lands a replacement splash pad to the same or better standard and quality as the one currently located within the Leased Lands and which shall reasonably appear as depicted in the Architectural Concept Drawings of the Splash Pad attached as Schedule "F" to this Agreement and as approved by Penticton. The replacement splash pad must be constructed, operational and approved by Penticton prior to the existing splash pad is taken out of service; and

- (b) On or before ~~May-December~~ 31, 2017, Trio shall construct on an area to be determined by Penticton either inside or outside the Leased Lands a replacement washroom/change room to the same or better standard and quality as the one currently located within the Leased Lands and which shall reasonably appear as depicted in the Architectural Concept Drawings of the Washroom/Change Room attached as Schedule "G" to this Agreement and as approved by Penticton. Such replacement washroom/change room shall be accessible to the public without having to gain access through the Water Park. The replacement washroom/change room must be constructed, operational and approved by Penticton prior to the existing washroom/change room is taken out of service; and
- (c) On or before December 31, 2017, Trio shall construct on an area to be determined by Penticton inside the Leased Lands a replacement dragon boat club house to a better standard and quality as the one currently located within the Leased Lands accessible from outside of the Leased Lands and including boat storage space and office space and which shall reasonably appear as depicted in the Architectural Concept Drawings of the Dragon Boat Club House attached as Schedule "H" to this Agreement and as approved by Penticton and the Dragon Boat Club. The replacement dragon boat club house must be constructed, operational and approved by Penticton prior to the existing dragon boat club house is taken out of service.

## 12.2 Design of Splash Pad and Washroom/Change Room

Prior to the construction of the Splash Pad, ~~and~~ Washroom/ Change Room and Dragon Boat Club House, after the completion of their own due diligence and after meeting with the local Rotary Club to discuss the reconstruction of the Splash Pad and with the Dragon Boat Society to discuss the relocation of their boat storage shed, Trio shall deliver to Penticton such drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and decoration and designs of the Splash Pad, ~~and~~ Washroom/Change Room and Dragon Boat Club House more or less as depicted on Schedule "F", ~~and~~ "G" and "H" for Penticton's approval which approval Penticton agrees not to unreasonably withhold. The Washroom/Change Room shall be configured so as to be accessible to the public without having to gain access through the Water Park. The Dragon Boat Club House Washroom-Change Room design shall also involve discussions with the Dragon Boat Society and shall accommodate the Dragon Boat storage area and office space to meet their needs. Upon receipt of Penticton's approval, after securing a building permit and all other approvals necessary from applicable authorities and Penticton acknowledging full and sufficient receipt of the Letter of Credit noted in Section 14.2, Trio shall construct the Splash Pad, ~~and~~ Washroom/Change Room and Dragon Boat Club House, expeditiously and in good, workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including the materials to be used), location and decoration and design, all upon which the issuance of the building permits and other approvals are based. Any changes to the drawings, specifications, locations, exterior decoration, design or exterior appearance of the buildings and improvements to be constructed for or in connection with the Splash Pad and the Washroom/Change Room must be first approved by Penticton and thereafter by any other relevant statutory authority.

## 12.3 Operation of Splash Pad, ~~and~~ Washroom/Change Room and Dragon Boat Club House

Penticton shall maintain operation of the Splash Pad and Washroom/Change Room once completed unless the Washroom/Change Room is located within Area A in which case Trio shall do so at their cost and shall allow Penticton and its invitees full access to the Washroom/Change Room and for a minimum of the equivalent days and hours that washrooms in Penticton parks are open to the public. Trio shall operate the Dragon Boat Club House and grant the Dragon Boat Society access at all times.

**12.4 Costs of Design, Construction and Operation of Splash Pad, ~~and~~ Washroom/Change Room and Dragon Boat Club House**

Trio shall pay all costs associated with the design and construction of the Splash Pad, ~~and~~ the Washroom/ Change Room and Dragon Boat Club House referred to in Sections 12.1 and 12.2 herein. Penticton shall pay all costs associated with the operation of the Splash Pad and Washroom/Change Room referred to in Section 12.3 herein where such facilities are located outside of Area A. Should the Washroom/Change Room be located within Area A Trio shall pay the costs associated with the operation. Trio shall pay all costs of Operation of the Dragon Boat Club House referred to in Section 12.3.

**13.0 CAPITAL EXPENDITURES**

**13.1 Water Park**

Trio shall invest and expend not less than TWO MILLION TWO HUNDRED THOUSAND (\$2,200,000.00) for the construction of the Water Park referred to in Section 10.1 of this Agreement, in accordance with the determination of the quantity surveyor in Section 14.2 of this Agreement.

**13.2 Boat/Trailer Parking Lot**

Trio shall invest and expend not less than THREE HUNDRED THOUSAND (\$300,000.00) for the construction of the Boat/Trailer Parking Lot construction referred to in Section 11.1 of this Agreement, in accordance with the determination of the quantity surveyor in Section 14.2 of this Agreement.

**13.3 Additional Capital Expenditures**

Throughout the Term of this Agreement Trio shall make sufficient capital investments to freshen up the facilities and create new attractions.

**14.0 GENERAL CONSTRUCTION PROVISIONS**

**14.1 Fire and Liability Insurance During Construction**

Trio shall effect or cause all of its contractors and sub-contractors to effect prior to the commencement of any construction whatsoever on the Lands and including, without limiting the generality of the foregoing, the construction as referred to in Sections 10.1, 11.1 and 12.1 herein and shall maintain and keep in force until the insurance required under Sections 22.1, 22.2, 22.3, 22.4 and 22.5 herein shall be effected, insurance:

- (a) protecting both Trio and Penticton and Penticton's servants and agents (without any rights of cross-claim or subrogation against Penticton) 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 Leased Lands and from any cause, including the risk occasioned by the construction of the improvements, and to any amount reasonably satisfactory to Penticton, for any personal injury, death, property, or other claims in respect of any one accident or occurrence;

- (b) protecting both Trio and Pentiction and Pentiction's servants and agents from loss or damage (without any rights of cross-claim or subrogation against Pentiction), to the improvements, equipment, building materials on the Lands from time to time both during and after construction, (but which may be by policies effected from time to time covering the risk during different phases of construction of the improvements) against fire, earthquake and all other perils from time to time customarily included in the usual all risk builders' form of policy applicable to similar properties under construction and effective in the Province of British Columbia by prudent owners, and such other perils as Pentiction may reasonably require to be insured against the full insurable value thereof at all times and in any event the amount sufficient to prevent Pentiction or Trio being deemed co-insurer.

#### 14.2 **Quantity Surveyor and Letter of Credit**

No less than 60 days prior to the commencement of construction as referred to in Sections 10.1, 11.1 and 12.1 of this Agreement, Trio shall provide all plans of the proposed works to Pentiction. Pentiction shall engage Spiegel Skillen Quantity Surveyors or another quantity surveyor as determined by Pentiction, at Pentiction's sole cost, to estimate the cost of the proposed work. Trio shall then provide Pentiction with an irrevocable letter of credit, in a form acceptable to Pentiction, drawn on a Canadian Schedule I chartered bank or a British Columbia credit union regulated under the laws of the Province of British Columbia in the amount of the Spiegel Skillen estimate. The letter of credit shall form security against default by Trio under the terms of this Agreement and/or Lease Lands and Pentiction will have the ability to draw on the letter of credit in the following events:

- (a) a lien is filed on the Leased Lands that Trio does not discharge within 30 days written notice from Pentiction to do so;
- (b) construction ceases on the Lands or is reduced to such a level that in the opinion of Pentiction, acting reasonably, Trio will be unable to meet the timelines established in this Agreement for the full completion and operation of the intended improvements and facilities.
- (c) Trio fails to fully invest and expend the required monetary amounts mandated by Section 13 of this Agreement as determined by Pentiction's quantity surveyor; or
- (d) Trio is otherwise in default of its obligations under this Agreement.

Trio may submit multiple letters of credit to Pentiction which may be reduced as elements of construction are completed.

The letter of credit shall be renewed 30 days prior to its expiry date unless specified in writing by Pentiction that it is not required. In the event that the letter of credit is not renewed within 30 days of the expiry date, Pentiction will be within its rights to and may draw down on the letter of credit and apply the proceeds against the outstanding deficiency/ies.

#### 14.3 **Security**

Any mortgage, encumbrance, charge, pledge or other grant of any security interest of any nature in the interest of Trio in the Lands shall be at the sole cost and expense of Trio. Pentiction shall not be required to mortgage, encumber, change, pledge or otherwise grant any security interest of any nature in the Lands. Provided, however, that Pentiction shall use reasonable commercial efforts in providing Trio's lender with the security it requires including an assignment of this Agreement and a mortgage of the Lease.

**14.4 Notice of Interest**

Penticton shall register a Notice of Interest under the *Builders Lien Act* on the Lands. Trio shall be required to disclose in writing to any person they contract with in relation to the Lands the existence of the Notice of Interest of Penticton and shall note in all of Trio's contracts the existence of the same.

**14.5 Statutory Declaration of Payment**

Trio shall provide to Penticton a statutory declaration within 15 days of the end of each month so long as any aspect of the project is under construction confirming that each contractor, subcontractor, workman and material supplier working on or in relation to the Lands have been fully paid.

**14.6 Notification of Claims**

Trio shall immediately notify Penticton of any claims of builders' liens that arise from third parties from construction or work performed on or materials supplied to the Lands

**14.7 Utilities, Levelton Reports and Existing Irrigation Lines**

Trio confirms and acknowledges that it is fully aware of the existence and location of the Utilities as noted in Schedule "B" and they will not disturb or construct in the area of such Utilities, except to the extent permitted by any right of ways or easements and in the case where there are no right of ways or easements exist to the extent permitted by the authority having jurisdiction over the Utility in question.

Trio further confirms and acknowledges that it is aware of and has studied the following reports:

- (a) The Levelton Preliminary Geotechnical Assessment Report Skaha Lake Development Lands dated August 29, 2012;
- (b) The Levelton Stage 1 Preliminary Site Investigation East Skaha Lake – City Lease Assembly Portion of 124 South Beach Drive dated June 2012;
- (c) The Levelton Stage 1 Preliminary Site Investigation East Skaha Lake – City Lots Portion of 124 South Beach Drive and 3915 Lakeside Road dated June 2012;
- (d) The Levelton Stage 2 Preliminary Site Investigation 124 South Beach Drive dated April 2013; and
- (e) The Levelton Hazardous Materials Management Survey 124 South Beach Drive dated October 4, 2012.

and will incorporate the findings of all of such reports in its planning, design, construction and operation of its improvements and operations on the Lands.

There are irrigation lines located throughout the Lands as noted in Schedule "B" and Trio covenants and agrees to work with Penticton and shall install at their cost all required by pass lines and connections to ensure that the existing irrigation system continues to operate to the satisfaction of Penticton after the construction of the items referred to in Sections 10.1, 11.1 and 12.1

**15.0 EXTENSION OF DEADLINES**

- 15.1** If Penticton or Trio determines that it will not be possible to meet a deadline set out in this Agreement, Penticton or Trio shall notify the other party in writing and provide a date by which the respective item can be completed. The deadline may only be changed upon mutual written acceptance of such change.

## **16.0 REPAIRS, MAINTENANCE AND ALTERATIONS**

### **16.1 Repair and Maintenance**

Trio, at its own expense, will improve, repair and maintain the Lands and all improvements, appurtenances and equipment therein and thereon (including, without limitation, repairing and maintaining waterslide components and supports , all pumps, plumbing, heating, and electrical systems, repairing and maintaining the roof, floors, foundations, bearing beams and the internal and external walls including all structural aspects thereof, replacing all broken windows and maintaining the landscaping of the Lands, excepting from such standard of repair and maintenance, reasonable wear and tear to the extent only that such reasonable wear and tear is not inconsistent with maintenance in good order and condition of the Lands generally. In this Section 16.1, "repair" will include replacement and renewals when necessary. Trio will be responsible for all damage or destruction to the Lands and for promptly complying with all requests or orders of any applicable government authority with respect to upgrading of the Lands and for the investigation and remediation of any Hazardous Substance in, under or affecting the Lands .

### **16.2 Inspection and emergencies**

Penticton, by its representatives may enter upon the Lands at all reasonable times and during any emergency to inspect the state of repair and maintenance.

### **16.3 Utilities**

Trio shall at all times during the Term allow the unobstructed and unrestricted access to the Utilities as shown on Schedule "B" to Penticton or to the applicable right of way or easement holder to undertake maintenance, repair and/or replacement of such Utilities, whether held by or for the benefit of Penticton or otherwise.

### **16.4 Repairs by designated trades people**

Trio, when necessary and whether upon receipt of notice from Penticton or not, will effect and pay for maintenance and repairs for which it is responsible and in so doing will use appropriated ticketed subcontractors, contractors and trades people.

### **16.5 Repair according to notice**

Without restricting the generality of Section 16.4, Trio, promptly upon notice by Penticton, will make and do all repairs and maintenance for which it is responsible in a good and workmanlike manner. If Trio fails to repair or maintain within what Penticton considers to be a reasonable time, then Penticton may cause such repairs and maintenance to be undertaken (and may cause its representatives to enter on the Lands for such purpose). Should Penticton deem it necessary to undertake such repairs or maintenance, then Trio will pay to Penticton a fee for supervision for carrying out Trio's obligations an amount equal to ten percent (10%) of the cost of repairs or maintenance carried out by Penticton, which amount will be in addition to the cost of such repairs or maintenance.

### **16.6 Alterations**

Notwithstanding anything to the contrary in this Agreement Trio will not make to or erect in the Lands any installations, alterations, additions or partitions without having received the prior written approval of Penticton to the plans and specifications and any variations or amendments thereof, such approval not to be unreasonably withheld, and all necessary approvals of any relevant statutory authority.

**16.7 Construction and alteration**

Trio will construct any such installations, alterations, additions and partitions only in accordance with the approved plans and specifications and in a good and workmanlike manner and will proceed diligently to completion. All such construction will be as contemplated in this Agreement. Trio will pay for all expenses incurred for labor performed upon, and materials incorporated into, the Lands for which it is responsible as same fall due.

**16.8 Repair and maintenance by Penticton**

Penticton shall not be obliged to furnish any services or facilities or to make repairs, replacements or alterations in or to the Lands. Trio hereby assumes the full and sole responsibility for the condition, operation, repair, replacement and maintenance of the Lands.

**16.9 Maintenance by Trio**

Trio covenants and agrees at its own expense to maintain the Lands and all improvements, appurtenances and equipment therein or thereon in accordance with all applicable building codes, bylaws, the laws and regulations of Canada, the laws and regulations of British Columbia and manufacturers specifications and using fully trained personnel. Trio further covenants and agrees to promptly comply with all reasonable concerns and recommendations which Penticton may provide, but is under no obligation to do so, to Trio in writing to ensure the safety and health of the customers of the Water Park and related facilities as well as the aesthetic appearance of the Lands.

