

This Lease made in duplicate this \_\_\_ day of \_\_\_\_\_ two thousand \_\_\_\_\_ (20 \_\_\_)

**BETWEEN**

**HIS MAJESTY THE KING IN RIGHT OF CANADA**, as represented by the Minister of Fisheries and Oceans Canada, duly authorized under Section 4 (2) of the *Federal Real Property Regulations* (SOR/92-502) and acting through the Regional Director of Small Craft Harbours by virtue of a delegation under Section 3 of the *Federal Real Property and Federal Immovables Act* (S.C.1991, chapter 50) and dated January 5<sup>th</sup>, 2005;

(the "Lessor")

**AND**

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN**, incorporated as a municipal corporation without share capital under the *Canada Not-for-profit Corporations Act* (S.C. 2009, c. 23) having its head office at **7030 Trans-Canada Highway, Duncan, B.C. V9L 3X4**, represented by \_\_\_\_\_, duly authorized under the terms of a resolution of its board of directors dated \_\_\_\_\_, certified copy whereof remains annexed hereto;

(the "Harbour Authority ")

The Lessor and the Harbour Authority jointly referred to as the "Parties";

The Parties agree as follows:

**SECTION 1**  
**DEFINITIONS**

1. Unless otherwise defined herein the following words and expressions, wherever used in this Lease, have the following meaning:

1.1 "Contaminants"

Any substance or group of substance specified on the List of Toxic Substances in Schedule 1 of the *Canada Environmental Protection Act* in a quantity or concentration that exceed those set forth in regulations made under the *Canada Environmental Protection Act*.

1.2 "Emergency"

A present or imminent event which can include but is not limited to; fire, drowning or serious injury, weather, earthquake, tsunami, serious crime, confined space incident, collision, sinking, bomb threat, demonstration and pollutant spill, which requires prompt coordinated action to protect the health, safety and welfare of people or to limit damage to property.

1.3 "Expenses"

Expenditures, Expenses and costs of all kinds incurred by the Harbour Authority, including capital and non-capital expenditures.

#### **1.4 “Force Majeure”**

An act of God, extraordinary weather conditions (including hurricanes or ice), strikes or labor troubles, hostilities, war, restraint or seizure by any government or belligerent party, riot or civil commotion, theft or pilferage, epidemic, quarantine, embargo, or any similar circumstances beyond the control of the signatories to this Lease.

#### **1.5 “Harbour”**

The harbour listed in Schedule 1 to the *Fishing and Recreational Harbours Regulations*, SOR/78-767 of the Lease, in which is located the Leased Area and named in Section 4 of this Lease.

#### **1.6 “Improvements”**

Any building work, construction or modification of new or existing facilities, carried out or erected by the Harbour Authority on the Leased Area listed or not in Schedule “E” for the benefit of the Harbour Authority.

#### **1.7 “Lease”**

This agreement and the attached SCHEDULES, which are incorporated into and form a part of this agreement.

#### **1.8 “Leased Area”**

The facilities and area leased by the Lessor to the Harbour Authority under this Lease (and land covered by water) described in SCHEDULE “A”, and as outlined in SCHEDULES “A.1”.

#### **1.9 “Leased Equipment”**

The equipment leased by the Lessor to the Harbour Authority under this Lease described in SCHEDULE “B”.

#### **1.10 “Operations, Maintenance and Repairs”**

Work normally carried out by the Harbour Authority and Lessor at their own expense during the Term of the Lease, and as mentioned and described in SCHEDULES “C” and “D”.

#### **1.11 “Public Purpose”**

Facilitating the public right of navigation by providing a safe and accessible harbour while continuing the original and developing program intent of the public purpose, which is primarily to support commercial fishing activities.

#### **1.12 “Regional Director”**

The individual responsible for the Small Craft Harbours program in the regional office of the Fisheries and Oceans Canada, for the area in which the Leased Area is situated, and any person authorized to act on that person's behalf.

#### **1.13 “Release”**

Includes, but is not limited to, any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

#### **1.14 “Term”**

The original FIVE (5) years period and THREE (3) consecutive FIVE (5) years optional renewal period that automatically comes into effect the day after the first period.

## **SECTION 2** **INTERPRETATION**

2. Unless otherwise stated herein, the Parties agree that this Lease shall be interpreted as follows:

### 2.1 Number and Gender

In this Lease, the singular shall include the plural and unless the context otherwise requires, a reference to one gender shall include reference to the other genders.

### 2.2 Headings and Captions

Headings and section numbers are inserted for convenience of reference only and are not to be considered when interpreting this Lease.

### 2.3 Entire Agreement

This Lease constitutes the entire agreement between the Lessor and the Harbour Authority and supersedes all negotiations, communications, verbal representations and previous agreements between the Lessor and the Harbour Authority.

### 2.4 Invalidity of Provisions

The invalidity or unenforceability of any provision of this Lease, or any covenant in this Lease, shall not affect the validity or enforceability of any other provision or covenant in this Lease. Any invalid provision or covenant is severable.

### 2.5 Applicable Law

This Lease shall be interpreted and enforced according to the laws of the province of British Columbia and the Federal laws of Canada.

### 2.6 Time of the Essence

Time is of the essence of this Lease and of every part of it, except as is otherwise provided in this Lease.

