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SALT SPRING ISLAND PARKS AND RECREATION COMMISSION

Notice of Meeting on **Monday, May 15, 2017 at 5:00 PM**

Portlock Portable, 145 Vesuvius Bay Rd, Salt Spring Island, BC

Wayne McIntyre

Daniel Clements

Brian Webster

Jacky Cooper

Garth Hendren

Jon Suk

Sonja Collombin

(R) = Regrets

AGENDA ADDENDUM

6.3 License of Occupation-Tree House Café- Written report submitted

To ensure quorum, advise Tracey Shaver 250 537 4448 if you cannot attend.



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6.3 License of Occupation Tree House Cafe

REPORT TO SALT SPRING ISLAND PARKS AND RECREATION COMMISSION MEETING OF MONDAY, MAY 15, 2017

SUBJECT Tree House Café (2007) Inc. Licence of Occupation for Manson Road

ISSUE

To consider entering into a one year licence of occupation with the Tree House Café over a portion of the undeveloped road known as Manson Road for the purpose of outdoor restaurant seating.

BACKGROUND

The adjacent property and business owners have requested the Capital Regional District (CRD) acquire control of Manson Road right of way and reclaimed land outside the terminus point north of the road from the Ministry of Transportation and Infrastructure (MoTI) and Ministry Forest, Lands and Natural Resource Operations (FLNR). The purpose was to maintain the lands for public use and a pedestrian corridor to the boardwalk and enter into leases, at fair market value, with the adjacent business owners to support continued use as outdoor restaurant seating on the lands.

In June 2015 the Capital Regional District Board authorized staff to acquire the unconstructed road right of way (Manson Road) and portion of filled in foreshore between the road and boardwalk through a licence of occupation with the Ministry of Transportation and Infrastructure and initiate the process to obtain tenure of the foreshore infill. Subsequently the Capital Regional District (CRD) obtained a Licence of Occupation with the province for a five year term ending January 31, 2022 for the undeveloped portion of Manson Road.

The Tree House Café wishes to enter into a tenure agreement with the CRD to utilize a portion of the area for outdoor restaurant seating. The attached tenure agreement has been prepared to lease 350 ft² at \$23.00/ft² which represents fair market value. The Tree House Café will be required to continue to keep a corridor for pedestrian access to the boardwalk and Purvis Lane; keep the area free and clear during non-use; and allow emergency access. Liquor sales will be permitted subject to applying for a Special Occasion License policy and meeting the conditions for the permit; and having proper insurance coverage as outlined in section 10 of the licence of occupation.

A season tenure for 2017 is recommended as an initial agreement, and a longer term agreement for 2018-2021 be prepared for consideration.

ALTERNATIVES

That the Salt Spring Island Parks and Recreation Commission recommends the Capital Regional District:

1. Enter into a property agreement with Tree House Restaurant for the purpose of their business to operate on CRD tenured lands at Manson Road in Ganges Village from May 1 – September 30, 2017; and further, that CRD staff and Chief Administrative Officer negotiate and execute an agreement suitable for the tenure.

2. Consider additional terms and conditions
3. Refer the tenure agreement to staff for further review.

IMPLICATIONS

SOCIAL AND ECONOMIC IMPLICATIONS

The unconstructed road right-of-way, known as 'Manson Road' is 20 feet wide and was originally created in 1952 and there are three subsequent plans dedicating the new road and defining new legal lots. This area is complicated in that this foreshore was created by infill and not properly defined in these plans; and the infill at the terminus point of Manson Road forms a part of the Crown water lots.

In 1985 as a community benefit and amenity, Mouat's Trading worked with both the federal and provincial governments to infill and landscape the area known as Manson Road that was once a former wooden walkway (see Attachment 2).

Mouat's continued with the development of proper boardwalk to connect both the federal dock to the Kanaka wharf in 1988 with the aim of making Ganges area an attractive seaside village and a vision within the Community Plan. This waterfront boardwalk provides access east from Fulford Ganges Road west to Lower Ganges Road.

