

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

**Thursday, December 1, 2016**  
**at 7:00 p.m.**

1. **Call Special Council Meeting to Order**
2. **Adoption of Agenda**
3. **Skaha Lake Marina and Water Park Development**

1-195

*Staff Recommendation: THAT Council receive this report for information;  
AND THAT after considering:*

- *The REVISED Settlement Agreement, Attachment "A" to this report;*
- *The REVISED Enhanced Marina Agreement, Attachment "B" to this report;*
- *The License to Use Agreement to December 31, 2018, Attachment "C" to this report;*
- *The Sub License of Occupation Agreement to December 31, 2018, Attachment "D" to this report;*
- *The material presented at the November 1, 2016 Council meeting on the Skaha Lake Marina and Water Park Development;*
- *The material presented at the November 23, 2016 Special Council meeting, Attachment "E" to this report;*
- *The questions and comments from the Public at the November 23, 2016 Council meeting; and*
- *The information contained in this Council Report.*

*THAT Council select one of the following alternatives:*

*Alternative 1*

*THAT Council accept the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement and authorize the Mayor and Corporate Officer to execute the:*

- *REVISED Settlement Agreement, Attachment "A" to this Council Report;*
- *REVISED Enhanced Marina Agreement, Attachment "B" to this Council Report;*
- *License to Use Agreement to December 31, 2018, as contained in Attachment "C" to this Council report, for the existing Marina; and*
- *Sub License of Occupation Agreement to December 31, 2018, as contained in Attachment "D" to this Council report, for the existing Marina.*

*OR*

*Alternative 2*

*THAT Council refuse to accept the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement.*

*OR*

*Alternative 3*

*THAT Council instruct staff to try and sort matters out with Trio in some other mutually acceptable way.*

OR

*Alternative 4*

*THAT Council simply wait and see what occurs with respect to the Waterpark Agreement.*

4. **Public Question Period**

5. **Adjourn to In-Camera Meeting**

*Resolution: THAT Council adjourn to a closed meeting of Council pursuant to the provisions of the Community Charter section 90 (1) as follows:*

- (e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;*
- (g) litigation or potential litigation affecting the municipality;*
- (i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;*
- (j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the Freedom of Information and Protection of Privacy Act.*

# Council Report

penticton.ca

**Date:** December 1, 2016  
**To:** Mayor and Council  
**From:** Mitch Morozuk, Interim Chief Administrative Officer  
**Subject:** **Skaha Lake Marina and Water Park Development**

File No:

## Staff recommendation

THAT Council receive this report for information;

AND THAT after considering:

- The REVISED Settlement Agreement, Attachment "A" to this report;
- The REVISED Enhanced Marina Agreement, Attachment "B" to this report;
- The License to Use Agreement to December 31, 2018, Attachment "C" to this report;
- The Sub License of Occupation Agreement to December 31, 2018, Attachment "D" to this report;
- The material presented at the November 1, 2016 Council meeting on the Skaha Lake Marina and Water Park Development;
- The material presented at the November 23, 2016 Special Council meeting, Attachment "E" to this report;
- The questions and comments from the Public at the November 23, 2016 Council meeting; and
- The information contained in this Council Report.

THAT Council select one of the following alternatives:

### Alternative 1

THAT Council accept the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement and authorize the Mayor and Corporate Officer to execute the:

- REVISED Settlement Agreement, Attachment "A" to this Council Report;
- REVISED Enhanced Marina Agreement, Attachment "B" to this Council Report;
- License to Use Agreement to December 31, 2018, as contained in Attachment "C" to this Council report, for the existing Marina; and
- Sub License of Occupation Agreement to December 31, 2018, as contained in Attachment "D" to this Council report, for the existing Marina.

OR

Alternative 2

THAT Council refuse to accept the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement.

OR

Alternative 3

THAT Council instruct staff to try and sort matters out with Trio in some other mutually acceptable way.

OR

Alternative 4

THAT Council simply wait and see what occurs with respect to the Waterpark Agreement.

**Strategic priority objective**

The enhancement of the Skaha Lake Marina area is supportive of the City of Penticton mission to be an adventurous waterfront city.

**Background**

On November 1, 2016 staff introduced a Council Report that spoke to four possible directions Council could take with respect to the Skaha Lake Marina and Water Park Agreements and provided information on a Settlement Agreement and Enhanced Marina Agreement. Information pertaining to these agreements was posted to the City web site on November 1 and hard copies were made available for viewing at City Hall and the Library.

Over the time period November 2 to November 18 City staff, Trio and legal counsel worked to create a REVISED Settlement Agreement and REVISED Enhanced Marina Agreement that would address the public concern that still existed with loss of green space due to the Park Amenity as contained in the Settlement Agreement.

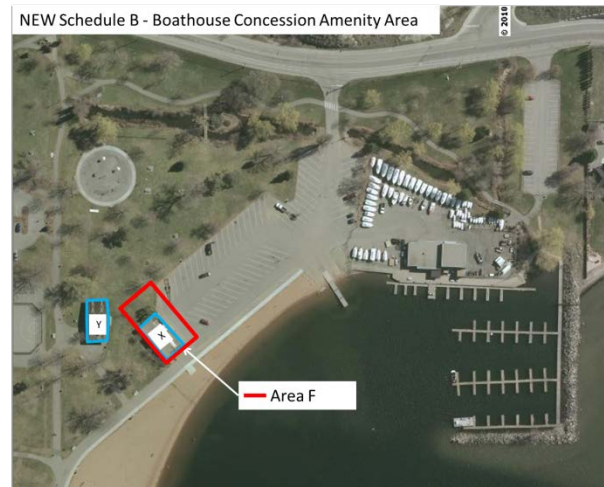
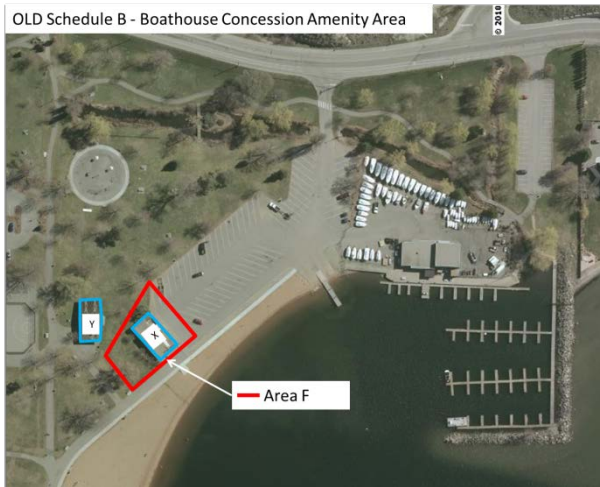
The REVISED Settlement Agreement and REVISED Enhanced Marina Agreement were considered by Council on November 21 and released to the public thereafter. Information pertaining to the REVISED Settlement Agreement and REVISED Enhanced Marina Agreement, the press release that was issued and a presentation that explained the changes was posted to the City web site on November 21 and hard copies were made available for viewing at City Hall and the Library.

On November 23, 2016 a Special Council meeting was held where the Settlement Agreement, Enhanced Marina Agreement, REVISED Settlement Agreement and REVISED Enhanced Marina Agreement were presented and the public was provided the opportunity to ask questions and provide comments.

Over the ensuing week three additional changes were made to the agreements to address some of the concerns raised at the November 23, 2016 Council meeting. The changes are highlighted in yellow in the attached agreements and are as follows:

## Revised Settlement Agreement

Schedule B – Boathouse Concession Amenity Area: The area where the boathouse concession amenity could be placed, Area F, was reoriented and reduced in size to improve sight lines and make the green space area within Area F more accurately reflect the size of the concession building.



Section 5.13: The existing Section 5.13 was removed and replaced with the following in order to protect against any marine amenity being installed, due to the reduced size of the Exclusion Area in the Revised Enhanced Marina Agreement, prior to the completion of the Marine Amenity process.

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

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

## Revised Enhanced Marina Agreement

Schedule C – Exclusion Area: The size of the exclusion area was reduced.



Council is now in the position to consider the information that has been provided to them November 1, November 21, November 23 and December 1 and provide direction to staff on how they would like to advance on the Skaha Lake Marina and Water Park development.

**Financial implications**

Alternative 1

The Trio Marine Group Inc. will be making a capital investment of \$1,500,000 in a Marina, Retail and Restaurant.

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

<b>Revenue Item</b>	<b>Average 2018 - 2022</b>	<b>Mid Point Year 2023 - 2047</b>
Land Lease	\$ 16,558	\$ 21,012
Parking Lease	\$ 14,984	\$ 19,014
Revenue Share	N/A	\$ 222,743
Taxes	\$ 27,334	\$ 43,673
<b>Total</b>	<b>\$ 58,877</b>	<b>\$ 306,443</b>

The cost to the City would be a \$20,000 payment to Trio plus the cost of undertaking public engagement on the Marine Amenity and developing Boathouse Concession Amenity concepts and undertaking public engagement on them. These are estimated to cost \$ 100,000.

Alternative 2

Not entering into the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement will expose the City to up to three Notice of Civil Claim and would yield significant legal costs to defend against.

Alternative 3

Further negotiations with Trio could lead to another form of agreement that would have to be evaluated for financial impacts once it was created. In addition the City would most likely have to start spending money to defend against the two existing Notice of Civil Claim.

Alternative 4

The financial implications of this alternative are similar to Alternative 2.

**Analysis**

Alternative 1 – Considerable time and effort has been spent by staff and legal counsel negotiating and revising a proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement. These agreements will for this development protect green space in Skaha Park as demanded by the Save Skaha

Park Society and some other community members and require full public consultations before any future for profit amenities in Skaha Lake or on the foreshore of Skaha Lake are considered.

The agreements represent the best deal that staff and legal counsel were able to negotiate with Trio at this point that: Preserve the enhancement of the marina on terms similar to the previous agreement and avoid paying Trio a negotiated amount of money to end all legal relationships between the parties, including the enhanced marina agreement to which very few have indicated their opposition.

Alternative 2 - If Council does not endorse the proposed form of REVISED Settlement Agreement and REVISED Enhanced Marina Agreement, which provide a way to bring both the previous Marina Agreement and Waterpark Agreement to a negotiated end and preserve, for this development, green space in the park, the City's dealings with Trio will not be at an end. There will still be, at the very least, a Waterpark Agreement that will continue to exist into 2017 until the conditions precedent are either discharged or not and a Marina Agreement of disputed status. This will remain the case unless and/or until the parties otherwise agree, there are further developments or the matter is resolved by a Court. In addition uncertainty as to the status of Skaha Park will remain in the community as will the two Notices of Civil Claim.

Alternative 3 – Council could instruct staff to continue to sort out matters with Trio. The outcome of this process is not clear and there is no certainty that agreements that are better for the City will emerge. In addition the uncertainty in the community with respect to Skaha Lake Park will continue as will the two Notices of Civil Claim.

Alternative 4 – Council could elect to wait and see what happens with respect to the Waterpark Agreement. But the uncertainty as to the status of Skaha Park will remain in the community as will the two Notices of Civil Claim and there would be a distinct possibility of a third Notice of Civil Claim from Trio.

### **Alternate recommendations**

Four alternative recommendations are presented on page one of this Council Report for Council to select from.

### **Attachments**

Attachment "A" – REVISED Settlement Agreement

Attachment "B" – REVISED Enhanced Marina Agreement

Attachment "C" – License to Use Agreement to December 31, 2018

Attachment "D" – Sub License of Occupation Agreement to December 31, 2018

Attachment "E" – November 23, 2016 Special Council Meeting Presentation

Respectfully submitted,

Mitch Moroziuk P.Eng. MBA

Acting Chief Administrative Officer

**Attachment "A" – REVISED Settlement Agreement**

**[..\..\Request for Proposals\Skaha Lake Marina\POSSIBLE NEW AGREEMENT\Settlement Agreement Versions\REVISED SETTLEMENT AGREEMENT 2016 11 30\PDF\2016 11 30 REVISED Settlement Agreement.pdf](#)**

**This Settlement Agreement dated for reference the \_\_\_\_ day of December 2016**

**BETWEEN:**

THE CORPORATION OF THE CITY OF PENTICTON,

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

("Penticton")

**AND:**

TRIO MARINE GROUP INC.,

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

("Trio")

**WHEREAS:**

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

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

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

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

**2        ENTRY INTO ENHANCED MARINA AGREEMENT**

- 2.1        Penticton and Trio shall enter into a Skaha Marina – Enhanced Marina Agreement (the “Enhanced Marina Agreement”) in the form exhibited to this Agreement as Schedule “A”.
  
- 2.2        The parties shall execute the Enhanced Marina Agreement at the same time they execute this Agreement.
  
- 2.3        Given the unique and lengthy history of this matter, Penticton agrees to waive its Purchasing Policy with respect to this Settlement Agreement and the Enhanced Marina Agreement as it relates to the Marine Proposal, the Skaha Lake East Concession and the Boathouse Concession Amenity Building.