## **SECTION 3** **USE OF THE LEASED AREA AND THE LEASED EQUIPMENT**

3. The Harbour Authority shall use and occupy the Leased Area and the Leased Equipment for the purposes of operating, maintaining and managing the public commercial fishing harbour (s), a scheduled Harbour (s) under the *Fishing and Recreational Harbours Act* (R.S.C 1985, Chapter F 24) and Regulations, as amended.

3.1 The Harbour Authority shall not modify the use or the description of the Leased Area and the Leased Equipment without the prior written consent of the Lessor.

## **SECTION 4** **LEASE**

4. The Lessor hereby leases to the Harbour Authority the Leased Area and the Leased Equipment described hereinafter:

### **DESCRIPTION:**

4.1 The Corporation of the District of North Cowichan (see SCHEDULES "A", and "A.1" for a specific description of the Leased Area, & Leased Equipment (and access road as required), located at 1497 Joan Avenue, Duncan, V9L 5W7, province of British Columbia,

known as Crofton Harbour, Scheduled in Schedule 1 of the *Fishing and Recreational Harbour Regulations* (SOR/78-767).

## **SECTION 5** **TERM OF LEASE**

**5.** This Lease is for a term of FIVE (5) years, beginning on the first (1<sup>st</sup>) day of October (2020) and ending on 30<sup>th</sup> of September (2025).

Upon the expiry of the Term, this Lease shall be automatically renewed for THREE (3) consecutive five-year terms, under the same conditions and provisions of this Lease, unless the Harbour Authority shall give the Lessor or the Lessor shall give the Harbour Authority notice of non-renewal at least six (6) months before the expiration of the Term mentioned in the above paragraph or at least six (6) months prior to the expiration of the renewed Term, that is, prior to the thirtieth (30<sup>th</sup>) of September, 2025.

No renewal shall extend beyond the thirtieth day and ninth month of two thousand and forty (30/09, 2040). **(20 years)**

### **5.1** Overholding

If the Harbour Authority continues to occupy or to use the Lease Area and Lease Equipment after the expiry of the Term, or any renewed Term:

- (1) The tenancy created shall be a tenancy from month to month rather than a tenancy from year to year; and
- (2) The Terms, covenants and conditions of this Lease will apply to the tenancy at will so far as they are applicable.

### **5.2** Utilities and Service Reservation

- (1) The Lessor and its lessees, subordinates, agents, contractors and licensees have the right to maintain and operate utility services installed on the Leased Area on the commencement date of the Term and any Overhold period.
- (2) The Lessor may grant at any time during the Term a lease, licence or easement, as the case may be, granting the right or privilege or permission to install, lay, maintain, and use utilities or services on, over or across the Leased Area.
- (3) The Lessor is not responsible for providing utilities or services of any kind, including electricity, water and sewerage, to the Leased Area.
- (4)

## **SECTION 6** **CONSIDERATION**

**6.** There is no rent charge to the Harbour Authority as the management service of the Leased Area for Public Purposes constitutes good and sufficient consideration to the Lessor.

## **SECTION 7** **OBLIGATIONS OF THE HARBOUR AUTHORITY**

**7.** The Harbour Authority shall:

### **7.1** Operational Costs

Pay the operational costs attributable to the Leased Area and the Leased Equipment for the services provided by the Harbour Authority. Further information on the role of the Harbour Authority with respect to operational costs is provided in SCHEDULE "D".

## 7.2 Charge User Fees to Harbour users

Establish a user-fee schedule and collect sufficient fees for the Harbour Authority use from harbour users to cover annual operational and maintenance costs. The Harbour Authority model is based on a user-pay system whereby Harbour users pay fair compensation for the use of the Leased Area and the Leased Equipment. For greater clarification: None of these user fees are set by or collected for the Lessor.

## 7.3 Taxes and Costs

Pay all costs, taxes, assessments, rates, and charges applicable and imposed by the Government of Canada, Canadian agencies and any governmental Canadian authority, the Government of British Columbia, provincial agencies and any governmental provincial authority and the **Municipality of North Cowichan** during the Term of this Lease related to the Leased Area and the Leased Equipment and the Harbour Authority's use thereof.

## 7.4 Public Access

Ensure that the public has safe access to the Leased Area for Public Purpose.

The Harbour Authority may deny access or use of the Leased Area and the Leased Equipment to any person, vehicle or vessel where such access or use would be contrary to the Public Purpose uses of the Leased Area and in particular where the Harbour Authority reasonably believes that the denial of access is necessary as a matter of safety for other users.

## 7.5 Harbour Rules and Policies

Develop rules and policies and apply the rules and policies to ensure the safe, equitable and consistent operation of the Harbour for Public Purposes, taking into account known uses of the Harbour, demands placed upon it and local conditions affecting it. Such rules and policies shall be communicated to users, made publicly available and the Harbour Authority shall take reasonable steps to enforce such rules.

## 7.6 Non-compliant Users

Make every reasonable effort to address cases where users do not respect the authority of the Harbour Authority as manager of the Harbour, or the harbour rules or policies.

In cases of non-compliance to the *Fisheries and Recreational Harbours Act and its Regulations*, once the Harbour Authority has taken every reasonable measure in their capacity to rectify the situation, if there is still no compliance, it may refer the matter to the Lessor seeking the intervention of the Lessor when it is in their authority to do so.

The Harbour Authority must document all pertinent information regarding an incident and maintain these records for the use of the Lessor.

