

LEASE

THIS LEASE is dated for reference this _____ day of _____, 2020

**UNDER THE LAND TRANSFER FORM ACT, PART 2
AND THE COMMUNITY CHARTER**

BETWEEN:

DISTRICT OF STEWART
PO Box 460
705 Brightwell Street
Stewart, BC V0T 1W0

(the "Lessor")

OF THE FIRST PART

AND:

Company Name

Address

(the "Lessee")

OF THE SECOND PART

WHEREAS

- A. The Lessor holds control or is the owner of land herein;
- B. The Lessee has requested and the Lessor has agreed to grant a lease of this land in the following terms:

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the rents and agreements to be paid and performed by the Lessee,

1. Land

The Lessor leases to the Lessee the land described in Schedule "A" annexed to this Lease (the "**Land**") situated in the District of Stewart, British Columbia.

2. Term

- 2.1 The term of this Lease shall be for **three** year(s) commencing on the this _____ day of _____, 2020 (the "**Term**");

2.2 Upon mutual agreement of the Parties, this Lease may be extended for an additional period, not to exceed the length of the original Term;

3. **Use**

The Lessee shall use the Land for the purpose of _____. The Lessee will not use or occupy the Land or permit the Land to be used or occupied in any manner inconsistent with the terms of this Lease, except with the prior written consent of the Lessor, which consent may be withheld at its discretion.

4. **Rent and Fees**

4.1 **Basic Rent.** The Lessee shall pay a Basic Rent, being the sum of \$_____ annually plus GST, payable to the Lessor in monthly installments of \$_____ plus GST on or before the 1st day of each month. The Basic Rent will be adjusted annually for increases in the Consumer Price Index.

4.2 **Additional Rent.** All other monies other than Basic Rent or Fees that are owing by the Lessee under this agreement are deemed to be Additional Rent. The Lessee will pay any such money to the Lessor upon demand by the Lessor unless there is mutual agreement for other terms of payment. If the Lessee fails to pay any Additional Rent, the Lessor will have the same remedies for the collection thereof as it has for the recovery of Basic Rent in Arrears.

(i) if the Lessor suffers any expense or is obligated to make payment for which the Lessee is liable, hereunder, then the Lessor shall have the right to add the expense or payment as Additional Rent.

4.3 **Fees.** For the purposes of this section, a Unit is defined as _____.

The Lessee shall pay a Fee, being the sum of \$_____ per Unit, for each unit that enters the Land, payable to the Lessor on a monthly basis on or before the 1st day of each month.

4.4 **Adjustment.** At the discretion of the Lessor, the Rents or Fees may be adjusted annually to reflect increases in the Consumer Price Index.

5. **Arbitration Agreement**

All disputes between the parties as may arise under this agreement shall be submitted to arbitration pursuant to the "*Commercial Arbitration Act*" of the Province of British Columbia or such successor legislation as may be promulgated from time to time. Any such arbitration shall take place in the District of Stewart.

6. **Lessee's Covenants**

The Lessee covenants with the Lessor:

Rent and Fees

6.1 To pay all rents and fees reserved under this Lease;

Taxes

6.2 To pay all taxes, rates, duties and assessments whatsoever, whether municipal, provincial, federal, or otherwise, including GST, charged upon the Lessee or the Lessor as a result of the Lessee's occupation of or use of the Land unless exempted by municipal bylaw;

Examination and Condition

6.3 That the Lessee has inspected the Land prior to execution of this Lease and acknowledges it is leasing same on an 'as is' basis and that the Lessor has made no representation, warranty or agreement with respect to the Land including, within limitation with respect to the suitability of the Land for the Lessees' intended use, except as may be otherwise expressly provide in this Lease.

Further, that upon the expiration or earlier termination of this Lease, the Lessee will at its expense remove all of its personal property and leave the Land in the same condition as it was at the date hereof, excepting only for reasonable wear and tear.