Both the Oyster Catcher and Tree House Café have been operating an outdoor restaurant seating area adjacent to Manson Road and reclaimed land outside the terminus point of Manson Road during the tourist season. Both businesses are significant employers on the island and due to their unique nature also are key attractions bringing tourists who in turn support other island employers.

The Tree House Café has been operating in a heritage cottage for about 19 years. This attraction has a long and diverse history since 1920 which includes being the site of the first electrical generating station on the island and later as a home for one of the Mouat family's favorite aunts. It's even been a smoke house, crystal shop and music school and now has built up a large clientele since 1996 as a full service restaurant and coffee bar/deli.

CONCLUSION

The CRD tenure agreement will provide assurance for the Tree House Café to continue with their operations while protecting this portion of Manson Road for pedestrian access and maintain the unconstructed road area as the gateway to the community harbour and public plaza.

RECOMMENDATION(S)

That the Salt Spring Island Parks and Recreation Commission recommends the Capital Regional District enter into a property agreement with Tree House Restaurant for the purpose of their business to operate on CRD tenured lands at Manson Road in Ganges Village from May 1 – September 30, 2017; and further, that CRD staff and Chief Administrative Officer negotiate and execute an agreement suitable for the tenure.

Submitted by:	Karla Campbell, Senior Manager, Salt Spring Island Electoral Area
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KC:kc

Attachments: Appendix 1 CRD Tenure document – licence of occupation
Appendix 2 Historic picture of the area
Appendix 3 Licence of Occupation of Provincial Public Way

LICENSE OF OCCUPATION

THIS AGREEMENT is dated for reference the day of , 2017,

BETWEEN:

CAPITAL REGIONAL DISTRICT (CRD)

625 Fisgard Street
Victoria, BC V8W 2S6

("Licensor")

AND:

TREE HOUSE CAFÉ (2007) INC.

106 Purvis Lane
Salt Spring Island, BC V8K 2S5

("Licensee")

WHEREAS:

- A. The CRD has a License of Occupation under File No. 103265 with the Province of British Columbia, commencing on February 1, 2017 for a term of 5 years, expiring on January 31, 2022, over a portion of the un-developed road known as Manson Road (the "Land"), located on Salt Spring Island, British Columbia.
- B. The Land is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with Section 58 of the *Transportation Act*, the BC Transport and Financing Authority (BCTFA) holds all of the Province's right and title in and to the soil and freehold of the Land.
- C. Section 2.1 of the License of Occupation with the Province of British Columbia allows the CRD to "...enter into leases, at fair market value, with the adjacent business owners to support continued use as an outdoor restaurant seating..."
- D. Section 11.(1)(a) of the *Capital Regional District Bylaw No.3795* a person may with written authorization of the Community Parks Manager or General Manager or a valid Park Use Permit allowing the activity, sell, barter, donate, trade, busk or display for sale any goods, services or materials, including food or refreshments in a community park.
- E. The Licensee wishes to occupy and use a portion of the Land and the Licensor has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION OF the mutual covenants and agreements in this Agreement, the parties covenant and agree as follows:

1. DEFINITIONS

1.1 In this Agreement

"Agreement" means this licence of occupation;

"Commencement Date" means May 1st, 2017;

"Fee" means the fee set out in section 5;

"improvements" includes anything made, constructed, erected, built, altered, repaired or added to, in or on the License Area, and attached to it or intended to become a part of it;

"Land" a portion of the un-developed road known as Manson Road, located on Salt Spring Island, British Columbia as per License of Occupation under File No. 103265 with the Province of British Columbia;

"Licence Area" means those parts of the Land shown outlined in red with cross-hatching on the sketch plans attached as Schedule "A", comprising of approximately 150 ft²;

"Liquor" means:

- (a) fermented, spirituous and malt liquors; or
- (b) combination of liquors; or
- (c) drinks and drinkable liquids that are intoxicating

and includes beer, or a substance that, by being dissolved or diluted is capable of being made a drinkable liquid that is intoxicating and that is declared to be liquor under the *Liquor Licensing and Control Act* (British Columbia);

"Park Use Permit" means a park use permit issued under CRD Bylaw No.3795;

"Term" means the period of time set out in section 3.