**16.10 Inspection by Penticton**

Notwithstanding any other provisions of this Agreement and without limiting the rights and powers that Penticton may exercise under the bylaws of the Corporation of the City of Penticton, Penticton will at any time, on 24 hours written notice to Trio, be granted access to the Lands and Penticton may inspect the for safety and health-related issues and using its own personnel or experts of its own choosing. Provided, however, that the inspection shall be conducted in such a manner as to interfere with the business of Trio as little as is possible.

**17.0 SURRENDER AND CONDITION OF LEASED LANDS AND LICENCED LANDS**

**17.1 Surrender**

Subject to any contrary term in this Agreement, upon any termination of the this Agreement or the Lease prior to the end of the Term, Trio will surrender to Penticton possession of the Leased Lands and fixtures and improvements therein, all of which will become the property of Penticton without any claim by or compensation to Trio, all in good order, condition and repair in accordance with Trio's obligation to repair and maintain, and free and clear of all encumbrances and all claims of Trio or of any person claiming by or through or under Trio and all the rights of Trio under this Agreement will terminate.

**17.2 End of Term Requirements**

At any time between 12 and 18 months prior to the expiration of the Term or any renewal thereof, the Penticton will, on 24 hours written notice, be granted access to enable it to extensively inspect the Lands and all facilities thereon to the extent the Penticton requires, using its own personnel or experts of its own choosing. Penticton shall then provide the Trio with written notice, not later than 6 months prior to the expiration of the Term or any renewal thereof, to Trio to remove all structures, improvements and fixtures on the Lands excepting only those designated to remain at the end of the Term or any renewal thereof as are set out in Penticton's notification to Trio , and to otherwise restore the Lands to a landscaped condition similar to the condition of the Lands at the commencement of the Term, all at the sole cost and expense of Trio.

**18.0 QUALITY AND USE OF THE LANDS**

**18.1 Quality of Lands**

Trio has inspected the Lands prior to execution of this Agreement and acknowledges that it is leasing the same respectively on a "where is, as is" basis in accordance with the provisions of this Agreement. Trio specifically acknowledges that Penticton has made no representations, agreements or warranties with respect to the Lands as to their fitness respectively for the uses referred to in Sections 10.1, 10.3, 11.1, 11.3, 12.1 and 12.3 of this Agreement.

18.2 Trio shall not use the Lands and all improvements thereon other than for the operation of the following:

- (a) Water Park; and
- (b) Boat/Trailer Parking Lot.

without the consent in writing from Penticton, which consent may be arbitrarily withheld in the sole discretion of Penticton.

**18.3 No Nuisance or Waste**

At no time during the Term will Trio carry on or permit or suffer to be carried on in or from the Lands or elsewhere surrounding the same anything which is noxious or offensive or which would constitute a public or private nuisance. Trio will not cause any waste or damage to the Lands.

**18.4 Signs**

Trio will not erect, paint, display, place, affix or maintain or permit to be erected, painted, displayed, placed, affixed or maintained any sign, decoration, picture, lettering, symbol or notice of any nature or kind whatsoever (herein called "Signs") either on the walls, fences or structures on the Leased Lands that can be viewed from off such premises unless it is in conformance with City of Penticton Sign Regulation Bylaw 2013-17 as amended from time to time and with the written mutual agreement of Penticton and Trio. Trio will cause any Signs to be maintained in a proper state of repair and will indemnify and save harmless Penticton from all personal injuries or property damage or loss to any person caused by the existence of any such Signs.

**18.5 Suppression of Weeds**

Trio will keep the Lands clean, landscaped and free from noxious weeds and brush growth at its expense.

**18.6 Contour of the Lands**

Trio shall not deposit on the Lands any earth, fill or other material for the purpose of filling in or raising the level of any part of the Lands or take any steps whatsoever to change the contour of the either of such premises without the prior written consent of Penticton, such consent not to be unreasonably withheld.

**18.7 Conditions of Premises**

Trio will not permit the Lands to become untidy or unsightly and will not permit waste or refuse to accumulate therein.

**18.8 Garbage and Recycling**

Trio will be responsible for ensuring that the areas around all garbage and recycling bins on the Lands are kept neat and tidy at all times.

**18.9 Service and Training**

Trio shall throughout the Term provide employees, agents and any sub-tenant of Trio with the level of training required, reasonably considering the position to be filled by the employee, agent or sub-tenant, to maintain and operate the Water Park and Boat/Trailer Parking Lot and to assist the clientele and visitors to these facilities and the boating public in a safe, effective, responsive and courteous manner. Trio shall keep records of such training and those records will be made available upon request for inspection by Penticton.

**19.0 ASSIGNING AND SUB-LETTING**

**19.1 Assigning and sub-letting Leased Lands**

Trio shall not assign, sub-let or part with possession of the whole or any part of the Leased Lands for the whole or any part of the Term, unless the assignment, sub-let or parting with possession is mutually agreed to in writing by Penticton and Trio. Such consent may not be unreasonably withheld provided the assignee, transferee or sub licensee agrees to assume Trio's obligations under this Agreement and Penticton is reasonably assured the assignee, transferee or sub licensee is of good character and has the business and financial ability to manage and operate all components of Trio's planned operation addressed in this Agreement. No assignment, sub-letting or parting with possession of the whole or any part of the Leased Lands shall extend beyond the Term of this Agreement or any exercised renewal thereof at the time of such assignment, sub-letting or parting with possession. Provided, however, that Penticton will reasonably co-operate with Trio and its bank to allow the bank to take security including a mortgage over Trio's interest in this Agreement or in the Lease. Subject to the provisions of Section 19.3 below, any sale or transfer of Trio's interest under this Agreement or the Lease pursuant to the security of Trio's bank shall require written mutual agreement between Penticton and the bank.

**19.2 Default of Trio's Bank Financing**

If in the event of default by Trio under Trio's bank financing secured in any way against Trio's interests in the Lands, the applicable bank shall continue to operate the facilities located on the Lands in compliance with the term and conditions of this Agreement. Should the bank not operate the facilities located on the Lands for a 24 month period any time after default or within a 36 month period after default should the bank not have transferred all of Trio's businesses conducted on or from the Lands together with the then remaining Term of this Agreement and the Lease to a replacement tenant mutually agreed to in writing by Penticton and the bank in accordance with Section 19.1 hereto, Trio's rights under this Agreement and the Lease, but none of its outstanding obligations hereunder, shall, at the option of Penticton, terminate.

**19.3 Penticton Conveyance**

Should Penticton convey or assign or otherwise divest itself of its interest in the Leased Lands, it will be relieved of all obligations under this Agreement and Lease from and after the effective date of such conveying, assigning or divesting, save and except for the obligation to account to Trio for any monies due and payable to Trio by Penticton pursuant to this Agreement up until the date of such conveyance, assignment or divestiture provided however Penticton agrees in the event of such conveyance, assignment or divestiture of its interest in the Lands, that a condition of such conveyance, assignment or divestiture shall be that the assignee of the interest of Penticton agrees to be bound by the terms of this Agreement.

**19.4 Exclusion Area**

Penticton will not issue an expression of interest, request for proposal or grant any form of license or lease for commercial operations related to water or lake activities within the Exclusion Area as shown on the plan attached hereto as Schedule "C" until January 1, 2019, save and except any existing types of such commercial operations operating prior to the execution of this Agreement including temporary or intermittent commercial operations for reoccurring annual or more frequent events or commercial operations which occur through 3rd party renters of Penticton park land under a rental agreement with Penticton. For the period January 2, 2019 to January 1, 2024 Penticton will only use a competitive process to seek expressions of interest, requests for proposals or grant any form of license or lease for commercial operations related to water or lake activities operating within the Exclusion Area.

**20.0 COMPLIANCE WITH LAWS,**

**20.1 Compliance with laws**

Trio, at its own expense, will promptly comply with all applicable requirements of all governmental, judicial and administrative authorities which relate, directly or indirectly to the use and occupation of the Lands and, without limiting the generality of the foregoing, including, all requirements pursuant to the statutes and regulations of the Province of British Columbia, all Environmental Laws, all bylaws of the City of Penticton, all applicable building codes and the requirements of all building permits issued in connection with the improvement, maintenance and operation of the intended facilities on the Lands.

**20.2 Notice of non-compliance**

Trio will deliver promptly to Penticton a copy of any notice, request, order, demand or claim of any nature, and any documentation ancillary thereto, pertaining to any actual or alleged failure by Trio or others with regard to the Lands to comply with any common law obligation or any applicable requirement of any governmental, judicial and or administrative authorities which relate, directly or indirectly to the Lands, and including, without limiting the generality of the foregoing, any actual or alleged presence or discharge of any Hazardous Substance(s) on, under or affecting the Lands. .

**21.0 LIABILITY AND INDEMNIFICATION**

**21.1 Non-Liability of Penticton**

Penticton will not be liable or responsible in any way for any personal injury that may be sustained by Trio or any invitee or licensee of Trio, or of any other person who may be upon the Lands or of any person who or for any loss of or damage or injury to, property belonging to or in the possession of Trio or any invitee or licensee of Trio or any other person, unless caused by gross negligence of Penticton or those for whom it is in law responsible, or resulting from a breach of this Agreement.

**21.2 Indemnification of Penticton**

Trio will indemnify and save harmless Penticton, its elected and appointed officials, employees and agents from and against any and all liabilities, damages, costs, expenses, causes of actions, actions, claims, suits, legal expenses on a solicitor and own client basis and judgments which Penticton may incur or suffer or be put to by reason of or in connection with or arising from:

- (a) any breach, violation or non-performance by Trio of any obligation contained in this Agreement or Lease to be observed or performed by Trio;
- (b) any damage to the Lands by Trio, or any person claiming through or under Trio, or damage to any other property howsoever occasioned by the condition, use, occupation, repair or maintenance of the Lands ,unless caused by the gross negligence of Penticton or those for whom it is in law responsible, or caused by a breach of this Agreement by Penticton;

- (c) any injury to any person, including death resulting at any time therefrom, occurring in or about the Lands unless caused by the gross negligence of Pentiction or those for whom it is in law responsible, or caused by a breach of this Agreement by Pentiction;
- (d) any wrongful act or neglect of Trio, its invitees and licensees, in and about the Lands;
- (e) any request or order made by any government authority requiring investigation or remediation of any Hazardous Substance on, under or affecting the Lands unless caused by the gross negligence of Pentiction or those for whom it is in law responsible, or by a breach of this Agreement by Pentiction;
- (f) any and all liabilities, claims, damages, costs, loss, suits, or actions of any nature whatsoever (including legal fees incurred by Pentiction in any related proceedings on a solicitor and own client basis) arising out of any release of a Hazardous Substance(s) in on or from the Lands or in, on, above or below the surface of the Lands as a result of the construction or operation of the Lands or any other activity carried out in, on, above or below the Lands by Trio or its servants, or contractors or any person for whom Trio is in law responsible.

Provided that this indemnity shall be reduced where and to the extent that the same is caused by the gross negligence of Pentiction or by a breach of this Agreement by Pentiction.

This indemnification provision shall survive any termination or expiration of this Agreement and Lease.

### **21.3 Indemnification of Trio**

Pentiction will indemnify and save harmless Trio, its directors, officers, shareholders, employees and agents from and against any and all liabilities, damages, costs, expenses, causes of actions, actions, claims, suits and judgments which Trio may incur or suffer or be put to by reason of or in connection with or arising from:

- (a) any breach, violation or non-performance by Pentiction of any obligation contained in this Agreement, or the Lease to be observed or performed by Pentiction, excepting those obligations Trio is to fulfill on behalf of Pentiction under the this Agreement.
- (b) any damage to the Lands caused by Pentiction;
- (c) any request or order made by any government authority requiring investigation or remediation of any Hazardous Substance on, under or affecting the Lands resulting from events prior to January 1, 2017.

provided that this indemnity shall be reduced where and to the extent that the same is caused by the negligence of Trio or those for whom it is responsible, or by a breach of this Agreement by Trio.

This indemnification provision shall survive any termination or expiration of this Agreement and Lease.

## **22.0 INSURANCE**

### **22.1 Trio's Insurance**

Trio, at its cost, will obtain and keep in force throughout the Term:

- (a) replacement cost fire, earthquake and all other perils insurance, including Pentiction as a named insured, of all buildings, structures and improvements located and subsequently constructed on the Lands, including extended coverage endorsement and water damage insurance (including, if applicable, sprinkler leakage) as well as all Trio's property in or on the Lands, including, without limitation, its improvements, furniture, equipment, fittings, fixtures and stock-in-trade, in an amount adequate to cover fully any loss that Trio or Pentiction could sustain. Such coverage shall include a stated amount co-insurance clause;

- (b) comprehensive general liability insurance (including, without limitation, tenant's fire, legal liability and contractual liability to cover the responsibilities assumed under Section 21 and under this Section 22 hereof) against claims for personal injury, death, property loss and damage arising out of or in connection with the business activities, use and operations of Trio and whether occurring upon or in or about the Lands or as a result of the business activities, use and operations conducted therefrom and environmental damage coverage, all in an amount of not less than \$5,000,000.00 per occurrence or such greater amount as Pentiction may reasonably require from time to time. Such coverage shall contain no exclusions for host liquor liability;
- (c) boiler and machinery insurance on such boilers and pressure vessels as may be installed by, or be under the exclusive control of, Trio on the Lands;
- (d) Trio's legal liability insurance in such amount as would a prudent tenant carry;
- (e) business interruption insurance;
- (f) amusement and water park operators liability insurance to cover all water park attractions and activities and boat/boat trailer parking related operations of Trio including an ICBC garage policy coverage and coverage for watercraft in the care, custody and control of Trio with limits sufficient to provide coverage for 100% of the values on or off-site from the Leased Lands with inclusive limits of not less than \$5,000,000 per occurrence;
- (g) environmental impairment liability insurance providing coverage for death, bodily injury, property loss and damage, remediation and all other losses arising out of or in connection with the business activities, use and occupation of the Lands in an amount of not less than \$5,000,000 per occurrence; and
- (h) such other insurance or increased insurance coverage as Pentiction might reasonably require from time to time.

## 22.2 Policies

All insurance required to be maintained by Trio hereunder shall be on terms and with insurers, carrying an A or higher rating with A.M. Best or with Standard & Poors, to which Pentiction has no reasonable objection. Trio shall furnish to Pentiction certificates or other evidence acceptable to Pentiction as to the insurance from time to time required to be effective by Trio and its renewal or continuation in force, either by means of a certified copy of the policy or policies of insurance with all amendments and endorsements or a certificate from Trio's insurer which shall provide such information as Pentiction reasonably requires. If Trio fails to take out, renew and keep in force such insurance Pentiction may do so as the agent of Trio and Trio shall repay to Pentiction any amounts paid by Pentiction as premiums forthwith upon demand.

## 22.3 Terms of insurance

Trio will cause each of the policies for the insurance referred to in Section 22.1 to contain an undertaking by the insurer(s) to notify Pentiction at least thirty (30) days prior to cancellation or any other change material to Pentiction's interests. The liability policy will include Pentiction as an additional named insured with a cross-liability clause and shall protect Pentiction in respect of claims by Trio as if Pentiction were separately insured. Trio will cause any insurance policy obtained by it pursuant to this Agreement to contain a waiver of subrogation clause in favor of Pentiction.