## 7.7 Operations, Maintenance & Repairs of the Leased Area and the Leased Equipment

Carry out , at its own expense, all Operations, Maintenance & Repairs regarding the Leased Area and the Leased Equipment in which the Harbour Authority is responsible for, as outlined in SCHEDULES "C" and "D". Inform the Lessor, within 30 days of becoming necessary, any Operations, Maintenance & Repairs in which the Lessor is responsible for as outlined in SCHEDULES "C" and "D" regarding the Leased Area and the Leased Equipment.

## 7.8 Insurance Coverage – Improvement Works and Operations, Maintenance & Repairs

Require general contractors, subcontractors or tradesmen retained by the Harbour Authority to carry out work for Improvements or Operations, Maintenance & Repairs, in the Leased Area or in relation to the Leased Equipment, to provide to the Harbour Authority, prior to commencing any work or repair, with evidence of adequate insurance coverage for the work to be undertaken.

## 7.9 Cleanliness of the Leased Area

Use best efforts to keep the Leased Area and the Leased Equipment clean and tidy and in particular, promptly remove all litter and garbage from the Leased Area and the Leased Equipment.

## 7.10 Emergency Response

Take necessary precautions to prevent emergencies. The Harbour Authority shall have and apply emergency procedures and take appropriate action in the event of an emergency.

## 7.11 Protection of Leased Area and Leased Equipment

Take all appropriate measures to ensure the protection of the Leased Area and Leased Equipment.

## 7.12 Unsafe Conditions

Upon becoming aware, immediately inform the Lessor of any unsafe condition occurring in the Leased Area or relating to the Leased Equipment and immediately erect barriers or take other safety measures as may be necessary whenever an unsafe condition shall occur on the Leased Area.

## 7.13 Private Aids to Navigation

Ensure, at its expense, that all Private Aids to Navigation it owns and that are located on the Leased Area at the date of signature of this Lease are maintained in accordance with a high standard of reliability and conform with the provisions of the *Private Buoy Regulations* (SOR/99-335).

## 7.14 Improvements Proposed by Third Parties

Present all recommended third party improvements to the Lessor and receive the Lessor's written approval prior to commencement of such improvements.

## 7.15 Notification of Potential Lawsuits or Court Activity

Notify the Lessor immediately after becoming aware that any aspect of the Leased Area or Leased Equipment has become subject to any potential lawsuits or legal action.

## **SECTION 8** **OBLIGATIONS OF THE LESSOR**

8. The Lessor is responsible for the following:

### 8.1 Repairs to Leased Area and Leased Equipment

The Lessor maintains the Leased Area and the Leased Equipment in good repair, in accordance with the "Lessor's Responsibilities" outlined in SCHEDULE "C" and "D" except for Improvements owned by the Harbour Authority outlined in SCHEDULE "E" and associated Maintenance and Repairs. The Lessor shall make the necessary repairs resulting from an Act of God. This responsibility is qualified in the Lessor's absolute discretion, deems necessary and at a time when it has funds available for such repairs.

### 8.2 Non-compliant Users

When it is in their authority to do so, and once the Harbour Authority as done everything in their power, in cases of non-compliance, the Lessor will take action when it is judged by the competent authorities that there is violation of the *Fisheries and Recreational Harbours Act* or its Regulations.

**SECTION 9**  
**IMPROVEMENTS**

**9.1** The Harbour Authority may, at its own expense, build or install Improvements on or in the Leased Area only upon prior written approval from Lessor. The Harbour Authority may also make Improvements to the Leased Equipment, upon prior written approval from Lessor.

**9.2** To this effect, the Harbour Authority shall provide, at its expense, prior to the commencement of any work, a written description of the project describing the proposed Improvements; in particular, in the case of Improvements relating to the Leased Area and Leased Equipment at the request of the Lessor, the Harbour Authority shall provide a survey or other acceptable document describing and showing the Improvements to be built on or in the Leased Area or relating to the Leased Equipment.

**9.3** The Parties agree that the Harbour Authority shall be the owner of all Improvements made on or in the Leased Area or related to the Leased Equipment.

**9.4** The Harbour Authority will be liable for all risks and Expenses, including without limiting the generality of the foregoing, all construction and modification costs, required training, insurance, permits and inspections related to all Improvements made in or on the Leased Area or relating to the Leased Equipment.

**9.5** The Harbour Authority ensures, at its expense, that all Improvements owned by it on or in the Leased Area and relating to the Leased Equipment are maintained in good condition and in reasonably good repair and comply with applicable construction and engineering standards, and shall therefore carry out all the necessary work, and pay all the necessary costs to that effect.

**9.6** In the absence of an agreement to the contrary between the Parties, upon the expiration or termination of this Lease, the Harbour Authority shall, at its own expense, remove the Improvements made by the Harbour Authority to the Leased Area or to the Leased Equipment during the Term of this Lease and restore them to their initial condition. In the event that the Harbour Authority fails to remove said Improvements within thirty (30) days of a written notice from the Lessor to the Harbour Authority to that effect, the Lessor shall be entitled to exercise the following options:

- a) Remove the Improvements located in, or on, the Leased Area or those made to the Leased Equipment and restore same in their initial condition at the expense of the Harbour Authority; or
- b) Take possession of the Improvements, and thus obtain all relevant property rights without being liable to paying any indemnity to the Harbour Authority.

**9.7** The Parties recognize that the Improvements made by the Harbour Authority to the Leased Area and the Leased Equipment prior to the conclusion of this Lease and approved by the Lessor are described in SCHEDULE "E", which has been signed by both Parties.

