
CITY OF KELOWNA

MEMORANDUM

Date: July 10, 2008
File No.: 2380-20
To: City Manager
From: Property Manager
Subject: Kelowna Yacht Club Building Lease

RECOMMENDATION:

THAT City Council approve a five year lease with no options to renew, based on the attached criteria with "Kelowna Yacht Club" for the lease of the Kelowna Yacht Club Clubhouse;

AND THAT the Mayor and City Clerk be authorized to execute the lease;

BACKGROUND:

Staff has been working with Yacht Club members and staff to develop a five-year lease for the Yacht Club Clubhouse. The development of this agreement is the first of four agreements as the City moves forward with the development of Stuart Park and the Kelowna Yacht Club moves forward with their desire to build a new clubhouse.

- The five year building lease provides time for City Staff and the Yacht Club Executive to plan for the permanent long-term location of the building as the current building is not part of the Stuart Park Plan.
- The second agreement will be an amendment to the current moorage space. Staff is currently negotiating with the Province to allow for moorage expansion.
- The third agreement will be for significant moorage expansion. This agreement is part of the Waterfront Development Planning work currently being done by the Parks Department and requires approval from both Provincial and Federal Governmental Agencies.
- The fourth agreement will be a long-term agreement for the Clubhouse once the final location has been determined.



Base Terms of Lease Agreement for the Kelowna Yacht Club Clubhouse

Term: 5 years (May 31, 2008 – April 30, 2013)
Renewal: No renewal
Rate: \$1.00 per year
Tenant Improvements: By tenant

INTERNAL CIRCULATION TO:

Parks Manager
Park Design & Construction Supervisor

LEGAL/STATUTORY AUTHORITY:

Community Charter – Section 24 allows the disposition of land below market value to non-profit organizations provided that notice must be published before the assistance is provided and must identify the intended recipient of the assistance, and describe the nature, term and extent of the proposed assistance.

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:

A notice must be published before the assistance is granted.

Considerations that were not applicable to this report:

FINANCIAL/BUDGETARY CONSIDERATIONS:

EXISTING POLICY:

PERSONNEL IMPLICATIONS:

TECHNICAL REQUIREMENTS:

EXTERNAL AGENCY/PUBLIC COMMENTS:

ALTERNATE RECOMMENDATION:

Submitted by:

R. Forbes

R. Forbes – Property Manager

Approved for Inclusion:

A small square box containing a handwritten signature, likely of the approving official.

cc: Director Recreation Parks and Cultural Services
Civic Properties Manager
Parks Manager
Community Development and Real Estate Manager

**LAND TITLE ACT
FORM C**

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT-PART 1 (This area for Land Title Office use)

Page 1 of 17 Pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Alyssa Bradley
LIDSTONE, YOUNG, ANDERSON
#1616 - 808 Nelson Street
Vancouver, BC V6Z 2H2
(604) 689-7400

Alyssa Bradley
Applicant's Solicitor

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

010-410-350

Lot A, District Lot 139, Osoyoos Division Yale District, Plan 16592

027-009-092

Lot 1, District Lot 139 Osoyoos Division Yale District, Plan KAP83363

3. NATURE OF INTEREST:*

Description	Document Reference (page and paragraph)	Person Entitled to Interest
Lease over part in Plan _____	Entire Document	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

- | | | | |
|-----|-----------------------------|----------|--|
| (a) | Filed Standard Charge Terms | — | D.F. No. |
| (b) | Express Charge Terms | <u>X</u> | Annexed as Part 2 |
| (c) | Release | — | There is no Part 2 of this Instrument. |

A selection of (a) include any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

CITY OF KELOWNA, 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

6. TRANSFEE(S): (including postal address(es) and postal code(s))*

KELOWNA YACHT CLUB, 1414 Water Street, Kelowna, British Columbia, V1Y 1J1

**LAND TITLE ACT
FORM C**

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Province of British Columbia

GENERAL INSTRUMENT-PART 1

Page 2

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):**This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature

Execution Date
Y M D

Transferor(s) Signature

2007 ____ ____

CITY OF KELOWNA by its
authorized signatory(ies):

Name of Officer

Mayor: Sharon Shepherd

(as to both signatures)

City Clerk: Allison Flack

Transferee(s) Signature

2007 ____ ____

KELOWNA YACHT CLUB by its
authorized signatory(ies)

Name of Officer

Name:

(as to all signatures)

Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

P:\Civic_Properties\PROPERTY MANAGEMENT\0870-20 LEASES\Yacht Club\Lease Negotiations\08 07 08 Lease Building Yc Final.Doc Jul 09, 2008 2:50 PM/RF

TERMS OF INSTRUMENT – PART 2

BUILDING LEASE

THIS AGREEMENT dated for reference May 31, 2008 is

BETWEEN:

CITY OF KELOWNA, a municipal corporation incorporated under the *Community Charter* and having an address of 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the “City”)

AND:

KELOWNA YACHT CLUB, a society duly incorporated under the *Society Act* and having an address of 1414 Water Street, Kelowna, British Columbia, V1Y 1J1

(the “Yacht Club”)

WHEREAS:

A. The City is the owner of lands in Kelowna B.C. legally described as:

PID: 010-410-350, Lot A, District Lot 139, Osoyoos Division Yale District, Plan 5027

PID: 027-009-092, Lot 1, District Lot 139 Osoyoos Division Yale District, Plan KAP83363

(the “Lands”);

B. The Yacht Club built a building on the Lands shown on Schedule “A” (the “Building”) and the City is the owner of the Building;

C. The Yacht Club wishes to lease a portion of the Lands and the Building and the City wishes to grant a lease of a portion of the Lands and the Building to the Yacht Club, on the terms and conditions set out in this agreement;

THIS AGREEMENT is evidence that in consideration of the mutual covenants, conditions and agreements herein contained the parties agree as follows:

Grant of Lease

1. The City leases those portions of the Lands outlined in bold a copy of which is attached hereto as Schedule "B" (the "Leased Area") and the Building on the Lands (the Lands and Building collectively, the "Leased Area") to the Yacht Club on the terms and conditions of this Lease.

Term of Lease

2. The term of this Lease shall be for five (5) years beginning on the commencement date and is subject to earlier termination pursuant to the terms of this Lease ("Term").

Rent

3. The Yacht Club shall pay the City the sum of Five Dollars (\$5.00) payable on the first day of the Term ("Rent").

Purpose

4. The Yacht Club may only use the Leased Area for the purposes of a clubhouse for its members and such purposes ancillary thereto and for no other purposes.

Yacht Club's Covenants

5. The Yacht Club covenants and agrees with the City:

- (a) **Rent** - to promptly pay the Rent when due;
- (b) **Taxes and Assessments** - to promptly pay when due, unless otherwise exempted by the City, all rates, taxes, property taxes and assessments, of whatsoever description, that may at any time during the existence of this Lease be lawfully imposed, or become due and payable, upon, or in respect of the Leased Area and the operations of the Yacht Club or any part thereof;
- (c) **Business Licences and Permits** - to procure and maintain, at the cost and expense of the Yacht Club, such licences, permits or approvals from any Federal, Provincial, Municipal or other Government authorities, and such private permits as may be necessary to enable the Yacht Club to furnish the services and conduct the operations provided for in this Lease;
- (d) **Utilities** - to promptly pay when due all other utility costs, other charges and assessments, of whatsoever description, that may at any time during the existence of this Lease be lawfully imposed, or become due and payable, upon or in respect of the Leased Area and the operations of the Yacht Club or any part thereof;
- (e) **Repair** - to repair and maintain the Leased Area in a safe, clean and sanitary condition and to take all reasonable precautions to ensure the safety of all persons using the Leased Area;

