

**THIS AGREEMENT, made as of the 26th day of October, 2000**

**Between:**

**The Corporation of the City of Hamilton (the "City of Hamilton")**

**and**

**The Hamilton Harbour Commissioners (the "HHC")**

**Whereas:**

a) In view of the long standing areas of disagreement between the City of Hamilton and the HHC, the parties commenced negotiations in an attempt to reach a full and final resolution of all litigation, actions and disputes between the parties. The parties recognize it is not in their interests to declare conquest or further challenge the legitimacy of the other party's claims.

b) The parties recognize continued litigation is not in the best interests of the City of Hamilton, the HHC, the Federal Government or the taxpayers of the community and the country. This Agreement is an attempt to advance harmonious relations, and to recognize the enormous benefits to be gained by balancing the various interests and needs that are served by Hamilton Harbour.

c) The Hamilton Harbour is a resource that serves both economic and social needs. It is recognized as a vital contributor to the success of industry, recreation, transportation, wildlife, shipping, navigation and the natural environment. This Agreement, in addition to settling existing disputes, provides a framework and a vision for future harbour developments. It is a vision that seeks to assist in providing a balance between industrial uses and other uses. We accept the premise that Hamilton Harbour should serve this diversity of needs of the community and the country at large.

d) HHC has, with the cooperation of the parties and the assistance of Nesbitt Burns, completed a review of the financial impact of this Agreement which review has provided HHC with the reasonable financial assurances it required as to its ability to afford this Agreement prior to executing this Agreement.

e) This Agreement, while providing a statement for the future, is also meant to assist and guide the new Port Authority for Hamilton Harbour to commence its work free of litigation in a spirit of goodwill and understanding. It is for these objectives that the parties have agreed to adopt a Charter for their relationship substantially in accordance with the attached Schedule 1.

**1. Windermere Basin**

- a) All the lands and lands under water encompassing the area of Windermere Basin shown as Parts 2, 3, 6 and 7 on the attached Schedule 2A shall be conveyed to the ownership of the City of Hamilton, except for the portion of the lands shown as Part 3 thereon which are shown on the attached Schedule 2B.
- b) Prior to the conveyance of the Windermere Basin lands and lands under water to the City of Hamilton, HHC will terminate any and all leases affecting the lands to be conveyed. HHC will hold the City of Hamilton harmless from and against any claims, and from any costs and expenses arising in connection with the termination of any such leases.
- c) The parties mutually agree to introduce before City Council a zoning-by-law amendment with respect to the defined area of Windermere Basin, so conveyed to the City of Hamilton as outlined herein, to provide that it be zoned and maintained by the City of Hamilton as green and open space.
- d) The parties mutually agree to introduce before City Council a zoning-by-law amendment to provide for:
- i) the "K" zoning on Parts 4 and 5 on Schedule 2A, and the retained portion of Part 3 on Schedule 2B on the south side of Windermere Basin; and
  - ii) with respect to Part 1 on Schedule 2A, a modified F-4 zoning in accordance with the attached Schedule 3.

HHC agrees that, in the event that Council of the City of Hamilton adopts the zoning by-law amendment for these lands in this paragraph and the preceding paragraph c), HHC will not challenge such modified zoning and will comply with the same in respect of these lands.

- e) With the transfer to the City of Hamilton of the Windermere Basin lands and lands under water, the parties agree that HHC will no longer have any responsibility for maintenance, dredging and greenscape development of the Windermere Basin lands and lands under water. Dredging of the Windermere Basin will be undertaken by the City of Hamilton in a timely manner to ensure the build-up of sediment will not impinge upon the shipping, navigation and transportation needs of the harbour's operations. HHC acknowledges and agree that the City will be permitted to deposit dredgeate in the prepared cell on the western edge of Windermere basin, including encroachment on adjacent HHC lands.

## 2. Eastport

- a) Further to the commitment of the City of Hamilton and HHC to the economic development of the region, the provision of jobs and the maintenance and enhancement of the environment, in addition to its own process for the approval of projects generally, the HHC agrees to implement a site plan approval process for Eastport. In particular, the HHC's site plan approval process shall include the following features:

- i) the proponent shall be required to submit to the City of Hamilton an application for site plan approval;
- ii) the HHC's site plan control process shall provide for the receipt and consideration by HHC or its designee of a report by the City of Hamilton, which report may include (1) comments received by the City of Hamilton from other agencies to whom the proposal may be circulated by the City of Hamilton, and (2) recommendations with respect to matters that would otherwise be the subject of site plan approval by the City of Hamilton including overall site design, siting of buildings, grading, access and landscaping;
- iii) if the report by the City identifies a community impact, the project review process shall include a public information and consultation process, including a public meeting relating to the proposal and, where requested by the City or the proponent, provision for referral to an independent review panel (the "Panel") to make recommendations to HHC with respect to the proposal.

The City of Hamilton agrees, to the extent possible, to adapt its usual Site Plan Approval process to such project review process. HHC agrees that in the event that the HHC refuses to accept and be bound by any final recommendation with respect to site plan control matters of a Panel, HHC will not challenge the jurisdiction of the Ontario Municipal Board to hear any appeal regarding such site plan control recommendations, provided that (a) this process shall not derogate from the rights and

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immunities of HHC with respect to any land use restrictions imposed by the City of Hamilton or the project review process which attempt to prohibit or regulate the use of these lands for purposes of navigation and shipping and (b) provided that the City of Hamilton does not attempt to use site plan control requirements in a colourable manner to prevent development of Eastport. The parties adopt wholeheartedly a "Good Neighbour Policy".

- b) The HHC undertakes to develop the Eastport lands by incorporating an increased level of berming, vegetation and quality landscaping, either independently or in concert with port tenants. In aid of this objective, HHC agrees to spend an additional \$50,000 annually, over and above its current capital expenditure budget, to be reviewed after 5 years.
- c) The HHC shall develop a second public parkette along Eastport for harbour viewing purposes and both parkettes shall be publicly accessible.
- d) The parties agree to adopt a higher standard of landscaping and improved aesthetic developments on Eastport, including reasonable view protection guidelines having regard to the best practices adopted by other port authorities in Canada.
- e) All of the above contemplated improvements shall be presented as a component of a master development plan, complete with visuals, costing and staging to be presented to the public for comment and consideration. Nothing herein is intended to derogate from and nothing herein shall be construed as derogating from the provisions of section 48 of the *Canada Marine Act*, in respect of land-use plans of port authorities.

### 3. West Harbour

- a) The HHC agrees to convey to the City of Hamilton the waterlots shown as Parts 1, 2, 3, & 4 on Plan 62R-15142 attached hereto as Schedule 4 and to quitclaim to the City any interest it may have in the lands highlighted in blue thereon. The parties agree that the conveyance of these waterlots shall be subject to (a) restrictive covenants prohibiting any development of the lands of the waterlots currently under water other than in accordance with the West Harbour Development Plan and (b) the public's right of navigation over navigable water.
- b) In addition, the HHC agrees to convey to the City of Hamilton the lands, piers, and waterlots, in Piers 5, 6, 7, and that part of 8, as defined on the attached Schedule 5,

together with all buildings and fixtures, and operating assets related to the marina and sailing school owned by the HHC thereon.

- c) The City of Hamilton will lease back to the HHC the lands, piers, waterlots, slips, operations and buildings, and operating assets generally associated with the lands defined on the attached Schedule 5, for \$1.00 per year for a term of fifteen years on the terms attached hereto as Schedules 6A and 6B.
- d) Upon the termination of the leases referred to in paragraph 3(c) above, the City of Hamilton agrees to offer employment to up to 15 of those of the current HHC employees listed on the attached Schedule 7 employed primarily on or in connection with the leased-back properties at the date of this agreement, who remain so employed as at the termination of the lease, with the City of Hamilton or its designee and upon comparable salary, benefits, terms and conditions, including those with respect to seniority. With respect to any bona fide replacements of up to 15 of the employees listed on the attached Schedule 7 employed on or in connection with the leased-back properties as at the termination of the lease, the City of Hamilton shall have the option either (A) to offer employment in the same manner and on the same terms as above, or (B) to indemnify the HHC in respect of any statutory or common law termination or severance entitlement due to such replacement employee based upon the salaries disclosed in the attached Schedule 7, adjusted for inflation and reasonable market changes.
- e) With respect to the remaining Pier 8 lands,
  - i) Northwest Section: subject to any prior leasehold interests, HHC will convey to Parks Canada, subject to the contractual right of the City of Hamilton described below, land sufficient for the development of an interpretative centre, not to exceed 8.25 acres subject to the following conditions:
    - (1) HHC shall commit financing for the construction of enhanced port facilities on Eastport in an amount of no less than \$15,000,000;
    - (2) in the event that the construction of the interpretative centre facility by Parks Canada is not completed on or before that date which is 36 months from the date of termination of any existing leases or such other date as the parties may agree, the City of Hamilton shall have a right to exercise its right of first refusal to purchase the land, in accordance with the agreement between the City of Hamilton, HHC and Parks Canada with respect to the interpretative centre, a copy of which is attached as Schedule 8;

(3) if the land is conveyed to the City of Hamilton, then the City of Hamilton shall lease it back to HHC for the remainder of the same term and on the same conditions as the lease-back in paragraph 3(e)(ii) below;

(4) docking by commercial vessels along the northern perimeter of that part of Pier 8 conveyed to Parks Canada under this paragraph shall be permitted for the purposes of queuing to load and unload such vessels, all in accordance with the agreement between the City of Hamilton, HHC and Parks Canada with respect to the interpretive centre and the siting and operation thereof, a copy of which is attached as Schedule 8; and (5) restrictive covenants in favour of the City of Hamilton and other surrounding landowners requiring Parks Canada to use the lands only for an interpretive centre.

- ii) Balance of Pier 8: HHC will convey the remaining Pier 8 lands shown on Schedule 9 to the City of Hamilton if the conveyance to Parks Canada in paragraph 3(e)(i) is completed; provided that the City of Hamilton leases back to the HHC the said lands, piers, waterlots, slips, operations and buildings generally associated with that part of Pier 8, for \$1.00 per year for 25 years, subject to review by the parties every five years for determination of whether or not any portion of this part of Pier 8 continues to be used for shipping and navigation purposes. In the event that no portion of the lands is being used for such purposes, the lease-back shall terminate on the review date. In the event of disagreement between the parties on any fifth anniversary review of the use of Pier 8 over whether or not any portion of this part of Pier 8 continues to be used or has commercially reasonable prospects for being used for shipping and navigation, the matter shall be finally resolved, in accordance with the *Commercial Arbitration Act*, R.S.C. 1985 c. 17 (2nd. Supp.), as amended, by a single arbitrator appointed by the parties. During the lease back period HHC agrees not to construct any new facilities on Pier 8 without the consent of the City of Hamilton.
- f) The HHC will be responsible for all maintenance and repairs to the properties referred to in e)ii) during its leases, subject to reasonable wear and tear and in accordance with HHC's past practices.
- g) If any capital works are undertaken by HHC on any parts of Piers , 7 or 8, such works will be performed by the HHC and shall be subject to the consent and approval of the City of Hamilton. Cost sharing and design plans shall be agreed between the parties.