Construction

6.4 That it will not during the Term of this Lease construct any additional buildings or structures on the Land unless, prior to any construction, having obtained

- (a) a development permit from the Lessor where required;
 - (b) a building permit where required authorizing the construction or renovations of the buildings and structures set out in the permit and the plans and specifications attached to it; and
 - (c) required inspections;
- and all work shall be carried out at the cost of the Lessee;

Assign or Sublet

6.5 That it will not assign nor sublet without leave of the Lessor's Council;

6.6 That the Lessor's consent to assignment or subletting shall not release or relieve the Lessee from its obligations to perform all the terms, covenants and conditions that this Lease requires the Lessee to perform, and the Lessee shall pay the Lessor's reasonable costs incurred in connection with the Lessee's request for consent;

Insurance

6.7 That it will take out and maintain during the Term a policy of general public liability insurance against claims for bodily injury, death or property damage arising out of the use and occupancy of the Land by the Lessee in the amount of not less than **Five**

Million Dollars (\$5,000,000.00) per single occurrence or such greater amount as the Lessor may from time to time designate that names the Lessor as an insured party thereto and shall provide the Lessor with a certified copy of such policy or policies by December 1st each and every year for the term of this agreement;

- 6.8 That all policies of insurance shall contain a waiver of subrogation clause in favour of the Lessor and shall also contain a clause requiring the insurer not to cancel or change the insurance without first giving the Lessor 30 days prior written notice;
- 6.9 That if the Lessee does not provide or maintain in force the insurance required by this Lease, the Lessor may take out the necessary insurance and pay the premium for periods of one year at a time and the Lessee shall pay to the Lessor as additional rent the amount of the premium immediately on demand.
- 6.10 Notwithstanding clause 6.9, the Lessee must advise the District immediately of any cancellation, termination or non-insurance in all other cases.
- 6.11 That if both the Lessor and the Lessee have claims to be indemnified under any insurance required by this Lease, the indemnity shall be applied first to the settlement of the claim of the Lessor and balance, if any, to the settlement of the claim of the Lessee;

Nuisance

- 6.12 That it will not carry on or do or allow to be carried on or done on the Land anything that
- (a) may be or become a nuisance to the Lessor or the public,
 - (b) directly or indirectly causes damage to the Land;

Environment

- 6.13 That for section 6.14, the following definitions apply:

“Contaminants” means any explosives, radioactive materials, asbestos materials, urea formaldehyde, chlorobiphynels, hydrocarbon contaminates, underground tanks, pollutants, contaminants, hazards, corrosive or toxic substances, special waste or waste of any kind or any other substance, the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under environmental laws;

“Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Land with respect in any way to the environmental, health or occupational health and safety, including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities.

- 6.14 That in relation to the environment, being the soil, minerals, water, air, flora or fauna on or adjacent to the Land, or affected by activities on the Land:

- (a) not to use or permit to be used all or any part of the Land for the sale, storage, manufacture, handling, disposal, use, or any other dealing with any Contaminants, without the prior written consent of the District, which may be unreasonably withheld;
- (b) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Land;
- (c) to waive the requirement, if any, for the District to provide a site profile for the Land under the *Environmental Management Act* or any regulations pursuant thereto;
- (d) to promptly notify the District in writing of any release of a Contaminant or any other occurrence or condition at the Land or any adjacent property which could contaminate the Land or subject the District or the Lessee to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (e) on the expiry or earlier termination of this agreement, or at any time if requested by the District or required by any governmental authority under Environmental Laws, to remove from the Land all Contaminants, and to remediate by removal any contamination of the Land or any adjacent property resulting from Contaminants, in either case brought onto, used at, or released from the Land by the Lessee or any person for whom it is in law responsible. The Lessee shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants shall remain the property of the Lessee, notwithstanding any rule of law or other provision of this agreement to the contrary and notwithstanding the degree of their affixation to the Land; and
- (f) to indemnify the District, its councillors, representatives, officers, officials, servants, agents, successors and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including all legal and consultants' fees and expenses and the cost of remediation of the Land and any adjacent property) arising from or in connection with:
 - (i) any release or alleged release of any Contaminants at or from the Land related to or as a result of the use and occupation of the Land or any act or omission of the Lessee or any person for whom it is in law responsible.