- (f) **Nuisance and Negligence** - not to do, suffer or permit any act which may in any manner, directly or indirectly, cause injury or damage to the Leased Area or which may be or become a nuisance to or interference with the owners, occupiers or users of other parts of the Lands, adjoining lands or to the public, including the accumulation of rubbish or unused personal property of any kind;
- (g) **Assignment** – not to assign or sub-let this Lease in whole or in part;
- (h) **Abide by Laws** - to abide by and comply with at its own expense all laws, rules, and regulations of every authority which in any manner relates to or affects the operations of the Yacht Club or the use of the Leased Area and to save harmless the City from all costs, charges or damages to which the City may be put or suffer by reason of any breach by the Yacht Club of any such law, rule or regulation;
- (i) **Rules and Regulations** – that the Yacht Club and its agents and employees and all persons using the Leased Area shall strictly comply with any rules and regulations governing the Leased Area the City may from time to time adopt, acting reasonably, and of which written notice has been given to the Yacht Club and that such rules and regulations shall be deemed to be incorporated into and form part of this Lease;
- (j) **Cleanliness** – not to permit the Leased Area to become untidy, unsightly or hazardous or to permit unreasonable quantities of waste or refuse to accumulate on the Leased Area or the area immediately surrounding the Leased Area and at the end of each business day leave the Leased Area in a clean and neat condition, to the satisfaction of the City;
- (k) **Provision of Equipment** – to provide at its own expense, all equipment and materials required to use the Leased Area for the purposes of this Lease;
- (l) **Signs** - not to use or erect any signs on the Leased Area without the prior written consent of the City;
- (m) **Installation of Improvements or Structures** – not to establish or erect any improvements or structures on the Leased Area without the prior written consent of the City;
- (n) **Builder's Liens** – to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, work or construction undertaken on the Leased Area; and
- (o) **Inspection** – to permit the City to enter upon the Leased Area at all reasonable times to determine whether the Yacht Club is complying with this Lease.

Insurance

6. The Yacht Club must, at its sole expense, obtain and maintain during the Term:

- (a) comprehensive general liability insurance providing coverage for death, bodily injury, property loss and damage, arising out of or in connection with the operations, use and occupation of the Leased Area in an amount of not less than \$5,000,000.00 per occurrence;
 - (b) Marina Operators Liability Insurance to cover all marina related operations of the insured on the Leased Area with an inclusive limits of not less than \$2,000,000 per occurrence;
 - (c) Protection and Indemnity Liability Insurance covering the ownership and operation of all marine vessels owned by the named insured with an inclusive limits of not less than \$2,000,000 per occurrence;
 - (d) "all risks" property insurance providing coverage for replacement cost of the Building and all other structures from time to time making up part of the Leased Area and all of the Yacht Club's fixtures and personal property on the Leased Area damaged as a result of fire, earthquake or other perils customarily included in the usual all risks form of policy applicable to similar properties;
 - (e) automotive insurance providing liability coverage on all automotive equipment used by the Yacht Club on the Leased Area in an amount of not less than \$2,000,000.00; and
 - (f) environmental impairment liability insurance providing coverage for death, bodily injury, property loss and damage, arising out of or in connection with the operations, use and occupation of the Leased Area in an amount of not less than \$2,000,000.00 per occurrence;
 - (g) any other form or forms of insurance that the City may reasonably require from time to time in amounts and for perils against which a prudent tenant acting reasonably would protect itself in similar circumstances.
7. All policies of insurance required to be taken out by the Yacht Club must be with companies satisfactory to the City and must:
- (a) name the City as an additional insured in comprehensive general liability insurance and environmental impairment liability insurance policies;
 - (b) be issued by an insurance company of investment grade and lawfully entitled to carry on the business of insurance under the laws of British Columbia;
 - (c) be primary and non-contributing with respect to any policies carried by the City and that any coverage carried by the City is in excess coverage;
 - (d) not be changed or amended in any way or cancelled without the insurer providing the City with 30 clear days written notice stating when such change or cancellation is to be effective;

- (e) comprehensive general liability insurance shall include a cross liability clause;
- (f) show loss payable firstly to the City, but only with respect to insurance coverage on the Building as required under Clause 6(d). Should a loss occur the City covenants to place the net proceeds from the insurance settlement into a reserve account. The funds in this reserve account will be put towards construction of a replacement building at a yet-to-be determined location.
- (g) the Yacht Club must provide evidence the insured replacement cost is accurate as evidenced by a Letter Of Opinion at the start of the agreement and again in year three (3)
- (h) be on other terms acceptable to the City, acting reasonably.