2. GRANT

The Licensor hereby grants to the Licensee, subject to the terms and conditions of this agreement, its employees, agents and contractors, a non-exclusive licence to enter and be upon the Licence Area.

3. TERM AND EXPIRATION DATE

The Agreement becomes effective on the Commencement Date, notwithstanding the actual dates of execution by the parties, subject to the other terms and conditions set out in this Agreement, and unless terminated earlier in accordance with the other terms and conditions set

out in this Agreement, the Term will be for five (5) months and will terminate on September 30th, 2017

4. PURPOSE

Subject to the terms and conditions of this Agreement, the licence is granted for the non-exclusive use by the Licensee of the Licence Area for purpose of outdoor restaurant seating.

5. FEES

- (a) The Licensee will pay to the Licensor, on the first day of each calendar month during the Term, a Fee in the amount of \$23/ ft²/year +GST for a total of \$287.50 +GST per month;

6. LIENS

- 4.1 The Licensee will not suffer or permit any lien under the *Builders' Lien Act* or like statute to be registered against title to the Licence Area by reason of labour, services or materials supplied or claimed to have been supplied to the Licensee. If any such lien is registered, the Licensee will procure registration of its discharge immediately after the lien has come to the notice of the Licensee. The Licensor may, but will not be obliged to, discharge any such lien at any time if, in the Licensor's judgment, the Licence Area becomes liable to any forfeiture or sale or its otherwise in jeopardy and any amount paid by the Licensor in so doing, together with all reasonable costs and expenses of the Licensor, will be reimbursed to the Licensor by the Licensee immediately on demand.

7. ENVIRONMENTAL RESPONSIBILITY

- (a) The Licensee will comply with all applicable environmental laws and will assume any environmental liabilities and perform any environmental obligations that result from the contravention of any environmental laws from the Licensee, its employees, agents or contractors, including the cost of complying with any remediation order and any liability for clean-up of any pollutant on, under or emanating from the Licence Area resulting from any release of such pollutant arising from the Licensee's acts or omissions under this Agreement.
- (b) The Licensee will use the Licence Area in a manner to prevent the occurrence of any adverse events and minimize potential hazards that may affect the Licensor and its contractors, invitees, licensees, employees, agents and servants, the public and the environment; and in connection with any occurrence the Licensee will implement effective control measures and immediately notify the Licensor and all concerned parties.
- (c) Except as expressly authorized by the Licensor and in compliance with all applicable laws, the Licensee will not release, deposit, store or transport any pollutant, explosive or waste within the Licence Area and will not permit any person under its direction or control to do so.

- (d) The Licensee will immediately notify the Licensor of any potential contravention of environmental, health or safety laws relating to its operations within the Licence Area and upon inspection or investigation by governmental authority. The Licensee will, at its expense, comply with all reasonable directions of the Licensor with respect to environmental risks in its use and occupation of the Licence Area.

8. COMPLIANCE WITH LAWS AND REGULATIONS

The Licensee will comply with all laws, by-laws and regulations, Federal, Provincial, Municipal or otherwise, applicable to the Licence Area and any work on improvements carried out in the Licence Area.

9. ASSUMPTION OF RISK AND LIABILITY BY THE LICENSEE

- (a) The Licensor has made no representations or given any warranties, express or implied, with respect to the Licence Area and the Licensor disclaims any implied representations, warranties or conditions relating to the quality or condition of the Licence Area.
- (b) The Licensee shall release, indemnify and hold harmless the Licensor and its elected and appointed officers, servants, agents, employees, or contractors and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the minister responsible for the *Transportation Act* from and against all losses, claims, demands, payments, suits, actions, damages, judgments and expenses, including legal fees, of every nature and description brought or recovered against or incurred by the Licensor and its elected and appointed officers, servants, agents and employees, arising out of or related to the Licensee's breach of this Agreement, or the granting of this Licence or the use of the Licence Area by the Licensee, its employees, agents, contractors, servants or invitees. Furthermore, the Licensee hereby releases and agrees to indemnify and hold the Licensor and its directors, officers, employees, agents and contractors and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the minister responsible for the *Transportation Act* harmless from any costs, expenses, claims, responsibility and liability, whether arising in tort (including negligence), contract or otherwise in respect of loss, damage or personal injury or death arising from, attributable to, or caused by the:
- (i) Condition of the buildings or any other part of the Licence Area, or
 - (ii) Activities on the Licence Area by the Licensee or its employees, agents, contractors or permitted assigns.
- (c) The Licensee assumes all risk of damage to the property of, or injury to the Licensee and the Licensee's contractors, invitees, licensees, employees, agents and servants in connection with the exercise of the privileges under this Agreement.
- (d) The Licensee will immediately pay for all damage resulting directly or indirectly from any act or omission of the Licensee, whether negligent or otherwise, and will immediately reimburse the Licensor for all expenses including, but not limited to, expenses incurred