- h) The HHC shall have the right to cancel the leases-back with respect to Piers 6, 7, and part of 8 at any time upon the serving of one year's notice to the City of Hamilton.
- i) With respect to the portions of Piers 6, 7 and any portions of Pier 8 leased back to HHC, while it is a lessee of that property, HHC will have a right to sublease premises currently being leased by HHC to any existing tenants including the Police Services Board. Any new subleases to new tenants on Pier 8 shall be subject to the consent and approval of the City of Hamilton, except that HHC shall have a right to sublease to parties engaged in shipping and navigation activities without the requirement for the consent of the City of Hamilton.
- j) The HHC undertakes at its reasonable expense to enhance the public view of the harbour by removing sheds 1 and 2 backing on Marina Drive (Guise Street), and landscape an area to be defined along Guise Street, in accordance with plans prepared by the HHC and approved by the City of Hamilton.

#### 4. Harbour Development Trust

The parties agree that it is in their mutual interests to further enhance the West Harbour lands and to improve the lands in and around the East End gateway to the harbour that are shown on the map attached as Schedule 10 hereto, through projects such as the Waterfront Trail. Accordingly, the parties agree to establish the Hamilton Harbour Development Trust (the "Trust") for the development of these lands, on the following terms.

- a) HHC shall appoint one member to the board of trustees of the Trust and the City of Hamilton shall appoint four members to the board of trustees of such Trust.
- b) HHC agrees to contribute to the Trust the entire sum of \$6,300,000, forthwith upon fulfilment of all of the conditions referred to in paragraph 5(d).
- c) In respect of the \$6,300,000 in funds contributed by HHC, the parties agree that the Trust shall be bound to use: \$5,000,000 for improvements to Windermere Basin, for land assembly and development costs related to the East End Gateway or West Harbour Development Plan, and for the Waterfront Trail; and \$1,300,000 solely for the Waterfront Trail.

- d) The parties further agree that the terms of the Trust shall permit contributions by parties other than the HHC to be used for purposes other than the development of lands specified in this section.

**5. General**

- a) The parties agree to negotiate in good faith and to enter into definitive agreements, transfers and other documents necessary to give effect to this Agreement by November 10, 2000. Time shall be the essence of this Agreement, and the parties recognize and agree that the spirit and intent of this Agreement shall be the guiding principle in the implementation of the Agreement.
- b) Notwithstanding any other provision in this Agreement, the parties agree that it is not their intention to restrict or limit the jurisdiction or rights and obligations of the respective parties under applicable legislation or the constitutional authority of the parties, including that of the HHC with respect to shipping and navigation in the Hamilton Harbour and that of the City of Hamilton with respect to land use planning, and any agreements made further to this proposal will clearly state their mutual intentions in this regard. Nothing herein is intended to derogate from and nothing herein shall be construed as derogating from constitutional authorities applicable to the parties or from the rights and obligations of the parties under applicable legislation.
- c) The City of Hamilton accepts all properties offered herein on an "as is" basis. The HHC makes no warranty with respect to the environmental condition, and no warranty of title on the properties herein.
- d) The obligations of the parties under this Agreement are conditional upon
- i) the passage by HHC (or its successor) and by the Council of the City of Hamilton of such legislative instruments, including zoning or other by-laws, as are contemplated by this agreement or otherwise required for its effective implementation;
  - ii) the receipt by the parties of comprehensive mutual Releases signed by the parties releasing each other from all causes of action and demands they now have, may have or could ever have with respect to events occurring up to the present time with respect to any claims that have or could have been made in the Superior Court action under Court File No. 4820/98 between the parties hereto and the Attorney General of Canada whether those claims be based upon events occurring prior to or following the present time or whether those



- claims be in respect of lands held now, formerly held, or that are subsequently acquired by HHC or any successor to HHC; and
- iii) the receipt by the City of Hamilton of executed Agreements with respect to rights of first refusal respecting the lands formerly conveyed by the City of Hamilton to the HHC comprising those portions of Pier 9 and Pier 10 and the bed of Hamilton Harbour referred to in Schedules 11 and 12 hereto, respectively.
  - iv) the execution by all parties of Minutes of Settlement in the form attached hereto as Schedule 13, the fulfilment of all conditions in Section 6 thereof, and receipt by HHC of the sum of \$21,300,000 from the Federal Government.
  - v) compliance with applicable legislation, including the *Ontario Planning Act*.
- e) HHC and the City of Hamilton will conclude agreements by the closing of this Agreement and all ancillary agreements hereto which is scheduled for early November 10, 2000, including: (i) the grant by HHC to the City of Hamilton of easements for outfalls as provided in Plan 62R-13804 (Catherine Street and Ferguson Ave), Plan 62R-14572 (Wellington Street), Plan 62R-14905 (Wentworth Street), Plan 62R-14904 (Hillyard Street), Plan 62R-14397 (Birch Ave.) and Plan 62R-13520 (Strathearne Ave.) on the terms which have been settled between the parties; (ii) the quitclaim by HHC to the City of Hamilton of the strip of land (25 feet more or less) which may be adversely possessed by the HHC under the Skyway Bridge as shown on Plan 62R-15136; and (iii) the grant by the City to HHC of the portion of Ship Street identified in Schedule 14.
- f) The HHC covenants and agrees with the City of Hamilton that it will not permit any use or authorize or approve any lease of HHC lands for purposes of an animal rendering plant, and agrees to appropriate zoning changes or to the registration of appropriate instruments to give effect to this commitment. This commitment is not intended and shall not be applied to prevent the continuation of any existing use or tenancy.
- g) All areas so defined in this proposal shall be surveyed by the parties to precisely set the exact boundaries of lands so conveyed.
- h) Legal counsel for the HHC or its successor shall draft the releases, deeds and ancillary agreements contemplated hereby for review and comments by the City of Hamilton's legal counsel.

- i) Unless and until all conditions in paragraph 5(d) of this Agreement have been satisfied or waived, this Agreement is without prejudice to the positions and claims of the parties in the Superior Court Action under Court File No. 4820/98 between the parties hereto and the parties hereto agree that this Agreement will not be introduced into evidence or referred to in those proceedings or otherwise used to advance or prejudice the positions of the parties to those proceedings.

In witness whereof the parties hereto have signed and delivered this Agreement this \_\_\_\_ day of October, 2000.

The Corporation of the City of Hamilton, by:

*Robertson*

*J. Chitt*

c/s

The Hamilton Harbour Commissioners, by:

*Brian Huskley*

c/s

*C. Edwards*

## Charter

### *For the Relationship Between the City of Hamilton and the Hamilton Harbour Commissioners*

*Whereas the Hamilton Harbour Commissioners (Port) is a major employer and economic generator within the Hamilton region and a major port contributing to Canada's economy. And Whereas the City of Hamilton (City) provides municipal services and access, essential to the effective operation of the Port, and manages development adjacent to the Port. And Whereas the City and the Hamilton Harbour Commissioners are both committed to the economic development of the Hamilton region, the provision of jobs, the efficient movement of goods and people, and the maintenance and enhancement of the environment, natural features of harbour lands, and the provision of water related recreational opportunities, and appropriate commercial development,*

*Therefore the City and the Port acknowledge the importance of each to the other, and the necessity for a good working relationship between the two bodies, and commit to this Charter to guide that relationship.*

1. The Port and the City each acknowledge the independence of the other, and the obligation of each to act in a manner consistent with its enabling legislation and obligations.
2. The Port Corporation and the City commit to continuing effective communication on matters of interest to both parties, including but not limited to notice to each other and consultation on physical developments and management policies which may affect the other.
3. The Port Director of Hamilton Harbour and the City Manager of the City will arrange joint meetings of their respective management teams at least annually, and additionally when appropriate, to review the relevant plans of the two organizations to determine where there may be issues requiring resolution and areas where the two organizations may be mutually supportive.
4. Following the annual meeting of staffs from the two organizations, the Hamilton Harbour Commissioners Board and City Council will receive reports from their officials and give direction as each may deem appropriate on issues requiring action by staff to support the joint interests of the two organizations.
5. Upon the signing of this charter the two organizations agree to arrange for the exchange of each other's senior planners for placement in one another's offices for a six month period. At the end of six months each planner shall return to their respective former position.
6. In the event of disagreement, the City and Port Corporation agree to rely on a dispute resolution procedure involving:
  - In the first instance, a joint review by the Port Director and the City Manager.
  - If the review by the Port Director and the City Manager is unsuccessful in resolving the dispute, a joint review by a committee consisting of the Mayor, two members of City Council and the City Manager, the Chair of the Commissioners, the two other Commissioners and the Port Director.
  - If this is unsuccessful, mediation/arbitration by an independent board, with one member appointed by each of the Port Corporation and City, and the third member, who shall be the Chair, appointed by the two members.