In regards to the insurance required pursuant to Section 22.1(a) herein such insurance shall provide that any proceeds recoverable in the event of loss shall be payable to Pentiction, provided however Pentiction agrees to make available such proceeds towards the repair or replacement of the insured property if this Agreement and Lease are not terminated under any other provision hereof. Provided, however, that Trio can make its bank the first loss payee on any policy of insurance if required by the terms of a loan form the bank for the purposes of fulfilling its obligations under Sections 10.1, 11.1, 12.1, 13.1 and/or 13.2.

If any of the policies to be obtained by Trio pursuant to its obligations herein contain any co-insurance clauses, Trio shall maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent Pentiction or Trio from becoming a co-insurer under the terms of such policy or policies and to permit full recovery from the insurance in the event of loss.

**22.4 Release of Pentiction from Liability for Insured Loss or Damage**

Trio hereby releases Pentiction, its elected and appointed officials, employees and agents from any and all liability for loss or damage caused by any of the perils against which Trio shall have insured or pursuant to the terms of this Agreement and Lease and is obligated to insure as provided herein.

**22.5 Workers' Compensation Coverage**

At all times during the Term, Trio shall at its own expense procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage in respect of all workmen, employees, servants, and others engaged in or upon any work on or in relation to the Lands non-payment of which could create a claim of any nature against Pentiction or against the Lands, this Agreement or the Lease.

**23.0 DAMAGE OR DESTRUCTION**

**23.1 Damage to the Lands**

Without qualification for the amount of insurance proceeds, Trio covenants and agrees with Pentiction that in the event of damage to or partial destruction of leasehold improvements, including any buildings or structures, Trio, subject to the regulations and requirements of any governmental authority having jurisdiction, shall repair, replace or restore any part of the improvements, buildings or structures so destroyed.

23.2 Without qualification for the amount of insurance proceeds, Trio covenants and agrees with Pentiction that in the event of complete or substantially complete destruction of the leasehold improvements including any buildings and structures, Trio, subject to the regulations and requirements of any governmental authority having jurisdiction, shall reconstruct or replace the said leasehold improvements including buildings and structures, with replacements and structures comparable to those being replaced.

**24.0 QUIET ENJOYMENT**

**24.1 Quiet enjoyment**

If Trio duly and punctually pays the Rent and Additional Rent and complies with its obligations under this Agreement and the Lease Trio will be entitled to peaceably possess and enjoy the Lands as provided herein during the Term without any unreasonable interruption or disturbance from Pentiction.

## **25.0 PERFORMANCE OF TRIO'S COVENANTS, DEFAULT AND BANKRUPTCY**

### **25.1 Penticton may perform covenants**

If Trio is in default of any of its obligations under this Agreement or the Lease then Penticton without limiting any other remedy which it may have, will have the right to remedy any such default and for such purpose may at any time enter upon the Lands. No entry for such purpose will be deemed to cause a forfeiture or termination of this Agreement or Lease in order to cure such default. Penticton may do such things as are necessary to cure the default and such things as may be incidental thereto (including without limitation, the right to make repairs and to expend monies). Trio will reimburse and indemnify Penticton for the aggregate of all expenses incurred by Penticton in remedying any such default. Penticton will be under no obligation to remedy any default of Trio and will not incur any liability to Trio for any action or omission in the course of its remedying or attempting to remedy any such default unless such act amounts to intentional misconduct or gross negligence on the part of Penticton or a breach of this Agreement by Penticton.

### **25.2 Rights of termination**

If and whenever:

- (a) the Lands are not available or in use for any of the purposes herein permitted and required continuously during the periods referred to in Sections 10.3, 11.3 and 12.3 herein during the Term;
- (b) any Rent or Additional Rent remains unpaid after any of the days on which the same ought to have been paid and following five (5) days written notice of non-payment by Penticton to Trio;
- (c) Trio has on more than two (2) occasions in any one calendar year of the Term not paid Rent or Additional Rent on the day on which same is due;
- (d) there is a breach of any of Trio's obligations under the this Agreement or Lease (other than as set out in the other clauses of this Section 25.2 which is not cured within 15 days after delivery of written notice by Penticton to Trio specifying such breach provided that if any default of Trio can only be cured by the performance of work or the furnishing of materials and if such work cannot reasonably be completed or such materials reasonably obtained and utilized within said 15 days, then such default will not be deemed to continue if Trio proceeds promptly with such work as may be necessary to cure the default and continues diligently to complete such work;
- (e) the Term or any goods and chattels on the Lands or are at any time seized or taken in execution or attachment; or
- (f) Trio assigns, sub-lets or parts with possession of the Leased Lands or any part thereof without the written mutual consent of Penticton and Trio as required herein;
- (g) if Trio is in breach or default during the Term of any obligation pursuant to this Agreement which is not cured in accordance with the terms of the Agreement;
- (h) Trio fails to fully invest and expend the required monetary amounts mandated by Sections 13.1, 13.2 and 13.3 of this Agreement as determined by Penticton's quantity surveyor;

then in any of the said cases (and notwithstanding any prior waiver of a similar or other breach of covenant) Penticton, at its option, may (and without prejudice to any other right or remedy it may then have or be entitled to) immediately or at any time thereafter and without notice or any form of legal process take possession of the Lands or any part thereof in the name of the whole and expel Trio and those claiming through or under it and remove its or their effects (forcibly if necessary) without being deemed guilty of any manner of trespass, any statute or law to the contrary notwithstanding.

### 25.3 **Bankruptcy**

If and whenever:

- (a) a receiver, guardian, trustee in bankruptcy or any other similar officer is appointed to take charge of all or any substantial part of Trio's property by a court of competent jurisdiction;
- (b) a petition is filed for the re-organization of Trio under any provision of the Bankruptcy Act or any law of Canada or any province thereof or of the jurisdiction in which Trio is incorporated relating to bankruptcy or insolvency, then in force;
- (c) Trio becomes insolvent;
- (d) Trio files a petition for such re-organization or for arrangements under any provision of the Bankruptcy Act or any law of Canada or any province thereof or of the jurisdiction in which Trio is incorporated relating to bankruptcy or insolvency then in force and providing a plan for a debtor to settle, satisfy or to extend the time for the payment of debts; or
- (e) if any application or petition or certificate or order is made or granted for the winding up or dissolution of Trio voluntarily or otherwise;

then in any of the said cases (and notwithstanding any prior waiver of breach of covenant) Penticton, at its option, may (and without prejudice to any other right or remedy it may then have or be entitled to) immediately or at any time thereafter and without notice or any form of legal process take possession of the Lands or any part thereof in the name of the whole and expel Trio and those claiming through or under it and remove its effects (forcibly if necessary) without being deemed guilty of any manner of trespass, any statute or law to the contrary notwithstanding.

### 25.4 **Waiver with respect to re-entry**

Trio hereby waives any present or future requirement that notice of Penticton's intention to re-enter be served or that Penticton commence legal proceedings in order to re-enter.

### 25.5 **Waiver of benefit of legislation and seizure**

Trio irrevocably waives and renounces the benefit of any present or future law taking away or diminishing Penticton's privilege on the property of Trio and right of distress and agrees with Penticton, notwithstanding any such law, that Penticton may seize and sell all Trio's goods and property, whether within the Lands or not, and apply the proceeds of such sale upon Rent and Additional Rent and upon the cost of the seizure and sale in the same manner as might have been done if such law had not been passed. If Trio vacates the Lands leaving any Rent or Additional Rent unpaid, Penticton, in addition to any remedy otherwise provided at law or in equity, may seize and sell the goods and chattels of Trio at any place to which Trio or any other person may have removed them in the same manner as if such goods and chattels had remained on the Lands. If Penticton, being entitled to do so, levies distress against Trio's goods and chattels, Penticton may use such force as Penticton may deem necessary for the purpose and for gaining admission to the Lands without Penticton being liable for any loss or damage caused thereby.

**25.6 Re-entry and damages**

If and whenever Penticton is entitled to re-enter the Lands, or does re-enter the Lands, Penticton may either terminate this Agreement and/or Lease by giving written notice of termination to Trio, or by posting notice of termination on the Lands, and in such event Trio and or any persons that Trio may have sublet to will forthwith vacate and surrender the Lands, or alternatively, Penticton may from time to time without terminating Trio's obligations under this Agreement make alterations and repairs considered by Penticton necessary to facilitate a further subletting or assignment including changing the door locks (without this being deemed to be a termination of the Agreement or Lease), and sublet the Lands, or any part thereof as agent of Trio for such term or terms and at such rental or rentals and upon such other terms and conditions as Penticton in its reasonable discretion considers advisable. Upon such assigning or subletting all rent and other monies received by Penticton from assigning or subletting will be applied first to the payment of costs and expenses of the assigning or subletting including brokerage fees and solicitors' fees and costs of the alterations and repairs, second to the payment of indebtedness other than Rent due hereunder from Trio to Penticton and third to the payment of Rent due and unpaid hereunder. The residue, if any, will be held by Penticton and applied in payment of future Rent as it becomes due and payable. If the rent received from the assigning or subletting during a rental period is less than the Rent to be paid during that rental period by Trio, Trio will pay the deficiency to Penticton. The deficiency will be calculated and paid monthly. No re-entry by Penticton will be construed as an election on its part to terminate the Agreement or Lease unless a written notice of that intention is given to Trio. Despite an assignment or subletting without termination, Penticton may elect at any time to terminate this Agreement and/or Lease for a previous breach. If Penticton terminates this Agreement and/or Lease for any breach and/or elects to claim damages for such breach, Trio will pay to Penticton on demand therefor:

- (a) Rent to the date of termination;
- (b) all additional charges and Additional Rent payable by Trio pursuant to the provisions hereof to the date of termination;
- (c) such expenses as Penticton may incur or have incurred in connection with re-entering or terminating and assigning or re-letting, collecting sums due or payable by Trio and realizing upon assets seized, including brokerage expense, legal fees and disbursements determined on a solicitor-client basis, keeping the Lands in good order and repairing and maintaining the same, and preparing the Lands for assigning or re-letting; and
- (d) as liquidated damages for the loss of Rent and other income of Penticton expected to be derived from this Lease during the period which would have constituted the unexpired portion of the Term had it not been terminated, the amount, if any, by which the rental value of the Lands for such period established by reference to the terms and provisions of this Agreement exceeds the rental value of the Lands for such period established by reference to the terms and provisions upon which Penticton assigns or re-lets them, if such assignment or re-letting is accomplished within a reasonable time after termination of the Agreement and/or Lease and otherwise with reference to all market and other relevant circumstances.

**25.7 Remedies of Penticton are cumulative**

The remedies of Penticton in this Agreement and the Lease are cumulative and are in addition to any remedies of Penticton at law or in equity. No remedy will be deemed to be exclusive and Penticton may from time to time have recourse to one or more of all the available remedies specified herein or at law or in equity.

**25.8 Payment of Penticton Expenses**

If at any time an action is brought where Penticton is otherwise required to employ the services of a bailiff, an agent, or its solicitors because of the breach by an act or omission of any covenant herein contained on the part of Trio, Trio shall pay to Penticton all expenses incurred by Penticton in the enforcement of its rights and remedies hereunder, including Penticton's administrative costs and legal fees on a solicitor and his own client basis in connection therewith, together with interest at the Prime Rate plus two percent (2%) per month, calculated monthly, not in advance, from the date of demand until paid.

**26.0 ABILITY TO PERFORM**

**26.1 Ability to Perform**

Except as herein otherwise expressly provided, if and whenever to the extent that either Penticton or Trio shall be prevented, delayed, or restricted in the fulfillment of any of its obligations hereunder other than the payment of Rent by reason of civil commotion, warlike operation or like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any significant and substantial material, service, utility, or labor required to fulfill such obligation, or by reason of any statute, law, or regulation of, or inability to obtain any permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfillment, or by reason of other unavoidable occurrence, other than the lack of funds, the time for fulfillment of such obligations shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfillment thereof, and the other party to the Agreement or Lease shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned but nevertheless in the event the delay for any one occurrence exceeds a period of thirty (30) days, the Term of the Agreement and the Lease shall be deemed to be extended for the period of such delay without additional payment of Rent payable to Penticton.

**27.0 OVERHOLDING**

**27.1 Overholding**

If Trio remains in possession of the Lands after the expiration of the Term and without the execution and delivery of a new Agreement and Lease or subject to renewal in accordance with Sections 8.1 and 8.2, Penticton may re-enter and take possession of the Lands and remove Trio therefrom and Penticton may use such force as it may deem necessary for that purpose without being liable in respect thereof or for any loss or damage occasioned thereby. While Trio remains in possession of the Lands after the expiration of the Term, the tenancy, in the absence of written agreement, will be from month to month only at a Rent equal to two times the Rent payable in respect of the rental period immediately preceding expiration of the Term, payable, on a pro-rata basis, in advance on the first day of each month and Trio will be subject to all terms of the Agreement and Lease, except that the tenancy will be from month to month only and a tenancy from year to year will not be created by implication of law or otherwise.

**28.0 INSPECTION SALE AND LEASE**

**28.1 Penticton's sign**

Penticton may, during the last 12 months of the Term, place upon the Lands a notice of reasonable dimensions and reasonably placed so as not to interfere with the business of Trio stating that the Lands are to be re-let.

**28.2 Inspection**

Penticton or its representatives may exhibit the Lands and at reasonable times to prospective tenants during the last twelve (12) months of the Term of this Agreement and the Lease.

**29.0 LEGAL COSTS & COMMUNICATION TO PUBLIC**

**29.1 Legal Costs Associated with This Agreement**

Penticton shall be responsible for paying the first TEN THOUSAND (\$10,000.00) in Penticton legal fees associated with creating the Term Sheet, this Agreement and the Skaha Marina – Marina Development agreement. Any Penticton legal fees over and above TEN THOUSAND (\$10,000.00) shall be shared on an equal basis between Penticton and Trio.

**29.2 Communications to the Public**

Penticton and Trio agree that it would be beneficial to work together on communicating the benefits of this Agreement to the public and shall work collaboratively in all communications to the public about this Agreement.

**30.0 MISCELLANEOUS**

**30.1 Waiver**

No waiver of any default will be binding unless acknowledged in writing by Penticton.

**30.2 Condoning**

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.

**30.3 Severability**

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 the Agreement and Lease the remaining provisions will continue to have full force and effect.

**30.4 Headings**

All headings in this Lease are inserted for convenience of reference only and will not affect the construction and interpretation of this Agreement.

**30.5 Representations and entire agreement**

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 with respect to the Leased Lands, that no agreement collateral hereto will be binding upon Penticton unless made in writing and signed by Penticton and that this Agreement constitutes the entire agreement between Penticton and Trio with respect to the Leased Lands.

**30.6 Notices**

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:

(a) To Penticton at:

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

(b) To Trio at:

c/o Pusher Mitchel 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 Section 30.6 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.

**30.7 Time of essence**

Time will be of the essence of this Agreement.