for fighting fires, resulting directly from the licensee's acts or omissions under this Agreement whether or not negligent.

- (e) The Licensee will indemnify and save harmless the Licensor against all claims or liabilities asserted by third persons resulting directly or indirectly from the Licensee's acts or omissions.
- (f) The Licensee will immediately comply with CRD's rules and directions relating to the use and occupation of the Licence Area.

The Licensee will not interfere with the Licensor's operations in the Licence Area.

10. INSURANCE

The Licensee shall, at its own expense, provide and maintain during the term of this Agreement the following insurance in a form acceptable to the Licensor with a company duly registered and authorized to conduct insurance business in the Province of British Columbia:

(a) Commercial General Liability Insurance

- i) The Licensee shall purchase Commercial General Liability Insurance covering losses to a third party for bodily injury or death, property damage, and unlicensed vehicle and attached equipment operations, **coverage not to exclude Host Liquor Liability or claims arising out of injury to participants**, and
- ii) this insurance shall be in an amount not less than FIVE MILLION (\$5,000,000.00) on an occurrence basis, and
- iii) the Licensor and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the minister responsible for the *Transportation Act* shall be named as an additional insured, and
- iv) this policy shall contain the separation of insureds, cross liability clause in the condition of the policy, and
- v) all such policies shall provide that no cancellation or material alteration in the policy shall become effective until 30 days after written notice of such cancellation, or alteration has been given to the Licensor, and
- vi) the Licensee shall provide the Licensor with a certificate or certificates of insurance as evidence that such insurance is in force including evidence of any insurance renewal. Every certificate, or certificates of insurance shall include, certification by the insurance agent or the insurer that the certificate of insurance specifically conforms to all of the provisions required herein.

The Licensee shall maintain Third Party Legal Liability Insurance in an amount not less than TWO MILLION (\$2,000,000) per occurrence in respect of all vehicles owned and / or operated by The Licensee in connection with this agreement.

Maintenance of such insurance and the performance by the Licensee of its obligations shall not relieve the Licensee of liability under the indemnity provisions set forth in this Agreement.

11. SALE OF LIQUOR

The sale and distribution of liquor is prohibited within the License Area unless the Licensee has obtained the legally required permits, including a valid Park Use Permit allowing that activity.

12. TERMINATION AND SUSPENSION.

- (a) If the Licensee defaults on its obligations under this Agreement, all privileges terminate 30 days after Licensor gives notice of default to the Licensee, if the default is not remedied within such time. The Licensor's termination of this Agreement will not prejudice the Licensor's right to collect damages on account of the Licensee's breach.
- (b) Any failure to exercise the Licensor's right to terminate this Agreement in case of default does not constitute a waiver of the Licensee's obligations to perform strictly in accordance with the terms of this Agreement. Any such right to terminate remains in effect and may be exercised as long as the default continues.
- (c) Upon termination or earlier expiry of this Agreement, the Licensee will remove its equipment and supplies, and any improvements made by it which the Licensor requires it to remove or the parties have agreed the Licensee may remove on the termination or expiry of this Agreement, within 30 days following written notice from the Licensor to do so and if not removed within this period, the Licensor may, at its option and without liability to the Licensee for loss, damage or compensation, take, keep or use the Licensee's machinery, equipment, supplies or any buildings, structures or improvements as its own property.
- (d) Early termination of this license can occur if 90 days' written notice is provided by either party.