**SECTION 10**  
**ACCOUNTING RECORDS AND AUDIT**

**10.1** The Harbour Authority shall maintain books and records of account in respect of this Lease in accordance with generally accepted accounting practices. In addition, keep such books and records should remain readily available.

**10.2** On or before **April 1st**, each year of the Term of this Lease, or as mutually agreed, the Harbour Authority shall provide the Lessor with a statement, in a form deemed satisfactory to the Lessor.

**10.3** During business hours, and upon receipt by the Harbour Authority of reasonable notice to that effect, the Lessor may audit and inspect the books, accounts and other records of the Harbour Authority. The Lessor may make copies and take extracts therefrom. The Harbour Authority shall provide the Lessor with the information required by Lessor for the audits and inspections.

**SECTION 11**  
**ENVIRONMENTAL PROTECTION**

**11.1** The Harbour Authority agrees to comply with, all federal environmental legislation, including the relevant provisions of the *Canadian Environmental Protection Act*, applicable to the Leased Area, as well as with the regulations and guidelines made and established hereunder, and all applicable provincial, territorial and municipal environmental legislations, regulations, rules or guidelines applicable to the Leased Area and the Leased Equipment.

**11.2** In collaboration with the Lessor, the Harbour Authority shall implement environmental best management practices and an environmental management plan for the Lease Area and Leased Equipment, to the satisfaction of the Lessor.

**11.3** The Harbour Authority agrees to immediately inform the Lessor upon becoming aware of the Release of Contaminants on or in the Leased Area, Leased Equipment or Improvements and follow their Environmental Emergency Response Plan (EERP). Once the Harbour Authority has become aware of a Release of Contaminants the Harbour Authority shall collaborate with the Lessor and any other government entities to help in efforts to determine the source or cause of the Release of Contaminants.

**11.4** The Harbour Authority agrees to remediate, at its expense, and in accordance with applicable federal, provincial and municipal bylaws, any or all of the Leased Area and the Leased Equipment that has been contaminated by the Release of Contaminants resulting from the acts of the Harbour Authority, its members (only when the member is performing duties of the Harbour Authority), employees or agents immediately upon becoming aware of such Release of Contaminants.

**11.5** Notwithstanding the aforementioned, the Lessor shall be liable for any Environmental Contaminant that can be directly and unequivocally be attributed to the Lessor's use of the Leased Area and Leased Equipment prior to the commencement of this Lease.

**SECTION 12**  
**LESSOR ACCESS**

**12.** The Lessor's officials, employees, agents, mandataries and contractors shall have a right of access to the Leased Area or any part of it, to verify the condition of the Leased Area and the Leased Equipment, to effect repairs and for any other purpose. Such right of access shall be exercised reasonably.

**SECTION 13**  
**ASSIGNMENT – SUBLETTING**

**13.1** The Harbour Authority shall not assign any of its rights and obligations under this Lease or sublet the whole or any part of the Leased Area and Leased Equipment for any purpose whatsoever without the prior written consent of the Lessor. No sublease shall exceed the expiry of this Lease.

**13.2** No sublease shall exceed the Term of this Lease or its subsequent renewal, if any. A sublease may be renewed for the Term not exceeding the renewal of this Lease, but only in the case of a renewal of the Lease pursuant to Section 5.

**13.3** The use of the Leased Area and Lease Equipment pursuant to harbour user agreements shall not be considered a sublease of this Lease.

**SECTION 14**  
**MORTGAGING**

**14.** The Harbour Authority hereby agrees that it shall not mortgage or otherwise encumber any part of the Leased Area, the Leased Equipment or any other type of its leasehold interest. The Harbour Authority can decide to mortgage Harbour Authority assets.



**SECTION 15**  
**COMPLIANCE WITH LAWS AND REGULATIONS**

15. The Harbour Authority shall comply with all applicable federal, provincial and territorial laws, regulations and rules and all municipal bylaws applicable to this Lease

**SECTION 16**  
**DISTURBANCES OR NUISANCE**

16. The Harbour Authority shall use best efforts to not cause or permit any act that constitutes or may constitute a disturbance, or nuisance whatsoever, detrimental or likely detrimental to the enjoyment of the Leased Area, or the Leased Equipment or any other affected person.

**SECTION 17**  
**INDEMNIFICATION**

17. During the Term of this Lease, the Harbour Authority shall indemnify and hold harmless the Lessor, its ministers, employees, servants or agents, from and against any and all claims, penalties, actions of any nature whatsoever arising from the actions of the Harbour Authority, its members, employees or agents or any other person authorized by the Harbour Authority to use the Leased Area and to use the Leased Equipment having harmed any person, including the Lessor, its employees, servants or agents, or harmed any property, due to a fault, negligence or omission on the part of the Harbour Authority, its members, employees or agents or any other person authorized by the Harbour Authority to use the Leased Area and to use the Leased Equipment.

**SECTION 18**  
**TERMINATION**

18.1 The Lessor may terminate this Lease at any time upon prior written notice of ninety (90) days signed by the Lessor and served to the Harbour Authority or to one of its representatives, or sent by registered mail to the address given in Section 22. The Lessor shall not be liable to the Harbour Authority, its employees, members and users for any damages or losses incurred by the termination of the Lease.

