



The Corporation of the Municipality of

Central Elgin

BY-LAW 2309

**Being a By-law to Execute a Lease Agreement with
the Lions Club of Port Stanley respecting
Lion's Landing Marina Park**

WHEREAS Council deems it to be in the public interest;

NOW THEREFORE BE IT RESOLVED THAT The Council of the Corporation of the Municipality of Central Elgin enacts as follows:

1. The Mayor and the Clerk are hereby authorized, on behalf of The Corporation of the Municipality of Central Elgin to execute a Lease Agreement with Lions Club of Port Stanley, P.O. Box 10, Port Stanley, ON N5L 1J4 respecting Lion's Landing Marina Park .
2. A copy of the said Agreement shall remain attached to and form part of this By-law.

READ a FIRST and a SECOND TIME this 9th day of October 2018.

READ a THIRD TIME and FINALLY PASSED this 9th day of October 2018.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 9th DAY
OF OCTOBER 2018.**

Donald N. Leitch
CAO/Clerk

David Marr
Mayor

This Lease Agreement made in quadruplicate this day of , 2018.

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF CENTRAL ELGIN
(hereinafter 'Municipality' or 'Landlord')

Of The First Part

And

LIONS CLUB OF PORT STANLEY
(hereinafter 'Club' or 'Tenant')

Of The Second Part

WHEREAS the Municipality oversees certain lands and premises in the Community of Port Stanley abutting the waters of Kettle Creek;

AND WHEREAS there are located upon such lands and premises certain park and marina facilities, which park and marina facilities have been leased previously by the Landlord to the Tenant, including for use as a small craft marina;

AND WHEREAS the Landlord and Tenant have reached agreement as to new terms and conditions by which such Lease arrangement shall continue and the Parties hereto deem to reduce such agreement in writing.

NOW THEREFORE, in consideration of payment of the sum of ONE DOLLAR (\$1.00) now paid by the Tenant to the Landlord and the terms and conditions and covenants otherwise accepted herein, the receipt and/or sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1.0 DEFINITIONS

- (1) "**Chief Administrative Officer**" or "**CAO**" shall mean the Chief Administrative Officer for the Municipality of Central Elgin, whether permanent or acting, or his or her designate.
- (2) "**Demised Area**" shall mean the lands and premises known as Lions Landing Marina Park and comprising that set forth and described in Schedule "A" hereto.

2.0 TERM / OPTION TO RENEW

- (1) The Landlord hereby demises and leases the Demised Area to the Tenant, subject to that set forth in sections 2 (2) and 9 (1) below, for a term of ten (10) years commencing January 1, 2019, on the terms and conditions set out herein; provided that the Tenant, if not then in default upon expiry of the original term thereof, shall have the option to renew the within Lease for up to but no more than two (2) distinct and successive five (5) year terms, the first commencing January 1, 2029 and the second commencing January 1, 2034, upon the same terms and conditions as contained herein, save and except without any further option for renewal but subject to the right and security of the Parties to negotiate and agree upon the amount of annual base rental for such renewal period, failing agreement upon which this Lease, including any renewal hereof, shall expire at the end of the then current term or renewal period; and provided further that any such option to renew must be exercised by the Tenant by delivering to the Landlord of a written Notice of Intended Renewal at least six (6) months prior to the expiry of the then current term or renewal period.
- (2) The Landlord and any agency (whether governmental or otherwise) owning or operating a public utility as that term is defined in the *Public Utilities Act, R.S.O. 1990, c. P. 52*, and their representative successors and assignees shall have the right:
 - (a) to install, maintain, repair, replace, reconstruct, enlarge, inspect, or test any pipes, cables, meters or other plant whatsoever on, under, or adjacent to the Demised Area as part of, appurtenant to or in connection with any such public utility; and,

- (b) by their representative officers, employees, agents and/or contractors, to enter upon the Demised Area, with or without all necessary or covenant gear and equipment, for the purposes set out in section 2 (2)(a) above.

3.0 RENT

- (1) The Tenant shall pay to the Landlord annual base rent consisting of a fixed sum of SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$7,800.00), exclusive of applicable taxes, to be paid in four (4) equal quarterly payments due and payable on the following dates during each year of term or any renewal period of the Lease contemplated herein: January 1, April 1, July 1 and October 1; provided that such annual base rent shall be adjusted annually, effective January 1 of each year of the term or any renewal period of the Lease contemplated herein, in accordance with the Consumer Price Index (CPI) for the Province of Ontario as at October 31 of each year, any such increase to begin January 1, 2020.