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

### **3 COMPENSATION**

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

### **4 SEASONAL LICENSE OF CONCESSION**

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

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

## **5 MARINE AMENITY CONSULTATION PROCESS**

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

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

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

5.10 The Marine Agreement will include the following terms:

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

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

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

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

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

## **6 BOATHOUSE AND CONCESSION RENEWAL OR REPLACEMENT CONSULTATION PROCESS**

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

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

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

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

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

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

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

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

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

## **7 TERMINATION**

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

## **8 REVENUE REINVESTMENT**

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

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

## **9 GENERAL PROVISIONS**

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

To Penticton at:

171 Main Street

Penticton, British Columbia

V2A 5A9

Attention: Corporate Officer

Fax No: (250) 490-2402

To Trio at:

c/o Pushor Mitchell LLP

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

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

9.7 Time will be of the essence of this Agreement.

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

**10 EXECUTION**

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

**THE CORPORATION OF THE CITY OF PENTICTON**

by its authorized signatories:

\_\_\_\_\_

Andrew Jakubeit, Mayor

\_\_\_\_\_

Dana Schmidt, Corporate Officer

**TRIO MARINE GROUP INC**

by its authorized signatories:

\_\_\_\_\_

Thomas John Dyas

\_\_\_\_\_

Witness

\_\_\_\_\_

Donald Thomas Hedquist

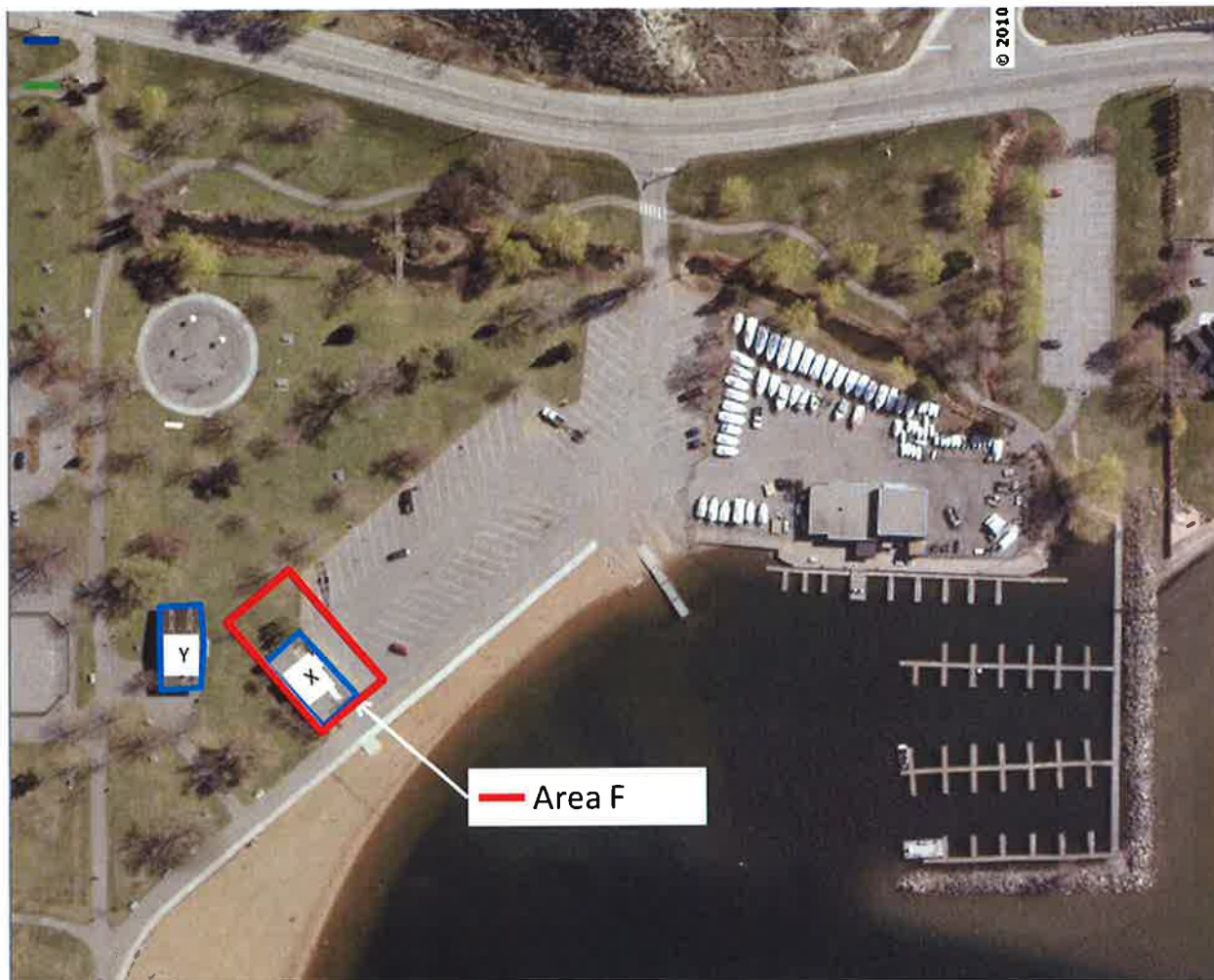
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Witness

Schedule "A" – Enhanced Marina Agreement

Schedule "B" – Boathouse Concession Amenity Area

Schedule "B" – Boat House Concession Amenity Area



**Attachment "B" – REVISED Enhanced Marina Agreement**

<..\Request for Proposals\Skaha Lake Marina\POSSIBLE NEW AGREEMENT\Enhanced Marina Agreement Versions\REVISED ENHANCED MARINA AGREEMENT 2016 11 30\PDF\2016 11 30 REVISED Enhanced Marina Agreement.pdf>

**SKAHA MARINA – ENHANCED MARINA DEVELOPMENT AGREEMENT  
FINAL 2016 12 06**

THIS AGREEMENT made the \_\_\_ day of December, 2016

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PENTICTON,**

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

("Penticton")

**AND:**

**TRIO MARINE GROUP INC.,**

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

("Trio")

**GENERAL COMMENTS:**

**WHEREAS:**

- (A) Penticton is desirous of entering into a lease of the Leased Lands and Parking Lands as covered by this Agreement and hereinafter defined as the Leased Lands and Parking Lands respectively 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 Parking 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 December 6, 2016, Penticton and Trio will enter into a two year License to Use Agreement dated for reference January 1, 2017 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";
- (D) On or about December 6, 2016, Penticton and Trio will enter into a two year Sub-License of Occupation Agreement dated for reference January 1, 2017, for the operation of the existing Marina, a copy of which is attached as Schedule "L"; and
- (E) On or about December 6, 2016, 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, 2018 in respect of the Leased Marina Lands and the Leased Lands and the Parking 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 or the Parking Lands;
- (g) **“Parking Lots”** means the parking lots 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, the Parking 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 and the Parking Lands to Trio under the terms and conditions contained in this Agreement;
- (l) **“Leased Lands”** means Area B 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 two 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 to Penticton and Trio as the tenants to be entered into on or before October 1, 2017;
- (r) **“Marina Lease Rent”** means the rent set out in Section 3;
- (s) **“Marketing Plan”** means that document required under Section 8.2;
- (t) **“Operating Plan”** means that document required under Section 8.2;
- (u) Intentionally Deleted;
- (v) Intentionally Deleted;
- (w) Intentionally Deleted;
- (x) **“Parking Lands”** means Areas C and D 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” save and except the parking machine in the trailer lot which shall be retained and removed by the City;
- (y) **“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;
- (z) **“Per Square Meter Appraisal Rate”** means the per square meter appraisal value obtained from an appraisal pursuant to Section 5.3 of this Agreement;
- (aa) **“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;
- (bb) **“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;
- (cc) **“Rent”** means the Lease Rent, the Marina Lease Rent and the Additional Rent;
- (dd) **“Restaurant”** means the restaurant as set out in Section 13.1(b);
- (ee) **“Restaurant Area”** means the Restaurant area as set out in Section 13.1(b);
- (ff) **“Retail Area”** means the retail area set out in Section 13.1(a);
- (gg) **“Sub-License of Occupation”** means the two year agreement attached hereto as Schedule “L” executed between Trio and Penticton for the operation of the Skaha Lake Marina in its existing form.

- (hh) **“Term”** means the term of years commencing on the Commencement Date as set out in Section 1.1(c) and ending on December 31, 2047; and
- (ii) **“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

References to Schedules in this Agreement are references to the Schedules to the Marina Development Agreement between Penticton and Trio dated August 4, 2015. For ease of reference, those Schedules are indexed as follows:

- (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” – Intentionally Left Blank;

- (h) Schedule "H" – Intentionally Left Blank
- (i) Schedule "I" – Intentionally Left Blank;
- (j) Schedule "J" – City of Penticton Council Resolution;
- (k) Schedule "K" – License to Use Agreement;
- (l) Schedule "L" – Sub-License of Occupation Agreement; and
- (m) Schedule "M" – Marina Lease of the Leased Marina Lands.

**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 similar to that contained in Schedule "M" to this Agreement to be executed subsequent to 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, 2018 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 AND THE PARKING LANDS**

**4.1 Leased Lands and Parking 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 and the Parking Lands for the Term.

**4.2 Term**

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

**4.3 Registrability of Lease**

Penticton and Trio will cooperate and use commercially reasonable efforts to make the Lease registrable, including using commercially reasonable efforts to have the Lease approved by the approving officer, provided however that Trio will bear sole responsibility for the cost of the preparation and presentation of plans for approval by the approving officer and all registration costs.

**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 \$4.45 per square meter multiplied by the total number of square meters contained in the Leased Lands payable on July 1, 2018 and July 1st of every year of the Term thereafter,
  - (b) annual payments equal to or greater than \$2.00 per square meter multiplied by the total number of square meters contained in the Parking Lands payable on July 1, 2018 and July 1st of every year of the Term thereafter
- (the foregoing rents together the "Base Lease Rent").

**5.2 Per Square Meter Rate Increase**

Notwithstanding anything herein to the contrary, the Base Lease Rent shall be increased as follows:

- (a) From January 1, 2018 to December 31, 2022 using the following formula:  

$$B_{n \text{ (n=2018 to 2022)}} = B_1$$
- (b) On January 1, 2023 using the following formula:  

$$B_{2023} = (B_1) \times (1 + ((CPI_{2022} - CPI_{2018}) / (CPI_{2018})))$$
- (c) January 1, 2024 to January 1, 2047 using the following formula:  

$$(B_{n \text{ (n=2024 to 2047)}}) = (B_{n-1}) \times (1 + ((CPI_{n-1} - CPI_{n-2}) / (CPI_{n-2})))$$

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)  $B_1$  = The 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=2018 is the year 2018 and so on.
- (iii)  $B_{2023}$  = the per square meter lease rate for the year 2023.
- (iv)  $CPI_{2022}$  = CPI for the year 2022.
- (v)  $CPI_{2018}$  = CPI for the year 2018.
- (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 2020, 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 and/or the Parking 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 or the Parking Lands (as the case may be) 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 or the Parking Lands (as the case may be) 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 and Parking Lands**

Trio covenants and agrees with Penticton to manage and operate the Leased Lands and Parking 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>, 2023 and on or before July 1<sup>st</sup> of each year of the Term thereafter, and including July 1<sup>st</sup>, 2048 after the expiration of the Term, Trio shall pay to Penticton the Additional Rent as follows:

- (a) 2% of C where C is between \$0 and \$625,000; plus
- (b) 7% of C greater than \$625,000 to \$925,000; plus
- (c) 8% of C greater than \$925,000 to \$1,225,000; plus
- (d) 9% of C greater than \$1,225,000.

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 1st, 2023 and on or before July 1st of each year of the Term thereafter, and including July 1st,2048 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. 2% of E where E is between \$0 to \$375,500; plus
  - ii. 3.5% of E greater than \$375,5001 to \$506,250; plus
  - iii. 4.0% of E greater than \$506,251 to \$675,000; plus
  - iv. 4.5% 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:

40% x (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, Parking 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, Parking 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 January 15, 2017 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 the Parking Lots as the latter are defined in Section 14.1;
- (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, Parking 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
- (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 only if sales are approved through the Province; 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 2018 to 2022, 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 Parking Lots;
- (f) Parking expenses from the Parking Lots;
- (g) Any other revenues not noted above; and
- (h) Any other expenses not noted above.

Beginning in 2023, 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 2018 to 2022.

## **9.0 PENTICTON RESPONSIBILITIES**

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

Penticton shall deposit 100% 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,

for Skaha Park 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 Parking Lots for every year of the Term;
- (d) Trio has improved and maintained the Leased Marina Lands and the Leased Lands and the Parking 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:

- (a) By March 15, 2017, Penticton must receive from Trio a detailed Marketing Plan and Operating Plan from Trio as contemplated in Section 8.2.
- (b) By May 15, 2017, Penticton, if satisfied with such plans, approving in writing both the Marketing Plan and the Operating Plan as submitted by Trio, such approval not to be unreasonably withheld or delayed.
- (c) By October 1<sup>st</sup>, 2017, Penticton must receive from Trio 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.
- (d) By November 1<sup>st</sup>, 2017 Penticton approving in writing the detailed financing plan submitted by Trio, such approval not to be unreasonably withheld or delayed.
- (e) By November 15, 2017 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.
- (f) By December 1, 2017 Penticton approving in writing the lender's loan commitment, such approval not to be unreasonably withheld or delayed.
- (g) By October 1, 2017 Penticton, Trio and the Province of British Columbia approving a form of joint lease for the Leased Marina Lands, such lease to be executed upon the satisfaction of all conditions precedent to this Agreement.

For the Restaurant and Retail area referenced in Section 13:

- (h) By March 15, 2017, Penticton must receive from Trio a detailed Marketing Plan and Operating Plan from Trio as contemplated in Section 8.2.
- (i) By May 15, 2017, Penticton, if satisfied with such plans, approving in writing both the Marketing Plan and the Operating Plan as submitted by Trio, such approval not to be unreasonably withheld or delayed.
- (j) By July 1<sup>st</sup>, 2018, Penticton must receive from Trio 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.
- (k) By August 1<sup>st</sup>, 2018 Penticton approving in writing the detailed financing plan submitted by Trio, such approval not to be unreasonably withheld or delayed.
- (l) By August 15, 2018 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.

- (m) By September 1, 2018 Penticton approving in writing the lender's loan commitment, such approval not to be unreasonably withheld or delayed.

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:

- (a) By May 15, 2017, receiving Penticton's approval, in writing, of both the Marketing Plan and the Operating Plan as submitted by Trio in accordance with Section 11.1.
- (b) By November 10, 2017 Trio must have received lender's loan commitments for financing.
- (c) By October 1, 2017 Penticton, Trio and the Province of British Columbia approving a form of joint lease for the Leased Marina Lands, such lease to be executed upon the satisfaction of all conditions precedent to this Agreement.

For the Restaurant and Retail area referenced in Section 13:

- (a) By May 15, 2017, receiving Penticton's approval, in writing, of both the Marketing Plan and the Operating Plan as submitted by Trio in accordance with Section 11.1.
- (b) By August 10, 2018 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.