7. Where legally possible, the City and Port Corporation agree to be bound by the conclusions of the arbitration where either the City or the Port Corporation cannot be bound by the rulings of a third party, neither shall be bound, but both undertake to give the recommendations from the process due consideration.
8. On matters requiring formal agreement between the two parties, the City and the Port Corporation agree to pursue simplified legal agreements relying on the dispute resolution procedure set out above.
9. The City and the Port Corporation agree to work together in the following areas of mutual interest, and insofar as their separate interests and obligations may permit, the development or mutually agreed plans to further these objectives:
  - promotion of the business of the port
  - enhancement of the marine environment
  - provision of access to the waterfront and activities of the Port for citizens where this is consistent with the work of the Port
  - effective management of the use of the harbour, including recreational use where this is consistent with the work of the Port
  - provision of effective road and rail access and utility services for the efficient operations of the Port
  - provision of access to water and necessary City utility services
  - provision of effective policing and emergency services in the Port and adjacent area of the City, including emergency planning and disaster response
  - ensuring that development on port lands is compatible with both the economic development of the Port and the interests of the City
  - ensuring effective public consultation on significant decisions relating to Port and adjacent city lands.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 1999



\_\_\_\_\_  
*Mayor, City of Hamilton*

\_\_\_\_\_  
*Chair, Hamilton Harbour Commissioners*

\_\_\_\_\_  
*City Manager, City of Hamilton*

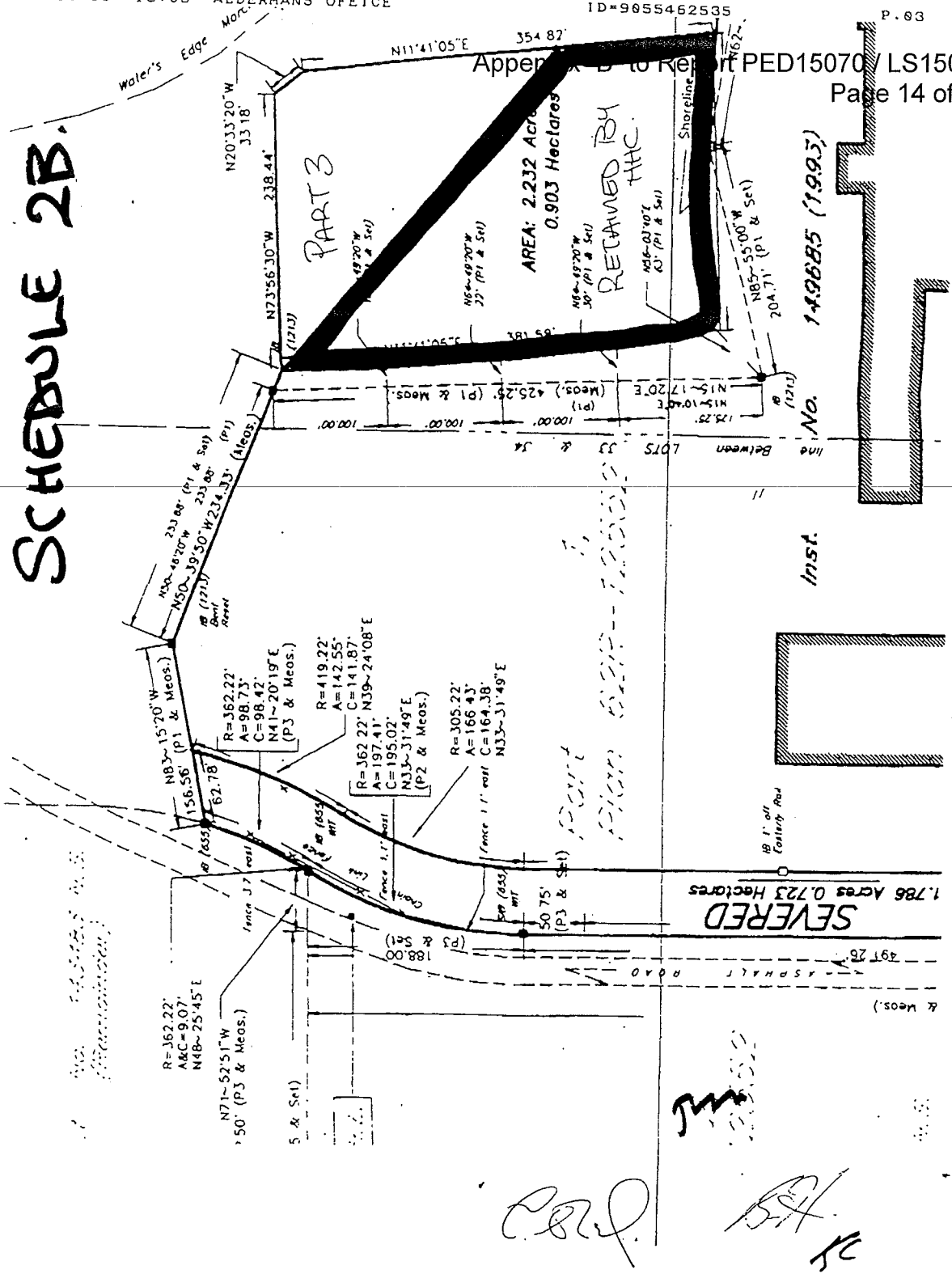
\_\_\_\_\_  
*Port Director,  
Hamilton Harbour Commissioners*



# SCHEDULE 2B.

Appendix B to Report PED15070/LS15015

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MODIFIED F-4 ZONING

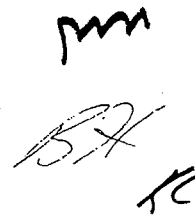
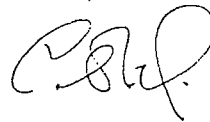
The following uses shall be permitted in the modified F-4 Zoning referred to in paragraph 1(d)(ii) of the Proposal:

1. Ferry Industry;
2. Marine Towing Industry;
3. Ship Chartering Industry;
4. Other Water Transport Industries;
5. Marine Cargo Handling Industries;

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6. Harbour and Port Operation Industry;
7. Marine Salvage Industry;
8. Piloting Service, Water Transport Industry;
9. Marine Shipping Agencies Industry;
10. Other Service Industries Incidental to Water Transport;
11. Shipbuilding and Repair Industry;
12. Boat building and Repair Industry;
13. Labour organizations;
14. General Freight Trucking Industry;
15. Forest Products Trucking Industry;
16. Other Truck Transport Industry;
17. Used Goods Moving and Storage Industry;
18. Freight Forwarding Industry;
19. Other Service Industries Incidental to Transportation, n.e.c.;

McCarthy Tétrault TDO-MCTETI #3513341 / v. 1



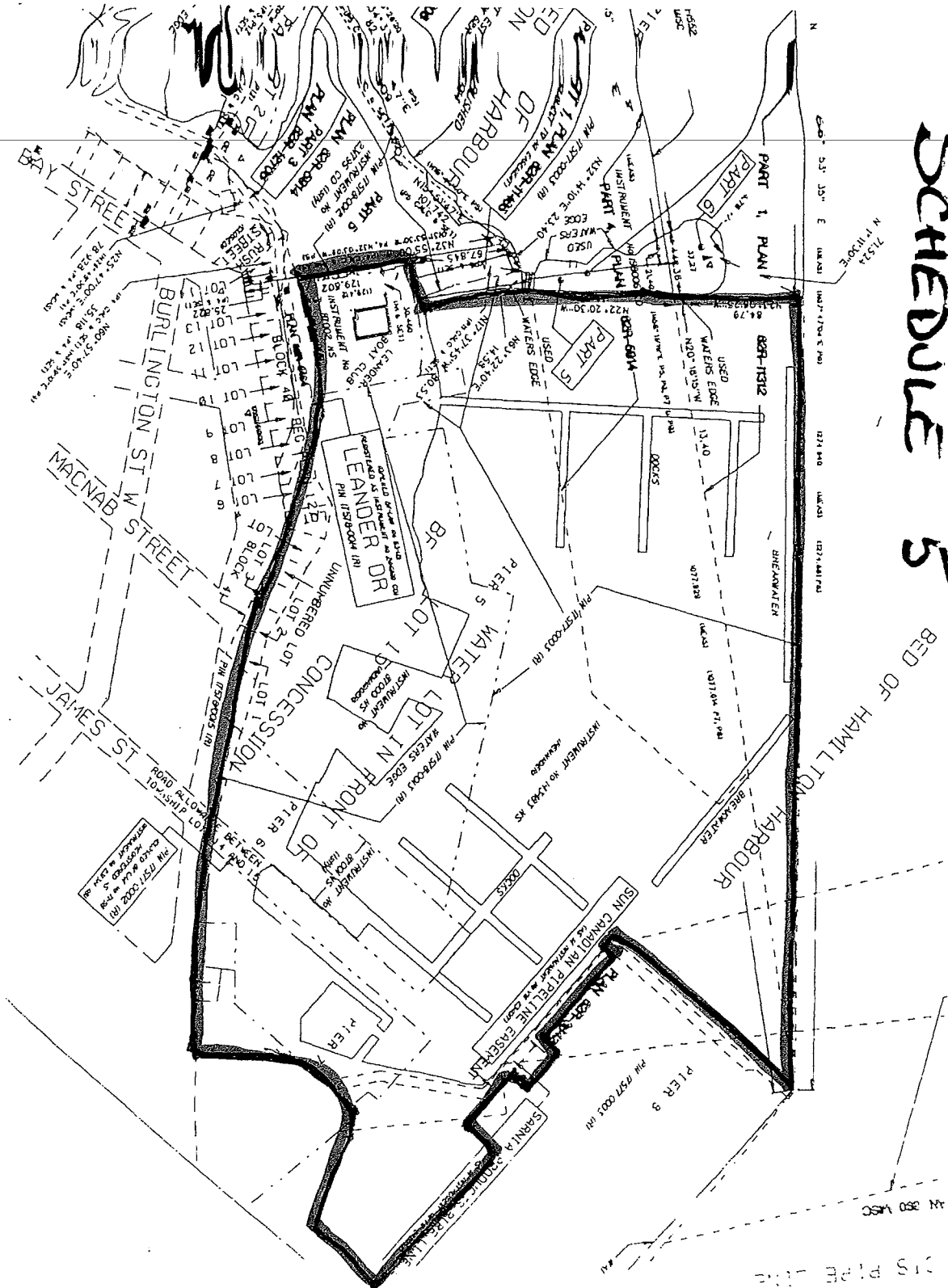
20. Refrigerated Warehousing Industry;
  21. Other Storage and Warehousing Industries, n.e.c.;
  22. Other Products, n.e.c., Wholesale limited to Chandlers;
  23. Customs Broker;
  24. Restaurants;
  25. Take-Out Food Services;
  26. Caterers;
  27. Taverns, Bars and Night Clubs;
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28. Hydraulic Cement Industry;
  29. Redi-Mix Concrete Industry;
  30. Chandler engaged in supply or outfitting of boats;
  31. Bank, trust company or credit union;
  32. Marine-related commercial school;
  33. Sale and rental of recreational equipment including the charter or rental of boats, canoes or bicycles, but not motorcycles and snowmobiles;
  34. Accessory business office;
  35. Laboratory;
  36. Boat Rental and Marina;
  37. Ticket and Travel Agencies;
  38. Tour Wholesaler and Operators;
  39. Shipping, Transshipping and Distribution Depot;
  40. Motor Vehicle and Equipment Repair Shop except paint and auto body repair shop;
  41. Day Nursery;



42. Research Establishment Laboratory;
  43. Telecommunications Broadcasting Industry;
  44. Heliports and Seaplane Operations;
  45. Postal and Courier Service Industry;
  46. Clothing industry;
  47. Paper Box, Bag and other converted paper products industry;
  48. Printing, publishing and allied industry,
  49. Fabricated metal products industry;
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50. Electrical products industry;
  51. Scientific and professional equipment industry;
  52. Jewellery and precious metal industry;
  53. Sporting goods and toy industry;
  54. Sign and display industry;
  55. Light manufacturing and assembly industry;
  56. Trade contracting industry;
  57. Truck, machinery and equipment sales, rental and repair;
  58. Textiles and textiles products industries;
  59. Fruit and vegetable industry other than processing;
  60. Dairy products industry other than processing;
  61. Bakery products industry;
  62. Millwork industry;
  63. Wooden buildings industry;

64. Wood products factory;
  65. Furniture industry;
  66. Machinery industry;
  67. Transportation equipment industry;
  68. Electronic products industry;
  69. Clay products industry;
  70. Concrete products industry;
  71. Glass products industry;
  72. Small metal wares factory;
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73. Retail stores, or showrooms or sample rooms, for the sale of jewellery, crafts, gifts and souvenirs, clothing, flowers, photographic equipment, teas, coffees, spices and specialty foods, imported goods bazaar, fish or antiques;
  74. Amusement parks;
  75. Establishments for the sale of bait;
  76. Service industries;
  77. Accessory Uses
    - (a) Accessory building, structures or uses.
    - (b) Business Identification Signs that are Ground Signs, Wall Signs, or Roof Signs of an occupancy or use of the land on which the sign is situate.