4.0 CONVENANTS OF THE TENANT

- (1) The Tenant covenants with the Landlord:
 - (a) to pay rent;
 - (b) to pay all charges (including penalties and interest) for water, electricity, and other utilities supplied to the Demised Area, directly to the supplier thereof in each case and, further hereto and on demand, to produce proof of such payment to the Landlord;
 - (c) to pay any and all taxes arising from or related to the within Lease and its occupation and use of the Demised Area to the applicable government authority or entity and, without limiting the foregoing, to pay all property taxes accruing to the Demised Area to the Municipality; provided that upon demand, the Tenant shall provide proof of any such payment to the Landlord;
 - (d) to pay to the Ministry of Natural Resources and Forestry (MNRF) any and all license and waterlot fees, including fees associated with its occupation and use of the Demised Area, including but not limited for the use set forth in section 4 (1)(g) below; and provided that, upon demand, the Tenant shall provide proof of any such payment to the Landlord;
 - (e) not to make changes in surfacing, grade or landscaping, at or on the Demised Area, except in accordance with plans therefor which have been submitted to, and approved by, the Chief Administrative Officer, such approval not to be unreasonably withheld, and to make any such changes expeditiously in a good and workmanlike manner (including proper clean-up) to the satisfaction of the Chief Administrative Officer;
 - (f) to keep the Demised Area in a clean and well-ordered condition, and not to permit any rubbish, refuse, debris or other objectionable material to be stored, or to accumulate in the Demised Area, all to the satisfaction of the Chief Administrative Officer;
 - (g) to use the Demised Area only for the purposes of a park and associated small craft marina;
 - (h) at all times, to operate the park and associated small craft marina on the Demised Area in a safe and prudent manner and in keeping with practices, standards, rules, and protocols associated with a park and/or small craft marina operation and used by the public, including but not limited to:
 1. employment of trained and competent personnel to assist users of the park and marina facility, including but limited to while launching vessels and watercraft into or removing vessels from the waters of Kettle Creek;
 2. provision of appropriate supervision of personnel employed at the park and marina facility;
 3. ensuring the availability of appropriate safety and/or life saving equipment at the park and associated marina facility;

- (i) without limiting to the generality of the foregoing subsection 4 (1)(h), at all times to follow and comply with the specific rules and regulations set forth in Schedule "B" hereto;
- (j) not to assign or sublet their rights under this Lease without leave and consent of the Chief Administrative Officer;
- (k) not to erect any signs, buildings or other non-landscaping structure on the Demised Area without the written consent of the Chief Administrative Officer;
- (l) to assume all responsibility for the paving, maintenance, repair, upkeep and snow removal of the Demised Area; provided that, with respect to such obligation of repair, reasonable wear and tear and damage by fire, lightning, tempest, and flood shall be exempted; and further that the Landlord shall have a right of entry to view the state of repair and that the Tenant shall repair in accordance with any notice of required repair from the Landlord;
- (m) to ensure that nothing is done or kept at or on the Demised Area which is or may be a nuisance, or which causes damage to or interference with normal usage of any adjoining property, provided that the use referred to in section 4 (1)(g) and the vehicles, supplies and equipment necessarily incidental thereto shall not be deemed to be, in and of themselves, a nuisance;
- (n) at its own expense, to take all measures necessary to ensure to the Chief Administrative Officer's satisfaction that the plant of or appurtenances to any municipal service or public utility now or in the future on, under or adjacent to the Demised Area, is adequately protected against damage, impairment, destruction or loss;
- (o) not to store inflammable or explosive substances at or on the Demised Area;
- (p) to comply with all federal, provincial and municipal laws, by-laws, rules and regulations affecting the Demised Area, including obtaining of all necessary permits and licences, and to save the Landlord harmless from any liability or cost suffered by it as a result of failure of the Tenant to do so;
- (q) upon termination of the tenancy, at its own risk and expense, to remove from the Demised Area within thirty (30) days, any fixtures and chattels belonging to it, with all damage, if any, caused by such removal made good by it, and to leave the Demised Area neat, clean, level and free of all waste material, debris and rubbish, all to the Chief Administrative Officer's satisfaction; and
- (r) that upon failure by the Tenant to comply with any covenant(s) incumbent upon it under this Lease within ten (10) days after written notice requiring such compliance is given by the Landlord to the Tenant, the Landlord may enter the Demised Area and fulfill such covenant(s) at the sole expense of the Tenant, who shall forthwith upon being invoiced therefor reimburse the Landlord, who in default of such reimbursement may collect same as rent owing and in arrears.

(2) The Tenant accepts the Demised Area in the condition existing at the date of commencement of the original term of this Lease and the Tenant shall be responsible for the cost of any grading, fencing, or other alteration or improvements required in order to prepare the Demised Area for the purposes set forth in section 4 (1)(g) above.