**30.8 Governing Law**

This Agreement and Lease will be construed and governed by the laws of the Province of British Columbia.

**31.0 ENVIRONMENTAL MATTERS**

**31.1 Hazardous Substance(s)**

Trio covenants with Penticton that if, as a consequence of any release of a Hazardous Substance(s) in, on or from the Lands or below the surfaces of either resulting from the construction on or the operation of the Lands or any other activity carried out, on or in the vicinity of the Lands by Trio or its servants, agents, or contractors or any person for whom Trio is in law responsible, any actions required to be taken in order to comply with any Governmental Requirement(s) applicable to the presence or removal of any Hazardous Substance(s) on or from the Lands (including any Governmental Requirement(s) relating to testing for or identification of Hazardous Substance(s)), and if Trio has received notice in writing of such Governmental Requirement(s) from the relevant authority or from Penticton, then Trio shall at its expense take such action as required by the Governmental Requirement(s) (or alternatively such other action as may be acceptable to the relevant authority after discussions with Trio).

31.2 If Trio fails to take any action required to be taken by Trio pursuant to Section 31.1, Penticton may (but shall not be obligated to) take such action after giving five (5) days written notice or lesser period of notice in the event of emergency to Trio of its intention to do so, unless within such five (5) day period or lesser period in the event of emergency, Trio has taken the required action or has commenced in and is continuing diligently to carry out such action, and Penticton shall, for that purpose, be permitted to enter the Lands with appropriate equipment. Trio covenants to reimburse Penticton for all reasonable costs incurred by Penticton in taking such action pursuant to this Section 31.2 within thirty (30) days after receiving from Penticton an invoice and reasonable supporting details relating to such costs.

31.3 Notwithstanding anything herein to the contrary, Penticton acknowledges that Trio will not be responsible for any remediation to the Lands in respect of Hazardous Substance(s) documented in the Levelton Reports listed in Section 14.7 of this Agreement.

31.4 Trio waives the requirement, if any, for Penticton to provide a site profile for the Lands under the *Environmental Management Act*, S.B.C. 2003, c. 53 or any regulations pursuant to that Act, as amended or replaced from time to time.

### **32.0 PENTICTON AND TRIO ONLY**

It is understood and agreed that nothing contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between the said parties, other than the relationship of landlord and tenant with respect to this Agreement and Lease.

### **33.0 DISPUTE RESOLUTION**

#### **33.1 Dispute Resolution**

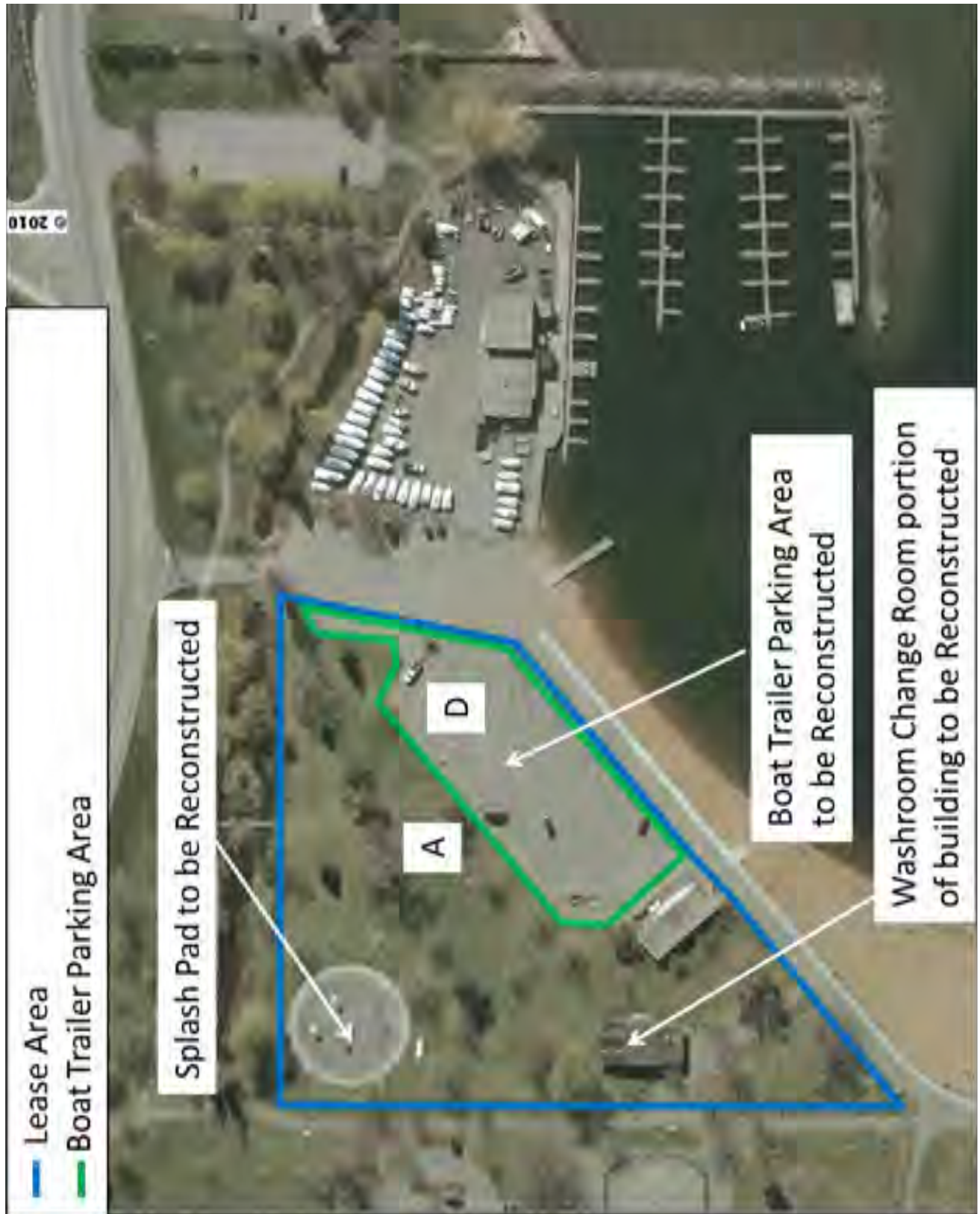
Except for the exercise of termination remedies available to Penticton under this Agreement and in any subsequent agreements between Penticton and Trio, if the parties to this Agreement are unable to agree on the interpretation or application of any provision herein or are unable to resolve any other issue in dispute pertaining to this agreement, on notice by either party to the other, the parties agree:

- (a) Firstly, to promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement in dispute;
- (b) Secondly, if the parties are unable to negotiate a resolution pursuant to Section 33.1 (a) above, within 60 days of the notice of dispute or disagreement, to request the assistance of a skilled commercial mediator, such mediator to be mutually agreed upon by the parties within 30 days of a receipt by a party of written notice requiring the mediation, failing which the mediator will be appointed by the British Columbia International Commercial Arbitration Centre (BCICAC). Any mediator selected must be qualified and experienced in the subject matter of the Agreement. Such mediation will be conducted under the Commercial Mediation Rules of the BCICAC to resolve a dispute unless otherwise agreed by the parties. If a mediator is appointed under this provision, the mediated negotiations will be terminated 60 days after the appointment unless the parties agree otherwise; and
- (c) Thirdly, if the negotiations in Section 33.1 (b) are terminated without resolution, to request the assistance of a single arbitrator by consent or if the parties cannot agree on the selection of an arbitrator within 30 days, the arbitrator will be appointed pursuant to the *Commercial Arbitration Act* of British Columbia and the decision of the arbitrator will be binding on both parties and final.

#### **33.2 Costs of Dispute Resolution**

The parties agree that each party will bear its own costs and expenses incurred in respect of the dispute resolution processes in Section 33.1 above and neither party will seek recovery against the other party for any of those costs and expenses.

Schedule "A" – Plan for the Lands



Schedule "B" – Utilities Plan Electrical



Schedule "B" – Utilities Plan Gas



**Schedule "B" – Utilities Plan Irrigation**



Schedule "B" – Utilities Plan Sanitary



Schedule "B" – Utilities Plan Storm



Schedule "B" – Utilities Plan Water



Schedule "C" - Exclusion Area



## Schedule D - Arch Concept Water Park







## Schedule E – Architectural Concept Drawings of Boat/Trailer Parking Lot





Schedule F – Architectural Concept Drawings of the Spash Pad



**waterplay**  
Solutions Corp.

COPYRIGHT 2014 WATERPLAY SOLUTIONS CORP.  
Local regulations may require the use of safety surfacing in and around certain features.  
These regulations may vary from region to region and we recommend each park owner to satisfy this need independently.

**AILSA CRAIG POND, AILSA CRAIG, ON**  
Visual representations, illustrations, photographs, art renderings, and other graphic representations  
and references are intended to portray only artist's impressions of the design and cannot be regarded as representation of fact.

**Schedule G – Architectural Concept Drawings of the Washroom Change Room**



**Schedule H – Architectural Concept Drawings of the Dragon Boat Club House**





# Skaha Lake Marina and Waterpark

Operational Plan 2015

TRIO MARINE GROUP



Regarding the operations of the Skaha Lake Marina and Waterpark please refer to the attached organizational charts. TRIO Marine Group will be the umbrella company under which all operations will be monitored. The Operating Manager will be responsible for the day-to-day operations of both the Marina and the Waterpark. The Marina will have four key personnel in the positions of Marine Rental Manager, Chef, Retail Sales Manager, and Administration Supervisor. The Waterpark will have two key personnel in the positions of Waterpark Supervisor and Food & Beverage Service Supervisor. Each supervisor will be responsible for their staff, training and certifications, scheduling and job descriptions.

The Marina will operate from May 1 to September 30, weather depending. The Waterpark will operate from May 15 to September 15, weather depending. The Restaurant will be operational, but will be dependent on weather and traffic.

STAFF ORGANIZATIONAL CHART – SKAHA LAKE MARINAMarina

- a. Refer to Organizational Chart above
- b. Staff requirements for Marina:
  1. One full time General Manager (shared with Waterpark)
  2. One Operations Manager (shared with Waterpark)
  3. One Marine Rentals Manager
  4. One Chef
  5. One Retail Sales Manager
  6. One Administration Supervisor, one Bookkeeper (shared with Waterpark)
  7. Seven seasonal, hourly paid staff
  8. One seasonal, hourly 'On Call' staff on rotational basis
  9. One seasonal, hourly Maintenance/Janitorial staff
  10. Electrician/Plumber: on call contractors
- We will provide Environmental training for fuel handling as well as First Aid training

STAFF ORGANIZATIONAL CHART – SKAHA LAKE WATERPARKWaterpark

- a. Refer to Organizational Chart above
- b. Staff requirements for Waterpark
  1. One full time General Manager (shared with Marina)
  2. One Operations Manager (shared with Marina)
  3. One Waterpark Supervisor
  4. One Food & Beverage Service Supervisor
  5. Fourteen seasonal, hourly Lifeguards/Ride Operators
  6. Two 'On Call' Lifeguards (rotational)
  7. Four seasonal, hourly cashiers
  8. Ten seasonal, hourly concession staff (cooks/cashiers)
  9. Two seasonal, hourly 'On Call' concession staff
  10. One seasonal, hourly Maintenance/Janitorial Supervisor (shared with Marina)
  11. One seasonal, contract Water Maintenance Technician
  - Lifeguards will be fully certified including First Aid
  - Food Concession staff will have Food Safe Certification
  - Water Maintenance Technician certified

## Service Methodology

We will endeavour to deliver quality customer service by employing the following:

- a. World Host Training for our Supervisors
- b. Weekly Staff meetings (additional staff meetings as required)
- c. On-site customer comment/satisfaction surveys and comment cards.  
Administered by the General Manager
- d. Online customer contact, comment, and information page, including review and response to online reviews
- e. Provide staff training on updates as required, including Serving it Right for staff handling alcohol sales

## Staff Hiring

Staff hiring and training programs will be administered by the General Manager. These training programs will include: Lifeguard certifications, First Aid certifications, Environmental and Fuel handling, Water Quality certifications, Food Safe certifications, and World Host Training.

## Measurable Quality Control Programs

The General Manager will incorporate the following:

1. Ongoing staff performance reviews. This will include self-assessment interviews and final performance rating.
2. Customer Surveys re:
  - a. Quality of Customer experience
  - b. Quality of Staff experience
  - c. Quality of Facilities experience
  - d. Overall Customer satisfaction
  - e. Review of online / social media comments

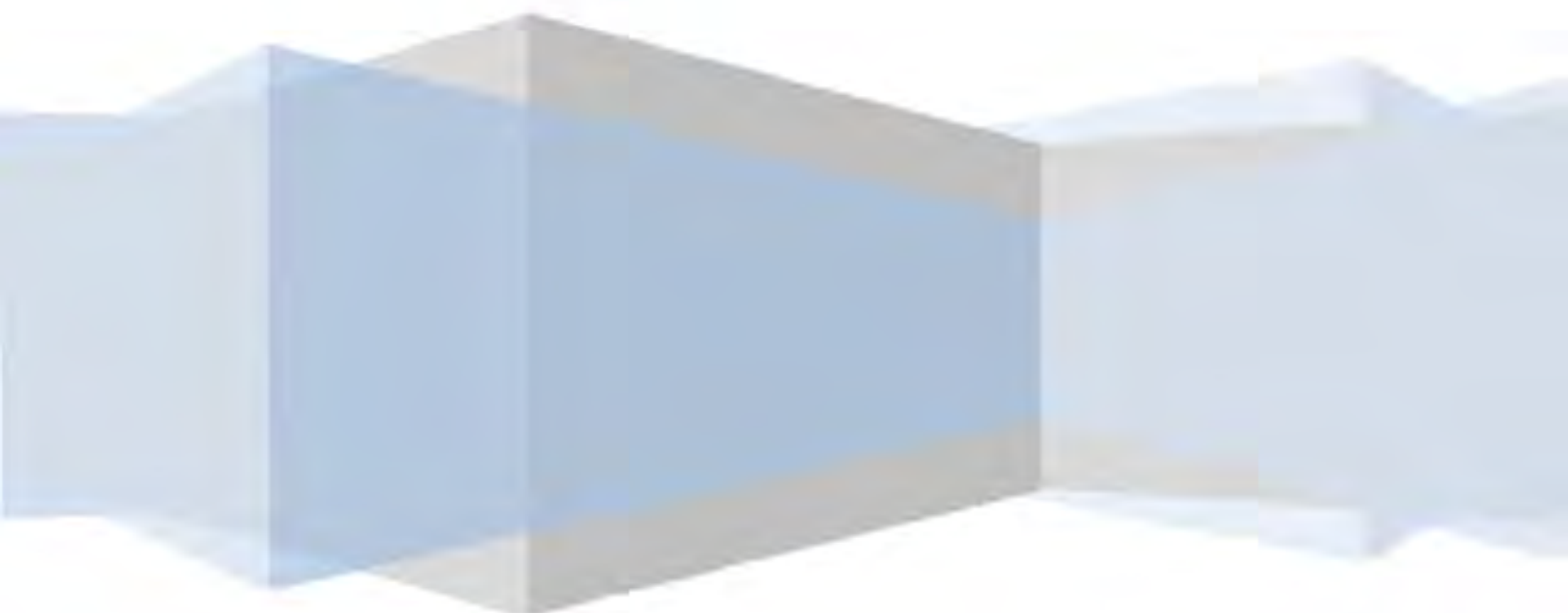


TRIO MARINE GROUP



# Skaha Lake Marina and Waterpark

Marketing Plan 2015





## INTRODUCING THE CONCEPT

Welcome to the Skaha Lake Marina and Waterpark, a multi-use gateway to Penticton's iconic Skaha Lake, already renowned for its wide and expansive beach, some of the warmest summertime water in British Columbia, and home to a variety of waterborne entertainment options from family to personal fitness to organized competition.