8. The Yacht Club must, before the commencement of the Term and promptly upon the City's request at such other times during the Term, provide the City with certificates of insurance confirming the placement and maintenance of the insurance in a form acceptable to the City.

9. If the Yacht Club fails to insure as required, the City may, after 30 days notice to the Yacht Club, effect the insurance in the name and at the expense of the Yacht Club and the Yacht Club must repay the City all costs reasonably incurred by the City within 21 days of receipt of an invoice. For clarity, the City has no obligation to insure the Leased Area during the Term.

10. The Yacht Club covenants and agrees with the City not to do or permit anything to be done which would render any other policy of insurance on the Leased Area or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event that the Yacht Club does anything that would cause an increase in their insurance premiums on the Leased Area, the Yacht Club shall pay the difference in the premium. If the Yacht Club does anything that would cause an increase in the City's insurance premiums the Yacht Club will pay to the City that amount which represents the increase in the insurance premiums by virtue of the Yacht Club's use or occupation of the Leased Area.

No Other Agreement

11. The provisions in this Lease constitute the whole of the agreement between the parties and merges and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Lease.

Surrender

12. Unless otherwise consented to by the City, the Yacht Club shall at the expiration or sooner termination of this Lease peaceably surrender and give up possession of the Leased Area in a safe and sanitary condition without notice from the City and any right to notice to quit or vacate is hereby expressly waived by the Yacht Club notwithstanding any law, usage or custom to the contrary.

Carefree

13. The Yacht Club acknowledges and agrees that notwithstanding anything else contained herein, this Lease shall be completely carefree for the City and the City shall not be responsible during the Term for any costs, charges, expenses or outlays of any nature whatsoever in respect of the Leased Area.

Environmental Clauses

14. For the purpose of this Part:

- (i) “*Environmental Law*” means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- (ii) “*Hazardous Substance*” means a contaminant, pollutant, dangerous good, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;
- (iii) “*Communication*” means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any governmental agency or any other person, acting reasonably;
- (iv) “*Permit*” means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law.

15. **Compliance with Laws** – The Yacht Club will conduct its business and operation on the Leased Area in compliance with all Environmental Laws and Permits

16. **Communication to City** – The Yacht Club will forthwith notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:

- (a) a release of a Hazardous Substance on the Leased Area, except as is authorized under Environmental Laws;
- (b) the receipt by the Yacht Club of a Communication from any governmental agency of non-compliance pursuant to any Environmental Law, including a Communication of non-compliance respecting a Permit;
- (c) the receipt by the Yacht Club of a Communication in writing of a claim by a third party relating to environmental concerns; or
- (d) the receipt by the Yacht Club of information which indicates that Hazardous Substances are present in or on the Leased Area.

17. **Storage of Hazardous Substances** – The Yacht Club will not permit the storage, treatment or disposal of Hazardous Substances on the Leased Area except in accordance with all Environmental Laws.

18. **Investigations** – The Yacht Club will conduct such investigations, searches, testing, and sampling (“Investigations”) as may at any time be required by the City where any reasonable evidence exists that the Yacht Club’s use or occupation of the Leased Area may be introducing or increasing the existence of any Hazardous Substance on the Leased Area. If the Yacht Club does not complete the Investigations to the satisfaction of the City, the City may enter on the Leased Area and take any actions necessary to complete the Investigations, the cost of which actions will be borne by the Yacht Club.

19. **Remediation** – If Hazardous Substances are present on or in the Leased Area as a result of the Yacht Club’s use or occupation of the Leased Area, the Yacht Club will take all necessary action, at the cost of the Yacht Club to remediate the Leased Area to a level acceptable to the City and to governmental authorities.