13. MAINTENANCE AND REPAIRS

The Licensee shall keep the License Area in a neat and tidy condition and in a state of repair acceptable to the Licensor. On termination, the Licensee shall leave the License Area in a condition acceptable to the Licensor.

14. IMPROVEMENTS

No improvements may be placed on, or physical changes made to, the Land without the prior written consent of the Licensor. On termination the Licensee shall forthwith remove any improvements placed on the Land if requested by the Licensor. If such improvements are not removed within thirty (30) days of termination, they shall belong to the Licensor, without cost, at

the option of the Licensor.

15. OTHER TERMS

- (a) The Licensor shall not impede public access to and from the boardwalk and Purvis Lane.
- (b) The License Area must be kept clear when not in use.
- (c) In the case of emergency, the Licensee must allow emergency vehicle and personnel access through the License Area.

16. NON-ASSIGNMENT

Neither this Agreement nor the privileges in it may be assigned by the Licensee, in whole or in part by operation of law or otherwise, without the prior written consent of the Licensor, which consent may be arbitrarily withheld. The Licensee will not sub-licence the Licence Area or permit any persons to enter the Licence Area unless they are authorized to do so.

17. NO SPECIAL DAMAGES

Neither party will be liable to the other for any consequential or indirect damages.

18. NOTICES

All notices required under this Agreement will be delivered by hand to the party for which it is intended, sent by email, fax or sent by prepaid courier directed to such party at its address or fax number set out in this Agreement, or at such other address or fax number as either party may stipulate by written notice to the other. Any notice delivered by hand or prepaid courier will be deemed to be received on the date of actual delivery thereof.

19. BINDING EFFECT

This Agreement will enure to the benefit of, and will be binding upon, the respective successors and permitted assigns of the parties.

20. GOVERNING LAW

This Agreement will be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties will be governed by, the laws of the Province of British Columbia and the federal laws of Canada where applicable and the parties hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts and each counterpart, when executed and delivered (whether by email fax or otherwise), will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first before written.

SIGNED on behalf of the **CAPITAL REGIONAL DISTRICT**
by its authorized signatory this ____ day of _____, 2017:

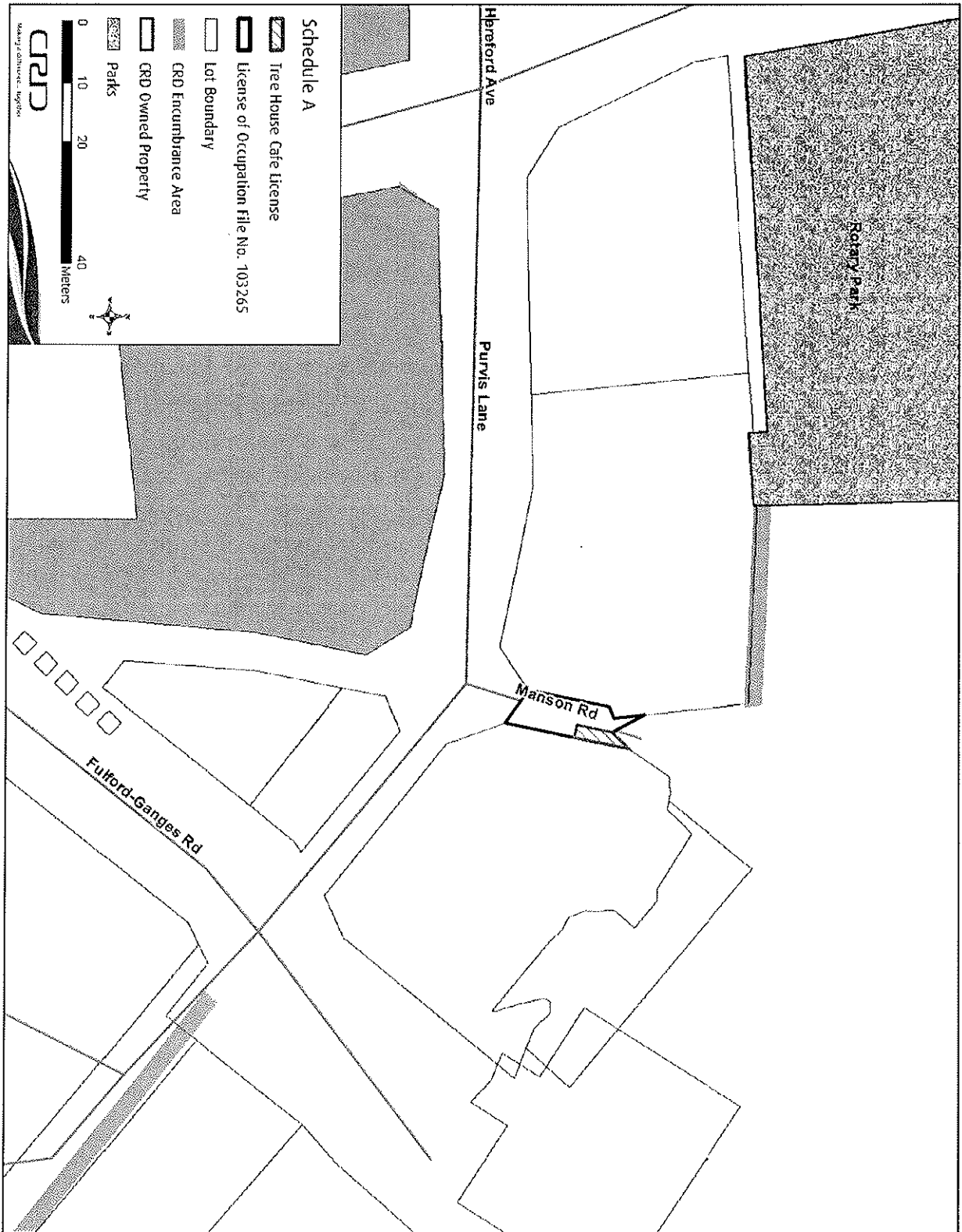
Authorized Signatory
Print name:

SIGNED on behalf of **TREE HOUSE CAFÉ (2007) INC.**
by its authorized signatory(ies) this ____ day of _____, 2017:

Authorized Signatory
Print name:

Authorized Signatory
Print name:

SCHEDULE "A"



SCHEDULE A

Licence shown in red.



Appendix 2





THIS AGREEMENT is made under section 62 of the *Transportation Act* and is dated for reference January 10, 2017.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the minister responsible for the *Transportation Act*

(the "Province")

AND

CAPITAL REGIONAL DISTRICT

(the "Licensee")

WHEREAS:

- A. The Land is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with section 58 of the *Transportation Act*, the BCTFA holds all of the Province's right and title in and to the soil and freehold of the Land.
- B. The Province may, pursuant to subsections 58(3) and 62(1) of the *Transportation Act* authorize any person to use or occupy a provincial public highway.
- C. The Licensee wishes to use and occupy the Land and the Province has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.

For valuable consideration, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**BCTFA**" means BC Transportation Financing Authority, a corporation continued under the *Transportation Act*;

"**Commencement Date**" means February 1, 2017;

"**Fee**" means the fee set out in Article 3;

"**Improvements**" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

"**Land**" means the road shown in red on the attached Schedule A and labeled Manson Road to this Agreement;

"**Realty Taxes**" means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged, at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them; and

"**Term**" means the period of time set out in section 2.2.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, the Province grants the Licensee a licence of occupation over the Land for the purpose of maintaining lands for public use and a pedestrian corridor to the boardwalk and enter into leases, at fair market value, with the adjacent business owners to support continued use as an outdoor restaurant seating on the lands and the Licensee acknowledges that this Agreement does not grant it the exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on January 31, 2022, or such earlier date provided for in this Agreement.

ARTICLE 3 - FEE

- 3.1 The Licensee will pay to the BCTFA **\$1,000.00** plus GST (equalling **\$50.00**) payable in advance on the Commencement Date and each anniversary of the Commencement Date together with the tax imposed under Part IX of the *Excise Tax Act* (Canada) which is payable on that amount.