### 11.2.1 **Replacement of License to Use and Sub-License of Occupation Agreements**

Upon the waiver or fulfillment of all conditions precedent to this Agreement applicable to the Marina by both parties or January 1, 2018, which ever shall last occur, the rent and revenue provisions of this Agreement including those provisions as to Lease Rent, Additional Rent, Revenue Sharing and Restaurant Revenue Sharing, shall commence and the License to Use shall be at an end. If the waiver or fulfillment of any of the conditions precedent to this Agreement applicable to the Marina should be extended into 2018 by mutual agreement of the parties, all such rent and revenue provisions shall nevertheless apply retrospectively for the entire 2018 calendar year. Upon the execution of the Marina Lease of the Leased Marina Lands, the Marina Lease Rent shall replace the sub-license fees payable under the Sub-License of Occupation retrospectively for the entire 2018 calendar year and the Sub-License of Occupation shall be at an end.

### 11.3 **Commercially Reasonable Efforts to Remove Conditions Precedent**

Penticton and Trio will use commercially reasonable efforts to remove the conditions precedent to the obligations under this Agreement.

**11.4 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.

**11.5 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.

**11.6 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 and Parking 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, 2018, 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 include 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, 2017 and shall operate the existing marina until at least December 31, 2018 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, 2016 to December 31, 2018 and once Penticton Conditions Precedent and Trio Conditions 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 March 15, 2017 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 June 15, 2017 Trio shall complete the safety repairs to the satisfaction of Penticton.

**12.4 Operation of Marina**

On or before January 1, 2018, 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 required under Section 8.2 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 required under Section 8.2 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 1st 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, 2019, 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 FOUR THOUSAND (4,000) square feet of building area for boating, beach related items, and other uses permitted or ancillary to uses permitted under the applicable zoning, and provided said Retail Area is compliant with all provincial and federal laws and all applicable City of Penticton Bylaws, subject to any variances that may be approved through the usual process.
- (b) a Restaurant of not less than ONE THOUSAND THREE HUNDRED AND SIXTY (1,360) square feet and not more than TWO THOUSAND FIVE HUNDRED (2,500) square feet of building area and seating for at least EIGHTY FIVE (85) customers and not more than ONE HUNDRED AND FIFTY-SIX (156) customers compliant with the applicable City of Penticton Bylaws, subject to any variances that may be approved through the usual process.

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, Parking 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, 2019, Trio shall begin operating the Retail Area and Restaurant and shall operate and maintain the Retail Area and Restaurant until at least September 30, 2019, 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 required under Section 8.2 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 required under Section 8.2 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.

### 13.4 **Restriction on Construction Footprint**

All new exterior walls constructed as part of the Retail Area and Restaurant shall be located on lands owned by Penticton or within the footprint of buildings existing within Area B at the date of execution of this Agreement.

**14.0 PARKING LOT OPERATION**

**14.1 Operation of Parking Lots**

Trio shall operate as a parking lot for visitors to Skaha Park or the Marina, maintain and retain all revenues from the existing South Parking Lot located in Area C as depicted in Schedule "A" attached hereto, (the "South Parking Lot"), and the existing Boat Trailer Parking Lot located in Area D as also depicted in Schedule "A" attached, (the "Boat Trailer Parking Lot"), (collectively the "Parking Lots"), from May 1, 2018 and for the remainder of the Term.

The Parking Lots are to be marketed in accordance with the Marketing Plan required under Section 8.2 and as modified by the updated 5 Year Marketing Plan as noted in Section 8.3.

The Parking Lots are to be operated in accordance with the Operating Plan, which shall include the parking rates to be charged users of the Parking Lots (which shall remain consistent with those presently in effect, subject to CPI increases), required under Section 8.2 and as modified by the updated 5 Year Operating Plan as noted in Section 8.4

**14.2 Costs of Operation for Parking Lots**

Trio shall pay all costs associated with the operation and maintenance, including, without limiting the generality of the foregoing, crack sealing, cleaning, sweeping and general deterioration repairs, and line painting as required, of the Parking Lots referred to in Section 14.1 herein.

**14.3 Use of Boat Trailer Parking Lot**

Trio shall operate the Boat Trailer Parking Lot so as to maintain the present capacity for the parking of boat trailers and tow-vehicles of non-commercial day use boating visitors to Skaha Park and Skaha Lake between 6:00 AM and 5:00 PM from May 1 to October 15 of each year of the Term, though boat trailers and tow-vehicles remaining in the parking lot after 5:00 PM shall be permitted to remain until the parking lot closes. At other times, Trio shall only be permitted to use the Boat Trailer Parking Lot for the parking of non-commercial visitors to Skaha Park or the Marina.

**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.

**15.3 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 and 13.1 and 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, Parking Lands and/or 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 Penticton and Penticton's servants and agents from loss or damage (without any rights of cross-claim or subrogation against Penticton), 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 Penticton may reasonably require to be insured against the full insurable value thereof at all times and in any event the amount sufficient to prevent Penticton 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 and 13.1 of this Agreement, Trio shall provide all plans of the proposed works to Penticton. Penticton shall engage Spiegel Skillen Quantity Surveyors or another quantity surveyor as determined by Penticton, at Penticton's sole cost, to estimate the cost of the proposed work. Trio shall then provide Penticton with an irrevocable letter of credit, in a form acceptable to Penticton, 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 Penticton will have the ability to draw on the letter of credit in the following events:

- (a) a lien is filed on the Leased Lands, Parking Lands or the Leased Marina Lands that Trio does not discharge within 30 days written notice from Penticton to do so;
- (b) construction ceases on the Lands or is reduced to such a level that in the opinion of Penticton', 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 Penticton's quantity surveyor; or
- (d) Trio is otherwise in default of its obligations under this Agreement.

Trio may submit multiple letters of credit to Penticton 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 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 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

Pentiction 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 Pentiction and shall note in all of Trio's contracts the existence of the same.

### 16.5 Statutory Declaration of Payment

Trio shall provide to Pentiction 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 Pentiction 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 Pentiction 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 Pentiction after the construction of the items referred to in Sections 12.1 and 13.1.

**17.0 EXTENSION OF DEADLINES**

17.1 If Pentiction or Trio determines that it will not be possible to meet a deadline set out in this Agreement, Pentiction 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**

Pentiction, 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 Pentiction 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 Pentiction or otherwise.

**18.4 Repairs by designated trades people**

Trio, when necessary and whether upon receipt of notice from Pentiction 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 Pentiction, 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 Pentiction considers to be a reasonable time, then Pentiction may cause such repairs and maintenance to be undertaken (and may cause its representatives to enter on the Lands for such purpose). Should Pentiction deem it necessary to undertake such repairs or maintenance, then Trio will pay to Pentiction 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, PARKING 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, Parking 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) Parking Lots;

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 and/or Parking 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, Parking 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 Parking Lots 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 and Parking Lands**

Trio shall not assign, sub-let or part with possession of the whole or any part of the Leased Lands or Parking 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 or Parking 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 consent to such security as is reasonably required by Trio's bank including, but not limited to, an assignment of Trio's interest in the Lease, and a mortgage of Trio's interest 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 consent to such security as is reasonably required by Trio's bank including, but not limited to, an assignment of Trio's interest in the Marina Lease, and a mortgage of 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, Trio or the applicable bank or its nominee 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 Trio, the applicable bank or its nominee 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, Parking 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, 2021, 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, 2021 to January 1, 2026 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 Penticton or those for whom it is in law responsible, or by a breach of this Agreement by Penticton;
- (f) any and all liabilities, claims, damages, costs, loss, suits, or actions of any nature whatsoever (including legal fees incurred by Penticton 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 Penticton or by a breach of this Agreement by Penticton.

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

### 23.3 Indemnification of Trio

Penticton 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 Penticton of any obligation contained in this Agreement or the Marina Lease to be observed or performed by Penticton, excepting those obligations Trio is to fulfill on behalf of Penticton under the this Agreement.
- (b) any damage to the Lands caused by Penticton;
- (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, 2018.

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 Penticton 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 Penticton 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, and 15.1.

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 Penticton 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 Penticton from Liability for Insured Loss or Damage**

Trio hereby releases Penticton, 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 Penticton 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 Penticton 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 Penticton 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 Penticton.

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

**27.1 Penticton may perform covenants**

If Trio is in default of any of its obligations under this Agreement or the Marina 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 the Marina 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. 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, 14.1 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, Parking 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 Section 15.1 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) Pentiction, 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 Pentiction's intention to re-enter be served or that Pentiction 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 Pentiction's privilege on the property of Trio and right of distress and agrees with Pentiction, notwithstanding any such law, that Pentiction 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, Pentiction, 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 Pentiction, being entitled to do so, levies distress against Trio's goods and chattels, Pentiction may use such force as Pentiction may deem necessary for the purpose and for gaining admission to the Lands without Pentiction being liable for any loss or damage caused thereby.

#### 27.6 **Re-entry and damages**

If and whenever Pentiction is entitled to re-enter the Lands, or does re-enter the Lands, Pentiction 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, Pentiction may from time to time without terminating Trio's obligations under this Agreement make alterations and repairs considered by Pentiction 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 Pentiction in its reasonable discretion considers advisable. Upon such assigning or subletting all rent and other monies received by Pentiction 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 Pentiction and third to the payment of Rent due and unpaid hereunder. The residue, if any, will be held by Pentiction 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 Pentiction. The deficiency will be calculated and paid monthly. No re-entry by Pentiction 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, Pentiction 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 Pentiction 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 Pentiction 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 Pentiction 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 Pentiction 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 Pentiction 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 Pentiction are cumulative**

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

If at any time an action is brought where Pentiction 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 Pentiction all expenses incurred by Pentiction in the enforcement of its rights and remedies hereunder, including Pentiction'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 Pentiction 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.

**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 COMMUNICATIONS TO PUBLIC**

**32.1 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 Pentiction.

**33.2 Condoning**

Any condoning, excusing or overlooking by Pentiction of any default by Trio will not operate as a waiver of Pentiction'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 Pentiction 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 Pentiction unless made in writing and signed by Pentiction and that this Agreement and the Marina Lease constitutes the entire agreement between Pentiction and Trio with respect to the Leased Lands and the Leased Marina Lands and the Parking 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 Pentiction at:  
171 Main Street  
Pentiction, British Columbia  
V2A 5A9  
Attention: Corporate Officer  
Fax No: (250) 490-2402
- (b) To Trio at:  
c/o Pushor Mitchell LLP  
301 – 1665 Ellis Street  
Kelowna, British Columbia  
V1Y 2B3  
Attention: Bradley Cronquist  
Fax No: (250)762-9115

Any such notice mailed shall be deemed to have been received on the fifth (5th) business day following the date of mailing. Any such notice telefaxed shall be deemed to have been received on the first (1st) business day following the date of transmission. Each of the parties may by notice in writing to the other from time to time designate any other address to which the notices may be sent. For the purposes of this 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

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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 Dyas