5.0 BANKRUPTCY / LEVY / RE-ENTRY

- (1) If the Tenant or any assignee or subtenant makes an assignment for the benefit of creditors, or becomes insolvent or commits an act of bankruptcy as defined by the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, or if the leasehold interest created by this Lease is at any time seized or taken in execution or in attachment, or if the Tenant or any corporate assignee or subtenant is subjected to voluntary or compulsory liquidation or winding-up, or if the Demised Area becomes abandoned, then, at the option of the Landlord, the leasehold shall cease, the Term shall be at an end, the rent for the then next ensuing three (3) months shall immediately become due and payable and the Landlord may re-enter and take possession.
- (2) Notwithstanding any present or future statute of the Ontario Legislature, none of the Tenant's goods and chattels on the Demised Area shall at any time during the Term be exempt from levy by distress for rent in arrears, and the Tenant, having waived

any such exemption, shall by this clause be estopped from setting up any such exemption in any proceedings between the parties.

- (3) This Lease makes provision for re-entry by the Landlord on non-payment of rent or non-performance of any covenant by the Tenant.

6.0 INDEMNIFICATION / INSURANCE

(1) The Tenant shall at all times indemnify and save harmless the Landlord from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever (including those under or in connection with the *Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sch. A*, or any successor legislation), made or brought against, suffered by or imposed on the Landlord or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including, without restriction, employees, agents and property of the Landlord or of the Tenant) directly or indirectly arising out of, resulting from or sustained as a result of the Tenant's occupation or use of, or any operation in connection with, the Demised Area or any fixtures or chattels in this Agreement except to the extent attributable to the Landlord's negligence.

(2) The Tenant shall, at all times during the currency of the Term and any renewal of the Term, at its own expense maintain in force insurance coverage with respect to the Demised Area and its use and occupation of the Demised Area, and shall provide the Landlord with certificates of a policy or policies of an insurance company or companies to the Landlord for:

- (a) insurance against loss by such insurable hazards as the Landlord may from time to time reasonably request; and
- (b) liability insurance for bodily injury, death or property damage up to FIVE MILLION DOLLARS (\$5,000,000.00)

Every policy or policies of insurance maintained by the Tenant shall provide cross-liability coverage and waiver of subrogation, and the Landlord may require the Tenant to supply evidence of such insurance from time to time.

(3) The Tenant shall at all times indemnify and save harmless the Landlord from and against any and all claims, demands, losses, costs, charges, actions and other proceedings under the Construction Lien Act, R.S.O. 1990, c. C.30, in connection with any work done for the Tenant at or on the Demised Area, and shall at its own expense promptly see to the removal from the registered title to the Demised Area, of every claim for lien or certificate of action having to do with such work and in any event within days of being notified in writing by the Landlord to do so, failing which the Landlord may see to such removal and recover the expense and all attendant costs from the Tenant as rent owing and in arrears.

(4) The Landlord assumes no responsibility for damage by fire, theft or otherwise whatsoever, to the goods, chattels, fixtures and improvements of the Tenant or of any other person except to the extent caused by the negligence of the Landlord or any person(s) for whom the Landlord is at law responsible.

(5) The provisions of this section will continue to apply, notwithstanding cessation of the tenancy created by this Lease, throughout the period(s) during which activities take place pursuant to subsection 4 above.

7.0 OVERHOLDING

(1) If, at the expiration of the Term, the Tenant remains in possession with the consent of the Landlord but without any further written agreement, a tenancy from year to year shall not be created by implication of law or otherwise, but the Tenant shall be deemed to be a monthly tenant only at a rental payable monthly in advance at the rate payable at the expiration of the Term or renewal and otherwise upon and subject to the terms and conditions contained in this Lease.

8.0 COVENANTS OF THE LANDLORD

- (1) Subject to section 2 (2) of this Lease, the Landlord covenants with the Tenant for quiet enjoyment.
- (2) The Landlord shall make reasonable efforts to complete any exercise by the Landlord of its rights under clause 2 (2) of this Lease, expeditiously, and upon such completion shall restore the Demised Area substantially to its condition immediately prior to such exercise.

9.0 LANDLORD'S RESERVATIONS

- (1) Notwithstanding anything herein to the contrary, the Landlord reserves unto itself the following rights and privileges:
 - (a) the Landlord may erect or cause to be erected on the premises during the months of November, December and January in each year a "Christmas Theme Light Display" and in so doing shall be permitted without charge to connect to the Tenant's hydro outlets; and
 - (b) the Landlord may, during the original term of the Lease, or any renewal thereof, enter upon the Demised Area for the purpose of constructing a public road leading from Carlow Road to the Demised Area, however the Landlord shall at all times during the said term or renewal thereof make such arrangements as are necessary, with any third party to ensure the Tenant has sufficient and satisfactory access to the Demised Area.

10.0 CAPITAL IMPROVEMENTS

- (1) Any capital improvement made to the Demised Area during the original term of this Lease, or any renewal period thereof, shall be and remain the property of the Landlord, without any right to or obligation for compensation payable to the Tenant.