18.2 The Harbour Authority may terminate this Lease at any time upon prior written notice by way of Harbour Authority resolution or board motion of ninety (90) days, signed by the Harbour Authority and delivered to the Lessor or to one of its representatives, or sent by registered mail.

**SECTION 19**  
**DISPUTE RESOLUTION**

19. In the event of any dispute, conflict, claim or controversy (hereinafter referred to as "Dispute(s)") relating to this Lease, the Parties shall use their best efforts to settle any such Disputes through negotiation or mediation. If the Parties fail to resolve a Dispute within a period of thirty (30) days or such greater period as may be mutually agreed upon, either Party may refer the Dispute to arbitration in accordance with the *Commercial Arbitration Act*. The Parties agree to have arbitration hearings in Vancouver, British Columbia.

**SECTION 20**  
**DEFAULTS**

20. In the event that during the Term of this Lease and at its renewal:

- 1) The Harbour Authority fails to cure any failure to fulfill obligations, provided herein within thirty (30) days or within a reasonable period of time as may be appropriate according to the nature of the failure indicated in the Lessor's written notice sent to the Harbour Authority;
- 2) The Harbour Authority shall not use or permit anyone to use the Leased Area or the Leased Equipment for purposes other than activities that can be

reasonably associated with those of a harbour including economic development activities, without the written consent of the Lessor;

- 3) The Harbour Authority becomes insolvent or avails itself of any law relating to insolvency, or is subject to proceedings under such law;
- 4) Measures shall be taken seeking the liquidation or dissolution of the Harbour Authority;
- 5) A receiver, trustee, guardian, or any other similar official shall be appointed with respect to the assets located on the Leased Area, at the business place of the Harbour Authority or at the place of the Harbour Authority itself; or
- 6) The Harbour Authority makes false declarations to the Lessor in connection with this Lease;

the Harbour Authority shall then be immediately deemed to be in default, and without notice or demand on the Harbour Authority the Lessor shall be entitled, in its sole discretion, to exercise the following options, which shall be cumulative in nature, in the following order:

- a) The Lessor shall be able to take measures to rectify or to attempt to rectify, at the expense of the Harbour Authority, any default on the part of the Harbour Authority under this Lease and without liability to the Lessor for any damage caused to the Harbour Authority. The Lessor shall have access to the Leased Area and to the Leased Equipment for this purpose;
- b) The Lessor shall be entitled to rescind this Lease, upon written notice to the Harbour Authority to that effect; without liability to the Harbour Authority for any damage caused thereby to the Harbour Authority, its employees, members or users; in such case, the Harbour Authority shall no longer have the right to remedy the default(s) in question;

irrespective of the option exercised by the Lessor, it shall maintain the right to recover, at any time, from the Harbour Authority, all damages the Lessor shall have suffered as well as all Expenses incurred as a result of any default.

## **SECTION 21** **NO PARTNERSHIP, JOINT VENTURE AND AGENCY**

**21.** The Lessor and the Harbour Authority hereby declare expressly that they do not intend to create a joint venture or a relationship of principal and agent. Nothing contained in this Lease, nor any measure taken by the Lessor or the Harbour Authority shall have the effect of creating a joint venture, or an agency, or shall be deemed to have that effect. No Party herein shall hold itself out as the agent of the other Party. In addition, no party herein is authorized to act on behalf of the other Party.

## **SECTION 22** **NOTICES**

**22.** Any notice given pursuant to this Lease shall be in writing and delivered personally, by courier, registered mail, e-mail or by telecopy and, unless notice to the contrary is given, shall be addressed as follows:

**22.1** To the Lessor:  
Attention: Regional Director, Small Craft  
Fisheries and Oceans Canada  
#200 – 401 Burrard Street  
Vancouver, B.C. V6C 3S4

Email : [DFO.PACSCH-PPBPAC.MPO@dfo-mpo.gc.ca](mailto:DFO.PACSCH-PPBPAC.MPO@dfo-mpo.gc.ca)

**22.2** To the Harbour Authority:  
Attention: Shawn Cator  
The Corporation Of The District Of North Cowichan  
7030 Trans-Canada Highway  
Duncan, B.C. V9L 3X4

Email : Shawn.cator@northcowichan.ca

**22.3** A notice shall be deemed to have been received when the postal receipt is acknowledged by the Party to whom it shall have been sent, if sent by registered mail, and on the following business day if sent by telecopy, e-mail or courier or delivered in person during business hours or the next day.

**22.4** Either Party may change its address by giving a notice of change of address in writing to the other Party.

## **SECTION 23** **GENERAL PROVISIONS**

### **23.1** Members of Parliament

No member of the House of Commons shall hold any interest in this Lease or receive any benefit therefrom.

### **23.2** Public Office

No former Public Office Holder not in compliance with the post-employment provisions of the *Federal Conflict of Interest and Post-Employment Code for Public Office Holders* shall derive any direct benefit from this Lease.

### **23.3** Survival of Lessor's Rights and Harbour Authority's Obligations

The Lessor's and Harbour Authority 's rights and obligations under sections 12 and 19 shall survive the expiration or termination of this Lease.

### **23.4** Amendments to the Lease

No amendment to this Lease, excluding SCHEDULES "A" and "B", will bind the Lessor or the Harbour Authority unless it has been made in writing and signed by both Parties.

### **23.5** Registration

In the event that this Lease is registered in the appropriate land registry office, the Harbour Authority shall pay all the applicable costs, as well as the costs of copies required for the Lessor.