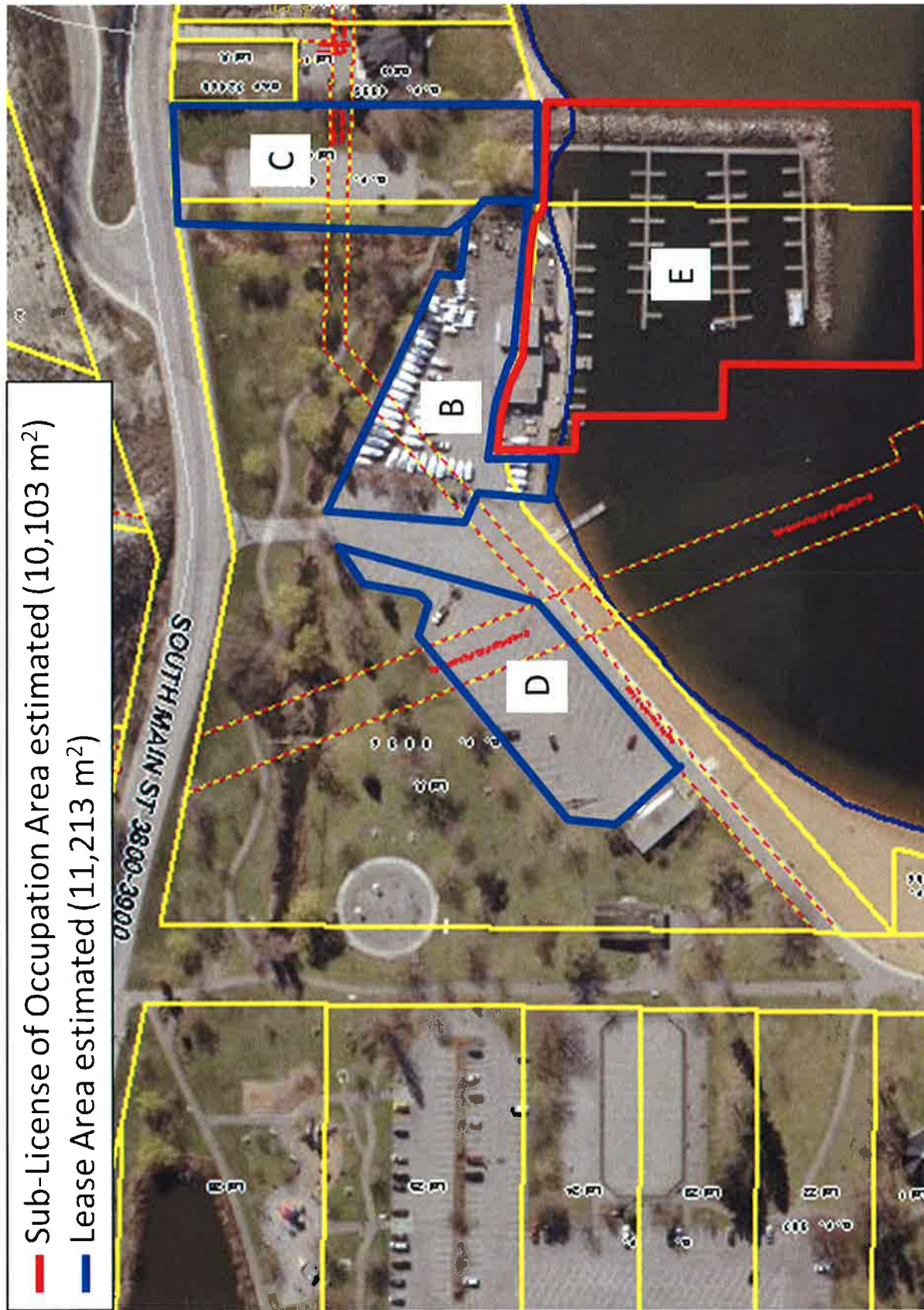
\_\_\_\_\_  
Witness

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Donald Thomas Hedquist

\_\_\_\_\_  
Witness

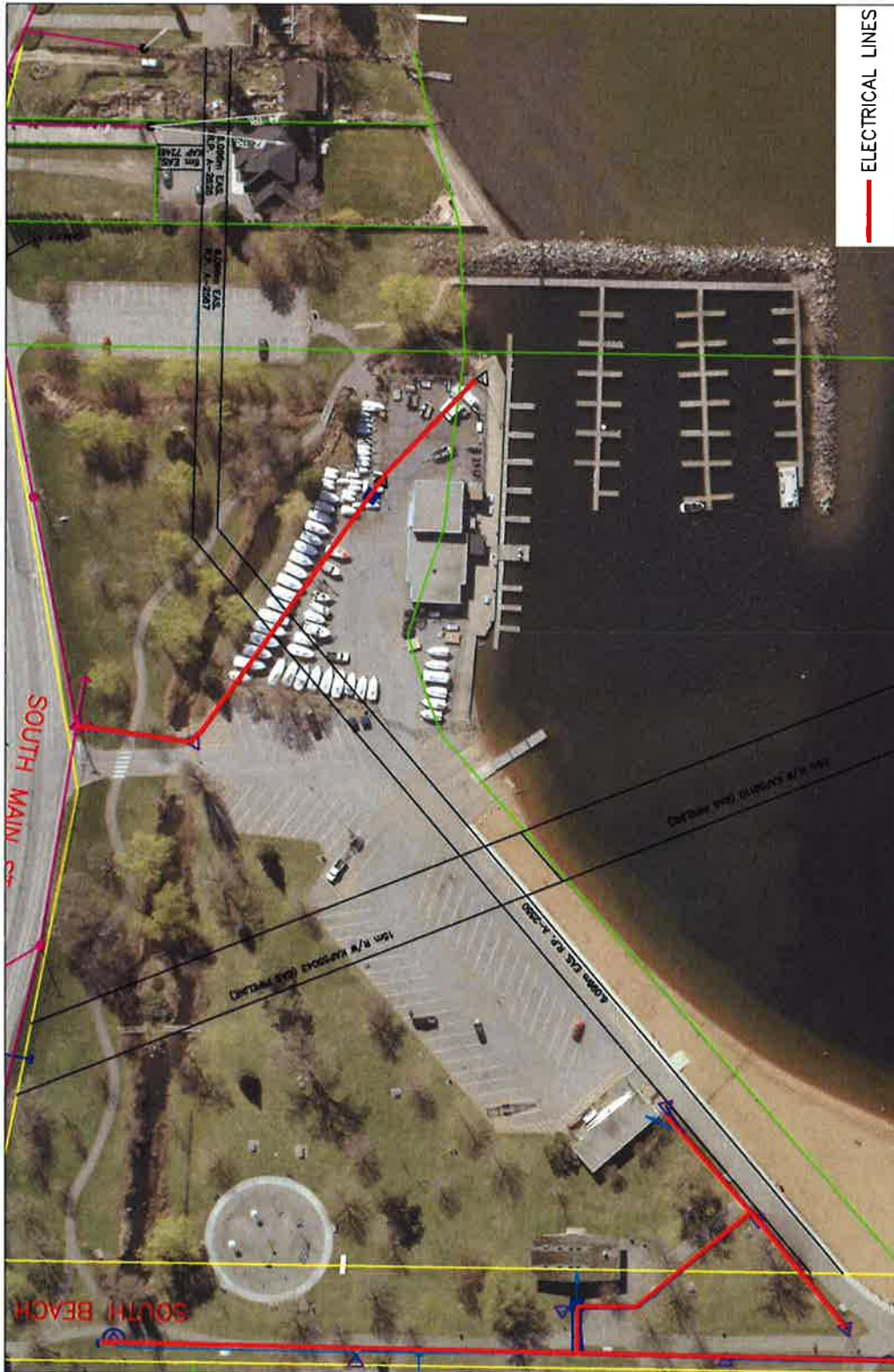
**Schedule "A" – Plan for the Lands**

Schedule "A" – Plan for the Lands

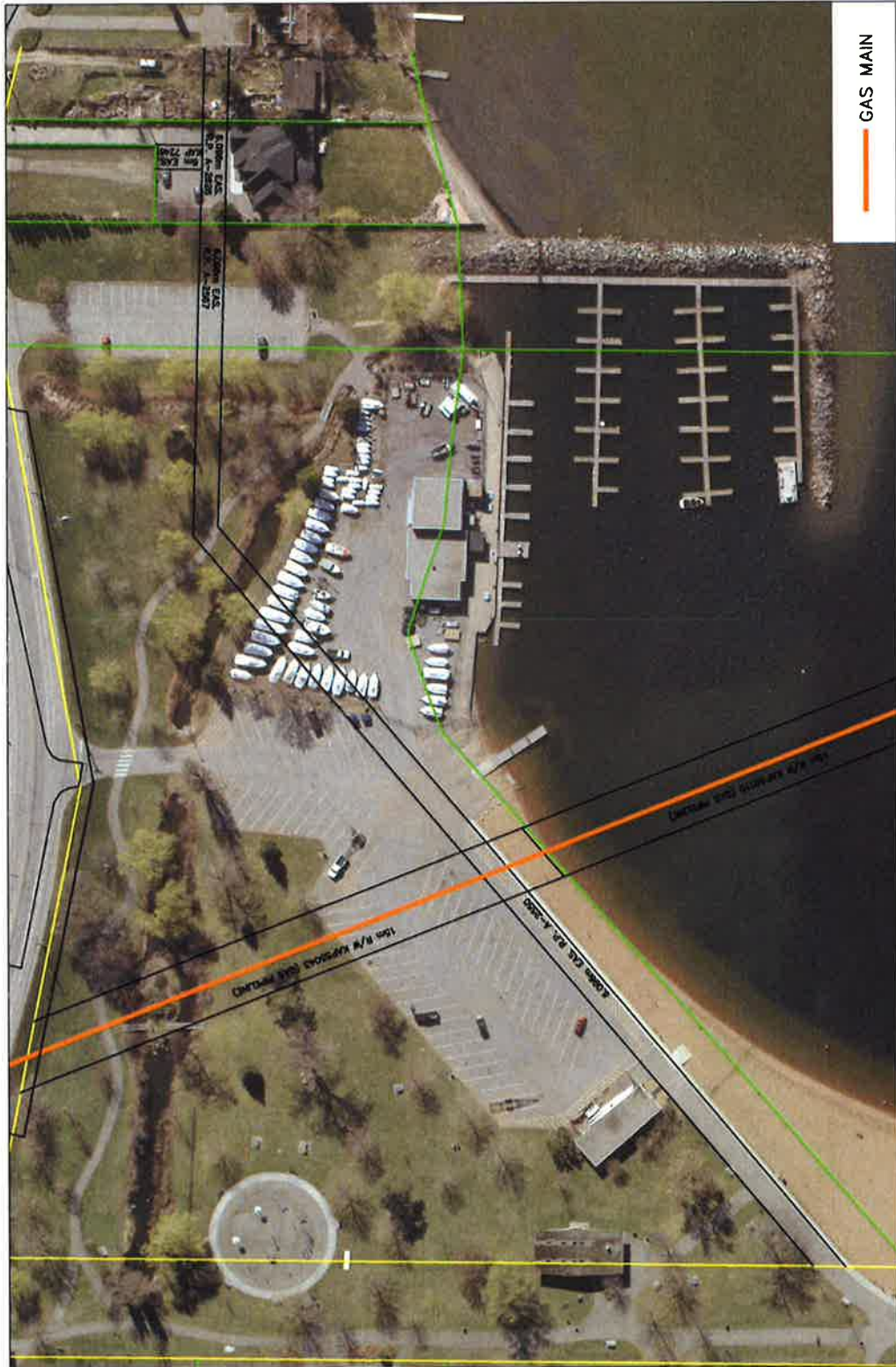


**Schedule "B" – Utilities Plan**

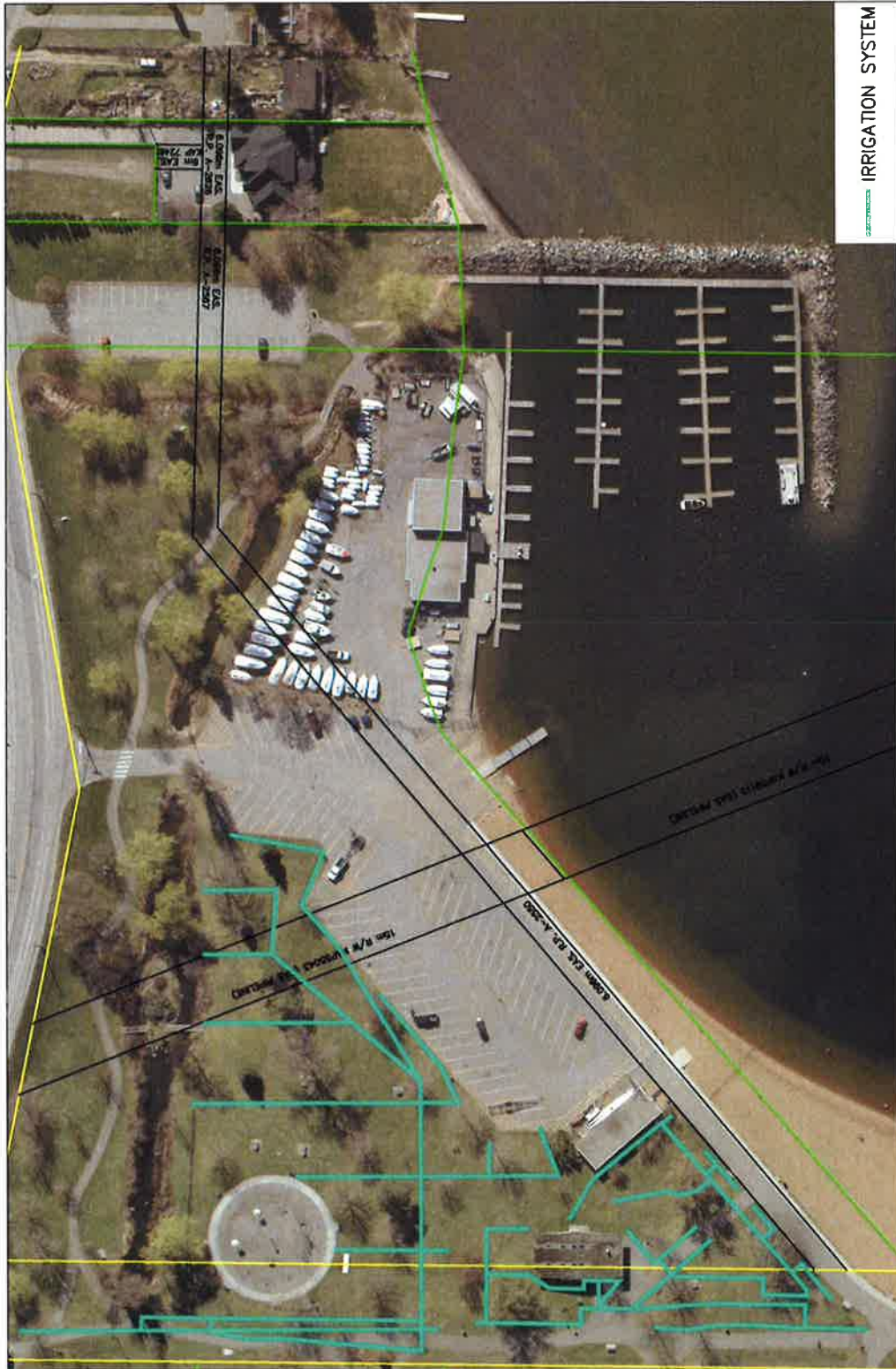
### Schedule "B" – Utilities Plan Electrical