11.0 EARLY TERMINATION

- (1) Upon giving to the other at least six (6) months prior written notice, both the Landlord and the Tenant shall have and possess the right to terminate this Lease without cause or right of compensation; provided that any improvements made to the Demised Area shall be and remain the property of the Landlord.
- (2) Notwithstanding and without prejudice to the right of termination set forth in section 11 (1) above, the Tenant shall also have and possess the right to terminate this Lease if the Ministry of Natural Resources and Forestry impose any fee, including but not limited to a license or waterlot fee, which the Tenant, in its unfettered discretion, considers unreasonable and for that reason refuses to pay; provided that this specific right of termination shall be exercisable only upon giving at least three (3) months written notice to the Landlord.

12.0 LIABILITY TO DATE OF EXPIRY / TERMINATION

- (1) The termination of this Lease by expiry or otherwise shall not affect the liability of either party to this Lease to the other with respect to any obligation under this Lease which has accrued up to the date of such termination but not been properly satisfied or discharged.

13.0 INTEREST / COSTS

- (1) All sums, for rent or otherwise, payable to the Landlord under this Lease shall bear interest commencing the 15th day next following the falling due thereof, at the then current rate of interest charged to the Landlord by its bankers until the actual date of payment.
- (2) The Tenant shall pay to the Landlord all the Landlord's legal costs, on a solicitor and client basis, of all actions or other proceedings in which the Landlord participates in connection with, or arising out of the obligations of the Tenant under this Lease or arising out of the Tenant's occupation of the Demised Area, except to the extent that the Landlord is not successful therein.

14.0 CONDUCT FOLLOWING BREACH BY TENANT

- (1) No condonation, excusing or overlooking by the Landlord or any default, breach or non-observance of any of the Tenant's obligations under this Lease at any time or times shall affect the Landlord's remedies or rights with respect to any subsequent (even if by way of continuation) default, breach or non-observance.
- (2) No waiver shall be inferred from or implied by anything done or omitted by the Landlord.
- (3) Any written waiver by the Landlord shall have effect only in accordance with its express terms.
- (4) All rights and remedies of the Landlord under this Lease shall be cumulative and not alternative.

15.0 RECORDS

- (1) The Tenant acknowledges and agrees to keep proper accounts and records in accordance with accounting and recordkeeping best practices.
- (2) The Tenant shall make available, for such audits and inspections all information as the Landlord or its authorized representatives may from time to time require with reference to such accounts, records, receipts, vouchers, and other documents relating to the contract. The landlord may copy any information it deems necessary in the course of such audits and inspections.
- (3) The Tenant shall cause all such accounts, records, receipts, vouchers and other documents, as aforesaid, to be preserved and kept available for audit and inspection at any reasonable time, and from time to time, until the expiration of 15 years from the date of disbursement of the grant under this agreement, or until the expiration of such lesser or greater period of time as shall be approved in writing by the Landlord.

16.0 RIGHT TO SHOW PREMISES

- (1) The Landlord has the right and the Tenant shall permit the Landlord to show and exhibit the Demised Area to any prospective subsequent Tenant during the final three (3) months of the original term of this Lease or any renewal thereof and, without limiting the generality of the foregoing, the Tenant shall permit any and all persons having written authority for such showing and exhibition to view the Demised Area, including lands and premises, at all reasonable hours.

17.0 NOTICE

- (1) Any notice pursuant to any of the provisions of this Lease shall be deemed to have properly given if delivered in person, or mailed by prepaid registered post addressed:
 - (a) in the case of notice to the Landlord to: 450 Sunset Drive, St. Thomas, ON N5R 5V1
 - (b) in the case of notice to the Tenant to: P.O. Box 10, Port Stanley, ON N5L 1J4.

Or such other address as either party may notify the other of, and in the case of mailing as aforesaid, such notice shall be deemed to have been received by the addressee, in the absence of a major interruption in postal service affecting the handling or delivery thereof, on the 5th business day, excluding Saturdays, next following the date of mailing.

18.0 AUTHORITY OF CHIEF ADMINISTRATIVE OFFICER

- (1) The authority of the Chief Administrative Officer shall not be deemed to be exhausted by any individual exercise thereof, and in the matters for which he or she is to be responsible under this Lease, the Chief Administrative Officer shall be the sole judge whose opinion and exercise of discretion shall not be subject to review in any manner whatsoever except as expressly otherwise indicated in this Lease.

19.0 FORCE MAJEURE

- (1) Notwithstanding anything to the contrary contained in this Lease, if either Party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes; labour troubles; delays during the construction process unless caused by the gross negligence of the Licensor; inability to procure materials or services; power failure; restrictive government laws or regulations; riots; insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such term, covenant or act is excused for the period of the delay and the Party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay.