The Skaha Lake Marina and Waterpark addresses a critical need at the south end of Penticton, providing a number of services and options for locals and visitors alike, including:

- a destination marina with public and private slips, providing seasonal service for launch and/or storage, as well as seasonal services and rentals for visitors;
- a family-friendly waterpark, filling a missing niche in Penticton to provide a safe and exciting activity for a younger demographic, in addition to families, as well as school-aged children;
- a new mid-end restaurant, taking full advantage of stunning views of the surrounding mountains and Skaha Lake, servicing a growing food and wine sector in the South Okanagan;
- an overall new lake side experience in Penticton with the potential to draw business from the immediate area, the region, as well as certain traveler types identified in regional marketing strategies.

As the City of Penticton continues to build and uphold its brand as a vibrant, waterfront community, the development of the Skaha Lake Marina and Waterpark property provides a welcome addition to what is quickly becoming a more accessible, exciting, and lively neighbourhood on the city's southern border. The Skaha Lake area has the potential to become its own "pocket destination" within the city, growing economic activity and tourism opportunities focused on markets critical to the South Okanagan as a desired destination.

### Key Messages

- a full-service waterfront destination, the Skaha Lake Marina and Waterpark gives a warm welcome to every guest;
- the Skaha Lake Marina and Waterpark provides excellent service and a safe environment where beachfront and water-based activities can be enjoyed and shared with friends and family;
- the Skaha Lake Marina and Waterpark is a vibrant waterfront property for recreational and competitive water-sport enthusiasts;
- the Skaha Lake Marina and Waterpark invites you to experience a full day of fun, from the beach to the water to the patio, in one of the most beautiful settings in the Okanagan;
- Potential tagline: spend the day at play (at the Skaha Lake Marina and Waterpark).

### Market Reach: Local

A waterfront city, Skaha Lake is one of two water and beach areas addressing a number of local service gaps, with the potential to expand market reach, providing essential services for the following targets:

- boat and equipment owners seeking launch sites and/or storage facilities;
- recreational water sport enthusiasts requiring rentals, equipment storage, and access to areas around Skaha Lake;
- local families searching for warm weather entertainment options, including waterslides and lake activities;
- nearby residents seeking a new destination restaurant option in the south end of Penticton;
- local accommodations operators seeking opportunities to create packages and partnerships to keep visitors in the area, increasing room nights;
- local event planners and organizations seeking facilities for festivals and events to draw visitors to the region.

### Market Reach: Regional

The surrounding communities to the south and west – Okanagan Falls, Oliver, Keremeos and Cawston – lack the full-service amenities provided by the Skaha Lake Marina and Waterpark, and are all within a 45 minute drive, which traveler studies show is a minimal barrier to reach a "day tripper" destination. In addition, the development of packages to draw regional visitors can extend their stay to a brief getaway, filling room nights in the area.

Specifically, regional targets include:

- area boat and equipment owners seeking seasonal launch and storage facilities;
- those seeking a day-long getaway, with the convenience of a "stay in place" full-service area encompassing activities, entertainment and food;
- travellers to Penticton in search of a one-stop beach destination offering waterfront activity options for a multitude of traveler types (see below).

### Market Reach: Traveler Types | Tourism

As part of its regional destination marketing plan, the Thompson Okanagan Tourism Association has adopted the Explorer Quotient model of tourism marketing, based on extensive market research conducted both regionally and with the Canadian Tourism Commission. "EQ" marketing is based on what kind of experiences a traveler is seeking, based on psychographic and demographic measurements including purchasing habits, age and gender, income level, and more. Most destination marketing organizations in the Okanagan have adopted EQ marketing, creating the potential for packages that include accommodations, culinary tours, adventure and sports travel.

While the home area of a traveler does, to a degree, dictate what experiences they are more likely to seek, the more important aspect of EQ marketing is to create an experience that entices a traveler to seek out an authentic destination with appropriate activities.

Key external target areas include:

- the Okanagan from the border to Kelowna, expanding on the regional targets;
- "just over the border" northern Washington communities within a two to five hour driving radius, or a 90 minute flight radius;
- the metro Vancouver, Seattle, and Calgary areas, specifically weekend and extended (long) weekend travelers, as well as seasonal summer travelers such as families, and wine and culinary travelers drawn by Okanagan wine events or touring packages;
- Northern Alberta, including oil patch workers seeking a getaway, or a convenient Okanagan location to store and then use boating and water sport equipment when visiting the area.

NOTE: as marketing expands, special attention must be paid to the addition of WestJet flights into Penticton (which began on October 2014), as well as Air North flights servicing Kelowna – Whitehorse (currently in service), and airlines servicing the oil patch to Kelowna (currently in service), for potential target market expansion and the development of partnerships and/or packages to entice these flyers to Penticton. There will be an increased amount of tourists coming into the Penticton region due to a favourable current exchange rate.

### Traveler Type Markets: EQ

These are traveler types identified by Thompson Okanagan tourism as the most likely travelers to come to the South Okanagan:

Free Spirits - this group seeks an experience that is generally close to nature, provides access to outdoor activities, and is hassle free, possibly near to amenities such as spas or related activities.

"A thrill-seeking hedonist, travel satisfies an insatiable need for the exciting and the exotic. Free spirits like the best of everything and want to be surrounded by others who feel the same way."

Cultural Explorers - this group seeks activity that is authentic to the location (reflecting the history or culture), and near cultural activities; note, these activities do not necessarily include structured visual or performing arts, but activities that are reflective of a sense of place.

"Seeking constant opportunities to embrace, discover, and immerse oneself in the entire experience of the culture, people and settings of the places visited."

Authentic Experiencers - related to cultural explorers, this group seeks activity that is reflective of the location, is not ostentatious, is hassle free, and provides an experience that closely reflects the area.

"Appreciative of the understated beauty of natural and cultural environments, and enjoy using all senses when exploring, and getting to know the places visited."

## MARKETING AND COMMUNICATIONS TACTICS: Project Announcement

It is critical that the local and regional markets and stakeholders are involved in the initial public conversations to generate support and excitement for the Skaha Lake Marina and Waterpark. The focus of marketing activities for the project announcement will target citizens of Penticton, particularly the residents and neighbourhoods in the South end, as well as regional stakeholders and businesses that benefit from the addition of the property to Penticton.

Targets:

- citizens of Penticton and the immediate surrounding areas, including Okanagan Falls, residential areas along Skaha Lake, and Kaleden;
- surrounding businesses that will benefit from economic activity generated by the Skaha Lake Marina and Waterpark, including members of the Penticton and Wine Country Chamber of Commerce and the Downtown Penticton Association;
- Regional stakeholders including local governments (City of Penticton, Regional District of the South Okanagan), and regional destination marketing (tourism) organizations;
- Tourism stakeholders, including Tourism Penticton, the Penticton Hospitality Association, area winery associations (Naramata Bench, Okanagan Falls, Summerland).

Tactics:

- to control misinformation, detailed information will be sent to current slip holders, and an invite only meeting will be held for this audience;
- initial press release announcing approval of the project, sent to all Okanagan media, for release immediately upon approval of the project;
- press conference on the project site, tentatively scheduled for June or July 2015;
- multiple public information forums tentatively scheduled for each month of June 2015/July 2015 to keep targets informed as the project progresses.

## MARKETING AND COMMUNICATIONS TACTICS: Grand Opening

The "grand opening" of the Skaha Lake Marina and waterpark will be a key component of the marketing plan in order to generate excitement, as well as sales for the property as a whole. The grand opening

will be a fun, exciting, community-based event showcasing everything the project has to offer. An appropriate events plan and budget will be produced.

The targets are similar to those for the initial project announcement, with some expansion, but in this case they will be invited to a celebratory event, rather than simply receiving information:

- Citizens of Penticton and the immediate surrounding areas, including Okanagan Falls, residential areas along Skaha Lake, Kaleden, Oliver;
- Surrounding businesses that will benefit from economic activity generated by the Skaha Lake Marina and Waterpark, including members of the Penticton and Wine Country Chamber of Commerce and the Downtown Penticton Association;
- Regional stakeholders including local governments (City of Penticton, regional district of the South Okanagan), and regional destination marketing (tourism) organizations;
- Tourism stakeholders, including Tourism Penticton, the Penticton Hospitality Association, area winery associations (Naramata Bench, Okanagan Falls, Summerland, Oliver - Osoyoos).

Tactics:

- Personalized invites to current slip holders;
- Targeted invitations to business organizations in the South Okanagan for distribution to their members;
- Personal invitations to all members of City Council, including an invitation to the mayor for an official opening ceremony, such as a ribbon-cutting;
- Press invite sent to all Okanagan media;
- Media kits, including press release, background information, and professional photos prepared for on-site media at the event, as well as distribution for absent media, including a digital version for website download;
- Multiple print advertising in South Okanagan outlets as budget allows, including potential pro bono advertising from local Penticton papers, including giveaways;
- Inclusion of event details on all local media events calendars, including Shaw TV and Global TV;
- Invitation to a select radio outlet (Bell Media) to conduct live radio broadcast during the opening event, including giveaways;

## MARKETING AND COMMUNICATIONS TACTICS: ANNUAL PLAN

A detailed month to month marketing plan will be developed as the project moves forward, with specific targets and detailed tactics depending on month-to-month activity, both internally at the Skaha Lake Marina and Waterpark, and externally in the region.

The opportunities to promote the facility may range from key points in the development and construction, including alerting the media to photo opportunities as the building progresses, to partnering with local businesses, such as accommodations and major festivals and events, to create enticing promotional opportunities or packages to both engage the local community as well as potential visitors.

At a base point, the ongoing annual marketing tactics will include:

- Development and optimization of a comprehensive and mobile friendly website(s) which will include mobile friendly booking options;
- A social media footprint including Facebook, Twitter, and Instagram, to be adjusted as networks fluctuate, including a content strategy;
- Digital ads in targeted, well trafficked websites, including Castanet, Destination BC, large-scale accommodation and travel websites;
- Print advertising in regional and provincial visitor guides as budget allows;
- Print advertising in local and regional newspapers and publications as budget allows;
- Print advertising in in-flight magazines servicing Penticton and Kelowna, as budget allows;
- The development of a standard rack card to be distributed by a provincial racking system (which includes parts of Alberta and Washington, as well as specific airports and BC Ferries); a distribution plan will be developed for the rack card;
- The development of a special events plan for peak use months, as well as the shoulder season months, to entice guests to visit the campus either for internal special events (such as a wine tasting in the restaurant, or a water sports festival), as well as external events that are executed by another organization seeking to use the Skaha Marina and Waterpark facilities (such as the Penticton Dragon Boat Festival).



## THE MARINA

While there are current marina services on Skaha Lake, the project will expand these options for the local and regional markets, as well as visitors desiring either permanent or temporary services. The marina is a full-service facility adding to current options on Skaha Lake, which allows for potential economic activity as use of all of the amenities along Skaha Lake expands.

Specific marketing targets:

- Current local slip leasees
- Slip renters and new local slip leasees
- Tourists seeking temporary storage or equipment rental
- Current and future boat owners, including those from areas outside of Penticton needing services in the Okanagan

Specific tactics:

- Direct print contact with current slip leasees to ensure clear communication;
- Invitation only event to current slip owners to an information session.



## THE WATERPARK

The Waterpark fills a missing amenity in Penticton, which has been without water slides for some time. Providing a family-friendly, safe environment for interactive play, it lends itself to specific targets both locally and from the incoming seasonal tourist population each summer. The addition of the Waterpark to the Skaha Lake Marina property provides value added entertainment for guests coming to Skaha Lake. Users of the Waterpark may not use the full facilities of the property, but would add secondary sales activity. In addition, gift certificates or other reward programs can be developed to specifically target the younger market, such as a "10th visit free" punch card, or a season's pass.

Specific marketing targets:

- Local and visiting families seeking water-based entertainment;
- Independent teenagers (13+) seeking group activities away from family supervision;
- Local and regional elementary schools needing year end/summer field trips.

Specific tactics:

- Themed events, or themed event days, targeting the younger demographic, including family days (kids play free);
- rewards program for repeat use (punch card);
- rewards program for locals, targeted to increase use during the shoulder season;
- discount packages and partnerships with nearby and regional accommodations to encourage visits, including guest coupons



## THE RESTAURANT

Currently, under the working title of the "Skaha Lake Grill", the concept behind this new establishment is a mid-end, upscale casual restaurant appealing to families enjoying the Skaha Lake Marina and Waterpark campus who may need a convenient break for sustenance and hydration, generally at lunch and in the afternoon to early evening. In addition, it offers an opportunity to take full advantage of the spectacular views as an evening to late-night destination for the more sophisticated diners.

As the project progresses, options are being explored to outsource the management of the restaurant to a third-party with a strong focus in food and wine service. This may result in the third-party choosing a specific name and brand for the restaurant, as well as adjusting the concept, however the overall concept will remain as outlined below.

The restaurant will service guests with lunch and dinner menus that are elevated grill dishes, with the possibility of brunch options in the high season, as well as a limited kid's menu to appeal to families. While the menu is uncomplicated and accessible, the quality will be high to entice the casual diner, building up repeat business from the local market in the off and shoulder seasons.

Guests will find it a convenient stop to recharge during a day of activity. At the same time, the restaurant will become a destination spot for upscale casual dining in the south end of Penticton, offering a new choice for residents in the area as well as for tourists staying in local accommodations.

Specific marketing tactics are in place working within the changes in regulation brought into effect by the new liquor laws in British Columbia. Licensing will allow children to be on the premises while their parents enjoy a glass of fine Okanagan wine or local craft beer. Special events will be developed to showcase the food and wine culture of the South Okanagan, including partnering on events with local wineries, breweries, and chefs.

Specific marketing targets:

- Local diners seeking a new lakeside option in Penticton for lunch and dinner;
- Guests of nearby accommodations that may or may not have their own food services;
- Wine and food travelers to the Okanagan;
- Wine tour operators that need access to a restaurant option as part of wine tours in the South Okanagan, either as part of a day trip or a longer package.