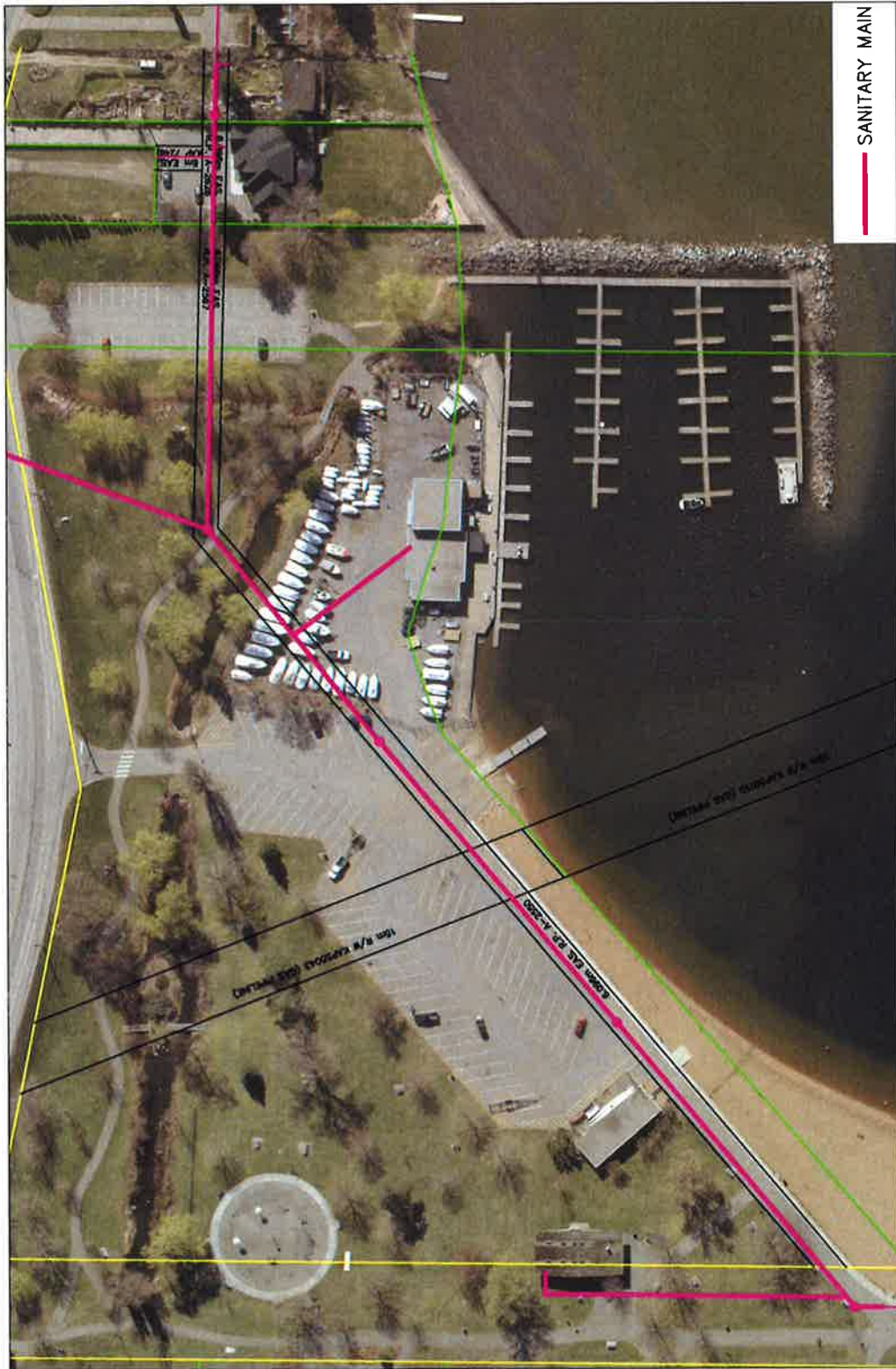
### Schedule "B" – Utilities Plan Gas



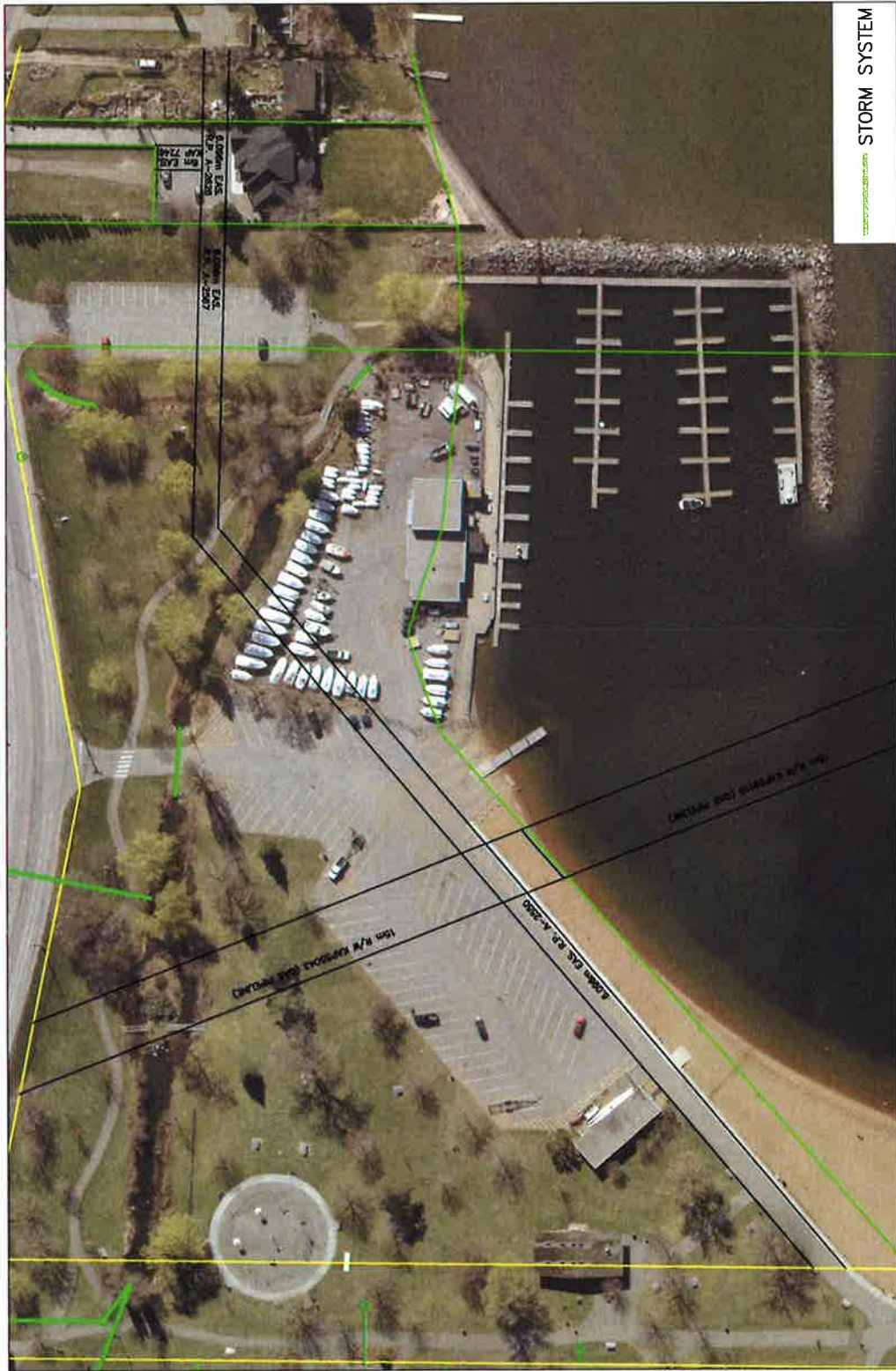
### Schedule "B" – Utilities Plan Irrigation



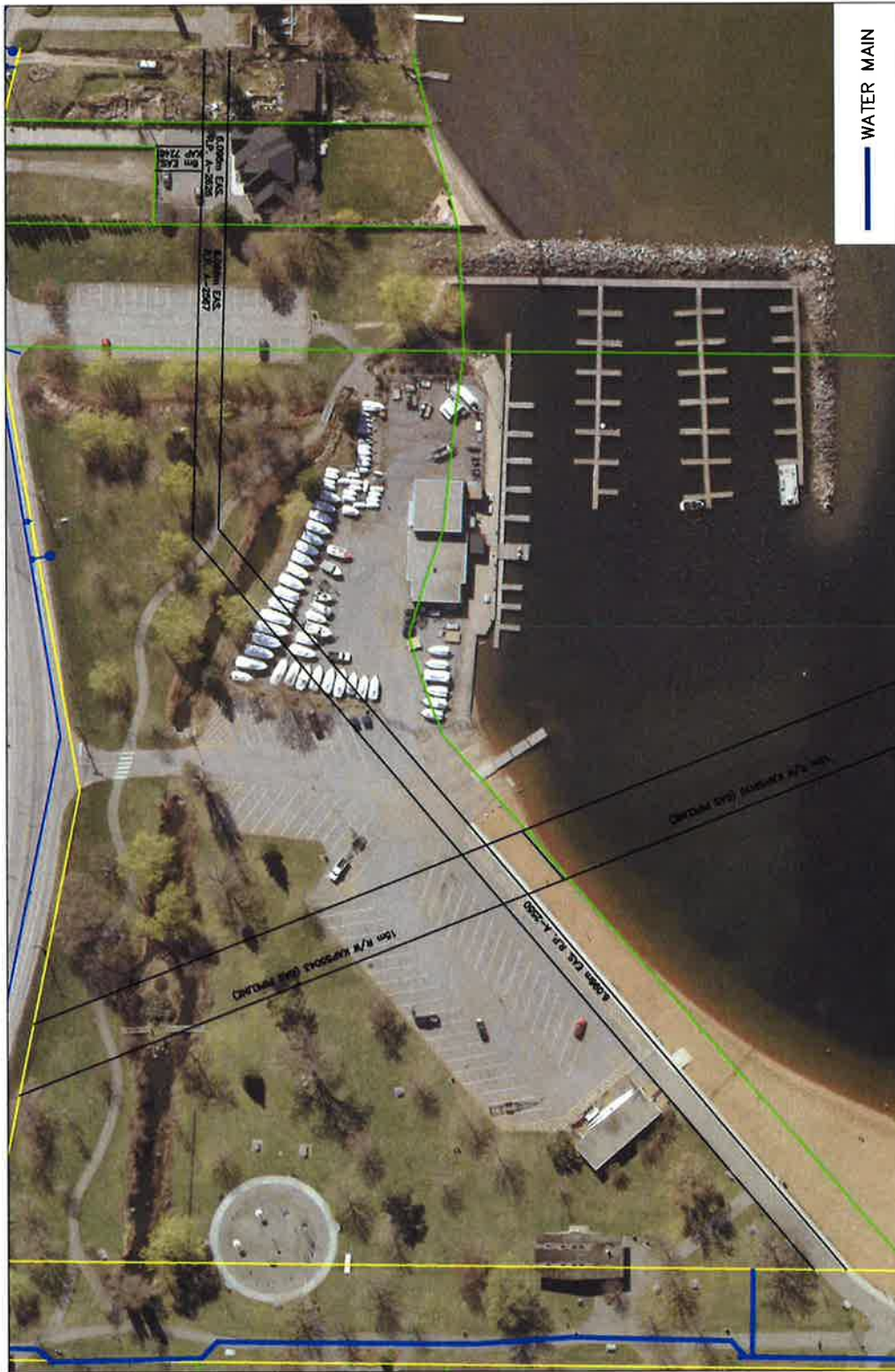
### Schedule "B" – Utilities Plan Sanitary



### Schedule "B" – Utilities Plan Storm



### Schedule "B" – Utilities Plan Water



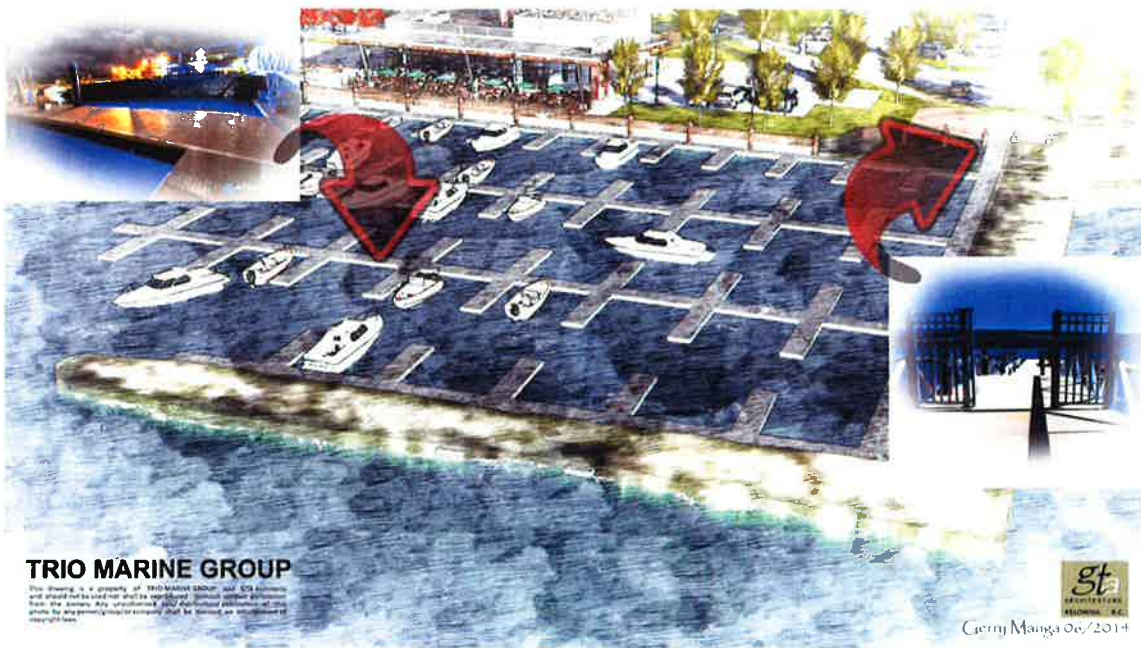
**Schedule "C" - Exclusion Area**

Schedule "C" - Exclusion Area



**Schedule "D" – Architectural Concept Drawings of the Marina**

### Schedule "D" – Architectural Concept Drawings Marina



**TRIO MARINE GROUP**

This drawing is a property of Trio Marine Group and is confidential. It should not be used for any other purpose without the written permission of Trio Marine Group. Any reproduction or distribution of this drawing for any purpose other than that for which it was prepared is prohibited without the written permission of Trio Marine Group.



Cerrif Manga 06/2014



NORTH ELEVATION



NORTH ELEVATION



SOUTH ELEVATION



EAST ELEVATION

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

Schedule "E" – Architectural Concept Drawings Retail Area



**Schedule "F" - Architectural Concept Drawings of the Restaurant Area**

### Schedule "F" – Architectural Concept Drawings Restaurant Area



**Schedule "G" – INTENTIONALLY BLANK**

**Schedule "H" – INTENTIONALLY BLANK**

**Schedule "I" – INTENTIONALLY BLANK**

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

**Schedule "K" – License to Use Agreement**

THE CORPORATION OF THE CITY OF PENTICTON AGREEMENT

LICENCE TO USE

File: 4380.20

PARTICULARS: Use of City owned lands for the operation of a food concession and the sale and/ or rental of related recreational equipment located at 3895 Lakeside Road, Penticton, B.C. (Skaha Lake Marina)

THIS AGREEMENT dated for reference January 1, 2016.