# SCHEDULE 5



October 26, 2000

GROUND LEASE

This lease made as of the . . . day of . . . , 2000 in pursuance of the *Short Forms of Leases Act*, between:

**THE CORPORATION OF THE CITY OF  
HAMILTON**  
(the "Landlord")

of the first part,

- and -

**THE HAMILTON HARBOUR COMMISSIONERS**  
(the "Tenant")

of the second part,

witnesses that whereas:

- (a) the Landlord has received a conveyance and quit claim from the Tenant of its interests in the Lands, as hereinafter defined;
- (b) the Tenant has entered into an agreement to lease the Lands and the Improvements;

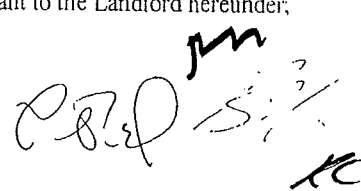
Now therefore in consideration of the rents, covenants and agreements herein contained, the Landlord and the Tenant agree as follows:

ARTICLE I - INTERPRETATION

**1.01**      Definitions

In this lease:

- (a) "Capital Alteration" has the meaning provided in Section 8.01;
- (b) "Capital Improvement" has the meaning provided in Section 8.01;
- (c) " Chattel Lease" means the lease of even date hereof, between the Landlord and the Tenant and also attached as a Schedule to the Settlement Agreement;
- (d) "Demised Premises" means the Improvements and the Lands;
- (e) "Improvements" means the marina and sailing school buildings, docks, wharves piers and floats, and all other fixtures improvements constructed upon the Lands;
- (f) "Lands" means the lands and premises more particularly described and shown in red on Schedule A hereto;
- (g) "Net Book Value" means the net book value of the Improvements as reflected in the Tenant's books applying generally accepted accounting principles, consistently applied with prior periods;
- (h) "Rent" means any amount payable by the Tenant to the Landlord hereunder;



- 2 -

- (i) "Rental Taxes" means any tax or duty imposed upon the Landlord which is measured by or based in whole or in part directly upon the Rent payable under this lease, whether existing at the date hereof or hereinafter imposed by any governmental authority, including without limitation value added tax, business transfer tax, retail sales tax, federal sales tax, excise tax or duty, or any tax similar to any of the foregoing;
- (j) "Replacement" has the meaning provided in Section 8.02;
- (k) "Settlement Agreement" means the agreement dated as of October 26, 2000 and signed by the Landlord and the Tenant to which this Ground Lease is a schedule;
- (l) "Taxes" means all taxes, rates, assessments, duties, levies and charges whatsoever, whether municipal, parliamentary or otherwise, levied, imposed or assessed by any taxing authority against the Lands and the Improvements or either of them or upon the Landlord in respect thereof of from time to time levied, imposed or assessed in the future in lieu thereof, including those levied, imposed or assessed for education, schools and local improvements or in respect of leasehold improvements, trade fixtures, other fixture, equipment and property moved or installed by the Tenant, including the amount of any applicable payments in lieu of taxes, and includes capital tax levied on the Landlord;
- (m) "Term" means the term of this lease as provided in Section 2.03, any period of permitted overholding and, if applicable, any renewal of this lease pursuant to Section 2.04.

**1.02 Schedules**

The schedules of this lease are a part of it and consist of:

- Schedule A - information as to the Lands, Improvements, and Adjacent Lands;
- Schedule B - Term, Rent, and additional terms of this Lease.

**1.03 Number and Gender**

The necessary grammatical changes required to make the provisions of this lease apply in the plural sense where the Tenant comprises more than one entity and to corporations, associations, partnerships or individuals, males or females, in all cases will be assumed as though in each case fully expressed.

**1.04 Headings and Captions**

The article numbers, article headings, section numbers and section headings are inserted for convenience of reference only and are not to be considered when interpreting this lease.

**1.05 Obligations as Covenants**

Each obligation of the Landlord or the Tenant expressed in this lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

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**1.06 Entire Agreement**

This lease, the Chattel Lease, and the Settlement Agreement, contain all the representations, warranties, covenants, agreements, conditions and understandings between the Landlord and the Tenant concerning the Demised Premises and the subject matter of this lease.

**1.07 Governing Law**

This lease shall be interpreted under and is governed by the laws of the Province of Ontario.

**1.08 Construction**

If any provision of this lease is illegal or unenforceable it shall be considered separate and severable from the remaining provisions of this lease, which shall remain in force and shall be binding as though the said provision had never been included. If there is more than one tenant then all obligations of the Tenant hereunder shall be joint and several.

**ARTICLE II - DEMISE AND TERM****2.01 Demise and Term**

The Landlord hereby leases and demises the Demised Premises to the Tenant for the Term at the rent and on the terms and conditions stated in this lease.

**2.02 Licenses to Access and Use Adjacent Lands**

Subject to the terms of this Lease, and during the Term, the Tenant shall also have and enjoy, and the Landlord hereby grants to the Tenant, a license to have access to and to use (and to allow its customers to have access to and to use) those lands adjacent to the Lands which are shown in blue and green on Schedule "A" hereto (the "Adjacent Lands"), for purposes of

- (a) access to the water,
- (b) temporary storage of vessels,
- (c) the movement and handling of boats into and out of the water or storage; and
- (d) other purposes consistent with the past practices of the Tenant with respect to the marina and sailing school operations;

provided that any such access or use is consistent with the past practices of the Tenant, and is not incompatible, in terms of safety or aesthetics, with either the public's access to the waterfront over the Adjacent Lands or the future redevelopment of lands in the vicinity of the Demised Premises.

The licenses granted under this Section 2.02 shall include the ability of the Tenant, during two annual periods of not more than seven (7) consecutive days, designated by the Tenant to the Landlord in writing on at least seven (7) days notice, commencing on or about May 1 and October 1 during each year of the Term, to have the exclusive use of the lands shown in green on Schedule "A", for purposes of removing or launching boats from or into the water.

**2.03 Term**

The Term of this lease is set out in Schedule B.

2.04 Overholding

If the Tenant remains in occupation of the Demised Premises after the expiration of the Term hereby granted without a written agreement to the contrary, it shall not be deemed to be a tenant from year to year, but shall be a monthly tenant at a rental equivalent to market rent, as agreed by the parties or fixed by arbitration, payable in advance, and all the terms and conditions hereof, so far as applicable, shall apply to such monthly tenancy. The acceptance by the Landlord of arrears of rent or compensation for use or occupation of the Demised Premises after notice of termination of this lease has been given shall not operate as a waiver of the notice or as a reinstatement of the lease or as a creation of a new lease unless the parties so agree.

ARTICLE III - RENT3.01 Fixed Rent

The Tenant covenants to pay to the Landlord Fixed Rent in the amount set out in Schedule B,

ARTICLE IV - GENERAL COVENANTS4.01 Covenants of Tenant

The Tenant covenants with the Landlord:

- (a) to pay Rent
- (b) on or before October 30, 2001 to remove, relocate and replace the existing fence line to the west of the Demised Premises between the waterfront and Guise Street, to a position along the western boundary of the Lands as shown on Schedule "A", and
- (c) to observe and perform all the covenants and obligations of the Tenant under this lease.

4.02 Covenants of Landlord

The Landlord covenants with the Tenant:

- (a) for quiet enjoyment of the Lands; and
- (b) to observe and perform all the covenants and obligations of the Landlord under this lease.

ARTICLE V - TAXES AND CHARGES5.01 Net Lease

It is the intention of the parties hereto that this lease be, subject to as expressly provided for herein, net and carefree to the Landlord. The Tenant covenants with the Landlord to be responsible for and to pay all costs, charges, expenses and outlays of every kind relating to or affecting the Demised Premises. Any payments not made by the Tenant may be paid by the Landlord and will thereafter be collectible as rent forthwith upon notice by the Landlord to the

Tenant and all of the Landlord's remedies for non-payment of rent hereunder shall apply thereto, but nothing in this lease limits any other remedy of the Landlord in respect thereto.

5.02 Business Taxes

The Tenant covenants to pay all business taxes levied on the Demised Premises, all Rental Taxes and all other taxes levied in respect of the Tenant's use and occupation of the Demised Premises, including all amounts in respect of payments in lieu of taxes.

5.03 Utilities

The Tenant agrees to pay for the cost of all utilities consumed at the Demised Premises including, without limitation, water, gas and electricity.

ARTICLE VI - ENTRY AND USE OF THE DEMISED PREMISES

6.01 Use of Demised Premises

The Tenant covenants that the Demised Premises will be used solely for the purposes set out in Schedule B and the Demised Premises may not be shared.

ARTICLE VII - REPAIRS AND MAINTENANCE

7.01 Tenant's Obligations

The Tenant covenants to maintain the Improvements in good working order and in safe condition and shall repair and replace them all in a manner and to a standard that is commercially reasonable and consistent with past practices and policies of the Tenant, all at the expense of the Tenant including, without limitation, all repairs and replacements as are necessary to make and keep the Demised Premises in compliance with all applicable health, fire and safety standards, including any additional standards required by law. The Tenant covenants to pay the charges for such repairs forthwith upon receipt of invoices for same. The Tenant shall be responsible for the maintenance and repair of its own equipment and fixtures.

7.02 Construction Liens

The Tenant shall comply with all of the provisions of the *Construction Lien Act*, and other statutes from time to time applicable to any work done or improvements made to the Demised Premises by or on behalf of the Tenant, including any steps necessary to ensure that no lien shall attach to the Improvements or the Lands. If any such construction lien for work, labour, services or materials supplied to or for the Tenant shall be registered on title to the Lands, the Tenant shall within twenty (20) days after receipt of notice thereof from the Landlord procure the discharge thereof including any certificate of action registered in respect of any lien; failing which the Landlord shall be entitled to make such payment or take such action as may be necessary or expedient to discharge such lien and the Tenant shall forthwith on demand and as additional rent indemnify and save harmless the Landlord for any payment so made.