ARTICLE 4 - COVENANTS

- 4.1 The Licensee must
- (a) pay, when due,
 - (i) the Fee to the Province at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
 - (b) deliver to the Province, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by it under this Agreement;
 - (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation, and
 - (ii) the provisions of this Agreement;
 - (d) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to the Province, and at its written request, make the Land and the Improvements safe, clean and sanitary;
 - (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;

- (f) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (g) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
- (h) cut or remove timber on or from the Land
 - (i) only to address an unsafe condition or for the purposes set out in section 2.1, and
 - (ii) in accordance with an agreement issued to it under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (i) permit the Province, or its authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements;
- (j) indemnify and save the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with
 - (i) the Licensee's breach, violation or nonperformance of a provision of this Agreement,
 - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of its entry upon, use or occupation of the Land, and
 - (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,

and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the Province immediately upon demand;
- (k) release the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land; and
- (l) on the termination of this Agreement,
 - (i) peaceably quit and deliver to the Province possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to its entry upon, use or occupation of the Land),
 - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for it, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building or part of the Land,
 - (iii) remove from the Land any Improvement that was placed on or made to the Land by or

for the Licensee, and that the Province, in writing, directs or permits it to remove; and

- (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the Province's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

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

- 4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

ARTICLE 5 - LIMITATIONS

- 5.1 The Licensee agrees with the Province that

- (a) the Province is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) the Province may, without the Licensee's consent, authorize other persons, including a Crown agency or ministry, to use and occupy the Land under section 62 of the *Transportation Act*;
- (c) the Licensee will make no claim for compensation, in damages or otherwise, in respect of an authorization granted by the Province under subsection (b),
- (d) all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b) will be borne solely by the Licensee;
- (e) the Licensee releases and discharges the Province from all claims for loss or damage arising directly or indirectly out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b);
- (f) the Licensee releases and discharges the Province from all claims for losses or damages arising directly or indirectly out of any interference with its rights under this Agreement as a result of a disposition made by the Province under subsection (b);
- (g) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (h) any interest the Licensee may have in the Improvements ceases to exist and becomes the Province's property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(1)(ii) or (iii) in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the Province's property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(1)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(1)(iii); and
- (i) if, after the termination of this Agreement, the Province permits the Licensee to remain in possession of the Land and the Province accepts money from it in respect of such possession, a tenancy from year to year will not be created by implication of law and the Licensee will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - INSURANCE

- 6.1 The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term
- (a) Commercial General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000.00 for bodily injury, death or property damage arising from any one accident or occurrence which insurance policy will indemnify the named insureds under the policy for all sums which the insured may become liable to pay or pays for bodily injury, death or property damage or for loss of use, arising out of or resulting from the work or operations of the parties under this Agreement which must be endorsed as follows:
- "It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the "Province"), together with the employees, agents (including the BC Transportation Financing Authority and its officers, directors, employees, servants and agents), and servants of the Province (the "Additional Named Insureds"), are each added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and each Additional Named Insured, in connection with contracts entered into between the insured and the Additional Named Insured.
- The Insurance as is afforded by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured will not affect the protection given by this policy to any other insured. The inclusion herein of more than one insured will not operate to increase the limit of liability under this policy.";
- (b) if vessels are owned, leased or rented or used in the performance of this Agreement by the Licensee and are not covered under the general liability policy, it will provide Protection and Indemnity insurance with limits of not less than \$N/A for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by the Licensee in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$1,000,000.00 providing third party liability and accident benefits insurance for all such vehicles, and
- (d) if aircraft (including helicopters) are owned, rented, leased or used by the Licensee in the performance of this Agreement, third party liability coverage with inclusive limits of not less than \$N/A;

which, in the case of the policies of insurance described in subsections (a), (b) and (d), must include endorsements or provisions that they may not be cancelled, reduced, altered or materially changed without the insurer or insurers giving not less than 30 days' prior written notice to the Province by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia or Canada issuing comparable policies.