20. **Condition of Leased Area on Termination** – Prior to the termination of this Lease, the Yacht Club will conduct all Investigations required by the City where any reasonable evidence exists that the Yacht Club’s use or occupation of the Leased Area has introduced or increased the existence of any Hazardous Substance on or in the Leased Area. The Yacht Club will provide the result of the Investigations to the City. Where any Hazardous Substance is found on or in the Leased Area as a result of the Yacht Club’s use or occupation of the Leased Area, the Yacht Club will take all necessary action, at the cost of the Yacht Club, to remediate the Leased Area to a level acceptable to the City and to governmental authorities.

21. **Permits** – The Yacht Club will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City from time to time.

22. **Environmental Indemnity** – The Yacht Club will indemnify and save harmless the City, and its elected and appointed officials, officers, employees, agents, successors, and assigns from and against any and all losses, claims, costs, expenses, damages and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor’s fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City, and its elected and appointed officials, officers, employees, agents, successors and assigns arising, directly or indirectly, out of:

- (a) a breach by the Yacht Club of any of the covenants contained in this Lease;
- (b) where the Yacht Club’s use or occupancy of the Leased Area results in the presence, release or increase of any Hazardous Substance on or off-site of the Leased Area;
- (c) any reasonable action taken by the City with respect of the existence of or remediation for any Hazardous Substance on or off-site of the Leased Area; or

- (d) any reasonable action taken by the City in compliance with any Communication from any governmental authority with respect to the existence of any Hazardous Substance on or off-site of the Leased Area.

Yacht Club Membership

23. The Yacht Club shall permit all adult residents of the City of Kelowna to be eligible for membership in the Yacht Club subject to availability.

Financial Statements

24. The Yacht Club shall provide copies of the Yacht Club's annual financial statements to the City within six months of the Yacht Club's fiscal year end.

City Not Obligated to Inspect or Repair

25. The City shall not be obligated to furnish any facilities or to make repairs or alterations in or to the Leased Area and the Yacht Club hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Leased Area. The City shall not be obliged to inspect the Property but should it become aware of a concern it may provide written notice to the Yacht Club to make certain repairs.

Maintenance and Repair

26. The Yacht Club must, at its own expense, at all times during this Lease, inspect, maintain and repair the Leased Area to standards of repair generally accepted in British Columbia with respect to comparable premises and upon written notice from the City the Yacht Club must make such repairs as are reasonably required by the City in the notice, acting as a prudent and careful owner. At the end of the Term, the Yacht Club must surrender the Leased Area to the City in good repair, excepting reasonable wear and tear.

Right to Make Repairs

27. If at any time during the Term the Yacht Club fails to maintain the Leased Area in the condition required by this Lease, the City may but shall not be obligated to enter upon the Leased Area for the purpose of making the repairs required. The City shall make such repairs only after giving the Yacht Club 10 days written notice of its intention to do so, except in the case of an emergency when no notice to the Yacht Club is required. Any amount paid by the City in making such repairs to the Leased Area shall be reimbursed to the City by the Yacht Club on demand.

Maintenance of Lands

28. The Yacht Club shall maintain the Lands suitably landscaped in keeping with the type and character of the surrounding lands and keep all public ways on the Leased Area clear of ice and snow to ensure the safety of all persons accessing the Building.

29. The Yacht Club shall provide receptacles for rubbish of all kinds and shall not cause, allow or permit any rubbish to collect, accumulate or remain on the Leased Area unless contained in a receptacle. Without limiting the generality of the foregoing, the Yacht Club must pick up and place in a waste receptacle on a daily basis all waste on the Leased Area.

The Yacht Club shall, at its sole cost and expense, regularly remove all waste contained on the Leased Area.

Quiet Possession

30. The City covenants and agrees with the Yacht Club to permit the Yacht Club, so long as the Yacht Club is not in default of the Yacht Club's obligations under this Lease, to peaceably possess and enjoy the Leased Area for the Term.