20.0 NO OTHER AGREEMENTS

- (1) The Tenant acknowledges that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Lease other than as set out in this Lease, which constitutes the entire agreement between the Parties concerning the Demised Area and which may be modified only by further written agreement under seal.

21.0 MISCELLANEOUS

- (1) Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.
- (2) The captions, headings, section numbers and clause numbers appear in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or interest of such sections or clauses of this Lease nor in any way affect the Lease contemplated herein.
- (3) The words "hereof", "herein", "hereunder" and similar expressions used in any section or subsection of this Lease relate to the whole of this Lease and not to that section or subsection only, unless otherwise expressly provided. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.
- (4) If for any reason whatsoever any term, covenant, or condition of this Lease, or the application thereof to any Person or circumstances, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition is deemed to be independent of the remainder of the Lease and to be severable and divisible therefrom, and continues to be applicable to and enforceable to the fullest extent permitted by law. Neither Party is obliged to enforce any term, covenant or condition of this Lease against any Person, if, or to the extent by so doing, such Party is caused to be in breach of any laws, rules, regulations or enactments from time to time in force.
- (5) Except as herein otherwise provided, no subsequent amendment or change to this Lease shall be binding upon the Landlord or the Tenant unless in writing and signed by the Tenant and by an executive officer of the Landlord under the Landlord's corporate seal.
- (6) This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario.
- (7) Time is of the essence of this Lease and of every part hereof.
- (8) All rights and liabilities herein granted to, or imposed upon the respective Parties hereto, extend to and bind the successors and assigns of the Landlord and the heirs, executors, administrators and permitted successors and assigns of the Tenant, as the case may be. No rights, however shall enure to the benefit of any assignee of the Tenant unless the assignee to such assignment has been approved by the Landlord in writing. If there is more than one Tenant, they are all bound jointly and severally by the terms, covenants and conditions herein.

22.0 ENUREMENT

SCHEDULE "A"

SCHEDULE "B"

The Tenant shall:

1. maintain the premises in a clean and sanitary condition, and in particular, shall not permit the deposit of any refuse and/or garbage, save and except in properly maintained receptacles provided for the purpose;
2. provide and maintain proper sanitary facilities for public use, including portable toilets and fixed washroom facilities;
3. maintain grass areas at a height of no greater than 75mm;
4. remove extended docks from the water course of Kettle Creek at the conclusion of the boating season, and properly store the same on the premises;
5. permit public access to the "park area" of the Demised Area during normal daylight hours under such terms and conditions as the Tenant may determine, subject only to the prior approval of the Landlord of such terms and conditions; and
6. make the dock space available to the general public pursuant to any lease agreement between the Tenant and any third party and to retain the rental fee. The fees charged by the Tenant for docking space shall be at the discretion of the Tenant but shall be competitive with the fees charged for the same privilege by other dock owners located in the general area.

This Lease Agreement made in quadruplicate this day of , 2018.

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF CENTRAL ELGIN
(hereinafter 'Municipality' or 'Landlord')

Of The First Part

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AND WHEREAS there are located upon such lands and premises certain park and marina facilities, which park and marina facilities have been leased previously by the Landlord to the Tenant, including for use as a small craft marina;

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 - (d) to pay to the Ministry of Natural Resources and Forestry (MNR) any and all license and waterlot fees, including fees associated with its occupation and use of the Demised Area, including but not limited for the use set forth in section 4 (1)(g) below; and provided that, upon demand, the Tenant shall provide proof of any such payment to the Landlord;
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 - (h) at all times, to operate the park and associated small craft marina on the Demised Area in a safe and prudent manner and in keeping with practices, standards, rules, and protocols associated with a park and/or small craft marina operation and used by the public, including but not limited to:
 - 1. employment of trained and competent personnel to assist users of the park and marina facility, including but limited to while launching vessels and watercraft into or removing vessels from the waters of Kettle Creek;
 - 2. provision of appropriate supervision of personnel employed at the park and marina facility;
 - 3. ensuring the availability of appropriate safety and/or life saving equipment at the park and associated marina facility;