Specific tactics:

- Menu preview event prior to the official opening, inviting key food and wine writers and bloggers for a sneak preview of the offerings;
- Specific advertising in regional food and wine publications;
- The development of special events, particularly in the shoulder and off seasons to attract guests;
- Developing partnerships with festivals and events to offer special themed menu items or other enticements to bring festival attendees to the restaurant.

| Skaha Marina and Waterpark: Suggested Marketing 2014 |                               |            |
|------------------------------------------------------|-------------------------------|------------|
| <b>Key Assets</b>                                    |                               |            |
| <b>Logo/Brand Development</b>                        |                               | \$1,000.00 |
| <b>Website</b>                                       |                               |            |
|                                                      | Design                        | \$2,500.00 |
|                                                      | Programming                   | \$2,500.00 |
|                                                      | SEO                           | \$500.00   |
|                                                      | Hosting Fees                  | \$350.00   |
| <b>Rack Card</b>                                     |                               |            |
|                                                      | Design                        | \$500.00   |
|                                                      | Printing                      | \$750.00   |
|                                                      | Distribution                  | \$1,000.00 |
| <b>Social Media</b>                                  |                               |            |
|                                                      | Facebook                      | \$1,000.00 |
|                                                      | Twitter                       | \$500.00   |
|                                                      | Instagram                     | \$500.00   |
| <b>Annual Activities</b>                             |                               |            |
|                                                      | Visitor Guide – Penticton     | \$800.00   |
|                                                      | Visitor Guide – Summerland    | \$300.00   |
|                                                      | Visitor Guide – Oliver        | \$300.00   |
|                                                      | TOTA Experiences Guide        | \$1,000.00 |
|                                                      | Air North In Flight Magazine  | \$1,000.00 |
| <b>Memberships</b>                                   |                               |            |
|                                                      | Tourism Penticton             | \$500.00   |
|                                                      | Penticton Chamber of Commerce | \$300.00   |
|                                                      | Other                         | \$200.00   |
| <b>Project Announcement: June 2015</b>               |                               |            |
| Press Release                                        |                               | \$325.00   |
| Open House                                           |                               | \$1,500.00 |
| <b>Advertising</b>                                   |                               |            |
|                                                      | Print                         | \$1,500.00 |
|                                                      | Radio                         | \$750.00   |
|                                                      | Digital                       | \$100.00   |
| <b>Grand Opening</b>                                 |                               |            |
| Open House                                           |                               |            |
|                                                      | Catering                      | \$1,500.00 |
|                                                      | Entertainment                 | \$500.00   |
|                                                      | On-site radio                 | \$500.00   |
|                                                      | Signage                       | \$100.00   |
|                                                      | Staffing                      | \$500.00   |
|                                                      | Equipment                     | \$1,000.00 |
| <b>Advertising</b>                                   |                               |            |
|                                                      | Print                         | \$2,500.00 |
|                                                      | Radio                         | \$1,000.00 |
|                                                      | Digital                       | \$150.00   |
| <b>Printing</b>                                      |                               |            |
|                                                      | Invitations                   | \$250.00   |
|                                                      | Mailing                       | \$100.00   |
|                                                      | Media Kits                    | \$750.00   |

Schedule “~~K~~” – City of Penticton Council Resolution

### Attachment "C" – Summary of Trio's Public Engagement Sessions

| Date of Meeting             | Location of Meeting          | Group met with                   | Number of people in attendance | Nature of questions asked                                                                                                                                                                                                                            | Overall feeling of the group toward the project                                                                                |
|-----------------------------|------------------------------|----------------------------------|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| May 22 <sup>nd</sup> , 2015 | City Hall – Committee Room B | Waterfront Enhancement Committee | 10                             | Is there going to be accommodation available? What are the timelines? Is the beach still available for public use? Will the boat launch still be public? How is the SplashPad being relocated? Have we been in conversation with the Dragon Boaters? | Positive – input that there would be a further discussion with regards to design that they could be aware of and involved with |
| May 27 <sup>th</sup> , 2015 | City Hall                    | Tourism Penticton                | 12                             | Similar to above. Would there be the possibility of relocating the boat launch to the other side of the marina? Is the area around the marina open at all times?                                                                                     | Very very positive.                                                                                                            |
| June 3 <sup>rd</sup> , 2015 | 533 Vees Dr                  | Penticton Chamber of Commerce    | 10                             | Similar to above. Would there be accommodation in the restaurant/marina building?                                                                                                                                                                    | Very positive                                                                                                                  |
| June 3 <sup>rd</sup> , 2015 | Days Inn Conference Centre   | Penticton Rotary Club            | 80                             | The Rotary Club did not allow for any questions or comments to be made.                                                                                                                                                                              | None Provided                                                                                                                  |

|                             |                          |                                            |       |                                                                                                                                                                                                                                  |                                                                                            |
|-----------------------------|--------------------------|--------------------------------------------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
|                             |                          |                                            |       |                                                                                                                                                                                                                                  |                                                                                            |
| June 3 <sup>rd</sup> , 2015 | Skaha Lake Marina        | Penticton Western News                     | 1     | What are our plans for the area? What is happening to the docks? What will the restaurant menu be like? What will access to the restaurant be like in terms of parking for vehicles and boats?                                   | Positive                                                                                   |
| June 6 <sup>th</sup> , 2015 | 200 Block of Main Street | Visitors of the Penticton Community Market | 200+  | What is the time frame? What will be the effect on environment? Will the waterpark be public or private? What will the admission costs be? Will there be more boat slips at the marina? What is the pricing to rent a boat slip? | Excitement, this is something that the community really needs.                             |
| June 9 <sup>th</sup> , 2015 | 2965 S Main Street       | Penticton Seniors Center                   | 25    | Time frame, how much park land will be lost                                                                                                                                                                                      | Excitement will be great for tourists and grandchildren.                                   |
| June 9 <sup>th</sup> , 2015 | Skaha Lake Marina        | Penticton Dragon Boat Club                 | 60-70 | Similar. Concerned about green space. Concerned about what their club is going to look like and if they'd have to pay for it. Questions about the second level on the new location. Timelines.                                   | 3-4 individuals not in favour of the waterpark project but overall very positive response. |

|                                   |                   |        |                                                                                      |                                                                                                                                                                                                                                           |                                                                                                                                                                                                                      |
|-----------------------------------|-------------------|--------|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   |                   |        |                                                                                      |                                                                                                                                                                                                                                           |                                                                                                                                                                                                                      |
| Ongoing open house since June 8th | Skaha Lake Marina | Public | 300 (about 200 people on the 8 <sup>th</sup> and a dozen or so coming through daily) | What is involved with the development and operation of the park? Are the slides in the pictures the exact waterslides that will be built? What is the timeline for the whole project? What is the length of the season for the waterpark? | Very positive. Public is very happy and excited to have a restaurant in the area. There are one or two naysayers that come through that do not see the project as necessary but great majority of public is excited. |

NOTE: THIS HAS BEEN OUT FOR ONLY ONE WEEK

RECEIVED

JUN 24 2015  
8:43 pm

### **Petition to the City of Penticton- Save Our Green-Space in Skaha Park**

City of Penticton has spent millions of dollars developing Skaha Park. Their efforts have resulted in a splendid public area with beautiful lawns, tall shade trees and open vistas; a green space with relaxing promenades and public areas with recreational activities unlike anything else in the city. Now 25% of the green-space (excluding the beach and parking lots) is going to be turned over to commercial developers (29+year lease) to develop a water slide, mini-golf course, and extend the marina. The footprint of this development takes over a heavily used section from the northeast parking lot to the beach that contains a splash pad and picnic tables and is close to the children's playground. A chain-link fence will surround this area. We believe that once commercial development is allowed to take place in this green-space, it will be lost forever.

An online petition can be accessed at: [www.ipetition.com/petition/save-our-park-green-space-in-skaha-park](http://www.ipetition.com/petition/save-our-park-green-space-in-skaha-park).

We the undersigned support the preservation of green-space in Skaha Park and are against leasing any area of green-space for commerce development.

---

# PENTICTON GOLDEN DRAGONS

- 171 -

Say no to commercial development on the waterfront of Skaha Park:

| Name                | Printed Name        | Address                                   |
|---------------------|---------------------|-------------------------------------------|
| C. Ester            | Charmaine Ester     | #110-705 Balsam Ave Penticton             |
| W. K. K.            |                     | SUMNERLAND                                |
| J. Meier            | INEZ NIE MEYER      | 170 JANKOVICK PL.                         |
| Gisele P. Miller    | Gisele P. Miller    | 233-805 Comox St.                         |
| Jan Finlay          | Jan Finlay          | 204-3310 Skaha Lk Rd.                     |
| Karen Taylor        | KAREN TAYLOR        | 512 11. Beach Rd.                         |
| Gerry Neiken        | Gerry Neiken        | 701 Newton Drive V2A 8Z4                  |
| Gordon Neish        | Gordon Neish        | 186 Dendrey Cr. V2A 7Z6                   |
| Bonne Borker        | BORNE BORKER        | 4531 LAKESIDE RD V2A 8W4                  |
| Sharon Christianson | Sharon Christianson | 154 Waterford Ave V2A 3T7                 |
| Linda Ward          | LINDA WARD          | #91-2333 St. Martin V2A 8J8               |
| Colleen Tar         | Colleen Tar         | 103-25 W. WILKIE ST. V2A 5L9              |
| Brad Chittenden     | BRAD CHITTENDEN     | 112-3701 WILSON ST. PENTICTON             |
| Sonya Quamme        | SONYA QUAMME        | 605 Russell Dr PENTICTON V2A 8K6          |
| Suzanne Tining      | SUZANNE TINING      | #506-3301 SKAHA LAKE RD PENTICTON V2A 6G6 |
| Hope White          | HOPE WHITE          | 153-321 YORRTON AVE V2A 3V6               |
| W. Field (Roba)     | W. FIELD (ROBA)     | P.O. BOX 313 KALEDEN V01K0                |
| Connie Forner       | Connie Forner       | 401-3105 South Main Penticton             |
| Heather Miller      | Heather Miller      | 1516 Timber St. Summerland V0H1Z9         |



**Say no to commercial development on the waterfront of Skaha Park:**

[illegible]

## Say no to commercial development on the waterfront of Skaha Park:

| Name                       | Printed Name               | Address                               |
|----------------------------|----------------------------|---------------------------------------|
| Emelene Smith              | Emelene Smith              | 37 Roy Ave Penticton                  |
| <del>John B. Foster</del>  | <del>C. FOSTER</del>       | <del>88 DUNCAN AVE</del>              |
| D. Atkinson                | D. ATKINSON                | 62 Drumhew                            |
| <del>Barbara</del>         | <del>J. BARBOUR</del>      | <del>88 DUNCAN AVE</del>              |
| A.A. Arneson               | A.A. ARNESON               | 101 Westview Dr.                      |
| Linda Self                 | L SELF                     | 661 Willse Blvd.                      |
| Donna Verbeke              | DONNA VERBEKE              | 405 3105 SOUTH MAIN ST PENTICTON      |
| <del>Patricia Shaver</del> | <del>PATRICIA SHAVER</del> | <del>2629 Cornwall Dr Penticton</del> |
| Heslie Marion              | Heslie Marion              | 103 Green Ave E - Penticton           |
| Gloria Marten              | GLORIA MARTEN              | 161 Murray Dr. Penticton              |
| J. Murray                  | J. MURRAY                  | 802 - 2285 ATKINSON ST                |
| Carl Weber                 |                            | 248 Fernside                          |
| <del>H. Mary</del>         | <del>H. MARY</del>         | <del>802 Atkinson St 2285</del>       |
| E.S. Wondal                | E.S. WONDAL                | #103 - 2245 ATKINSON                  |
| V. Zelesko                 | V. ZELESKO                 | 203 - 195 Warren St                   |
| Linda White                | LINDA WHITE                | 192 CLELAND DR                        |
| Reg Pratt                  | REG PRATT                  | 121 ✓ ✓                               |
| Eona Ogden                 | EONA OGDEN                 | 126 CRAIG                             |
| Gladys Ross                | Gladys Ross                | 178 Falcon Cr.                        |

(before) 29 June

Drop in Centre



[illegible]

**Date:** June 29, 2015 **File No:**  
**To:** Mitch Moroziuk, Acting City Manager  
**From:** Shawn Filice, Manager Electric Utility  
**Subject:** **Housekeeping Amendment - Electrical Section of Fees and Charges Bylaw**

### **Staff Recommendation**

THAT Council give first, second and third reading to "Fees and Charges Amendment Bylaw No. 2015-34", a bylaw to amend Appendix 7 of Fees and Charges Bylaw No. 2014-07 to address a housekeeping issue related to the Credit Score Requirements for the Electrical Service Payment Plan to set a separate credit score for individuals and businesses;

AND THAT Council amend the Electrical Service Payment Plan by removing Section 2 and replacing it with the following:

2. The Participant must meet the following eligibility requirements:
  - o Must be for a new or an upgrade to an Electrical Service;
  - o Minimum amount eligible for Payment Plan is \$5,000;
  - o Maximum amount eligible for Payment Plan is \$50,000
  - o Must be a City of Penticton Electric Utility customer;
  - o **Must have a credit score of: 650 or greater for and individual, or less than 25 for a business;**
  - o Must have a maximum of 19 City of Penticton Utility Credit Point;
  - o The customer must own both the land and building where the service is required.

### **Strategic priority objective**

N/A

### **Background**

On March 16, 2015 Council approved the establishment of an Electric Service Payment Plan by passing Resolution 179/2015, see Attachment "B". On May 19, 2015 Council adopted Bylaw 2015-22 a Bylaw to amend City of Penticton amended Fees and Charges Bylaw 2014-07 to include provisions for an Electric Service Payment Plan. The changes as made included a credit score requirement for individuals but not businesses. As the intent of the Electrical Service Payment Plan was to be open to all customer classes it is

necessary to create credit score requirements for both individuals and business. The attached Bylaw will address this requirement.

### **Financial implication**

The Payment Plan would have a temporary financial impact to the Electric Utility's cash account and will appear as a receivable on the financial statements.

### **Analysis**

Endorsing "Fees and Charges Amendment Bylaw No. 2015-34" and changes to Section 2 of the Electrical Service Payment Plan will provide clarity regarding the Credit Score requirements for both individuals and businesses.

Should Council not wish to provide this clarity they could elect to maintain the status quo or send the matter back to staff with direction.

### **Alternate recommendation(s)**

Alternative 1

THAT no amendments be made to the Fees and Charges Bylaw with respect to setting a credit score for business.

Alternative 2

THAT Council send the matter back to staff with direction.

### **Attachments**

Attachment "A" – Fees and Charges Amendment Bylaw No. 2015-34

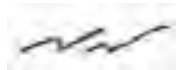
Attachment "B" - Resolution 179/2015

Respectfully submitted,

Shawn Filice P.Eng. MBA

Manager of Electric Utility  
City of Penticton

Approvals

|                                                                                                                   |                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Chief Financial<br>Officer<br> | Acting City Manager<br> |
|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|

## Attachment "A"

### The Corporation for the City of Penticton

#### Bylaw No. 2015-34

A bylaw to amend the Fees and Charges Bylaw No. 2014-07

WHEREAS the Council of the City of Penticton has adopted a Fees and Charges Bylaw pursuant to the *Community Charter*;

AND WHEREAS the Council of the City of Penticton wishes to amend the "Fees and Charges Bylaw No. 2014-07";

NOW THEREFORE BE IT RESOLVED that the Council of the City of Penticton in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. Title:

This Bylaw may be cited as "Fees and Charges Amendment Bylaw No. 2015-34".