Possession

- 6.15 That it will at the expiration or sooner determination of this Lease peaceably surrender and give up possession of the Land without notice from the Lessor, any right to notice to quit or vacate being hereby expressly waived by the Lessee, despite any law or custom to the contrary;

Performance Security

- 6.16 That it shall provide in favour of the District as security for performance of all the terms and conditions under this agreement, the amount of X THOUSAND (\$ _____,000 .00) in one of the following forms to the satisfaction of the District:

- (a) an irrevocable Letter of Credit from a financial institution acceptable to the District;
- (b) by deposit into the account of the District "in Trust"; or

- (c) a performance bond issued by a surety company in a form acceptable to and approved by the District.

(the “Security”)

6.17 If the Lessee fails to perform its obligations under this agreement the District may call on the Security and apply such amounts to complete the work or portion thereof or to compensate it for any costs incurred or loss or damages suffered as a result of the Lessee’s non-performance or default under this agreement.

- (a) If the amount of the Security is insufficient to cover the Lessors costs and expenses (which costs, without limitation, may include the Lessor’s normal overhead) to remedy the Lessee’s default, then the Lessee shall forthwith reimburse the Lessor within ten (10) days of receiving a written request by the Lessor for payment of the same.
- (b) If the Lessor is satisfied, in its sole discretion, that the Lessee has complied with its obligation under this Lease, the Lessor will return to the Lessee the Security (or if the Security has been cashed, any remaining portion thereof) still held by the Lessor.

Liens

6.18 The Lessee will not permit, do, or cause anything to be done on or to the Land at any time which would allow any lien, charge or encumbrance of any nature whatsoever to be imposed or to remain on the Land. In the event that any lien is so filed, the Lessee will, at its cost, take immediate action to cause same to be removed.

7. Lessor's Covenants

7.1 The Lessor covenants with the Lessee for quiet enjoyment, consistent with the use of the Land and other uses surrounding the Land;

7.2 The Lessor, by its representative, will have the right to enter upon the Land at all reasonable times upon 48 hours’ notice to the Lessee to inspect the state of the Land and assess the Lessee’s compliance with the obligations under this Lease, except in the case of emergency when no such notice will be required.

8. Miscellaneous Covenants

It is hereby mutually agreed:

Non-exclusive Access

8.1 Access to and on the Land is a non-exclusive right of the Lessee, and the Lessor may permit others to have access on or to the Land as long as this permission does not unduly impact or negatively affect the Lessee’s Use of the Land;

- (a) The Stewart World Port has permitted access on and through a portion of the Land.

Re-entry

8.2 If the Lessee shall default in the payment of rent, or the payment of any other sum payable hereunder, or fail to perform any covenant hereunder and if such default shall continue for thirty (30) days after the giving of written notice by the Lessor to the Lessee, then the Lessor may re-enter the Land and the rights of the Lessee with respect to the Land shall lapse and be absolutely forfeited;

Forfeiture

8.3 The Lessor, by waiving or neglecting to enforce the right to forfeiture of this Lease or the right of re-entry upon breach of any covenant, condition or agreement in it, does not waive the Lessor's rights upon any subsequent breach of the same or any other covenant, condition or agreement in this Lease;

Improvements

8.4 It is understood and agreed that where the Lessee has constructed substantial improvements on the Land; said improvements shall remain the property of the Lessee during the period of this lease or any extension thereof and the value of such improvements shall not be used in determining the amount of future annual rentals; such improvements must be removed by the Lessee within One Hundred and Twenty (120) days following the termination or expiration of this Lease, and that the Lessee, at its own expense, shall repair any damage to the leased Land caused by such removal and if any such improvements shall remain on the leased Land after the time period provided herein they shall remain on the leased Land without compensation to the Lessee therefore and they shall become the sole and exclusive property of the Lessor;

Holding Over

8.5 If the Lessee holds over following the Term and the Lessor accepts rent, this Lease becomes a tenancy from month to month subject to those conditions in this Lease applicable to a tenancy from month to month;

Lessor's Payments

8.6 If the Lessor incurs any damage, loss or expense or makes any payment for which the Lessee is liable under this Lease, then the Lessor may add the cost or amount of the damage, loss, expense or payment to the rent and may recover it as if it were rent in arrears;

Notices

8.7 Each notice sent pursuant to this agreement ("**Notice**") shall be in writing and shall be sent to the relevant Party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered, mail, by commercial courier, by facsimile transmission, or by electronic mail.