### **23.6** Waiver of Right

No waiver, release, or amendment relating to any terms or obligation of this Lease by the Lessor shall be effective unless it is made in writing and signed by both Parties. The failure of a Party to require the performance of an undertaking, obligation or Term of this Lease, or to exercise any rights granted hereunder, shall not be construed as a waiver thereof.

### **23.7** Force Majeure

Neither the Lessor nor the Harbour Authority shall be deemed to be in default of any obligation provided for in this Lease if such failure shall result from Force Majeure. Any applicable deadline for performing the obligation shall be extended accordingly.

### **23.8** Successors and Assigns

This Lease shall inure to the benefit of the Parties and of their heirs and successors.

### **23.9** Title Defect

The Harbour Authority releases the Lessor from all liability respecting any defect in title. It agrees that it shall have no recourse against the Lessor if the Lessor's title to the Leased Area is defective or if this Lease proves ineffective because of any defect in the Lessor's title.

**23.10 Counterparts; Electronic Execution**

The Parties agree to use technological processes to sign this agreement. The Parties further acknowledge that by signing and sending this agreement electronically, they are bound by the terms of the agreement, and acknowledge that it is enforceable against them, with the same legal and contractual obligations as if the Parties had signed this agreement by hand on a paper version.

**23.11 Independent Legal Advice**

The Harbour Authority hereby certifies that it has had the benefit of independent legal advice, or has had the opportunity to seek independent legal advice.

IN WITNESS WHEREOF Parties have signed this Lease, in duplicate as follows:

His Majesty the King in right of Canada, by his representative at Vancouver, province of British Columbia, this day \_\_\_\_ of \_\_\_\_\_ two thousand and \_\_\_\_\_ (20\_\_).

SIGNED, SEALED AND  
DELIVERED

His Majesty the King in right of  
Canada

\_\_\_\_\_  
Witness

per: \_\_\_\_\_

The Corporation Of The District Of North Cowichan by its representative, at Vancouver, province of British Columbia, this day \_\_\_\_ of month \_\_\_\_\_ of year two thousand and \_\_\_\_\_ (20\_\_)

SIGNED SEALED AND  
DELIVERED

The Corporation Of The District Of North Cowichan

\_\_\_\_\_  
Witness

per: \_\_\_\_\_

\_\_\_\_\_  
Witness

per: \_\_\_\_\_

**SCHEDULE “A”**

**LEASED FACILITIES**

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN – CROFTON HARBOUR**

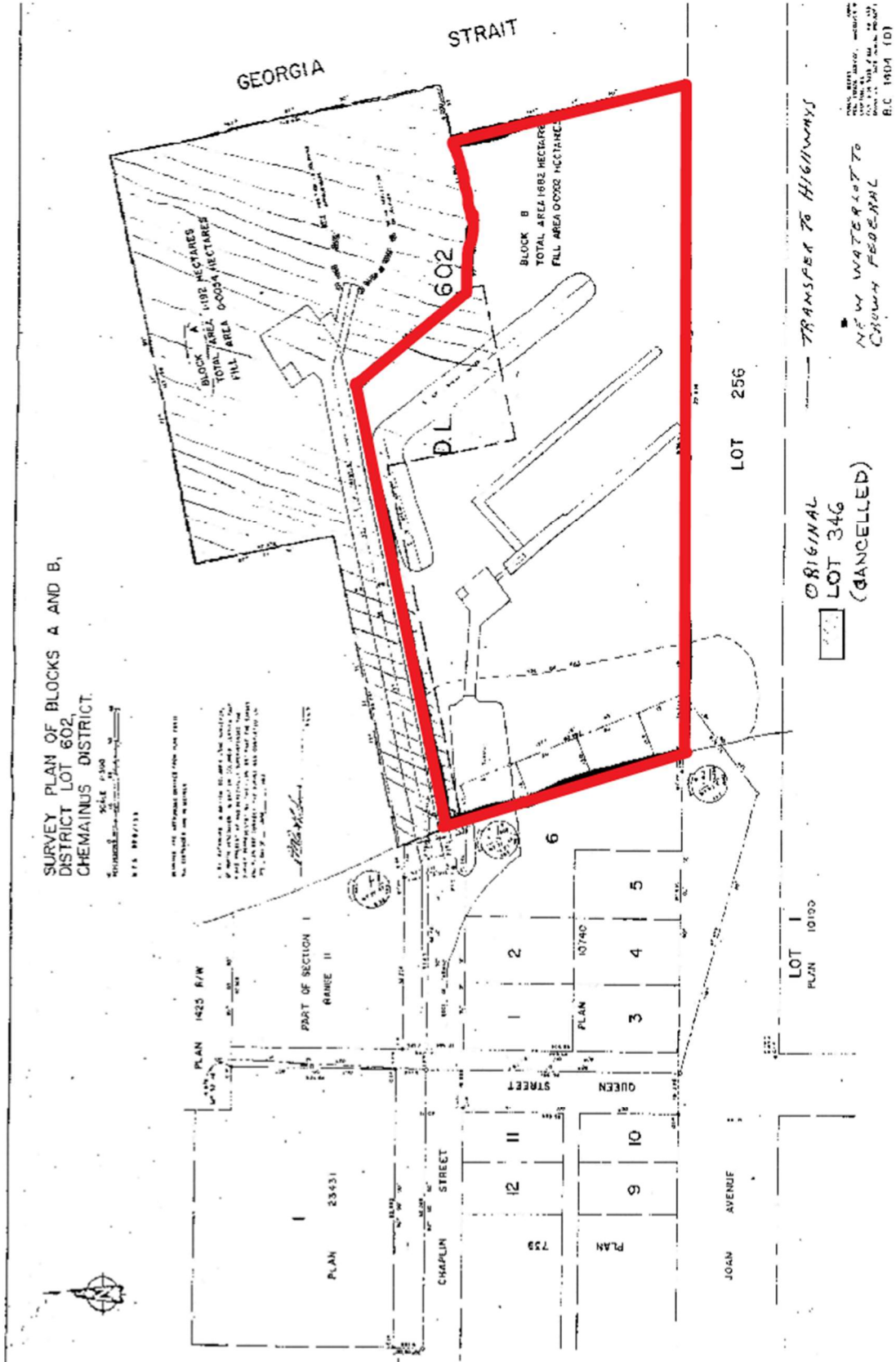
<b>SCH Code</b>	<b><u>Leased Facilities</u></b>	<b><u>Description</u></b>
<b>Harbour Infrastructure</b>		
051	Water Lot	Lot 346, Cowichan District
101	Channel	Entrance
201	Basin	Berthing Basin
301	Breakwater	East dogleg BW rocks rubble mound
600	Armour Unit	N/A
601	Shore Protection	Rock rip rap rocks rip-rap
600	Retaining Wall	N/A
700	Buoy	N/A
720	Aids to Navigation ( <i>for those not under CCG responsibility</i> )	N/A
<b>Wharves &amp; Floats Infrastructure</b>		
401	Wharf	Approach (LT VEH) treated timber trestle
402	Wharf	Wharfhead (LT VEH) treated timber trestle
400 / 800	Offloading Space	N/A
400	Fender	N/A
400	Ladder	N/A
400	Wheel Guard	N/A
500	Boat Grid / Platform	N/A
500	Launching Facility	N/A
500	Skidway/Slipway	N/A
801	Gangway	Gangway Float A timber pontoon/TM pile
802	Float	Wing Float B timber pontoon/TM pile
803	Float	Wing Float C timber pontoon/TM pile