ARTICLE VIII - CHANGES AND ALTERATIONS

8.01 Changes and Alterations

The Tenant shall not make or permit to be made any alterations, changes or additions (collectively, "Capital Alterations") to the Demised Premises without the prior written



approval of the Landlord, which approval shall not be unreasonably withheld. The Tenant shall submit any designs, working drawings and specifications for proposed Capital Alterations to the Landlord for approval prior to undertaking the work and, in the event that the Tenant seeks any contribution from the Landlord in respect of the cost of Capital Improvements under the terms of this Lease or otherwise, the terms of such cost sharing shall be agreed in writing between the parties, acting reasonably, in advance of the commencement of the work. All work to be performed in the Demised Premises shall be performed by competent contractors and subcontractors of whom the Landlord shall have approved, such approval not to be unreasonably withheld. All such work shall be completed in a good and workmanlike manner in accordance with the description of the work approved by the Landlord, who shall have a reasonable opportunity to inspect such work.

All Capital Alterations to the Demised Premises shall immediately become the Landlord's property absolutely, and there shall be no compensation therefor to the Tenant unless cost sharing terms have been agreed in the manner provided in the preceding paragraph.

Following any annual audit in accordance with Schedule B hereto, and immediately prior to the end of the Term, to the extent directed to do so by the Landlord, the Tenant shall remove any unapproved Capital Alterations to the Demised Premises made by the Tenant since the date of the Landlord's preceding audit.

The Tenant acknowledges having inspected the Demised Premises at the date of execution hereof and agrees to accept them on an "as is" basis.

**8.02 Replacements**

If during the Term either the Tenant decides that it is commercially reasonable from an operating perspective, or if the Landlord decides that it is commercially reasonable as owner, to replace all or any part of the Improvements (the "Replacement"), such Replacement shall be undertaken by the Tenant, and shall be subject to the prior approval and written agreement with respect to cost sharing plans by the Landlord or the Tenant, respectively as the case may be, in the same manner as provided in Section 8.01 with respect to Capital Alterations.

**8.03 Locking System**

Neither the Landlord nor the Tenant shall during the Term, alter or cause to be altered the locking system on any door giving entry to the Demised Premises, except by mutual consent. No additional locks shall be placed upon any door of the Improvements without the consent of the Landlord.

**8.04 Access**

The Tenant shall have access to the Demised Premises twenty four hours a day during each day of the Term.

**ARTICLE IX - INSURANCE**

**9.01 Public Liability Insurance**

Forthwith upon execution hereof, and at all times during the Term, the Tenant shall maintain at its own expense, comprehensive general public liability insurance against claims for personal injury or death and property damage or loss arising out of all operations of the Tenant as would a prudent owner of similar premises. Such insurance shall protect the Landlord and the Tenant in an amount consistent with the tenant's past practices, and the Landlord shall be a named insured in the insurance policy, which shall contain a cross-liability

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clause protecting the Landlord against claims by the Tenant as if the Landlord were separately insured and protecting the Tenant against claims by the Landlord as if the Tenant were separately insured.

**9.02      Legal Liability Insurance**

At all times during the Term, the Tenant shall maintain at its own expense all risk tenants' legal liability insurance as would a prudent owner of similar premises. Such insurance shall protect the Landlord and the Tenant in an amount consistent with the tenant's past practices, and the Landlord shall be a named insured in the insurance policy, which shall contain a cross-liability clause protecting the Landlord against claims by the Tenant as if the Landlord were separately insured and protecting the Tenant against claims by the Landlord as if the Tenant were separately insured.

**9.03      Property Insurance**

The Tenant shall maintain during the Term all risk insurance in its chattels, fixtures and leasehold improvements in the Demised Premises as would a prudent owner of similar premises. Such insurance shall protect the Landlord and the Tenant in an amount consistent with the tenant's past practices, and the Landlord shall be a named insured in the insurance policy, which shall contain a cross-liability clause protecting the Landlord against claims by the Tenant as if the Landlord were separately insured and protecting the Tenant against claims by the Landlord as if the Tenant were separately insured.

**9.04      Evidence of Insurance**

The Tenant shall forthwith after request by the Landlord provide evidence of the insurance required to be carried by the Tenant hereunder from time to time.

**ARTICLE X - DAMAGE OR DESTRUCTION**

**10.01      Damage or Destruction**

In the event of damage to or destruction of the Improvements during the first fourteen years of the Term by fire or other casualty against which the Landlord is insured, the Landlord shall pay out such insurance proceeds to the Tenant in compliance with all laws, including the *Construction Lien Act*, and the Tenant agrees to use the proceeds to rebuild to the extent possible given the amount of the proceeds and the cost of doing so, the Improvements which have been damaged based upon plans and specifications approved by the Landlord, acting reasonably. If the event of damage to or destruction of the Improvements occurs during the last year of the Term, this lease shall be automatically terminated and the Landlord shall have the right to retain all of the insurance proceeds.

**10.02      Limitations on Landlord's Liability**

The Landlord shall not assume any additional liability under this Lease for any damage to any property at any time on the Demised Premises or in the Improvements from gas, water, steam, water works, rain or snow, which may leak into, issue or flow from any part of the Improvements or from the pipes or plumbing works of same, or from any other place or quarter, provided that nothing in this Section 10.02 shall derogate from any such liability that may exist otherwise by law.

**10.03      Notice to Landlord**

The Tenant shall give the Landlord prompt written notice of any material accident or other defect in the plumbing, electrical, telephone, gas, heating, air conditioning or other service systems in the Improvements.

**10.04      Tenant's Liability**

The Tenant shall be liable for any damage done by reason of water being left running in the Demised Premises or from gas permitted to escape therein. The Tenant will also be responsible for any damage caused by allowing the windows of the Improvements to remain open so as to admit rain or snow.

**ARTICLE XI - INDEMNITY****11.01      Tenant's Indemnity**

The Tenant covenants to indemnify and save harmless the Landlord from all claims, actions, costs and losses of every nature arising during the Term and caused by the Tenant or those for whom it is at law responsible, provided that in no event shall the Tenant be liable for any losses, costs, claims or actions arising from the Landlord's negligence or the negligence of those for whom the Landlord is in law responsible. The foregoing indemnity extends to all claims, actions, costs or losses arising out of:

- (a) a breach of or non-compliance with a covenant, agreement or condition on the part of the Tenant contained in this lease;
- (b) injury to a person, occurring in or about the Demised Premises, including death resulting from the injury; and
- (c) damage to or loss of property arising out of the use and occupation by the Tenant of the Demised Premises.

The obligations of the Tenant to indemnify the Landlord under the provisions of this section are to survive the termination of this lease in respect of every event occurring during the Term or any overholding.

**ARTICLE XII - SUBLETTING AND ASSIGNING****12.01      Assigning or Subletting**

The Tenant shall not assign this lease or sublet the Demised Premises, or any part thereof, without the prior written consent of the Landlord, which consent may not be unreasonably withheld. No assignment or sublease shall relieve the Tenant of its obligations hereunder. Any assignee or subtenant shall, at the Landlord's option, enter into an agreement with the Landlord whereby it agrees to be bound by the provisions of this lease. The Tenant shall not pledge or grant any security interest in or otherwise encumber the Demised Premises but the Tenant may register its interest in this Lease.

**ARTICLE XIII - IN DEFAULT**

**13.01 Tenant's Default**

Where the Tenant fails to perform or comply with any covenant, term or condition in this lease to be performed or complied with by the Tenant, and the failure continues (a) in the case of payment of rent or other payments deemed to be rent by Section 5.01 herein, for 60 days after the rent is due, and (b) in case of any other covenant, term or condition of this lease, for 45 days after receipt of notice from the Landlord of the default or such longer period of time as is reasonably necessary in the circumstances, provided that the Tenant diligently begins to rectify such default forthwith upon receiving such notice and diligently continues to do so until such default is rectified, the Landlord may enter and take possession of the Demised Premises with or without terminating this lease. A default under the Chattel Lease shall also be a default under this lease. In taking possession of the Demised Premises, the Landlord may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of the Tenant, all without service of notice or resort to legal process and without being considered guilty of trespass or becoming liable for loss or damage occasioned thereby.

If the Demised Premises are vacant for a period of 30 days or more, otherwise than in a manner consistent with the seasonal nature of the Tenant's operations thereon, the Tenant shall be deemed to have abandoned the Demised Premises and the Landlord shall be entitled to take immediate proceedings for possession thereof.

None of the goods of the Tenant on the Demised Premises shall be exempt from levy by distress for rent or additional rent in arrears, notwithstanding the provisions of any statutes taking away or limiting the Landlord's right of distress.

**13.02 Remedies Generally**

If the Tenant defaults hereunder the Landlord may remedy or attempt to remedy the default and in so doing may make any payments due or alleged to be due by the Tenant to third parties. The Landlord's reasonable costs on account of remedying or attempting to remedy the default shall be payable by the Tenant to the Landlord on demand. The Landlord may from time to time resort to any or all the rights and remedies available to it in the event of any default hereunder by the Tenant all of which rights and remedies are intended to be cumulative and not alternative and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or general law.

**ARTICLE XIV - SURRENDER OF THE DEMISED PREMISES**

**14.01 Surrender of the Demised Premises**

On the termination of this lease for any reason, the Tenant shall surrender the Demised Premises to the Landlord in the condition in which they are required to be kept by the Tenant under the provisions of this lease.

**14.02 Removal of Fixtures**

At the end of the Term, the Tenant may remove any trade fixtures it owns but not any other leasehold improvements, goods and chattels from the Demised Premises provided that:

- (a) the Tenant is not in default under this lease; and

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- (b) the Tenant shall repair any damage or injury caused to the Demised Premises by such removal.

#### ARTICLE XV - MISCELLANEOUS

##### **15.01 For Rent and For Sale Signs**

The Landlord may within six (6) months before the expiration of the Term, if not renewed, or six (6) months before the expiration of any renewal term, place on the Demised Premises a notice of reasonable dimensions stating that the Demised Premises are for rent. The Landlord may, at any time during the Term, place on the Demised Premises a notice of reasonable dimensions stating that the Demised Premises are for sale.

##### **15.02 Entry by Landlord**

Notwithstanding any other provisions of this lease, the Landlord may enter the Demised Premises, at all reasonable times on reasonable notice, for the purpose of exercising any right or enforcing any remedy given to it by or under this Lease.

##### **15.03 Notices**

Any notice to be given pursuant to the provisions of this lease must be in writing and may be personally served in which case service shall be immediate or may be given by prepaid registered post mailed at a post office in the City of Hamilton and shall be deemed to have been served 72 hours following the day of mailing. The address of the Landlord and Tenant for such purpose is set out in Schedule B. Either party may from time to time notify the other of any change of address.