(a) The Contact Information for the parties is:

District of Stewart	Lessee
Contact Name: Jennifer Larson, CFO Address: PO Box 460 705 Brightwell Street Stewart, BC V0T 1W0	Contact Name: Address:
Fax Number: 250-636-2417 Email: finance@districtofstewart.com	Fax Number: Email:

- (b) Each Notice sent by electronic mail (“E-Mail Notice”) must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (c) Subject to s. 8.7(f) through (h) each Notice shall be deemed to have been given or made at the following times:
- (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
 - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or
 - (iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.
- (d) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.
- (e) Notice given by facsimile transmission in accordance with the terms of this section 8.7 will only be deemed to be received by the recipient if the sender’s facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (f) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually

received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.

- (g) Each Party shall provide Notice to the other Party of any change of address, facsimile number, or e-mail address of such Party within a reasonable time of such change.

Net Lease

- 8.8 This Lease shall be a complete carefree net lease to the Lessor as applicable to the Land and the Lessor shall not be responsible during the Term for any cost, charges, expenses or outlays of any nature whatsoever in respect of the Land or its contents except those mentioned in this Lease;

Binding Effect

- 8.9 This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees;

Amendment

- 8.10 The parties hereto may by agreement amend the terms of this Lease, such amendment to be evidenced in writing and executed by both parties;

Law Applicable

- 8.11 This Lease shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia;

Interpretation

- 8.12 When the singular or neuter is used in this Lease they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require;
- 8.13 All provisions of this Lease are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph;
- 8.14 The headings to the clauses in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or provision of it;

Time

- 8.15 Time shall be of the essence of this Lease.

9. Termination

- 9.1 If the Lessee is in default of payment of any sum payable under this agreement, or is in breach of this agreement, and if the default or breach continues for thirty (30) days after the giving of notice in writing by the District to the Lessee, then the District may terminate this agreement and may re-enter the Land and the rights of the Lessee with respect to the Land shall lapse and be absolutely forfeited.
- 9.2 Subject to this agreement, either party may terminate this agreement by giving sixty (60) days written notice of termination and such termination shall be effective as of the expiration of the sixty (60) days period and, except as noted in this agreement, upon termination neither party will have any further obligations.
- 9.3 Indemnities, releases of the Lessee shall survive the expiration or earlier termination of this Lease, including obligations related to contaminants and the environment. This includes, but is not limited to, clauses 6.3, 6.14 and 8.3.
- 9.4 Upon notice of termination by the Lessee to the Lessor, the Lessee will be obligated to pay, prior to the actual termination date, a termination penalty of the lesser of 6 months' Basic Rent, or Basic Rent for the remainder of the original lease agreement term.

IN WITNESS WHEREOF the parties have signed and sealed this Lease on the _____ day of _____, 2020.

DISTRICT OF STEWART by its authorized signatories:)

Mayor)

Corporate Officer)

c/s

The parties have signed and sealed this Lease on the _____ day of _____, 2020.

LESSEE by its authorized signatories:)

Authorized signatory)

c/s

SCHEDULE "A"

The following lease areas are collectively known as the Land:

Plan showing **applicable portion of** District Lot 7318 consisting of **XX** hectares.

Plan showing **applicable portion of** Water Lot, District Lot 7317 consisting of **XX** hectares.

Plan showing **applicable portion of** Water Lot, District Lot 7184 consisting of **XX** hectares.

SAMPLE