- 6.2 All insurance required to be maintained by the Licensee under this Agreement must be placed with insurers licensed to transact business in British Columbia or Canada and, the Licensee must, under the insurance required to be maintained by it under this Agreement,
- (a) pay all deductibles;
- (b) not exclude hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning

- or demolition work or any other operation or work from insurance coverage;
- (c) deliver to the Province, on the Commencement Date, on the renewal of the insurance and at other times required by the Province,
- (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to the Province (as of the Commencement Date, such form is entitled "Certificate of Insurance" and is numbered H-111), and
- (ii) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 form or a copy of the vehicle registration/insurance certificate;
- (d) on the Province's request, deliver to the Province evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.
- 6.3 The Licensee acknowledges and agrees that, in the event of any third party loss or damage or any physical loss or damage to the Land (and its associated apparatus, improvements or fixtures), the settlement or payment by the insurer of the subsequent claim will be made without the right of subrogation against the Province or the BCTFA or those for whom the Province and the BCTFA are legally obligated to indemnify against such claims.

ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the Province's prior written consent, which consent the Province may withhold in its sole discretion.
- 7.2 For the purpose of section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for consent under section 7.1, the Province may require the Licensee to meet certain conditions, including without limitation, that it provides to the Province a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

ARTICLE 8 - CANCELLATION

- 8.1 The Licensee agrees with the Province that
- (a) if it
- (i) defaults in the payment of any money payable by it under this Agreement, or
- (ii) fails to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),
- and its default or failure continues for 60 days after the Province gives written notice of the default or failure to it,

- (b) if, in the Province's opinion, it fails to make diligent use of the Land for the purposes set out in this Agreement, and its failure continues for 60 days after the Province gives written notice of the failure to it;
- (c) if it
 - (i) becomes insolvent or makes an assignment for the general benefit of its creditors,
 - (ii) commits an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against it or it consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging it bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enters into an arrangement with its creditors;
- (d) if it is a corporation,
 - (i) a receiver or receiver-manager is appointed to administer or carry on its business, or
 - (ii) an order is made, a resolution passed or a petition filed for its liquidation or winding up;
- (e) if it is a society, it converts into a company in accordance with the *Society Act* without the Province's prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at the Province's option and with or without entry, terminate, and all of the Licensee's right, interest and estate in the Land will be absolutely forfeited to the Province.

- 8.2 If the condition complained of in subsection 8.1(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently complete the same.
- 8.3 The Licensee agrees with the Province that the Province may, on 60 days' written notice to it, terminate this Agreement if the Province or the BCTFA requires the Land for any purpose.
- 8.4 The Licensee agrees with the Province that it will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1 or 8.3 or under subsection 62(5) of the *Transportation Act*.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, the dispute will be resolved by arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.

- 9.4 The arbitration will be conducted at the office of the Province in Nanaimo, British Columbia, and if the Province has no office in Nanaimo, British Columbia, then at the office of the Province that is closest to Nanaimo, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within the Province's sole discretion cannot, unless it agrees, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

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

to the Province:

Property Services
3rd Flr – 2100 Labicux Road
Nanaimo, British Columbia
V9T 6E9
Attention: Lorna Andreychuk
Telephone: (250) 751-3261

to the Licensee:

Capital Regional District
145 Vesuvius Bay Road
Salt Spring Island, BC V8K 1K3
Attention: Karla Campbell
Telephone: (250)537-4448

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

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

ARTICLE 11 - MISCELLANEOUS

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

- this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the Province specifically releases the Licensee from such obligation in its consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
- (a) gives notice to the Province within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
 - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the Province that
- (a) the Province is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
 - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the Province or the BCTFA or gives its any authority or power to bind the Province or the BCTFA in any way; and
 - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.
- 11.7 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

ARTICLE 12 - INTERPRETATION

- 12.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 12.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 12.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 12.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.

- 12.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 12.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 12.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 12.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 12.9 All provisions of this Agreement in the Province's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 12.10 Time is of the essence of this Agreement.

- 12.11 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

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

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

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

SIGNED on behalf of **CAPITAL REGIONAL DISTRICT** by its authorized signatories

Authorized Signatory

Authorized Signatory