##### **15.04 Transfer by Landlord**

The Landlord may transfer or lease the Improvements or the Lands or any part thereof and, to the extent that the transferee or lessee becomes liable to perform the obligations of the Landlord hereunder, the Landlord shall only thereafter be liable in respect of those obligations in the event and to the extent that the transferee or lessee is unable to perform them.

##### **15.05 Successors and Assigns**

This lease shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and the heirs, executors, administrators, successors and permitted assigns or successors and permitted assigns of the Tenant, as the case may be.

##### **15.06 Waiver**

If either party shall overlook or excuse any default by the other party of any obligation hereunder this shall not operate as a waiver of such obligation in respect of any continuing or subsequent default and no waiver shall be effective unless expressed in writing. The acceptance of rent by the Landlord from the Tenant or any other entity will not be considered to be a waiver of a breach by the Tenant of its obligations hereunder regardless of the knowledge of the Landlord of the breach at the time of acceptance of the rent.

##### **15.07 Force Majeur**

If and to the extent that either the Landlord or the Tenant shall be prevented, delayed or restricted in the fulfilment of any obligation hereunder other than the payment of

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money by the Tenant because of any cause beyond the reasonable control of the party affected thereby which prevents the performance by such party of any obligation hereunder and not caused by its default and not avoidable by the exercise of reasonable effort including, without limitation, strikes, labour disturbances, civil disturbance, acts, orders, legislation, regulations or directives of any government or public authority, acts of a public enemy, war, riot, sabotage, earthquake, fire, storm, hurricane, flood, explosion or act of God, it shall be deemed not to be a default in the performance of such obligation and any period for the performance of such obligation shall be extended accordingly and the other party to this lease shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

#### 15.08 Dispute Resolution

Any controversy, question, claim or other dispute arising out of or relating to this lease (a "Dispute") which are not resolved in the first instance by negotiation in good faith between the parties within two business days of the Dispute arising, shall be resolved by either party giving written notice to the other that the Dispute is to be submitted to arbitration in accordance with this paragraph. For any Dispute submitted to arbitration, the following provisions shall apply:

- (a) the arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Landlord and the Tenant or in the event of failure to agree within 10 business days following delivery of the written notice to arbitrate, any party may apply to a judge of the Superior Court of Justice (Ontario) to appoint an arbitrator. The arbitrator shall be qualified by education and training to pass upon the particular matter to be decided;
- (b) the submissions of each party shall be in writing, and provided to the arbitrator and the other party within 2 business days of the dispute being submitted to arbitration;
- (c) the arbitration shall take place in Hamilton, Ontario;
- (d) the arbitrator will make a decision and advise both the parties in writing of the decision no later than 15 business days following the day on which the written submissions are provided to the arbitrator;
- (e) the costs of the arbitration shall be borne equally by the parties except that each party will pay its own legal expenses unless the arbitrator rules otherwise;
- (f) the parties shall co-operate promptly and in good faith with the arbitrator to provide full disclosure of information relevant to the dispute;
- (g) the arbitration award shall be given in writing and shall be final and binding on the parties, not subject to any appeal except as set out in the *Arbitration Act, 1991* (Ontario), and shall deal with the questions of costs of arbitration and all related matters;
- (h) all Disputes referred to arbitration (including the scope of the agreement to arbitrate, any statute of limitations, set-off claims, conflict of laws rules, torts claims and interest claims) shall be governed by the substantive law of Ontario;
- (i) The arbitrator shall make such other rules of procedure, evidence and other matters for an arbitration as are reasonable having regard to the timing requirements set out herein;

- (j) the parties agree that the arbitration shall be kept confidential and that the existence of the proceedings and any elements of it (including any pleadings, brief or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrator, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may lawfully be recorded in judicial proceedings relating to the arbitration or otherwise.

In witness whereof the Landlord and Tenant have executed this lease as of the first date set out above.

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**THE CORPORATION OF THE CITY OF  
HAMILTON**

By: \_\_\_\_\_

c/s

By: \_\_\_\_\_

**THE HAMILTON HARBOUR  
COMMISSIONERS**

By: \_\_\_\_\_

c/s

By: \_\_\_\_\_

SCHEDULE B

The Land: legal description: ●

Term: 15 years commencing on ●, 2000 and ending on ●, 2015.

Rent: \$1.00 per annum

**Permitted Uses of  
the Demised Premises**

**(the "Permitted Business"):** For the operation of a marina and sailing school and no other purpose

Address for Notice: Landlord: ●

Tenant: ●

Early Termination

At any time during the Term, the Tenant shall have the right, exercisable on one year's written notice to the Landlord, to terminate this lease and the Chattel Lease. On the termination date, the Tenant shall surrender the Demised Premises in the condition required to be maintained by the Tenant under this Lease. The Tenant shall not have any claim or remedy against the Landlord in the event that it elects early termination of this lease as set out herein, except in the case of a breach by the Landlord of the terms set out in this lease or the Chattel Lease, in which case a claim may only be made pursuant to arbitration in accordance with this lease.

Audit

The Landlord shall have the right, to conduct an annual audit of the capital equipment, buildings, and fixtures to review and confirm the Tenant's compliance with its obligations to repair, replace and maintain, and to account for the same as provided herein and in the Chattel Lease. The Tenant agrees to make available to the Landlord such of its books and records, including the working papers of its accountants or auditors as may be required to be reviewed in order to confirm Tenant's compliance with such obligations, available for review and copying by the Landlord or its representative in connection with such audit.

Adjustment of Net Book Value

Each of the parties agree, at the end of the Term (and in any case of early termination by the Tenant or for default) to make or to accept (as the case may be) a one-time payment to adjust for any increase or decrease in the Net Book Value of the Improvements (other than buildings) that may arise between the commencement date and the expiration date of this lease, applying generally accepted accounting principles. If any payment is due from the Tenant to the Landlord under this section, and the Tenant has made repairs to the Improvements (other than buildings) or any part thereof which are not otherwise reflected in their net book values using its own staff, equipment and other resources, the payment due from the Tenant may be reduced to the extent that the Tenant establishes the net value of such repairs, provided that no claim for any payment by the Landlord to the Tenant shall be made on this basis. If the parties at the expiration of the Term are unable to agree upon the amount of the payment to be made under this Section, then the amount shall be determined by a single arbitrator in accordance with the dispute resolution provisions set out herein. The remedy under this Section shall be the sole remedy available to the parties in respect of the value of, or their investment in, the Improvements.

Non-Competition

The Landlord agrees that it will not operate (or permit any tenant to operate), on any lands transferred by the Tenant to Landlord under the Settlement Agreement, any marina or sailing school operations that compete with the Tenant's operations at the Demised Premises, provided that:

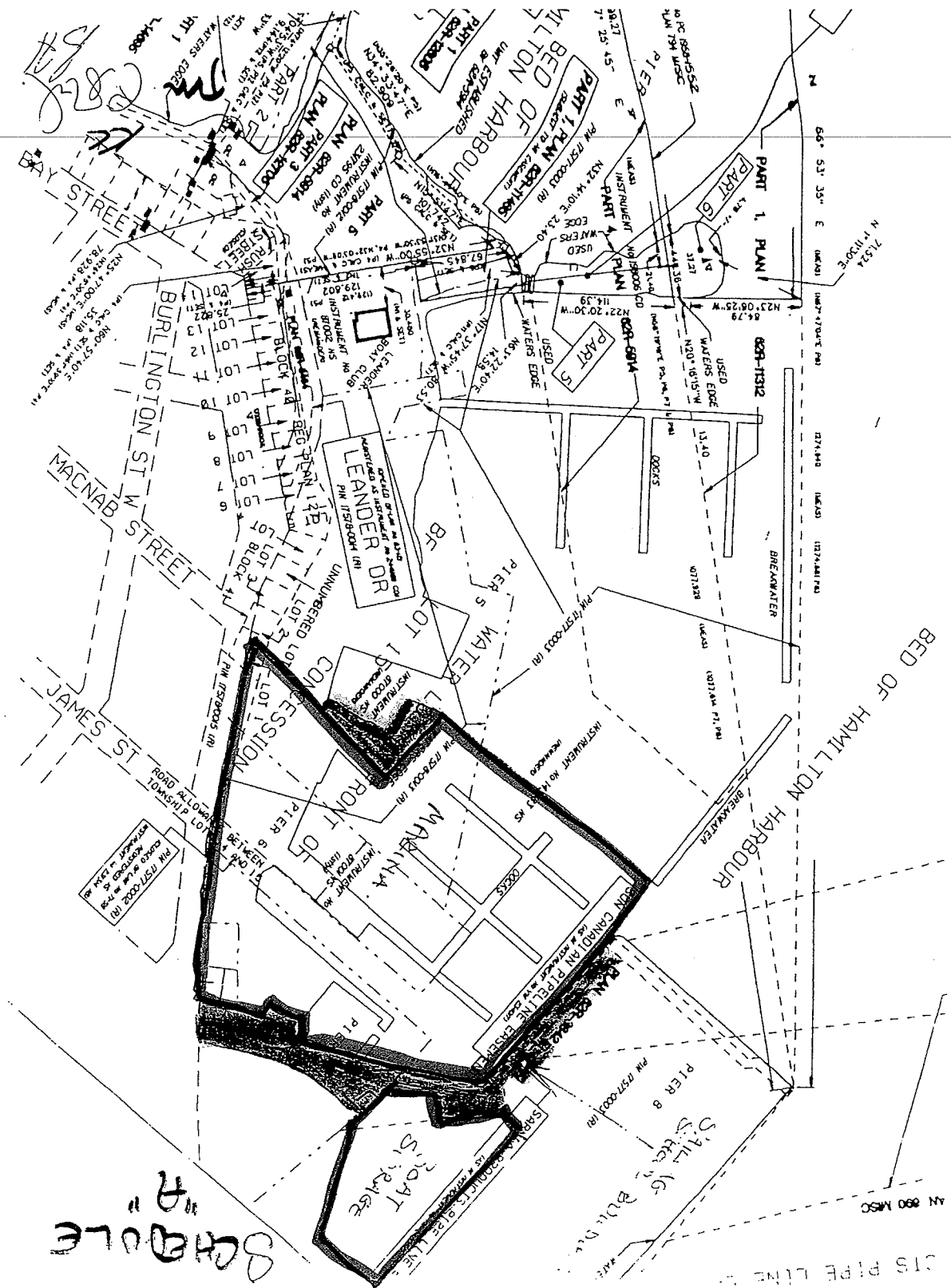


- 2 -

- (a) the Tenant shall not withdraw any services, facilities or pricing concessions with respect to the Lands and the Tenant's operations thereon previously provided to the Royal Hamilton Yacht Club or Leander Boat Club that would jeopardize the viability of these parties;
- (b) the Tenant will offer all its marina and sailing school services (other than moorage) to the boating public generally, on the same terms and conditions as they are offered to the Tenant's own moorage customers on the Pier 6 slips from time to time; and
- (c) nothing in this section shall prevent the Landlord, The Royal Hamilton Yacht Club, or the Leander Boat Club from using any land, buildings or other assets currently being used for such purposes, for providing, or continuing to provide, the marina services and facilities that have been provided on or in connection with the Pier 5 lands and slips in the period immediately prior to the commencement date of this lease.