- (i) without limiting to the generality of the foregoing subsection 4 (1)(h), at all times to follow and comply with the specific rules and regulations set forth in Schedule "B" hereto;
- (j) not to assign or sublet their rights under this Lease without leave and consent of the Chief Administrative Officer;
- (k) not to erect any signs, buildings or other non-landscaping structure on the Demised Area without the written consent of the Chief Administrative Officer;
- (l) to assume all responsibility for the paving, maintenance, repair, upkeep and snow removal of the Demised Area; provided that, with respect to such obligation of repair, reasonable wear and tear and damage by fire, lightning, tempest, and flood shall be exempted; and further that the Landlord shall have a right of entry to view the state of repair and that the Tenant shall repair in accordance with any notice of required repair from the Landlord;
- (m) to ensure that nothing is done or kept at or on the Demised Area which is or may be a nuisance, or which causes damage to or interference with normal usage of any adjoining property, provided that the use referred to in section 4 (1)(g) and the vehicles, supplies and equipment necessarily incidental thereto shall not be deemed to be, in and of themselves, a nuisance;
- (n) at its own expense, to take all measures necessary to ensure to the Chief Administrative Officer's satisfaction that the plant of or appurtenances to any municipal service or public utility now or in the future on, under or adjacent to the Demised Area, is adequately protected against damage, impairment, destruction or loss;
- (o) not to store inflammable or explosive substances at or on the Demised Area;
- (p) to comply with all federal, provincial and municipal laws, by-laws, rules and regulations affecting the Demised Area, including obtaining of all necessary permits and licences, and to save the Landlord harmless from any liability or cost suffered by it as a result of failure of the Tenant to do so;
- (q) upon termination of the tenancy, at its own risk and expense, to remove from the Demised Area within thirty (30) days, any fixtures and chattels belonging to it, with all damage, if any, caused by such removal made good by it, and to leave the Demised Area neat, clean, level and free of all waste material, debris and rubbish, all to the Chief Administrative Officer's satisfaction; and
- (r) that upon failure by the Tenant to comply with any covenant(s) incumbent upon it under this Lease within ten (10) days after written notice requiring such compliance is given by the Landlord to the Tenant, the Landlord may enter the Demised Area and fulfill such covenant(s) at the sole expense of the Tenant, who shall forthwith upon being invoiced therefor reimburse the Landlord, who in default of such reimbursement may collect same as rent owing and in arrears.

(2) The Tenant accepts the Demised Area in the condition existing at the date of commencement of the original term of this Lease and the Tenant shall be responsible for the cost of any grading, fencing, or other alteration or improvements required in order to prepare the Demised Area for the purposes set forth in section 4 (1)(g) above.

5.0 BANKRUPTCY / LEVY / RE-ENTRY

- (1) If the Tenant or any assignee or subtenant makes an assignment for the benefit of creditors, or becomes insolvent or commits an act of bankruptcy as defined by the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, or if the leasehold interest created by this Lease is at any time seized or taken in execution or in attachment, or if the Tenant or any corporate assignee or subtenant is subjected to voluntary or compulsory liquidation or winding-up, or if the Demised Area becomes abandoned, then, at the option of the Landlord, the leasehold shall cease, the Term shall be at an end, the rent for the then next ensuing three (3) months shall immediately become due and payable and the Landlord may re-enter and take possession.
- (2) Notwithstanding any present or future statute of the Ontario Legislature, none of the Tenant's goods and chattels on the Demised Area shall at any time during the Term be exempt from levy by distress for rent in arrears, and the Tenant, having waived

any such exemption, shall by this clause be estopped from setting up any such exemption in any proceedings between the parties.

- (3) This Lease makes provision for re-entry by the Landlord on non-payment of rent or non-performance of any covenant by the Tenant.

6.0 INDEMNIFICATION / INSURANCE

(1) The Tenant shall at all times indemnify and save harmless the Landlord from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever (including those under or in connection with the *Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sch. A*, or any successor legislation), made or brought against, suffered by or imposed on the Landlord or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including, without restriction, employees, agents and property of the Landlord or of the Tenant) directly or indirectly arising out of, resulting from or sustained as a result of the Tenant's occupation or use of, or any operation in connection with, the Demised Area or any fixtures or chattels in this Agreement except to the extent attributable to the Landlord's negligence.

(2) The Tenant shall, at all times during the currency of the Term and any renewal of the Term, at its own expense maintain in force insurance coverage with respect to the Demised Area and its use and occupation of the Demised Area, and shall provide the Landlord with certificates of a policy or policies of an insurance company or companies to the Landlord for:

- (a) insurance against loss by such insurable hazards as the Landlord may from time to time reasonably request; and
- (b) liability insurance for bodily injury, death or property damage up to FIVE MILLION DOLLARS (\$5,000,000.00)

Every policy or policies of insurance maintained by the Tenant shall provide cross-liability coverage and waiver of subrogation, and the Landlord may require the Tenant to supply evidence of such insurance from time to time.

(3) The Tenant shall at all times indemnify and save harmless the Landlord from and against any and all claims, demands, losses, costs, charges, actions and other proceedings under the Construction Lien Act, R.S.O. 1990, c. C.30, in connection with any work done for the Tenant at or on the Demised Area, and shall at its own expense promptly see to the removal from the registered title to the Demised Area, of every claim for lien or certificate of action having to do with such work and in any event within days of being notified in writing by the Landlord to do so, failing which the Landlord may see to such removal and recover the expense and all attendant costs from the Tenant as rent owing and in arrears.

(4) The Landlord assumes no responsibility for damage by fire, theft or otherwise whatsoever, to the goods, chattels, fixtures and improvements of the Tenant or of any other person except to the extent caused by the negligence of the Landlord or any person(s) for whom the Landlord is at law responsible.