<b>SCH Code</b>	<b><u>Leased Facilities</u></b>	<b><u>Description</u></b>
804	Float	Header Float D timber pontoon/anchor
805	Float	Wing Float E timber pontoon/TM pile
800	Anchor	N/A
800	Mooring System	N/A
<b>Building / Upland Infrastructure</b>		
000	Upland	N/A
500	Access Road / Facility Approach	N/A
900	Bait Shed	N/A
900	Community Storage	N/A
901	Service Area	Fill on foreshore
920	Parking Area	75 parking spaces - paved
930	Road	N/A
951	Buildings owned by the Lessor	HBR manager's office
<b>Services &amp; Equipment</b>		
400	Travel Lift	N/A
400 / 800	Fuelling	N/A
402	Crane	3-Legged Hand - Tons:3
500	Haulout Engine	N/A
750	Waste Oil Storage Tank	(describe)
800	Service Island	N/A
940	Lighting	Light standards with electrical outlets
946	Sanitary Equipment/ System	Water valves
950	Electrical System	Various electrical outlets on floats and piers
950	Fish Handling	N/A
950	Gear Handling	N/A
950	Ice	N/A
950	Fire Prevention System	Dry lines and fire extinguishers
950	Offloading equipment	N/A

SCHEDULE to be amended as required and agreed upon by the Harbour Authority and Small Craft Harbour representative. Initialled by the Harbour Authority and Fisheries and Oceans Canada.

**SCHEDULE "A.1"  
LEASED AREA**

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN-CROFTON  
HARBOUR**



**SCHEDULE "B"**

**LEASED EQUIPMENT**

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN**

<b>Equipment</b>	<b>Code</b>	<b>Description</b>
		<b>No leased equipment as of October 1<sup>st</sup>, 2020</b>



**SCHEDULE “C”**

**SCH OWNED INFRASTRUCTURE – ROLES AND RESPONSIBILITIES**

**Definitions of the different types of Maintenance & Repairs:**

**Visual Inspections, Clearing & Cleaning** – actions to identify potential issues as well as keeping facilities and assets free of debris and hazards as well as ensuring that areas and assets are washed.

**Minor Maintenance** – simple, small-scale activities associated with the general upkeep of facilities and assets against normal wear and tear. Minor Maintenance requires only minimal skills or training. Minor Maintenance is done on a regular and ongoing basis in a routine, scheduled or anticipated fashion to prevent failure and/or degradation of facilities.

**Minor Repairs** – Minor projects that fix existing infrastructure that has become damaged, in order to restore to condition for safe operation. Typically would require the use of hand tools and/or heavy equipment and often would also require hiring a professional.

**Major Repairs** – Major projects to fixing existing infrastructure such as dredging, structural repairs and capital upgrades. SCH is responsible for these types of repairs.