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

(hereinafter called "the City")

OF THE FIRST PART

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

(hereinafter called "the Licensee")

OF THE SECOND PART

AND

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

AND

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

(collectively the "Indemnifiers")

OF THE THIRD PART

WITNESSETH:

- A. The City is the owner of the lands and improvements known as 3895 Lakeside Road and legally described as:  
Lot 1, DL 189, SDYD, Plan EPP50612
- 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 2016, (herein called the "Commencement Date", through the 31st day of December 2016.

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, 2016 plus other amounts specifically provided for herein (the "Licence Fee"). The parties hereto acknowledge that the above-noted Licence Fee is inclusive of the fee for the Sub-licence Basic Fee, as defined in and payable pursuant to the terms of the companion Sub-licence.

3.02 Net Fees

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

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

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

Article IV - Covenants of the Licensee

4.01 The Licensee covenants with the City:

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

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

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

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

Article V - Non-exclusivity

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

Article VI – Assignment

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

Article VII - Cancellation

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

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

Article VIII - General

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

to the Licensee at:

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

to the Indemnifiers at:

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

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

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

Article XI - Indemnity

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

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

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

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

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

Article XII - Entire Agreement

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

Article XIII - Execution

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

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

THE CORPORATION OF THE CITY OF PENTICTON

ANDREW JAKUBETT, Mayor

DANA SCHMIDT, Corporate Officer

COUNCIL APPROVED

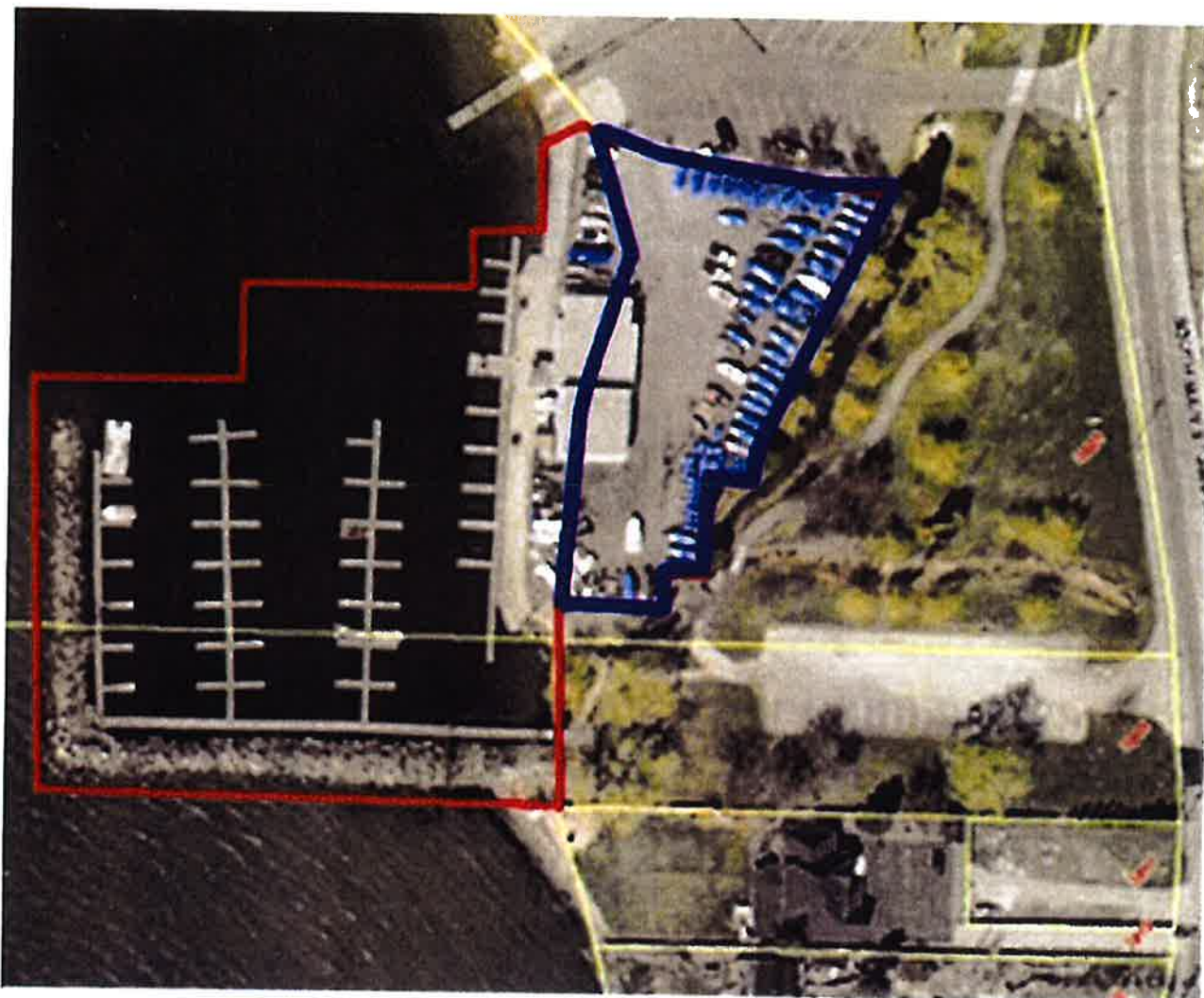
Date: 2015-09-28

Res. No.: 491/2015



## Schedule "A"

Portion of Lot 1, DL 189, SDYD, Plan E P P 5 1 0 7 5 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, 2016)



**Schedule "L" – Sub-License of Occupation Agreement**

**SUB-LICENSE OF OCCUPATION**

THIS SUB-LICENSE dated for reference January 1, 2016

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

("the Sub-Licensee")

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, 2016 (the "License") of a part of the lands and premises described as:

Lot 1, DL 189, SDYD, Plan EPP50612

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

**(1) Capitalized Terms**

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

**(2) Grant of Sub-license**

Subject to the consent of the Head Licensor, the Sub-licensor grants to the Sub-licensee a Sub-license of Occupation of the Land for the period January 1, 2016 to December 31, 2016 (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 Mitchel LLP  
301 – 1665 Ellis Street  
Kelowna BC V1Y 2B3

to the Indemnifiers at:

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

or such other address as the Sub-licensee and Indemnifiers may from time to time direct in writing, and any such notice by the Sub-licensor to the Sub-licensee and/or the Indemnifiers shall be deemed to have been received, if mailed, five (5) days after the time of mailing, or if telefaxed seventy-two (72) hours after the time of telefaxing, and 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-licence 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-licence, remove any improvements or fixtures made by the Sub- licensee to the Sub-licensed Land during the term of this Sub-licence, 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-licence 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

  
\_\_\_\_\_  
ANDREW JAKUBEIT, MAYOR

  
\_\_\_\_\_  
DANA SCHMIDT,  
CORPORATE OFFICER

COUNCIL APPROVED  
Date: 2015-09-28  
Res. No.: 491/2015

TRIO MARINE GROUP INC

  
\_\_\_\_\_  
THOMAS DYAS

  
\_\_\_\_\_  
THOMAS HEDQUIST

INDEMNIFIERS


Signed, Sealed and Delivered  
in the presence of:


  
\_\_\_\_\_  
Witness signature

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

  
\_\_\_\_\_  
Witness signature

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

)  
)  
)   
)  
)  
) THOMAS JOHN DYAS

)  
)   
)  
) THOMAS DONALD HEDQUEST  
)  
)

**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" – Marina Lease of the Leased Marina Lands.**



LEASE

Lease No.:

File No.: 3403233

Disposition No.: 915728

THIS AGREEMENT is dated for reference January 1, 2016 and is made under the *Land Act*.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia

(the "Province")

AND:

CORPORATION OF THE CITY OF PENTICTON  
171 Main St  
Penticton, BC V2A 5A9

And

TRIO MARINE GROUP INC., Incorporation No. BC1008060  
5831 Columbia Ave  
Peachland, BC V0H 1X4

(the "Lessee")

The parties agree as follows:

**ARTICLE 1 - INTERPRETATION**

1.1 In this Agreement,

**"Agreement"** means this lease;

**"Ancillary Marine Use"** means boathouses, fuel docks, marina ways (portion submerged at mean high tide), launching ramps (portion submerged at high tide), boat sales dock, boat rentals dock and boat charters dock where they are below the mean water mark and not on fill;

**“Commencement Date”** means January 1, 2016;

**“disposition”** has the meaning given to it in the *Land Act* and includes a licence of occupation;

**“Hazardous Substances”** means any substance which is hazardous to persons, property or the environment, including without limitation

- (a) waste, as that term is defined in the *Environmental Management Act*; and
- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

**“Improvements”** means all buildings, structures, equipment, improvements and marine docking, moorage, storage and launching facilities for the accommodation, moorage, storage, launching, maintenance and minor repair of marine vessels (including bulkheads, groins, breakwaters and floating booms) that are made, constructed, erected, placed or installed on the Land at any time during the term of this Agreement, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs to any of them;

**“Land”** means that part or those parts of the Crown land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule” except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the *Transportation Act*);

**“Land Value”** means for the first five years of the Term the value for the Land established by us prior to the Commencement Date which value shall thereafter be subject to review by us prior to the sixth anniversary of the Commencement Date and thereafter at five year intervals during the remainder of the Term;

**“Linear Footage of Moorage Space”** means: the linear footage of all moorage space within the Land, whether open or covered by a boathouse, together with the linear footage of all improvements used for an Ancillary Marine Use;

**“Management Plan”** means the most recent management plan prepared by you in a form approved by us, signed and dated by the parties, and held on file by us;

**“Month to Month Moorage Charge per Linear Footage”** means:

- (a) the standard monthly linear footage rate that you charge to your customers for the use of moorage space; or

- (b) if you do not have a standard monthly linear footage rate but charge on a prepaid annual linear footage basis, the annual rate will be converted to an equivalent monthly rate; or
- (c) if we determine that you charge a membership fee or any other charge which is not solely a linear footage charge, we may determine a month to month moorage charge per linear footage taking into consideration the rates charged by commercial marinas which charge on a linear footage basis that we may determine to be comparable having regard to location and other factors;

**“Moorage Rent Discount”** means the following:  
NIL

**“Non-Moorage Rent Discount”** means the following:  
NIL

**“Potential Gross Income From Moorage”** means for any particular year of the Term, the amount calculated as follows:

$$A \times B \times C$$

where:

- A = the amount of Linear Footage of Moorage Space on the Land;
- B = the Month to Month Moorage Charge per Linear Footage; and
- C = the number of months the operation was open for business in that year;

**“Rate”**

- (a) during the first 15 year period of the Term means 3.5%; and
- (b) during the second 15 year period of the Term means 4.0%.

**“Ratio”** during each year of the Term means the percentage fixed by us in our sole discretion.

**“Realty Taxes”** means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

**“Rent”** means the rent set out in Article 3;

**“Security”** means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

**“Term”** means the period of time set out in section 2.2;

**“we”, “us” or “our”** refers to the Province alone and never refers to the combination of the Province and the Lessee: that combination is referred to as **“the parties”**; and

**“you” or “your”** refers to the Lessee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.

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- 1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with any legislation, regulations, Treasury Board directives or other enactments or any policy, directive, executive direction or other such guideline of general application.
- 1.14 Where this Agreement contains the forms of words contained in Column I of Schedule 4 of the *Land Transfer Form Act*, those words will have the same effect and be construed as if the appropriate forms of words contained in Column II of that Schedule were contained in this Agreement, unless the context requires another construction of those words.

**ARTICLE 2 - GRANT AND TERM**

- 2.1 On the terms and conditions set out in this Agreement, we grant you a lease of the Land for commercial marina, restaurant, lounge, retail sales and liquor sales purposes.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the 30th anniversary of that date, or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

**ARTICLE 3 - RENT**

3.1 You will pay to us:

(a) for the first year of the Term Rent of \$4,944.00 payable in advance, on the

Commencement Date; and

- (b) during the balance of the Term the sum of each of the annual Rents determined under sections 3.2 and 3.3 of this Article or \$500, whichever is the greater, payable in advance beginning on the first anniversary of the Commencement Date and thereafter on each anniversary of that date.
- 3.2 The annual Rent payable for moorage and Ancillary Marine Use for any particular year shall be an amount equivalent to the product of the Potential Gross Income from Moorage for the previous year multiplied by the Rate, less the Moorage Rent Discount, if any.
  - 3.3 The annual Rent payable for non-moorage uses shall be an amount equivalent to the product of the Land Value multiplied by the Ratio, less the Non-Moorage Rent Discount, if any.
  - 3.4 You will, in each and every year during the Term within 30 days of an anniversary of the Commencement Date deliver to us a Statutory Declaration, or such other document that we may approve from time to time to (a "statement") for the purpose of verifying the information necessary to calculate the Rent payable under section 3.2. We may give you notice from time to time specifying the form of the statement, the information to be set out in the statement and any supporting documents that you will be required to provide with the statement.
  - 3.5 In the event you deliver the Statutory Declaration referred to in section 3.4 of this Article to us before the deadline referred to in section 3.4, we will, not later than 15 days before the anniversary of the Commencement Date during each year of the Term, give written notice to you specifying the annual Rent payable under section 3.4 for the immediately succeeding year of the Term.
  - 3.6 If we do not give you notice under section 3.5 of this Article, the annual Rent shall be equal to the annual Rent calculated or in force during the immediately preceding year of the term.
  - 3.7 If you fail to deliver the Statutory Declaration referred in section 3.4 of this Article to us before the deadline referred to in section 3.4 we may:
    - (a) enter upon the Land and do such things as are necessary to determine the information required in section 3.4 of this Article; and
    - (b) based on the information determined under subsection (a) above, set the annual Rent, retroactive to the last anniversary date of the Commencement Date.
  - 3.8 The annual Rent specified in a notice given under section 3.5 shall constitute conclusive evidence of the annual Rent payable for the year of the Term specified in the notice.