(5) The provisions of this section will continue to apply, notwithstanding cessation of the tenancy created by this Lease, throughout the period(s) during which activities take place pursuant to subsection 4 above.

7.0 OVERHOLDING

(1) If, at the expiration of the Term, the Tenant remains in possession with the consent of the Landlord but without any further written agreement, a tenancy from year to year shall not be created by implication of law or otherwise, but the Tenant shall be deemed to be a monthly tenant only at a rental payable monthly in advance at the rate payable at the expiration of the Term or renewal and otherwise upon and subject to the terms and conditions contained in this Lease.

8.0 COVENANTS OF THE LANDLORD

- (1) Subject to section 2 (2) of this Lease, the Landlord covenants with the Tenant for quiet enjoyment.
- (2) The Landlord shall make reasonable efforts to complete any exercise by the Landlord of its rights under clause 2 (2) of this Lease, expeditiously, and upon such completion shall restore the Demised Area substantially to its condition immediately prior to such exercise.

9.0 LANDLORD'S RESERVATIONS

- (1) Notwithstanding anything herein to the contrary, the Landlord reserves unto itself the following rights and privileges:
 - (a) the Landlord may erect or cause to be erected on the premises during the months of November, December and January in each year a "Christmas Theme Light Display" and in so doing shall be permitted without charge to connect to the Tenant's hydro outlets; and
 - (b) the Landlord may, during the original term of the Lease, or any renewal thereof, enter upon the Demised Area for the purpose of constructing a public road leading from Carlow Road to the Demised Area, however the Landlord shall at all times during the said term or renewal thereof make such arrangements as are necessary, with any third party to ensure the Tenant has sufficient and satisfactory access to the Demised Area.

10.0 CAPITAL IMPROVEMENTS

- (1) Any capital improvement made to the Demised Area during the original term of this Lease, or any renewal period thereof, shall be and remain the property of the Landlord, without any right to or obligation for compensation payable to the Tenant.

11.0 EARLY TERMINATION

- (1) Upon giving to the other at least six (6) months prior written notice, both the Landlord and the Tenant shall have and possess the right to terminate this Lease without cause or right of compensation; provided that any improvements made to the Demised Area shall be and remain the property of the Landlord.
- (2) Notwithstanding and without prejudice to the right of termination set forth in section 11 (1) above, the Tenant shall also have and possess the right to terminate this Lease if the Ministry of Natural Resources and Forestry impose any fee, including but not limited to a license or waterlot fee, which the Tenant, in its unfettered discretion, considers unreasonable and for that reason refuses to pay; provided that this specific right of termination shall be exercisable only upon giving at least three (3) months written notice to the Landlord.

12.0 LIABILITY TO DATE OF EXPIRY / TERMINATION

- (1) The termination of this Lease by expiry or otherwise shall not affect the liability of either party to this Lease to the other with respect to any obligation under this Lease which has accrued up to the date of such termination but not been properly satisfied or discharged.

13.0 INTEREST / COSTS

- (1) All sums, for rent or otherwise, payable to the Landlord under this Lease shall bear interest commencing the 15th day next following the falling due thereof, at the then current rate of interest charged to the Landlord by its bankers until the actual date of payment.
- (2) The Tenant shall pay to the Landlord all the Landlord's legal costs, on a solicitor and client basis, of all actions or other proceedings in which the Landlord participates in connection with, or arising out of the obligations of the Tenant under this Lease or arising out of the Tenant's occupation of the Demised Area, except to the extent that the Landlord is not successful therein.

14.0 CONDUCT FOLLOWING BREACH BY TENANT

- (1) No condonation, excusing or overlooking by the Landlord or any default, breach or non-observance of any of the Tenant's obligations under this Lease at any time or times shall affect the Landlord's remedies or rights with respect to any subsequent (even if by way of continuation) default, breach or non-observance.
- (2) No waiver shall be inferred from or implied by anything done or omitted by the Landlord.
- (3) Any written waiver by the Landlord shall have effect only in accordance with its express terms.
- (4) All rights and remedies of the Landlord under this Lease shall be cumulative and not alternative.

15.0 RECORDS

- (1) The Tenant acknowledges and agrees to keep proper accounts and records in accordance with accounting and recordkeeping best practices.
- (2) The Tenant shall make available, for such audits and inspections all information as the Landlord or its authorized representatives may from time to time require with reference to such accounts, records, receipts, vouchers, and other documents relating to the contract. The landlord may copy any information it deems necessary in the course of such audits and inspections.
- (3) The Tenant shall cause all such accounts, records, receipts, vouchers and other documents, as aforesaid, to be preserved and kept available for audit and inspection at any reasonable time, and from time to time, until the expiration of 15 years from the date of disbursement of the grant under this agreement, or until the expiration of such lesser or greater period of time as shall be approved in writing by the Landlord.