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN – CROFTON HARBOUR**

*\* HA owned infrastructure is the sole responsibility of the HA.*

<b>Leased Facilities</b>	<b>Harbour Authority Responsibilities</b>	<b>Lessor’s Responsibilities</b> <i>Subject to Availability of Funding</i>
<b>Harbour Infrastructure</b>		
Channel	Visual Inspections, Clearing & Cleaning	Major Repairs
Basi	Visual Inspections, Clearing & Cleaning	Major Repairs
Breakwater	Visual Inspections, Clearing & Cleaning	Major Repairs
Armour Unit	N/A	N/A
Shore Protection	Visual Inspections, Clearing & Cleaning	Major Repairs
Retaining Wall	N/A	N/A
Aids to Navigation	N/A	N/A
<b>Wharves &amp; Floats Infrastructure</b>		
Wharves	Minor Maintenance	Major Repairs
Buoy	N/A	N/A
Offloading Space	N/A	N/A
Fender	N/A	N/A
Ladder	N/A	N/A
Wheel Guard	N/A	N/A
Tidal Boat Grid/Platform	N/A	N/A
Launching Facility	N/A	N/A
Skidway/Slipway	N/A	N/A
Floats/Floating Dock	Minor Maintenance	Major Repairs
Gangway	Minor Maintenance	Major Repairs

<b>Leased Facilities</b>	<b>Harbour Authority Responsibilities</b>	<b>Lessor's Responsibilities</b> <i>Subject to Availability of Funding</i>
Mooring System	N/A	N/A
<b>Building / Upland Infrastructure</b>		
Access Road / Facility Approach	Minor Maintenance	Major Repairs
Service Area	Minor Maintenance	Major Repairs
Parking Area	Minor Maintenance	Major Repairs
Buildings owned by the Lessor	N/A	N/A
<b>Service &amp; Equipment</b>		
Travel Lift	N/A	N/A
Crane	Visual Inspections, Clearing & Cleaning Minor Maintenance	Major Repairs
Haulout Engine/Winch	N/A	N/A
Waste Oil Storage Tank	N/A	N/A
Service Island	N/A	N/A
Lighting	Minor Maintenance	Major Repairs
Sanitary Equipment and System	Visual Inspections, Clearing & Cleaning	Major Repairs
Electrical System	Visual Inspections, Clearing & Cleaning	Major Repairs
Water System	N/A	N/A
Fire Prevention System	Minor Maintenance	Major Repairs
Offloading Equipment	N/A	N/A

SCHEDULE to be amended as required and agreed upon by the Harbour Authority and the Small Craft Harbour representative. Initialled by the Harbour Authority and Fisheries and Oceans Canada.

**SCHEDULE “D”**  
**HARBOUR OPERATIONS – ROLES & RESPONSIBILITY**

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN – CROFTON HARBOUR**

<b>Task</b>	<b>Harbour Authority Responsibility</b>	<b>Lessor’s Responsibility</b>
Building Permits related to HA projects	Responsible for building permit applications, as well as payment of associated fees.	Written approval of Improvements as per S. 9 of the Lease.
Development Cost Charges related to HA projects	Responsible for development permit applications.	N/A
Emergency Response	Develop and implement emergency procedures. Provide and service fire extinguishers as required (for private HA buildings)	Provide technical support, installation and repair of safety equipment. Provide technical support and assistance in the development emergency procedures.
Environment	Implement a Harbour Environmental Management Plan (EMP).	Development of the Environmental Management Plan (EMP).
Minor Repairs	Provide priority list for minor repairs for short term harbour expenditures.	Assist in establishing minor repair lists.
Short and Long-Term Planning	Contributes to SCH planning.	Work with HAs on long term planning.
Signage	Develop and erect signage related to site operational/management issues such as: <ul style="list-style-type: none"> <li>• harbour rules/policies, user fees, contact information, operational practices, safety, etc.</li> </ul>	Provide assistance as required. Develop and erect federal site identification sign.
Site Management	Manage day to day site activities such as: <ul style="list-style-type: none"> <li>• Berthage assignment, safety, storage, parking, traffic control, access control and site administration.</li> </ul>	Support and advise as required.
Snow Removal/Ice Control	Address as required.	N/A
Records and Receipts and Budget	Maintain all financial records pertaining to day-to-day operations in accordance with standard accounting practices.  Provide vessel count reports as required.  Submits all annual reports/filings in accordance with all reporting deadlines.	Provide guidance as required.
Revenue Generation	The Harbour Authority shall generate sufficient revenue to cover all operational costs, defined as daily, monthly or annual charges for utilities, services, insurance,	Assistance in determining fee/ rate requirements.

	maintenance and taxes. (refer to SCHEDULE C)	
Fee collection (NEW)	Responsible for making every reasonable effort to ensure funds due are received in a timely manner and documenting such efforts.	N/A
Rules and Regulations	Develop rules, policies, procedures and by-laws of the Harbour Authority.	Provides guidance in establishing rules policies, procedures and by-laws.
Compliance	Ensure compliance with harbour authority rules, policies, procedures and by-laws of the Harbour Authority.	Enforcement actions as per the <i>Fishing and Recreational Harbours Act</i> and Regulations (particularly on matters relating to infrastructure damage, user/public safety and public access).
Waste Management	Remove all garbage, recyclables, waste oil and pests as required.	N/A

SCHEDULE to be amended as required and agreed upon by the Harbour Authority and the Small Craft Harbour representative, Small Craft Harbours. Initialled by the Harbour Authority and the Department of Fisheries and Oceans.

**SCHEDULE "E"**  
**IMPROVEMENTS MADE BY THE HARBOUR AUTHORITY**

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN-  
CROFTON HARBOUR**

*\*HA owned infrastructure is the sole responsibility of the HA.*

Facility	Code	Description
		<b>No improvements by HA as of October 1<sup>st</sup>, 2020</b>