2. Amendment:

- i. Amend "Fees and Charges Bylaw No. 2014-07" by deleting and replacing Note #4 of Appendix 7 in its entirety and replacing it with the following:

All customers are eligible to access the "Electrical Service Payment Plan" for the installation of City Electrical Infrastructure that supplies power to their properties. The details of this program are summarized as follows:

- Payment Plan range: A customer can put a minimum amount of \$5,000 up to a maximum amount of \$50,000 on a Payment Plan;
- Payment Plan terms: 5 year payback in equal monthly amounts on the Electric utility Bill plus interest calculated at the Prime Interest Rate +0.5%; and
- The customer has the ability to end the Payment Plan at any time by repaying the balance owing in full at any time without penalty.

Eligibility requirements:

- Must be for a new or an upgrade to an Electrical Service;
- Must be a City of Penticton Electric Utility customer;
- Must have a credit score of: 650 or greater for an individual, or less than 25 for a business;
- Must have a maximum of 19 City of Penticton Utility Credit Points;
- The customer must own both the land and building where the service is required; and
- Protection: Any defaults on the Payment Plan will be subject to the normal City of Penticton utility collection procedures, including service disconnect and ultimately transfer of outstanding amount to taxes. Any outstanding payment plan amounts must be paid in full upon sale of the property.

READ A FIRST time this                      day of                      , 2015

READ A SECOND time this                      day of                      , 2015

READ A THIRD time this                      day of                      , 2015

ADOPTED this                      day of                      , 2015

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Andrew Jakubeit, Mayor

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Dana Schmidt, Corporate Officer

## **Attachment "B" - Resolution 179/2015**

### **8.9     Electrical Service Payment Plan**

179/2015

#### **It was MOVED and SECONDED**

THAT Council approve the establishment of an Electrical Service Payment Plan for new electrical services and/or service upgrades as described in Attachment "A"; AND FURTHER THAT Council direct staff to amend Appendix 7 of the Fees and Charges Bylaw No. 2014-07 by adding the following Note:

4. All customers are eligible to access the "Electrical Service Payment Plan" for the installation of City Electrical Infrastructure that supplies power to their properties. The details of this program are summarized as follows:

- Payment Plan range: A customer can put a minimum amount of \$5,000 up to a maximum amount of \$50,000 on a Payment Plan;
- Payment Plan terms: 5 year payback in equal monthly amounts on the Electric Utility Bill plus interest calculated at the Prime Interest Rate +0.5%. (Prime rate at the time of signing the Payment Plan agreement);
- The customer has the ability to end the Payment Plan at any time by repaying the balance owing in full at any time without penalty;
- Eligibility Requirements:
  - o Must be for a new or an upgrade to an Electrical Service;
  - o Must be a City of Penticton Electric Utility customer;
  - o Must have a minimum credit score of 650;
  - o Must have a maximum of 19 City of Penticton Utility Credit Point;
  - o The customer must own both the land and building where the service is required; and
- Protection: Any defaults on the Payment Plan will be subject to the normal City of Penticton utility collection procedures, including service disconnect and ultimately transfer of outstanding amount to taxes. Any outstanding payment plan amounts must be paid in full upon sale of the property.

**CARRIED UNANIMOUSLY**



**Date:** June 29, 2015  
**To:** Mitch Moroziuk, Acting City Manager  
**From:** Blake Laven, Planner

File No: 5450-20/ 2015

**Subject: Street naming bylaw for the road being created by the subdivision of 2750 Cedar Road**

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### **Staff Recommendation**

THAT Council, after considering the information presented in this Council Report, select one of the following alternatives:

1. THAT Council give first reading to "Street Naming Bylaw 2015-36", a bylaw to name the new road created by the subdivision of 2750 Cedar Road "Avery Place"; or
2. THAT "Street Naming Bylaw 2015-36" not be given first reading and that the developer is instructed to choose a street name from list the created by the Heritage and Museum Advisory Committee." Or
3. THAT "Street Naming Bylaw 2015-36" be referred back to staff for work with the developer and the committee.

### **Strategic priority objective**

N/A

### **Financial implication**

N/A

### **Background**

At the January 19, 2015 Council Meeting, City Council adopted a bylaw that rezoned 2750 Cedar Road to R1 (Large Lot Residential) to accommodate a 27 lot subdivision of the property (Attachment 'A'). The subdivision process has been ongoing since that time, with earthworks having already been started and road construction to begin later this month. The marketing name for the development is Avery Heights. The developer is requesting that the name of the new street being created follow along with this theme and be called "Avery Place."

In his letter of request, attached for Council's reference as Attachment 'B', the developer states that he named the development Avery Heights after a local girl named Avery Wild. Avery and the Wild family represent the type of community the developer hopes to create: a place for families to live in and enjoy a zest for life.

### **Committee Review**

As per Council policy, all requests for new street names are forwarded to the Heritage and Museum Advisory Committee for recommendation. This particular application was considered by the committee on June 18<sup>th</sup>, 2015.

At that meeting the Committee passed the following resolution, not supporting the name Avery Place:

**It was MOVED and SECONDED that the Heritage & Museum Committee recommend:**

**THAT Council not support the name of Avery Place for the new street created by the subdivision of 2750 Cedar Road.**

**CARRIED**  
**Opposed, Brad Hillis, Shelley Clarke**

### **Analysis**

Street naming in Penticton has not, historically, followed a uniform format. Different areas of the City, developed in different times, have taken a variety of approaches to street naming themes. This has created identifiable areas in the City. For instance, the area developed for returning war veterans in the 1950s has a distinctly British feel, with street names like King Street, Queen Street, Kensington Street (an area in London), Killarney Street (an area in Ireland) and Kilwinning Street (a town in Scotland). In other areas of the city, street names are named after other Canadian cities, a practice that was popular in the 1920s: Edmonton Avenue, Calgary Avenue, Moosejaw Street and Waterloo Avenue are examples of this.

The Cedar Road area, where the new subdivision is located is in an area where all the streets are named after evergreen trees. For example, Evergreen Drive, Pineview Avenue, Cedar Road, Balsam Avenue, Juniper Drive etc.

In 2003, Council passed a policy that stated that all street names be sent to the Heritage Advisory Committee (now the Heritage and Museum Advisory Committee) for comment. The Heritage Advisory Committee endorsed a list of names of individuals that they felt have made a difference in the community such as politicians, pioneers, orchardists and settlers (Attachment 'C'). The committee intended that all new street names, regardless of their location, are to be chosen from that list.

Following from the policy, during the development of Sendero Canyon most of the street names were selected from the list, including Harris Road, Brent Road and Syer Road. The only deviation from the list is the main street that runs through the development. The developer chose the name Sendero Crescent and this choice was supported by Council.

Since that time there have been three streets within the City of Penticton that have changed names: a portion of Westminster Avenue East became Backstreet Boulevard; a portion of Railway Street became Vees Drive; and, Forbes Street became Veterans Way. None of these names were from the list, but were all special circumstances and supported by Council.

In the case of this application, the developer does not want to choose from the list provided and wishes to have the street name named after the development itself: Avery Place. The street is a short, dead end street that will run east from Cedar Road and end in a cul-de-sac.

Staff do not have a recommendation on this issue as there is no clear policy for staff to follow in this case. Street naming is under the jurisdiction of Council. Staff do comment, however, that many different approaches to street naming have, historically, been taken in Penticton. This has created many identifiable neighbourhoods in the City.

If Council chooses the name Avery Place and proceeds to bylaw adoption, proper notification will follow to Canada Post, Emergency Services and other affected agencies and persons.

### **Alternate Recommendations**

1. THAT Council give first reading to "Street Naming Bylaw 2015-36", a bylaw to name the new road created by the subdivision of 2750 Cedar Road "Avery Place"; or
2. THAT "Street Naming Bylaw 2015-36" not be given first reading and that the developer is instructed to choose a street name from list created by the Heritage and Museum Advisory Committee." or
3. THAT "Street Naming Bylaw 2015-36" be referred back to staff for work with the developer and the committee.

### **Attachments**

Attachment A: Approved subdivision layout  
Attachment B: Letter from developer requesting street name "Avery Place"  
Attachment C: The list of names for consideration  
Attachment D: Street Naming Bylaw 2015-36

Respectfully submitted,

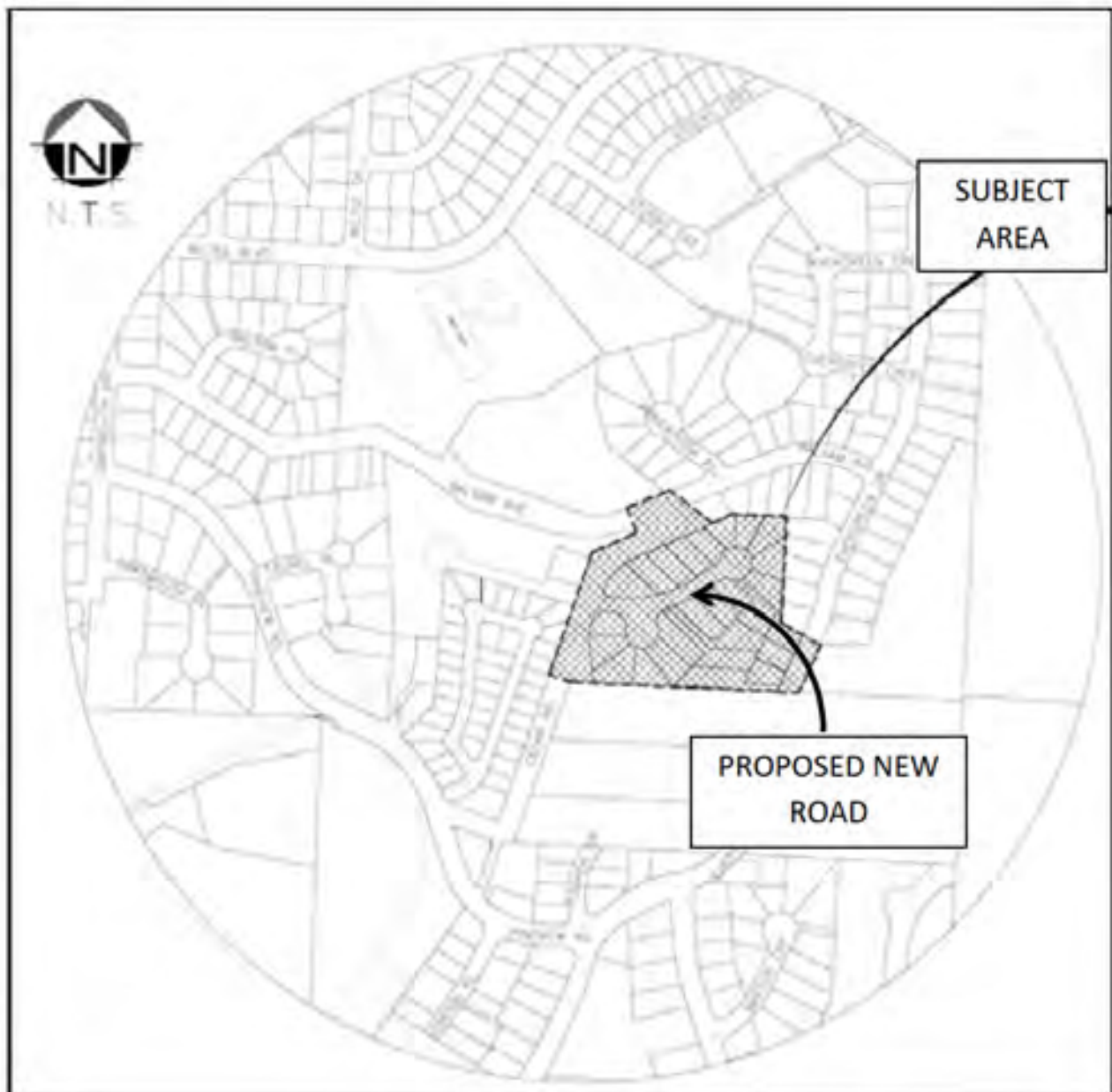
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Blake Laven, RPP, MCIP  
Planning Manager

### **Approvals**

| Director                                                                            | City Manager                                                                        |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  |  |

Attachment A  
Approved Subdivision Layout



Attachment B  
Letter from Developer



Brentview Developments Ltd. is owned by long time local resident and community supporter, Rod Ferguson.

Through established relationships with local architects, designers and trades-people, Rod and his management team have completed many successful developments throughout the South Okanagan over the past 20 years.

Rod and his team have an unparalleled commitment to quality and ensure first-rate workmanship throughout the process of all new and existing developments. Rod is a hands-on developer dedicated to bringing new and innovative homes to a wide range of consumers focusing on quality and value at an affordable price.

Rod's commitment is to building homes that draw consumers and their investment dollars from other cities in BC and or other provinces in Canada to Penticton to ensure a strong economy scale.

Why Avery Place? As the logo states, "Your Place to call Home". Penticton has a rich history of naming streets and avenues throughout Penticton in memory of veterans, local hockey clubs and influential people making great contributions to the City of Penticton.

As we appreciate the list of current names to be considered for the roads in Avery Heights, we would like the City of Penticton to strongly consider allowing the use of Avery Place.

"Avery Heights" is named after Avery Wild. Avery was born at Penticton Regional Hospital on Sept 30th 2008. Avery attended Learning for Little People preschool for 2 years at ages 3 and 4. Avery started dancing at Even dance in its inaugural year taking one ballet class and now 3 years later is taking 4 classes (tap, jazz, ballet, musical theatre) and a duet class. Avery, now 7, has a zest for life that is contagious. Everyone Avery meets wants to be around her and

that's what we want our new development to be. Your place to call home as well a friendly neighborhood feel.

Avery, along with her mom Marie (Office Manager, Penticton IGA) and Grandma Yvonne Wild (Team lead single point of contact third party integration, Valley First Penticton) have been long time residents of Penticton and family friends of Rod and his wife Noella for many years. Both Avery's mom Marie and Uncle Jason graduated from Pen High. Jason also played a prominent local boy role on the Penticton Panthers for one season in 1998-99. When Avery first met Rod, they hit it off and have had a strong bond ever since. That strong bond with not only Avery but also the Wild family was the soul reason for the naming of the new development "Avery Heights".

The positive that comes out of Avery Place being considered is there will be a family and a young girl that can appreciate this for many years to come and proudly promote a great new development in the city of Penticton.

Rod's long-term vision for future developments is to have many different price points of homes within a given area of development. This will allow us to fulfill a real need in providing new affordable housing for young family's as well as building on the success of our current project Brentview Estates.