**Remedy by Injunction**

The parties agree that in the event of a breach of any of the terms of this lease for which the law recognizes that damages may be an inadequate remedy, the parties agree that a remedy by way of injunction shall be available in an arbitration hereunder.



CHATTEL LEASE

THIS LEASE made this \_\_\_\_\_ day of \_\_\_\_\_, 2000, between:

**THE CORPORATION OF THE CITY OF HAMILTON**  
(the "Lessor")

\_\_\_\_\_ of the first part

- and -

**THE HAMILTON HARBOUR COMMISSION**  
(the "Tenant").

\_\_\_\_\_ of the second part

In consideration of their respective covenants set out below, Lessor and Lessee agree as follows:

**1. Interpretation**

**(1) Definitions**

In this lease:

"Alteration" has the meaning specified in section 5(3);

"business day" means a day which is not a Saturday, a Sunday or a statutory or civic holiday in the Province of Ontario;

"default" means an event which, with the giving of notice or lapse of time, or both, may become an Event of Default;

"demand date" has the meaning attributed thereto in subsection 6(2)(f);

"Demised Premises" shall have the meaning given to such term in the Ground Lease;

"Event of Default" means an event described in section 6(1) in respect of which all preconditions (such as the lapse of time or the giving of notice by Lessor, or both) to the Lessor's exercise of one or more of its remedies in section 6(2) have been satisfied or have expired, and with respect to which the Lessor, according to the terms of sections 6(1) and (2), is then immediately entitled to exercise one or more of its remedies under section 6(2);

"Ground Lease" means a lease dated of even date hereof, between the Lessor, as landlord, and the Lessee, as tenant and attached as a Schedule to the Settlement Agreement;



"Leased Assets" means the Major Capital Assets and the Operating Assets;

"Lien" has the meaning attributed thereto in section 5(4);

"Major Capital Assets" means those assets described in Schedule "A" under the heading Major Capital Assets;

"Net Book Value" means the net book value of the Leased Assets as reflected in the Lessee's books and records applying generally accepted accounting principle, consistently applied with prior periods;

"Operating Assets" means at any time the equipment and personal property described in Schedule A under the heading Operating Assets, all parts, components, attachments and accessories thereto, together with all attachments, replacements, Alterations (to the extent that such Alterations may from time to time become or be deemed to be property of Lessor as contemplated in section 5(3), repair parts and components and all plans, surveys, blueprints, technical drawings and other drawings with respect to any of the foregoing, but shall not include any replacements which are not accounted for in the Net Book Value statement prepared by the Tenant in connection with s.5(13)

"person" includes an individual, corporation, trust, partnership, governmental authority and any other entity;

"Proceeds of Disposition" has the meaning attributed thereto in clause 6.2(f)(v);

"Settlement Agreement" means the Agreement dated as of October 26, 2000 and signed by the Landlord and the Tenant to which this Lease is a Schedule

"Taxes" means any and all taxes, rates, duties, assessments, levies, licence fees and other public charges (excluding only Canadian federal and provincial taxes or foreign taxes on net income or capital of Lessor and Canadian provincial or municipal place of business taxes and other similar taxes in respect of Lessor or its property other than the Leased Assets) which may at any time be charged or assessed directly or indirectly with respect to this lease or the Leased Assets, or Lessor's or Lessee's interest therein, or with respect to the use, leasing or operation of the Leased Assets, and all interest and applicable penalties with respect thereto, whether assessed, levied or charged by any municipal, provincial or federal government, any school board or any other public body;

"Term" has the meaning specified in section 2(2); and

"this lease", "herein", "hereunder", "hereof" and similar terms refer to this lease as a whole and not to any particular article, section, schedule or other subdivision of this lease.

(2) **Number and Gender**

The necessary grammatical changes required to make the provisions of this lease apply in the plural sense where the Lessee comprises more than one entity and to corporations, associations, partnerships or individuals, males or females, in all cases will be assumed as though in each case fully expressed.

(3) **Headings and Captions**

The article numbers, article headings, section numbers and section headings are inserted for convenience of reference only and are not to be considered when interpreting this lease.

(4) **Obligations as Covenants**

Each obligation of the Lessor or the Lessee expressed in this lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

(5) **Entire Agreement**

This lease, the Ground Lease, and the Settlement Agreement contain all the representations, warranties, covenants, agreements, conditions and understandings between the Lessor and the Lessee concerning the Demised Premises or the subject matter of this lease.

(6) **Governing Law**

This lease shall be interpreted under and is governed by the laws of the Province of Ontario.

(7) **Construction**

If any provision of this lease is illegal or unenforceable it shall be considered separate and severable from the remaining provisions of this lease, which shall remain in force and shall be binding as though the said provision had never been included. If there is more than one tenant then all obligations of the Lessee hereunder shall be joint and several.

(8) **Schedules**

Annexed to and forming a part of this lease are the following schedules:

Schedule A — description of Leased Assets

**2. Demise and Term****(1) Demise**

Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, the Leased Assets, to have and to hold the same during the Term upon and subject to the terms and conditions set out below.

**(2) Term**

The term of this lease (the "Term") shall be for a period of fifteen (15) years and shall commence on • and, except as otherwise expressly provided herein, shall terminate on •. This lease cannot be cancelled or terminated except as expressly provided herein.

**(3) Title**

Title to the Leased Assets is and shall at all times remain vested in Lessor. This agreement is one of lease only. Lessee shall have no right, title or interest in the Leased Assets except the right to use and possess the same upon and subject to the terms and conditions contained in this lease. Lessee shall defend Lessor's title against any contrary claim asserted during the Term or at any other time by any person claiming through or against Lessee or arising out of or related in any way to this lease or Lessee's possession or use of the Leased Assets.

**3. Rent**

(1) Lessee shall pay to Lessor as rent for the Leased Assets a payment in the amount of \$1.00.

**(2) Net Lease**

Except as expressly provided herein, this lease is a net lease and every cost and expense existing or arising with respect to the Leased Assets, the delivery thereof or Lessee's lease, possession or use thereof and all Taxes shall be borne by Lessee.

**4. Representations and Warranties****(1) Lessee's Representations and Warranties**

Lessee represents and warrants to Lessor that:

- (a) Lessee is duly qualified and holds all necessary licences, approvals, certificates and permits to enable it to lease the Leased Assets from Lessor and to operate the same as contemplated in this lease;
- (b) Lessee has full power, authority and the legal right to enter into this lease and perform its obligations hereunder, and the execution and delivery by it of this

lease and performance of its obligations hereunder have been duly authorized by all necessary corporate action on the part of Lessee and will not violate any provision of law or of the constating documents or bylaws of Lessee or result in a breach of or constitute a default under any agreement, indenture or other instrument to which Lessee is a party or by which it or any of its property may be bound or affected, or permit any lender to accelerate or demand repayment of any material amount of indebtedness of Lessee;

- (c) this lease constitutes a legal, valid and binding obligation of Lessee; and
- (d) all consents, authorizations and approvals of third persons, if any, necessary with respect to this lease and to performance by Lessee of its obligations hereunder and for the protection and preservation of Lessor's interest in the Leased Assets have been obtained.

**(2) Lessor's Representations and Warranties; Exclusions**

- (a) Lessor represents and warrants to Lessee that:
  - (i) Lessor is a corporation duly incorporated, organized and validly existing under the laws of Ontario) and is duly qualified to own the Leased Assets and to lease it to Lessee as provided in this lease;
  - (ii) Lessor has full power, authority and the legal right to enter into this lease and perform its obligations hereunder, and the execution and delivery by it of this lease and performance of its obligations hereunder have been duly authorized by all necessary corporate action on the part of Lessor and will not violate any provision of law or of the constating documents or by-laws of Lessor or result in a breach of or constitute a default under any agreement, indenture or other instrument to which Lessor is a party or by which Lessor or any of its property may be bound or affected; and
  - (iii) this lease constitutes a legal, valid and binding obligation of Lessor;
- (b) Except as set forth in subsection 4(2)(a), there are no conditions, representations or warranties by Lessor or operating in favour of Lessee, whether oral or written, express or implied, statutory or otherwise, with respect to Lessor, the Leased Assets, and this lease. In that regard, and for greater certainty, Lessee acknowledges that: (i) it has selected the Leased Assets without placing any reliance on Lessor or on Lessor's skill or judgement, and that Lessor has purchased the same at the direction of Lessee, and that Lessor shall not be held to have examined, inspected or assembled the Leased Assets or any part thereof for any purpose; (ii) the Leased Assets are leased under this lease on an "as is" basis; (iii) and there are no warranties, conditions, terms, representations or inducements, oral or written, express or implied, statutory or otherwise, made by or on behalf of Lessor or operating in favour of Lessee as to any aspect of the

Leased Assets including, without limitation, as to its condition, operation, fitness for any particular purpose, durability or merchantability, or as to Lessor, this lease or any other matter related to this lease transaction, all of which are hereby waived and excluded from this lease to the fullest extent permitted by applicable law, and Lessee agrees not to seek or claim the benefit thereof.

**5. Use of Leased Assets**

**(1) Taxes, Compliance With Laws; Use of Leased Premises**

- (a) Lessee shall promptly pay all Taxes in respect of the Leased Assets, when due, to Lessor or to the proper governmental authority. Notwithstanding the foregoing,
- (i) if by law any particular Tax, at the option of the Lessee, may be paid by instalments (whether or not interest may accrue on the unpaid balance from time to time), Lessee may pay the sum in instalments as they become due; and
- (ii) Lessee may, upon written notice to Lessor, refrain from paying any particular Tax if (i) the amount, applicability or validity thereof is then being contested by Lessee, and (ii) Lessee shall have deposited with or otherwise delivered to the applicable governmental authority such security for payment if, and in such amount as may be, required by such governmental authority or by applicable law in order to permit Lessee to contest the same, and shall have provided Lessor with evidence satisfactory to it that the effect of such proceeding is to postpone or avoid the enforcement of such Tax and any forfeiture or seizure of any part of the Leased Assets; but upon final determination of such proceeding Lessee shall immediately pay and satisfy all proper Taxes, costs, penalties, interest or other charges payable by it in connection therewith.
- (b) Lessee shall at all times and at its own expense comply with all applicable statutes, laws, regulations, orders and rules, present or future, and the requirements of any insurance policies and underwriters relating to the ownership, possession, use, operation, maintenance, alteration, storage, repair, delivery, return or other disposition of all and any part of the Leased Assets, including, without limitation, all of the same relating to equipment standards, spill contingency plans, spill containment and clean-up, annual testing and filing of all reports required in respect thereof with all applicable governmental and regulatory bodies and authorities. Lessee shall indemnify and hold Lessor harmless with respect to any failure to so comply and shall, upon request, furnish Lessor with evidence satisfactory to Lessor of Lessee's compliance.