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**ARTICLE 4 - COVENANTS**

4.1 You must

- (a) pay, when due,
  - (i) the Rent to us at the address set out in Article 10,
  - (ii) the Realty Taxes, and
  - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
  - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and human health and safety, and
  - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (g) not construct, place, anchor, secure or affix any Improvement in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan (where applicable) or otherwise, do not:

- (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or
- (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access;

- (h) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that you are required to hold back under the *Builders Lien Act*;
- (i) if any claim of lien over the Land is made under the *Builders Lien Act*, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (j) not 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 unless you obtain our prior written approval;
- (k) ensure any proposed changes to the docks or other improvements will require our written consent prior to any work being completed;
- (l) ensure that the Skaha Marina - Marina Development Agreement dated August 4, 2015 between The Corporation of the City of Penticton and Trio Marine Goup Inc is adhered to. If at anytime the Agreement is in default, this tenure will be cancelled;
- (m) not alter or add to any Improvement without our prior written consent;
- (n) permit the free and unrestricted use by the general public of the banks of Skaha Lake for recreational and fishing purposes saving and excepting the gated off marina area;
- (o) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the *Heritage Conservation Act*;
- (p) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil,

groundwater and other materials and substances, where the inspection may be necessary or advisable for us to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances, provided that we take reasonable steps to minimize any disruption of your operations;

- (q) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
- (i) any breach, violation or non-performance of a provision of this Agreement,
  - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
  - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

- (r) on the termination of this Agreement,
- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition,
  - (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
  - (iii) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
  - (iv) restore the surface of the Land as nearly as may reasonably be possible, to the condition that the Land was in at the time it originally began to be used for the purposes described in this Agreement, but if you are not directed or permitted to remove an Improvement under paragraph (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Article.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement;

save and except only to the extent that we have given a prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the

Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

4.7 We will provide you with quiet enjoyment of the Land.

#### ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) in addition to the other reservations and exceptions expressly provided in this Agreement this Agreement is subject to the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
- (b) other persons may hold or acquire rights to use the Land in accordance with enactments other than the *Land Act* or the *Ministry of Lands, Parks and Housing Act*, including rights held or acquired under the *Coal Act*, *Forest Act*, *Geothermal Resources Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Water Act* or *Wildlife Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect); such rights may exist as of the Commencement Date and may be granted or

acquired subsequent to the Commencement Date and may affect your use of the Land;

- (c) with your prior consent, which consent you will not unreasonably withhold, we may make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, including a Crown agency or ministry, and, upon such consent being given you will, if required by us, execute and deliver to us such instrument as may be necessary to subordinate your rights under this Agreement to such easement, right of way or statutory right of way;
- (d) for the purpose of subsection (c), you will be deemed to have reasonably withheld your consent if a disposition made under that subsection would have a material adverse impact on your use of the Land under this Agreement;
- (e) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b), and (c);
- (f) if a proposed disposition under subsection (c) will not have a material adverse impact on your use of the Land under this Agreement you must not require any payment, whether as compensation or any other charge, as a condition of your consent to that disposition;
- (g) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with your use of the Land under this Agreement that arises as a result of the exercise or operation of the interests, rights, privileges and titles described in subsections (a), (b) and (c);
- (h) any interference with your use of the Land under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles described in subsection (a), (b) and (c) will not constitute a breach of our covenant of quiet enjoyment and you release and discharge us from all claims for loss or damage arising directly or indirectly out of any such interference;
- (i) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under the enactments described in subsection (b), or any other applicable enactment;
- (j) you will not dredge or displace beach materials on the Land unless you have obtained our prior written approval;

- (k) you will not moor or secure any boat or structure to the Improvements or on any part of the Land for use as a live-aboard facility, whether permanent or temporary;
- (l) you will not interrupt or divert the movement of water or of beach materials by water along the shoreline unless you have obtained our prior written approval;
- (m) you will not use mechanized equipment other than a pile-driver during the construction, operation or maintenance of Improvements on the Land;
- (n) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (o) any interest you may have in the Improvements ceases to exist and becomes our property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(r)(ii) or (iii) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(r)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(r)(iii); and
- (p) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

## ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$5,000.00 which will
- (a) guarantee the performance of your obligations under this Agreement;
  - (b) be in the form required by us; and
  - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of

your obligations under this Agreement that are not performed by you or to pay any overdue Rent and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.

6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.

6.5 You acknowledge that we may, from time to time, notify you to

- (a) change the form or amount of the Security; and
- (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
  - (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the

form of a completed "Province of British Columbia Certificate of Insurance";

- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

6.9 You waive all rights of recourse against us with regard to damage to your own property.

#### ARTICLE 7 - ASSIGNMENT

7.1 You must not sublease, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.

7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

#### ARTICLE 8 - TERMINATION

8.1 You agree with us that

- (a) if you
  - (i) default in the payment of any money payable by you under this Agreement, or
  - (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),

and your default or failure continues for 60 days after we give written notice of the default or failure to you,

- (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;
- (c) if you transfer or assign your interest in fee simple in all that parcel or tract of land more particularly described as Lot 1, District Lot 189, Similkameen Division Yale District, Plan EPP50612, PID #029-633-818; Amended Lot 4 (see 244321F) Block 209, District Lot 190, Similkameen Division Yale District, Plan 466, PID #012-322-954;
- (d) if you
  - (i) become insolvent or make an assignment for the general benefit of your creditors,
  - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
  - (iii) voluntarily enter into an arrangement with your creditors;
- (e) if you are a corporation,
  - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
  - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (f) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (g) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate, and all of your right, interest and estate in the Land will be absolutely forfeited to us.

8.2 If the condition complained of (other than the payment of any money payable by you under this

Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

#### ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Kamloops, British Columbia, and if we or our authorized representative have no office in Kamloops, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Kamloops, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

#### ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:  
  
to us

MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS

441 Columbia Street  
Kamloops, BC V2C 2T3;

to you

CORPORATION OF THE CITY OF PENTICTON

171 Main St  
Penticton, BC V2A 5A9

And

TRIO MARINE GROUP INC.

5831 Columbia Ave  
Peachland, BC V0H 1X4;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

**ARTICLE 11 - MISCELLANEOUS**

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.

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- 11.3 The grant of a sublease, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublease, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
  - (b) you diligently attempt to remove the delay.
- 11.6 You acknowledge and agree with us that
- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
  - (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
    - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
    - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
    - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
    - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and

- (v) the application of any federal or provincial enactment or law to the Land;
  - (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
  - (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a "site profile" under the *Environmental Management Act* or any regulations made under that act;
  - (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
  - (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.
- 11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.
- 11.8 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

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Lease

File No.: 3403233  
Disposition No.: 915728

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SIGNED on behalf of **HER MAJESTY  
THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA**  
by the minister responsible for the *Land Act*  
or the minister's authorized representative

---

Minister responsible for the *Land Act*  
or the minister's authorized representative

SIGNED on behalf of CORPORATION OF THE CITY OF PENTICTON  
By its authorized signatories

---

Authorized Signatory

---

Authorized Signatory

SIGNED on behalf of TRIO MARINE GROUP INC., Incorporation No. BC1008060  
By its authorized signatories

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Authorized Signatory

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Authorized Signatory



**Attachment "C" – License to Use Agreement to December 31, 2018**

[..\Request for Proposals\Skaha Lake Marina\POSSIBLE NEW AGREEMENT\License to Use and Sub License\PDF Versions\2016 10 30 License to Use.pdf](#)

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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, 2017.

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

(hereinafter called "the City")

OF THE FIRST PART

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

(hereinafter called "the Licensee")

OF THE SECOND PART

AND:

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

AND

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

(collectively the "Indemnifiers")

OF THE THIRD PART

WITNESSETH:

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

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

Article I - Grant of Licence

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

Article II - Duration

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

Article III – Licence Fee

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

3.02 Net Fees

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

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

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

**Article IV - Covenants of the Licensee**

**4.01 The Licensee covenants with the City:**

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

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

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

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

**Article V - Non-exclusivity**

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

**Article VI – Assignment**

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

**Article VII - Cancellation**

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

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

**Article VIII - General**

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

to the Licensee at:

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

to the Indemnifiers at:

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

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

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

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

Article IX - Capital Works

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

Article X - Payment of City's Expenses

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

Article XI - Indemnity

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

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

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

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

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

Article XII - Entire Agreement

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

Article XIII - Execution

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

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

**THE CORPORATION OF THE CITY OF PENTICTON**

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

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

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

\_\_\_\_\_

\_\_\_\_\_



## Schedule "A"

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



**Attachment "D" – Sub License of Occupation Agreement to December 31, 2018**

[..\Request for Proposals\Skaha Lake Marina\POSSIBLE NEW AGREEMENT\License to Use and Sub License\PDF Versions\2016 10 30 Sub License.pdf](#)

## SUB-LICENSE OF OCCUPATION

THIS SUB-LICENSE dated for reference January 1, 2017

BETWEEN:

**THE CORPORATION OF THE CITY OF PENTICTON**

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

(the "Sub-licensor")

OF THE FIRST PART

AND:

**TRIO MARINE GROUP INC.** (Inc. No. BC1008060)

a company duly incorporated under the laws of the Province of British Columbia, having its Registered and Records Office at c/o Pusher Mitchel LLP, 301 – 1665 Ellis Street, Kelowna, BC, V1Y 2B3

("the Sub-Licensee")

OF THE SECOND PART

AND:

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

- and -

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

(collectively, the "Indemnifiers")

OF THE THIRD PART

WHEREAS:

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

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

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

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

Lot 1, DL 189, SDYD, Plan EPP50612

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

### **1. CAPITALIZED TERMS**

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

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

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

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

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

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

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

- 4.1 The Sub-license Basic Fee payable under this Sub-license shall be net and care free to the Sub-licensor, and will be payable without deduction or set-off by the Sub-licensor 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-licensor 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-licensor 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-licensor 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-licensor or goods or services provided to the Sub-licensor, and the Sub-licensor will be entitled to exercise all remedies in respect of any failure by the Sub-licensor to pay such amounts as if they were part of the Sub-license Basic Fee in arrears. From the date any Sub-license Basic Fee or tax thereon payable under this Sub-license are due until they are actually paid, they will bear interest at the rate of ten percent (10%) per annum.
- 4.2 The Sub-licensor 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-licensor acknowledges and agrees that it is intended this Sub-license shall be carefree for the Sub-licensor.

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

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

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

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

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

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

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

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

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

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

## **8. USE**

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

## **9. INSURANCE**

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

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

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

## **11. TERMINATION**

In addition to any rights of termination of the Sub-licensor as provided herein in the event the Sub-licensee is in default and such default has not been remedied within the time required with respect to any other agreement or contract between the Sub-licensor and the Sub-licensee such default will be deemed to be a default under this Sub-license and this Sub-license will, at the option of the Sub-licensor, with or without entry, terminate and the Sub-licensee's right to use and occupy the Sub-licensed Land will cease without prejudice to any rights to which the Sub-licensee has accrued under the Sub-license before the said termination.

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

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

## **13. NOTICES**

Any notice required to be given hereunder by the Sub-licensee shall be in accordance with the provisions of the Community Charter of British Columbia and if by the Sub-licensor to the Sub-licensee and the Indemnifiers any notice hereunder shall be deemed to have been well and sufficiently given if mailed by prepaid express mail, telefaxed, or delivered:

to the Licensee at:

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

to the Indemnifiers at:

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

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

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

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

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

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

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

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

## **17. WAIVER**

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

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

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

## **19. INDEMNITY**

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

### **19.1 The Indemnifiers shall:**

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

- 19.2 In the event of a default under this Sub-license, the Indemnifiers hereby waive any right to require the Sub-licensor:
- (a) to proceed against the Sub-licensee or pursue any rights or remedies with respect to this Sub-license;
  - (b) to pursue any other remedy whatsoever in the Sub-licensor's power or otherwise available to the Sub-licensor.
- 19.3 The Indemnifiers hereby expressly waive notice of the acceptance of this Indemnity and all notice of non-performance, non-payment or non-observance on the part of the Sub-licensee of the terms, covenants, conditions and provisions of the Sub-license.
- 19.4 This indemnity is absolute and unconditional and without limiting the generality of the foregoing, the liability of the Indemnifiers under this Indemnity shall not be deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of the Sub-licensee in any receivership bankruptcy, winding up or other creditors' proceedings, or the rejection, surrender, disaffirmation or disclaimer of the Sub-license by any party or in any action or proceeding, and shall continue with respect to the periods prior thereto and thereafter for and with respect to the Sub-license Term and any renewals thereof. The liability of the Indemnifiers shall not be affected by any repossession of the Sub-licensed Land by the Sub-licensor, provided however, that the net payments received by the Sub-licensor after deducting all costs and expenses of repossession and re-licensing the same, shall be credited from time to time by the Sub-licensor to the account of the Indemnifiers and the Indemnifiers shall pay any balance owing to the Sub-licensor from time to time immediately upon ascertainment.
- 19.5 The Indemnifiers shall, without limiting the generality of the foregoing, be bound by this Indemnity in the same manner as though the Indemnifiers were the Sub-licensee named in this Sub-license.
- 19.6 All of the terms, agreements and conditions of this Indemnity shall extend to and be binding upon the Indemnifiers, their respective heirs, executors, administrators, and assigns, and shall enure to the benefit of and may be enforced by the Sub-licensor, its successors and assigns.

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

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

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

- 20.2 If the Sub-licensee is in default in the observance of any covenant, agreements, provisions or other conditions contained herein and such failure continues for a period of thirty (30) days after the giving of written notice by the Sub- licensor to the Sub-licensee of the nature of the failure, or where such default cannot reasonably be cured within 30 days, if the Sub-licensee fails to commence and diligently continue to remedy the default promptly after the Sub-licensee receives such notice from the Sub-licensor, then the Sub- licensor may cancel this Licence without prejudice to any rights to which the Sub-licensor has accrued under this Sub- license before the said cancellation.

## **21. FIXTURES**

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

## **22. GOVERNING LAW**

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

## **23. GENERAL**

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

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

**24. RENEWAL**

This Sub-license is not subject to renewal.