Attachment C  
List of names for consideration

| Future Street Names |             |                                                                                                                                                                                                                              |      |
|---------------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| ID                  | Street Name | History                                                                                                                                                                                                                      | Used |
| 13                  | Agnew       | Harry - 1906 - pioneer family, was a constable in Pentticton                                                                                                                                                                 | No   |
| 5                   | Alderidge   | Ed - long time resident born in 1900. Works on railway, later as an author/journalist.                                                                                                                                       | No   |
| 47                  | Almack      | J.H. - Alderman                                                                                                                                                                                                              | No   |
| 46                  | Anderson    | J. - Alderman                                                                                                                                                                                                                | No   |
| 6                   | Auston      | Constable G.H. - killed on board S.S. Okanagan, March 1912 by prisoner Boyd James he was escorting to Kamloops                                                                                                               | No   |
| 114                 | Barnard     | RCAF, Pentticton School Board early 1900's, longtime resident                                                                                                                                                                | No   |
| 53                  | Barrett     | J.R. - Alderman                                                                                                                                                                                                              | No   |
| 1                   | Beames      | William Stanley - born in 1886 in England. In 1905 Will headed for fortunes in the gold field in ended up in Rossland. In 1933 his family moved to Pentticton where he was the Rector of the parish of St. Saviour's Church. | Yes  |
| 7                   | Biello      | early residents whose descendants still reside in Pentticton                                                                                                                                                                 | No   |
| 48                  | Bishop      | J.A. - Alderman                                                                                                                                                                                                              | No   |
| 14                  | Boggs       | L.B. - 1912 - principal of Pentticton High School for many years. Miss Laura Boggs matron of Pentticton Hospital for many years                                                                                              | No   |
| 49                  | Bolton      | G.W. - Alderman                                                                                                                                                                                                              | No   |
| 15                  | Brent       | Joe - 1870 - well know pioneer family                                                                                                                                                                                        | Yes  |
| 16                  | Brown       | R.P. Circa - 1905 pioneer civil engineer                                                                                                                                                                                     | No   |
| 52                  | Browne      | J.N. - Alderman                                                                                                                                                                                                              | No   |
| 51                  | Burgart     | L.L. - Alderman                                                                                                                                                                                                              | No   |
| 17                  | Burpee      | Dougald - 1909 - pioneer orchardist, interested in 1st curling club. One of the 1st investors and developers in Osoyoos                                                                                                      | No   |
| 50                  | Butterfield | G.E. - Alderman                                                                                                                                                                                                              | No   |
| 18                  | Carliss     | Charles - 1909 - pioneer carpenter later in garage business with A. Beatty                                                                                                                                                   | No   |
| 55                  | Carnicross  | L.D. - Alderman                                                                                                                                                                                                              | No   |
| 58                  | Carson      | J.H. - Alderman                                                                                                                                                                                                              | No   |
| 59                  | Carter      | W.B. - Alderman                                                                                                                                                                                                              | No   |
| 8                   | Cattee      | Louis - arrived in 1906. Orcharded many years on Lower Bench Rd (now Northhley Ave) Carpenter foreman on original CPR station and later at Incola Hotel.                                                                     | No   |

| Future Street Names |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |      |
|---------------------|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| ID                  | Street Name     | History                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Used |
| 54                  | Chambers        | E.J. - Alderman/Reeve                                                                                                                                                                                                                                                                                                                                                                                                                                                            | No   |
| 60                  | Chartrand       | L.A. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No   |
| 56                  | Christian       | E.C. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No   |
| 57                  | Coe             | L. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | No   |
| 9                   | Cossentine      | Henry & Given - long time orchardists Poplar Grove and Naramata Rd.                                                                                                                                                                                                                                                                                                                                                                                                              | No   |
| 19                  | Cousins         | Bruce - circa 1905 - Irrigation foreman, later served on Council                                                                                                                                                                                                                                                                                                                                                                                                                 | No   |
| 61                  | Curtain         | E.C. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No   |
| 20                  | Edwards         | 1907-1917 Chief of Indian Reserve                                                                                                                                                                                                                                                                                                                                                                                                                                                | No   |
| 21                  | Ewart           | Max - 1905 Kerekeos Provincial Constable                                                                                                                                                                                                                                                                                                                                                                                                                                         | No   |
| 22                  | Fallis          | George O. Col. Rev. 1912 - one of 1st ministers of Methodist Church later a career as a padre in First World War. A noted hunter and athlete.                                                                                                                                                                                                                                                                                                                                    | No   |
| 62                  | Fisher          | H.K. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No   |
| 104                 | Foley - Bennett | E. - Reeve                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | No   |
| 23                  | Fowler          | Bertha (Miss) 1912 - pioneer, owned small farm, ardent church worker in community.                                                                                                                                                                                                                                                                                                                                                                                               | No   |
| 24                  | Francois        | First Christian Chief - before Chief Edwards                                                                                                                                                                                                                                                                                                                                                                                                                                     | No   |
| 115                 | Fugeta          | Hiro - Late 1800's immigrated to Pentiction from Japan. Married Haru-mali order bride from Japan. Hiro built family home at 186/298 Yorkton. Operated tent camp, gas station, store and vegetable farm selling produce to Pentiction stores. A homes built on property, original house moved to 117 Lee in 1980 and last house at 298 Yorkton sold and moved to 385 Greenwood Drive Had 4 children. Son Jim Fugeta born 1919 in Pentiction resides at 136-102 Forestbrook Place. | No   |
| 12                  | Gabriel         | long time Indian residents                                                                                                                                                                                                                                                                                                                                                                                                                                                       | No   |
| 66                  | Garrioch        | H.G. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No   |
| 67                  | Gartner         | W.W. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No   |
| 25                  | Garrell         | James - 1887 - pioneer family - first settlers at Trout Creek                                                                                                                                                                                                                                                                                                                                                                                                                    | No   |
| 65                  | Gesses          | H.M. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No   |
| 64                  | Gibbs           | J.P. - Alderman                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No   |
| 26                  | Gillis          | John - large investor, original owner of Braeside Orchards on Skaha Lake                                                                                                                                                                                                                                                                                                                                                                                                         | No   |

| Future Street Names |             |                                                                                                                            |      |
|---------------------|-------------|----------------------------------------------------------------------------------------------------------------------------|------|
| ID                  | Street Name | History                                                                                                                    | Used |
| 27                  | Glass       | J.H. - well know pioneer orchardist                                                                                        | No   |
| 63                  | Goodchap    | L.J. - Alderman                                                                                                            | No   |
| 111                 | Grigor      | suggestion from phil & Betty Clark                                                                                         | No   |
| 71                  | Haddleton   | W.D. - Alderman                                                                                                            | No   |
| 74                  | Haddleton   | W.D. - Alderman                                                                                                            | No   |
| 28                  | Hancock     | Edith (Miss) - 1907 - nurse from England started 1st private hospital in Pentiction - now private residence in Fairview Rd | No   |
| 73                  | Harris      | L. - Alderman                                                                                                              | No   |
| 76                  | Harris      | L. - Alderman                                                                                                              | No   |
| 29                  | Harris      | Lloyd - 1905 - started first fruit tree nursery, located on Fairview Rd south of Anglican cemetery.                        | Yes  |
| 68                  | Hatch       | S. - Alderman                                                                                                              | No   |
| 70                  | Hawkins     | S.R. - Alderman                                                                                                            | No   |
| 30                  | Helmer      | R.H. - 1912 - first superintendent of Exp. Station in Summerland                                                           | No   |
| 31                  | Henderson   | Bill & Camerison - 1903 - well known brothers in the early life of Pentiction                                              | No   |
| 32                  | Hesselwood  | R.T. - 1909 - Nursery salesman well known to pioneer orchardists                                                           | No   |
| 77                  | Hewitt      | J.L. - Alderman                                                                                                            | No   |
| 33                  | Hinkesman   | C. Henry - 1907 - pioneer orchardist, served on various committees in the fruit industry. Served overseas in World War I.  | No   |
| 72                  | Hunt        | W. - Alderman                                                                                                              | No   |
| 75                  | Hunt        | W. - Alderman                                                                                                              | No   |
| 69                  | Huntley     | A.H. - Alderman                                                                                                            | No   |
| 34                  | Hylke       | Henry - 1905 - large land owner of meadow where golf course and arean are located. An ardent race horse enthusiast.        | No   |
| 35                  | Inglee      | Hirma - 1897 - had small orchard and cattle west of White Lake. Postmaster at White Lake.                                  | No   |
| 80                  | Kendrick    | A.C. - Alderman                                                                                                            | No   |
| 79                  | Kenyon      | H.S. - Alderman                                                                                                            | No   |
| 78                  | Keyes       | R.G. - Alderman                                                                                                            | No   |
| 81                  | Kimuk       | P.J. - Alderman                                                                                                            | No   |

| Future Street Names |             |                                                                                                                                                                                                                                                          |      |
|---------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| ID                  | Street Name | History                                                                                                                                                                                                                                                  | Used |
| 82                  | Lang        | G.E. - Alderman                                                                                                                                                                                                                                          | No   |
| 36                  | Layton      | Fred - 1906 - District Manager for B.C. Telephone Company                                                                                                                                                                                                | No   |
| 112                 | Loughheed   | suggestion from Ian Stout, Public Works Manager                                                                                                                                                                                                          | No   |
| 2                   | Mason       | Anna - born in 1915. She worked for many years as the only public health nurse in Penikese. Instrumental in construction of Penikese & District Retirement Centre and Meals on Wheels.                                                                   | No   |
| 85                  | Messner     | I.C. - Alderman                                                                                                                                                                                                                                          | No   |
| 84                  | Midgley     | F.W. - Alderman                                                                                                                                                                                                                                          | No   |
| 105                 | Morley      | H.B. - Reeve                                                                                                                                                                                                                                             | No   |
| 83                  | Murk        | H. - Alderman                                                                                                                                                                                                                                            | No   |
| 37                  | Northcote   | 1909 - daughter of Wm. Sutherland - worked at Perry's Mill 1913-1914. At age 84 resided on Penikese Ave                                                                                                                                                  | No   |
| 86                  | Oakes       | F. - Alderman                                                                                                                                                                                                                                            | No   |
| 108                 | Oliver      | C.E. - Mayor                                                                                                                                                                                                                                             | No   |
| 38                  | Pandosa     | Charles Father - 1859 - one of the oblate Fathers - founded O.K. Mission. Died 1891 in Chief Francois' cabin on Penikese Indian Reserve                                                                                                                  | No   |
| 11                  | Parkins     | First municipal clerk/assessor                                                                                                                                                                                                                           | No   |
| 3                   | Parrott     | John Perkins "J.P." came to Penikese in 1909. Soon became employed as the Public Works Manager staying until mid 1930's. Build and maintained all of the early streets and designed the flood control works on Penikese Creek.                           | No   |
| 88                  | Pauls       | P.E. - Alderman                                                                                                                                                                                                                                          | No   |
| 87                  | Phipps      | C. - Alderman                                                                                                                                                                                                                                            | No   |
| 109                 | Rathbun     | W.A. - Mayor                                                                                                                                                                                                                                             | No   |
| 90                  | Rathvon     | L.A. - Alderman                                                                                                                                                                                                                                          | No   |
| 89                  | Richardson  | F. - Alderman                                                                                                                                                                                                                                            | No   |
| 91                  | Riordan     | D.S. - Alderman                                                                                                                                                                                                                                          | No   |
| 4                   | Roadhouse   | Thomas - born in 1862 in Ontario. Moved to Penikese in 1902 due to asthmatic condition. Drove stagecoaches from Penikese to Princeton, a 4 day round trip. Twice a month gold bricks valued at \$60,000 were shipped out from the Nickelplate Gold Mine. | Yes  |
| 39                  | Schulbert   | J.A. - 1862 - member of Overland Expedition, early merchant, superintendent of roads and bridges for Similkameen.                                                                                                                                        | No   |

| Future Street Names |             |                                                                                                                                                       |      |
|---------------------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| ID                  | Street Name | History                                                                                                                                               | Used |
| 40                  | Shorts      | Thomas Capt. - 1886 - owner of first steamer "May Victoria Greenhow" on Lake Okanagan. A portion of Front St was at one time known as "Shorts Street" | No   |
| 93                  | Southworth  | J.D. - Alderman                                                                                                                                       | No   |
| 94                  | Stayberg    | G. - Alderman                                                                                                                                         | No   |
| 95                  | Stinson     | F.T. - Alderman                                                                                                                                       | No   |
| 92                  | Swann       | H.L. - Alderman                                                                                                                                       | No   |
| 113                 | Sworder     | 1920-Pioneer orchardist, Rotary, Good Citizen award, worked with former MP Fred King in crop insurance                                                | Yes  |
| 41                  | Syer        | Thomas - 1910 - well known merchant, an active sportsman                                                                                              | Yes  |
| 97                  | Talball     | A.E. - Alderman                                                                                                                                       | No   |
| 42                  | Tey         | Fred - 1910 - Insurance Agent and prominent in the Turf Club of Penticton.                                                                            | No   |
| 98                  | Titchmarsh  | E.A. - Alderman                                                                                                                                       | No   |
| 96                  | Tough       | A. - Alderman                                                                                                                                         | No   |
| 100                 | Udzenija    | T.T. - Alderman                                                                                                                                       | No   |
| 99                  | Usborne     | T.H. - Alderman                                                                                                                                       | No   |
| 44                  | Weeks       | Richard - circa 1908 - pioneer family, owned a livery stable.                                                                                         | No   |
| 43                  | Weeks       | Capt. J.B. - Last captain of the S.S. Scamious, sailed Lake Okanagan for more than 40 years.                                                          | No   |
| 102                 | Whimster    | W.H.L. - Alderman                                                                                                                                     | No   |
| 110                 | Whittaker   | D. - Mayor                                                                                                                                            | No   |
| 106                 | Wilkins     | W.G. - Reeve                                                                                                                                          | No   |
| 101                 | Williams    | T.B. - Alderman                                                                                                                                       | No   |
| 103                 | Winkelaar   | J.J. - Alderman                                                                                                                                       | No   |
| 45                  | Yull        | Etta Jane - 1907 - Early school teacher                                                                                                               | No   |
| 10                  | Zimmerman   | W. - local watchmaker/jewel in 200 block Main St. Victim of Penticton's first unsolved murder Jan 17, 1907                                            | No   |

**The Corporation of the City of Penticton**

**Bylaw No. 2015-36**

*A bylaw to name roads in the City of Penticton.*

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The Council of the City of Penticton in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. Title:

This Bylaw may be cited as "Street Naming Bylaw No. 2015-36".

2. Purpose:

- i. That the City of Penticton name the new road created by the subdivision of 2750 Cedar Road, "Avery Place" as shown on Schedule "A".
- ii. Schedule "A" attached hereto forms part of this bylaw.

READ A FIRST time this                      day of                      , 2015

READ A SECOND time this                      day of                      , 2015

READ A THIRD time this                      day of                      , 2015

ADOPTED this                      day of                      , 2015

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Andrew Jakubeit, Mayor

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Dana Schmidt, Corporate Officer



City of Penticton – Schedule 'A'

Street Naming Bylaw No. 2015-36

Date: \_\_\_\_\_

Corporate Officer: \_\_\_\_\_