16.0 RIGHT TO SHOW PREMISES

- (1) The Landlord has the right and the Tenant shall permit the Landlord to show and exhibit the Demised Area to any prospective subsequent Tenant during the final three (3) months of the original term of this Lease or any renewal thereof and, without limiting the generality of the foregoing, the Tenant shall permit any and all persons having written authority for such showing and exhibition to view the Demised Area, including lands and premises, at all reasonable hours.

17.0 NOTICE

- (1) Any notice pursuant to any of the provisions of this Lease shall be deemed to have properly given if delivered in person, or mailed by prepaid registered post addressed:
 - (a) in the case of notice to the Landlord to: 450 Sunset Drive, St. Thomas, ON N5R 5V1
 - (b) in the case of notice to the Tenant to: P.O. Box 10, Port Stanley, ON N5L 1J4.

Or such other address as either party may notify the other of, and in the case of mailing as aforesaid, such notice shall be deemed to have been received by the addressee, in the absence of a major interruption in postal service affecting the handling or delivery thereof, on the 5th business day, excluding Saturdays, next following the date of mailing.

18.0 AUTHORITY OF CHIEF ADMINISTRATIVE OFFICER

- (1) The authority of the Chief Administrative Officer shall not be deemed to be exhausted by any individual exercise thereof, and in the matters for which he or she is to be responsible under this Lease, the Chief Administrative Officer shall be the sole judge whose opinion and exercise of discretion shall not be subject to review in any manner whatsoever except as expressly otherwise indicated in this Lease.

19.0 FORCE MAJEURE

- (1) Notwithstanding anything to the contrary contained in this Lease, if either Party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes; labour troubles; delays during the construction process unless caused by the gross negligence of the Licensor; inability to procure materials or services; power failure; restrictive government laws or regulations; riots; insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such term, covenant or act is excused for the period of the delay and the Party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay.

20.0 NO OTHER AGREEMENTS

- (1) The Tenant acknowledges that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Lease other than as set out in this Lease, which constitutes the entire agreement between the Parties concerning the Demised Area and which may be modified only by further written agreement under seal.

21.0 MISCELLANEOUS

- (1) Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.
- (2) The captions, headings, section numbers and clause numbers appear in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or interest of such sections or clauses of this Lease nor in any way affect the Lease contemplated herein.
- (3) The words "hereof", "herein", "hereunder" and similar expressions used in any section or subsection of this Lease relate to the whole of this Lease and not to that section or subsection only, unless otherwise expressly provided. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.
- (4) If for any reason whatsoever any term, covenant, or condition of this Lease, or the application thereof to any Person or circumstances, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition is deemed to be independent of the remainder of the Lease and to be severable and divisible therefrom, and continues to be applicable to and enforceable to the fullest extent permitted by law. Neither Party is obliged to enforce any term, covenant or condition of this Lease against any Person, if, or to the extent by so doing, such Party is caused to be in breach of any laws, rules, regulations or enactments from time to time in force.
- (5) Except as herein otherwise provided, no subsequent amendment or change to this Lease shall be binding upon the Landlord or the Tenant unless in writing and signed by the Tenant and by an executive officer of the Landlord under the Landlord's corporate seal.
- (6) This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario.
- (7) Time is of the essence of this Lease and of every part hereof.
- (8) All rights and liabilities herein granted to, or imposed upon the respective Parties hereto, extend to and bind the successors and assigns of the Landlord and the heirs, executors, administrators and permitted successors and assigns of the Tenant, as the case may be. No rights, however shall enure to the benefit of any assignee of the Tenant unless the assignee to such assignment has been approved by the Landlord in writing. If there is more than one Tenant, they are all bound jointly and severally by the terms, covenants and conditions herein.

22.0 ENUREMENT

SCHEDULE "A"

SCHEDULE "B"

The Tenant shall:

1. maintain the premises in a clean and sanitary condition, and in particular, shall not permit the deposit of any refuse and/or garbage, save and except in properly maintained receptacles provided for the purpose;
2. provide and maintain proper sanitary facilities for public use, including portable toilets and fixed washroom facilities;
3. maintain grass areas at a height of no greater than 75mm;
4. remove extended docks from the water course of Kettle Creek at the conclusion of the boating season, and properly store the same on the premises;
5. permit public access to the "park area" of the Demised Area during normal daylight hours under such terms and conditions as the Tenant may determine, subject only to the prior approval of the Landlord of such terms and conditions; and
6. make the dock space available to the general public pursuant to any lease agreement between the Tenant and any third party and to retain the rental fee. The fees charged by the Tenant for docking space shall be at the discretion of the Tenant but shall be competitive with the fees charged for the same privilege by other dock owners located in the general area.