Alterations by Yacht Club

31. The Yacht Club shall not construct any structures or make any alterations, additions or improvements to the Leased Area that require a building permit, without obtaining the City's prior written consent, which consent the City shall not unreasonably withhold and all such work shall be done only by contractors or tradesmen or mechanics approved in writing by the City, which approval the City shall not unreasonably withhold, and at the Yacht Club's sole expense and at such time and in such manner as the City may approve, acting reasonably. Such approval on the part of the City does not constitute approval of suitability or appropriateness of the materials used or of the quality of the work performed by the contractor, tradesmen or mechanics.

Minimum Work Standards

32. The Yacht Club must ensure that any repairs or work with respect to the Leased Area done by or on behalf of the Yacht Club:

- (a) do not affect any structural or foundation elements of the Building unless in accordance with an approved building permit;
- (b) meet or exceed the standards of materials and construction employed in the original construction of the Building; and
- (c) comply with all applicable laws, statutes, enactments, regulations, bylaws and orders from time to time in force, including the applicable building code and bylaws of the City of Kelowna.

33. The parties acknowledge and agree that the City intends to demolish the Building at the end of the Term. The Yacht Club may, at its own expense and with the consent of the City, remove reusable items from the Building for use in a new clubhouse building prior to the termination or expiry of this Lease.

State of Leased Area at Termination

34. If the Yacht Club fails to leave the Leased Area in a safe and sanitary condition required by this Lease, the City may do so on behalf of the Yacht Club and the Yacht Club must, on demand, compensate the City for all costs incurred by the City.

Indemnity

35. The Yacht Club shall indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents, successors and assigns from any and all actions, causes of action, suits, claims, demands, losses, expenses (including actual fees of professional advisors), liens (including builders liens), damages, liabilities and costs, whether connected to death, bodily injury, property loss, property damage, or consequential or economic loss, arising directly or indirectly out of:

- (a) this Lease;
- (b) any breach or default of the Yacht Club under this Lease;
- (c) the Yacht Club's use or occupation of the Leased Area; and
- (d) any act, omission or negligence of the Yacht Club or its directors, officers, employees, agents, partners, contractors, subcontractors, invitees and others for whom it is responsible in law.

36. The Yacht Club shall release the City and its elected officials, employees, servants, and agents from any claims or demands that the Yacht Club has or may have in relation to this Lease or the Leased Area.

37. The release and indemnities in this Lease shall survive the expiry or earlier termination of this Lease.

No Representations

38. The Yacht Club acknowledges and agrees that it has leased the Leased Area on an as is basis after examining the Leased Area and that the City has given no representations, warranties or conditions with respect to the Leased Area including, without limitation, with respect to the suitability of the Leased Area for the Yacht Club's intended use of the Leased Area.

Property Rendered Unusable

39. If the Leased Area or any part thereof shall, at any time during the Term, be destroyed or damaged by any cause so that in the opinion of the City, acting reasonably the Leased Area is unfit for the Yacht Club's intended use of the Leased Area either party may terminate this Lease, and in that event the insurance monies in respect of the Building and all other structures making up the Leased Area shall be made payable in case of loss to the City. If this Lease is not terminated, the Yacht Club shall be entitled to receive the insurance proceeds paid as a result of the damage to any structures or improvement on the Leased Area provided that the Yacht Club

rebuilds for the City equivalent structures or improvements on the same site or another location on the Leased Area acceptable to the City and the insurer.

Termination Due to Default

40. If and whenever

- (a) this Lease is at any time seized or taken in execution or attachment by any creditor of the Yacht Club or under bill of sale or chattel mortgage;
- (b) a writ of execution issues against the goods and chattels of the Yacht Club;
- (c) the Yacht Club makes any assignment for the benefit of creditors or becomes insolvent or bankrupt;
- (d) proceedings are begun to wind up the Yacht Club;
- (e) the Yacht Club is in default in the payment of Rent or any other amount payable under this Lease and the default continues for 15 days after written notice by the City to the Yacht Club;
- (f) the Yacht Club does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Agreement to be observed, performed and kept by the Yacht Club, and persists in such default for 15 days after written notice by the City; or
- (g) the Yacht Club vacates or abandons the Leased Area or uses or permits or suffers the use of the Leased Area for any purpose other than the purposes permitted by this Lease,

then the City may, at its option, terminate this Lease and the Term then becomes immediately forfeited and void and the Yacht Club must immediately cease all use and occupation of the Leased Area and must vacate and deliver up possession of the Leased Area and the City may without notice or any form of legal process and without any adherence to public law duties or procedural fairness or the principles of natural justice, forthwith re-enter the Leased Area and repossess and enjoy the same.