**25. ENTIRE AGREEMENT**

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

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

**THE CORPORATION OF THE CITY OF PENTICTON**

by its authorized signatory(ies)

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

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

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

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

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

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

**AUTHORIZED SIGNATURES**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

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

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

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

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

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

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

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

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

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

\_\_\_\_\_) )  
**THOMAS DONALD HEDQUIST**



2. **Aerial View**



**Attachment "E" - November 23, 2016 Special Council Meeting Presentation**

[..\Presentations\Council\2016\2016 11 23 Council Meeting\2016 11 23 Public Meeting Skaha Park Marina and Waterpark.pptx](#)



# Special Council Meeting

Skaha Lake Marina and Water Park  
Development Agreement  
November 23, 2016



# Agenda

1. Introduction of the parties – Mayor Jakubeit
2. Opening remarks – Mayor Jakubeit
3. Summary presentation – Mitch Moroziuk
4. Review of alternatives – Mitch Moroziuk
5. Moderator process rules – John Singleton
6. Questions and comments from the community



## Introduction of the parties

1. **City Council:** Mayor Jakubeit; Councillors: Konanz, Martin, Picton, Sayeed, Sentes and Watt
2. **City Staff:** Mitch Moroziuk (General Manager of Infrastructure); Blake Laven (Manager of Planning); and Tyrone Duerr (City Legal Counsel)
3. **Trio Marine Group:** Tom Dyas (Owner); Tom Hedquist (Owner); and Jeffrey Robinson (Trio Legal Counsel)



## Introduction of the parties

4. Moderator – John Singleton
  - The question and comment session tonight will be moderated by John Singleton of Singleton Consulting Corporation
  - John has lived in Penticton for nearly 25 years
  - John works with municipal governments and First Nations across Canada
  - John helps communities and organizations discover collaborative solutions



# Opening remarks<sup>188</sup>

## Opening Remarks Mayor Jakubeit



# Summary Presentation

- Background
- Key dates
- Summary of proposal
  - Settlement Agreement
  - Enhanced Marina Agreement
  - Possible Revenue
- **NEW INFORMATION**

- City and Trio entered into a Marina and Waterpark contract (August 2015)
- Public opposition to loss of green space and waterpark
- Two civil claims filed
- New proposal developed to better meet community expectations
- Council has four options to consider





# Key Dates

**Sept. 28, 2015**

Notice of Civil Claim filed by Save Skaha Park Society

**Oct. 11, 2016**

Meikle Notice of Civil Claim amended

**Nov. 21, 2016**

REVISED Settlement and Enhanced Marina Agreement released

**Dec. 1, 2016**

Options considered at open council meeting



**Aug. 4, 2015**

Skaha Park Marina & Waterpark Agreement executed

**July 23, 2016**

Notice of Civil Claim filed by Nelson Meikle

**Nov. 1, 2016**

City introduces four options including revised proposal

**Nov. 23, 2016**

Special Council meeting to discuss options



# Summary of November 1 Proposal <sup>-167</sup>

- No water slide
- Marina enhancements in 2018
- Trio operates concession 2018
- Marine amenity public process 2018
  - If supported by the public and Trio accepts the agreement, project would proceed
- Restaurant and retail enhancements 2019
- Park amenity public process 2019
  - If supported by the public and Trio submits a proposal then an agreement would be finalized in late 2019 followed by construction
- Copies of Agreements posted online Nov.1

Existing agreements terminated and replaced with:

- Settlement Agreement
- Enhanced Marina Agreement
- Termination Agreement
- License to Use
- Sub License of Occupation



## 1. Termination and Release

- All rights under existing Marina and Waterpark Agreements terminated
- Replaced with Settlement Agreement, Enhanced Marina Agreement, Termination Agreement, Two-year License-to-Use, Two-year Sub-License of Occupation

## 2. Unique History

- Waive purchasing policy for seasonal concession, marine amenity and park amenity
- Trio has the exclusive right to the concession, the first right to bid on the marine amenity until 2028 and the first right to bid on the park amenity



### **3. Compensation**

- City pays Trio \$20K for claims related to the existing agreements and \$20K for safety repairs to the existing docks for the future
- City forgoes rent and property tax for 2016 (\$39K)
- Trio forgoes reimbursement for dock repairs (\$8K) and undetermined claims for delay and loss of anticipated waterpark revenue

### **4. Seasonal Concession**

- Trio seasonal license to concession begins in January 2018
- Same terms and conditions as existing



## 5. Marine Proposal

- City and Trio will develop a proposal for an in-lake play structure (same terms as the water play structure in Okanagan Lake, 29-year term)
- Community consulted on proposal and if supported, Trio will have the first opportunity to bid until 2028
- City under no obligation to offer anything if the City and Trio cannot agree on the play structure or after public consultation there is no aquatic play structure

## 6. Park Amenity

- City will work with community to develop a plan to revitalize Skaha Lake Park
- Trio will have first opportunity to bid on any revenue-generating park amenity proposed on lands covered under the original agreement, Area A



## 7. Termination

- City has right to terminate under certain conditions
- City will pay \$200K to Trio

## 8. Revenue Reinvestment

- City to invest all revenue sharing monies to upgrade Skaha Park



## 1. Term

- 29-year beginning Jan. 1, 2018
- Possibility of two, 5-year extensions

## 2. Amenities

- Trio to design, build and operate:
  - Expanded marina of 100 slips
  - Retail / restaurant 85-156 seat
  - Parking cars and boat trailers
- Investment of \$1.5M (May 2019)



## 3. Compensation – Lease

- Annual Joint Lease Fee City Trio Province of BC, estimated to be \$15,000
- Lease rate on the Leased Land of \$4.45 /m<sup>2</sup>
- Lease rate on the Parking Lands of \$2.00 /m<sup>2</sup>
- Lease rate will remain constant to 2023 after which it will be adjusted for catch up inflation and for annual inflation thereafter
- Starting in 2020 and every 5 years thereafter lease rate determined by appraisal

## 4. Compensation – Revenue Sharing Commences 2023

- On all but the restaurant based on an inclining stepped % of gross revenue
- Restaurant (Trio operates) based on an inclining stepped % of gross revenue
- Restaurant (leased) based on a % of the difference between compensation Trio receives for subletting and the amount they pay the City for the lease fee for the restaurant footprint



# Enhanced Marina Agreement <sup>-176-</sup>

## 5. Compensation –Property Taxes

## 6. Reinvestment

- 100% of the revenue sharing dollars deposited in an interest bearing account to purchase additional park land and/or park and waterfront amenities in Skaha Park

## 7. Protection of the City

- Conditions precedent in favor of the City with respect to:
  - Marketing and Operating plan;
  - Detailed Financing plan;
  - Lender's Loan Commitment Letter; and
  - Entering into a Joint Lease with Trio and the Province of BC for the Provincial Marina Lands.
- Notice of Interest on Title to prevent registration of enforceable liens
- Irrevocable letter of credit
- Trio to provide insurance

## 8. Exclusivity

- Exclusivity for commercial water and lake activities on Skaha Beach until January 2021
- RFP to be used January 2021 to January 2026



## 9. End of Term and Dispute

- City to inspect the lands and then determine if we would like all items all constructed items to remain or if they are to be removed
- Dispute process is negotiate, mediate and arbitrate

## 10. License to Use and Sub License of Occupation

- Trio will operate the existing marina under a Licence to Use and Sub License of Occupation until such time as the Enhanced Marina Agreement becomes live



## Potential Revenue

Revenue Item	Average 2018 - 2022	Mid Point Year 2023 - 2047
Land Lease	\$ 16,558	\$ 21,012
Parking Lease	\$ 14,984	\$ 19,014
Revenue Share	N/A	\$ 222,743
Taxes	\$ 27,334	\$ 43,673
<b>Total</b>	<b>\$ 58,877</b>	<b>\$ 306,443</b>



## NEW INFORMATION November 21, 2016

- The City and Trio recognized that the Park Amenity provisions of the Settlement Agreement is still a cause for public concern
- The Park Amenity process includes provisions for full public consultation on a proposal developed by the City
- The City would identify a concept that best balances the interests of Penticton in revitalization the Skaha Lake waterfront and the expressed desires and concerns of the citizens of Penticton
- This does not provide 100% certainty that green space will not be lost this will not be known until the process is complete



## NEW INFORMATION November 21, 2016

- The City and Trio worked to make alterations to the Settlement Agreement to address this concern
- Changes were reviewed with Council on Nov. 21 and published on the web immediately after
- The REVISED Settlement Agreement, REVISED Enhanced Marina Agreement, A PowerPoint Presentation explaining the changes were posted to web site
- Hard copies were made available at the Library and City Hall
- Handout with a summary of the changes provided at the start of the Special Council Meeting



## CHANGES TO SETTLEMENT AGREEMENT

- Park Amenity Section removed
- Schedule B showing the area where the Park Amenity would go removed.
- Added a Boathouse Concession Amenity Section
- The City would work with the community commencing in 2019 to develop an amenity that would renew or replace the existing concession and boathouse

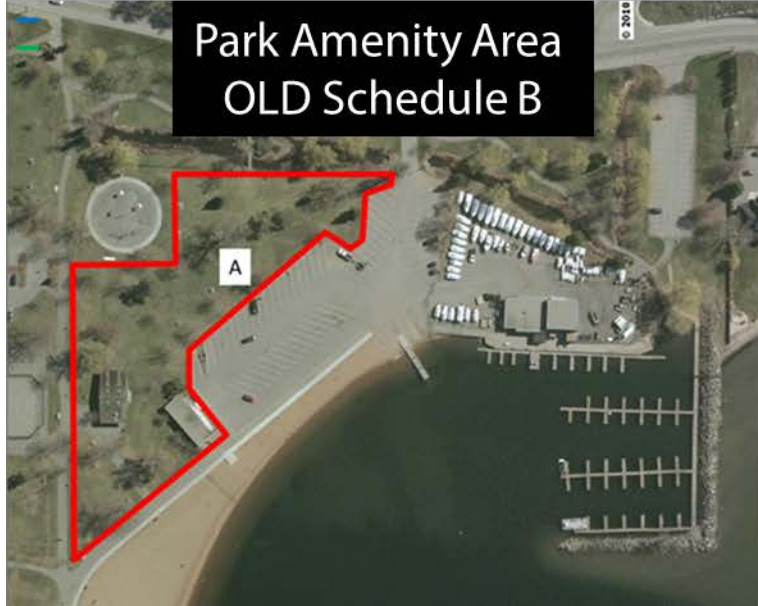


# CHANGES TO SETTLEMENT AGREEMENT

- The agreement specifically states that:
  - The boathouse concession amenity will not include a waterpark;
  - Will not result in any net loss of green space (The existing concession could be demolished, the area returned to green space and the same amount of greenspace as was created used on the west of the dragon boat storage building);
  - Will not result in any loss of boat trailer parking and if boat trailer parking must be constructed elsewhere it must be done without the loss of green space; and
  - Any revenue generating amenities would be first offered to Trio in the form of a Request for Proposal.
- Added a new Schedule B showing the area where the boathouse concession amenity could be located
- Language clean up

# CHANGES TO SETTLEMENT AGREEMENT

Park Amenity Area  
OLD Schedule B



Boathouse Concession Amenity Area  
NEW Schedule B





# CHANGES TO ENHANCED MARINA AGREEMENT

- Reference to Cold Beer and Wine store removed
- Changed dates on four of the conditions precedent for Penticton from January 2017 to March 15, 2017 and from March 15, 2017 to May 15, 2017. This was done in two locations.
- Changed dates on two of the conditions precedent for Trio from March 15, 2017 to May 15, 2017. This was done in two locations.
- Language clean up

**#1**

**REVISED  
Proposal**

**“Find middle  
ground”**

**#2**

**“Refuse to  
accept”  
REVISED  
Proposal**

**#3**

**Instruct staff  
to “go back to  
the  
negotiating  
table”**

**#4**

**“Wait and  
see”**



## Review alternatives

#1

**REVISED  
Proposal**

**“Find middle  
ground”**

- Council accepts the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement

### **What does that mean?**

- No waterslide, protects green space, requires full consultation before commercial activity considered
- Best deal staff and legal could negotiate
- Enhances marina (which few oppose) and avoids large penalties

#2

**“Refuse to  
accept  
REVISED  
Proposal”**

- Council refuses to accept the REVISED Settlement and Enhanced Marina Agreements

## **What does it mean?**

- Marina Agreement remains in disputed status
- Waterpark Agreement remains live until acted on; or the parties reach a settlement; or the matter is resolved by a Court
- Uncertainty around Skaha Park remains as will the two Notices of Civil Claim
- Possibility of a third Notice of Civil Claim

**#3**

**Instruct staff  
to “go back to  
the  
negotiating  
table”**

- Council instruct staff to try and sort matters out with Trio in some other mutually acceptable way

## **What does it mean?**

- Staff continues to sort out matters with Trio
- Outcome is unclear
- Uncertainty around Skaha Lake Park remains as will the two Notices of Civil Claim

#4

“Wait and see”

- Council simply wait and see what occurs with respect to the Waterpark Agreement

### **What does it mean?**

- Council could elect to wait and see what happens with respect to the Waterpark Agreement
- The items note in Alternative 2 and 3 would also be relevant to this alternative

## Moderator Process Rules

### Expected Outcomes

- An opportunity to listen to, and hear, the community
- Build a better understanding of the situation
- Refocus everyone's energy and build a collaborative solution
  
- Notes:
- No decisions will be made tonight
- Council will take this information and consider it when taking the next step

## Moderator Process Rules

- Use a respectful tone and demeanour
- This is not a debate;
  - this is about sharing information and learning from each other
- If you do not agree with the response you may take another turn to ask follow-up questions
- Everyone will be heard in turn via 3 roving microphones
- There will be no personal or corporate attacks accepted
- Refrain from repeating previously asked questions
- This meeting will provide an Audio Recording for posting on to the City Website for those who were not able to attend.

## Moderator Process Rules

- One person speaking at a time and that person will:
  - Identify themselves and their street address
  - Be provided with up to 3 minutes to make their point or ask a question
- At the end of 3 minutes the microphone will be turned off at the moderators request



# Community Feedback

## Questions and Comments from the Community