Termination or Expiry of the Moorage Lease

41. Notwithstanding any other provisions herein contained, if the Yacht Club's sub-lease with the City for moorage is terminated or expires without being renewed or replaced immediately after expiry with a new lease between the parties, this Agreement shall immediately and automatically terminate on the date the Yacht Club Moorage Lease and Sub-Lease is terminated or expires, as the case may be.

Ownership of Improvements at Termination

42. At the expiration of the Term or earlier termination of this Lease, all structures, alterations, additions and improvements on the Leased Area, whether done by or on behalf of the Yacht Club or not, are forfeited to and become the permanent property of the City.

43. The parties may terminate this Lease upon mutual agreement before the end of the term provided that an alternate location for the Yacht Club Building has been mutually agreed upon.. Both parties using reasonable efforts shall work together to determine the most suitable location for a new Yacht Club building.

Distrain

44. If the City levies distress against the goods and chattels of the Yacht Club, such force as may be deemed necessary for the purpose and for gaining admission to the Leased Area may be used without the City being liable to any action in respect thereof or for any loss or damage occasioned thereby and the Yacht Club hereby expressly releases the City, its employees and agents from all actions, proceedings, claims or demands whatsoever for or on account or in respect of any forcible entry or any loss or damage sustained by the Yacht Club in connection therewith.

Overholding

45. If the Yacht Club shall continue to occupy the Leased Area after the expiration of the Term and the City shall accept Rent, the tenancy created shall be deemed to be a monthly tenancy and shall be subject to the same terms and conditions of this Agreement insofar as the same are applicable to a month-to-month tenancy.

Notices

46. Where any notice, request, direction or other communication (any of which is a "Notice") must be given or made by a party under this Lease, it must be in writing and is effective if delivered in person, sent by registered mail addressed to the party for whom it is intended at the address set forth above in this Lease or sent by fax, to the City at fax number (250) 862-3320 or to the Yacht Club at fax number (250) _____, as the case may be, provided that any Notice to the City must be to the attention of the City Clerk. Any Notice that is delivered by hand is to be considered given on the day it is delivered, any Notice sent by registered mail is to be considered given three days after mailing, and any Notice sent by fax is to be considered given on the day it is sent, except that if, in any case, that day is not a business day, it is to be considered given on the next business day.

Lease Not in Registrable Form

47. The Yacht Club acknowledges and agrees that the City is under no obligation to at any time deliver this Lease or any instrument creating this Lease to the Yacht Club in a form registrable under the *Land Title Act* (British Columbia).

No Waiver

48. Waiver by the City of any breach of any term, covenant or condition of this Lease by the City must not be deemed to be a waiver of any subsequent default by the Yacht Club. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Lease by the Yacht Club must not be deemed to be a waiver of such term, covenant or condition.

No Effect on Laws or Powers

49. Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Leased Area, all of which may be fully and effectively exercised in relation to the Leased Area as if this Lease had not been fully executed and delivered.

Lease Execution

50. This Lease and all subsequent amendments thereto are only binding on the City and the Yacht Club respectively, if in writing and executed by authorized signatories for the City and the Yacht Club and executed copies thereof have been delivered to each party.

Enurement

51. This Lease enures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

Severance

52. If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of this Lease.

Law of British Columbia

53. This Lease must be construed according to the laws of the Province of British Columbia.

Time of Essence

54. Time is of the essence of this Lease.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C which is attached hereto and forms part of this Agreement.

Schedule "A"

Building



Schedule "B"

Reference Plan of Leased Area



Licensed Area ———

Lands and Building ———