(2) **Maintenance, Use and Inspection**

- (a) Lessee shall, subject to its duty to account at the end of the Term in accordance with this Lease, at all times and at its own expense, and notwithstanding any defective condition on the date hereof or thereafter, be permitted to sell, trade, transfer, discard, and if appropriate in its judgment, replace any of the Leased Assets, and shall maintain the Leased Assets in good mechanical and working order and in safe condition, and shall repair and replace them all in a manner and to a standard that is commercially reasonable and consistent with the past practices and policies of the Lessee in connection therewith, and shall make any and all necessary repairs and replacements to the Leased Assets, and shall furnish or obtain and install any and all parts, components, accessories and servicing required to keep the Leased Assets in the state required by this lease, all at the expense of the Tenant.
- (b) Lessee shall cause the Leased Assets to be maintained and operated by competent and duly qualified personnel only, and for proper business purposes, and in compliance with all manufacturer's or supplier's recommendations, instructions, manuals and specifications and with all terms and provisions of this lease.

(3) **Alterations, Additions, Improvements and Replacements**

- (a) Lessee shall be entitled, at its expense, to make alterations, additions or improvements (each individually referred to as an "Alteration") to the Leased Assets provided that any such Alteration and all such Alterations collectively shall not be subject to, and shall not subject the Leased Assets to, any Lien which is not removed prior to the end of the Term.

Where, in respect of any Alteration, Lessee would be required or permitted by applicable law to obtain any permit, certificate, inspection or approval prior to or following making of the same from any governmental authority, Lessee shall obtain the same and promptly provide Lessor with evidence thereof.

- (b) All Alterations required by law or required to maintain the Leased Assets in the condition required by this lease or constituting replacements for any existing part of the Leased Assets shall upon the earlier of installation or completion become the property of, and the same are hereby conveyed to, Lessor without requirement of any further act or formality, and thereafter all such Alterations shall for all purposes be and be deemed to be part of the Leased Assets. All other Alterations shall remain the property of Lessee. Lessee shall not be entitled to remove any Alterations which become the property of Lessor but shall be entitled during the Term to remove any Alterations which remain the property of Lessee. However, damage caused by such removal shall be repaired by Lessee at Lessee's expense.

- (c) If Lessee fails to remove any Alterations which it is entitled to remove during the Term Lessor may, in the event that any such Alterations diminish the value of the Leased Assets when in its original condition hereunder, require Lessee to remove the same at or prior to the date Lessee is required to surrender or return the Leased Assets to Lessor under section 5(11). If Lessee does not remove and is not required by Lessor to remove any Alteration which otherwise would remain Lessee's property under subsection 5.3(2), any further right on the part of Lessee to remove the same after expiry of the Term shall be extinguished, and all right, title and interest of Lessee in and to all Alterations which had previously remained the property of Lessee but which have not been removed by Lessee shall without further act or formality be vested in and the same are hereby conveyed to Lessor. In addition, Lessor shall be indemnified by Lessee for any damages suffered by Lessor as a result of Lessee's failure to remove any Alteration which diminishes the original value of the Leased Assets.
- (d) ~~If during the Term either the Lessee decides that it is commercially reasonable from an operating perspective or the Lessor decides that it is commercially reasonable as owner to undertake any capital repairs or improvements to, or replace any, Major Capital Assets or part thereof (each individually referred to as a "Replacement"), such Replacement shall be undertaken by the Lessee and shall be subject to the prior written consent of the City or the Lessee respectively, which consent by either party shall not be unreasonably withheld or delayed. The parties shall, acting reasonably, agree upon the design and cost sharing plans in respect of the Replacement having regard to the expected useful life of the Replacement and the time remaining in the Term.~~
- (e) All Replacements shall upon the earlier of installation or completion become the property of, and the same are hereby conveyed to, Lessor without requirement of any further act or formality, and thereafter all such Replacements shall for all purposes be and be deemed to be part of the Leased Assets. All other Alterations shall remain the property of Lessee.
- (f) Lessee shall, if so requested by Lessor, execute and deliver to Lessor such bills of sale, assignments, conveyances, deeds and other documents and instruments as may be requested by Lessor to evidence the transfer to Lessor of title in and to any Alterations or Replacements which are to become the property of Lessor as contemplated in this section 5(3).

**(4) Prosecution of Work**

Lessee shall make and complete all repairs, Alterations, additions, changes or improvements to the Leased Assets diligently and in a good and workmanlike manner.

**(5) Liens and Encumbrances**

Lessee shall not at any time during the Term permit any builder's, labourer's, material supplier's or other similar lien or charge to stand against the whole or any part of the Leased Assets. In addition, at all times during the Term and so long as any amount owing hereunder shall remain unpaid, Lessee shall keep the Leased Assets and all Alterations referred to in subsection 5(2)(e) free and clear of all other liens, charges, encumbrances, security interests, seizures and rights or claims of third parties of any kind or nature (any such lien, charge, encumbrance, security interest, seizure and third party right and claim of any kind or nature being referred to as a "Lien"), except for any Lien arising out of claims against the Lessor unrelated to this transaction and to the Leased Assets. Notwithstanding the foregoing Lessee may, upon written notice to Lessor, refrain from paying and discharging any Lien if:

- (a) the amount, applicability or validity thereof is being contested by Lessee, and
- (b) Lessee shall have deposited with Lessor or with a court having jurisdiction or with the appropriate governmental authority such amount by way of cash, certificates of deposit or other security, if any, as may be required by such court or governmental authority or by applicable law in order to permit Lessee to contest the same, and shall have provided to Lessor, if and whenever requested by Lessor, with evidence satisfactory to Lessor that the effect of such proceedings is to postpone or avoid the enforcement of the Lien and forfeiture of any part of the Leased Assets.

However, upon final determination of such proceedings Lessee shall immediately pay and satisfy all costs, penalties, interest or charges payable by it in connection with the Lien and such proceedings.

**(6) Loss or Damage; Restoration and Rebuilding; Expropriation**

Lessee assumes the entire risk of loss (including loss or interruption of use) of or damage to the Leased Assets from any cause whatsoever. No loss or damage, other than loss or damage arising from the negligence of Lessor shall affect or impair the obligations of Lessee under this lease, all of which shall continue in full force and effect subject to subsection 5(6)(c).

**(7) Loss Insurance**

Lessee shall maintain insurance against loss, damage or destruction of the Leased Assets as would a prudent owner of similar premises. Such insurance shall protect the Landlord and the Tenant in an amount consistent with the tenant's past practices, and the Landlord shall be named insured in the insurance policy, which shall contain a cross-liability clause protecting the Landlord against claims by the Tenant as if the Landlord were separately insured and protecting the Tenant against claims by the Landlord as if the Tenant were separately insured.

(8) **Third Party Liability, Indemnity**

- (a) Lessee assumes liability for all loss, damage, injury or death to persons or property arising directly or indirectly out of the possession, operation, storage or use of the Leased Assets during the Term, by whomsoever caused and whether or not caused by negligence unless caused by the negligent actions of Lessor's employees, agents or representatives. For greater certainty, it is understood that Lessor will not be responsible for any failure or omission to act, whether or not negligent, nor for any liability which may accrue to it by virtue only of its ownership of or interest in the Leased Assets, any such liability being solely the responsibility of Lessee. Lessee shall insure at its expense both Lessor and Lessee against such liability under comprehensive general liability policies (including contractual and, where commercially available, pollution liability insurance) as would a prudent owner of similar premises. Such insurance shall protect the Landlord and the Tenant in an amount consistent with the tenant's past practices, and the Landlord shall be named insured in the insurance policy, which shall contain a cross-liability clause protecting the Landlord against claims by the Tenant as if the Landlord were separately insured and protecting the Tenant against claims by the Landlord as if the Tenant were separately insured.
- (b) Lessee shall indemnify and save harmless Lessor, its directors, officers, employees and agents, from any liability described in subsection 5(8)(a) for which Lessee assumes liability under this lease and, subject to its control thereof, for all reasonable legal fees and other reasonable fees and costs Lessor or any of such persons may incur defending any claims, actions or proceedings in respect of any such liability. Lessee shall also indemnify and save harmless Lessor, its officers, employees and agents, from and against any and all other claims, demands, liabilities (statutory or otherwise), losses, costs, charges and expenses of whatever nature or kind relating to the Leased Assets including those relating to the possession, use, operation, maintenance, alteration, storage, repair, delivery, return or other disposition of all or any part of the Leased Assets unless caused by the negligent actions of Lessor's employees, agents or representatives.

(9) **Proof of Insurance; Notice of Changes**

Certificates confirming existence of the insurance coverage required to be maintained by Lessee under sections 5(7) and 5(8) shall be provided to Lessor upon request but Lessor shall not be deemed to have reviewed the same or the sufficiency thereof except where it has so confirmed in writing. In the event of issuance of notice of cancellation or termination, Lessee shall provide Lessor with satisfactory evidence of replacement insurance complying with this lease.

(10) **Failure to Perform Covenants**

If Lessee fails to maintain, to insure, to pay taxes or to keep the Leased Assets and the respective interests of Lessor and Lessee therein free and clear of all claims, proceedings and

Liens as required by this lease, or to perform or observe any other covenant or condition of this lease, then in addition to its other remedies and provided that, if Lessee is not otherwise in default hereunder, such failure shall have continued for a period of not less than sixty (60) days (except in the event of a failure to insure, in which event Lessor may exercise its rights under this section 5(10) immediately), Lessor may, but shall not be obligated to, pay for repairs, pay to insure, pay taxes, pay to discharge, release or vacate any adverse claim or Lien against all or any part of the Leased Assets or to release the Leased Assets from proceedings, or pay any other sum or otherwise take such steps and proceedings as may in its opinion be required to cure or partially cure any default by Lessee hereunder. The reasonable cost of such actions and all amounts so paid and incurred by or on behalf of Lessor shall be payable to Lessor from the date the same is paid by Lessor to the date of payment by Lessee.

**(11) Return Condition; Redelivery on Termination**

- (a) On expiry or termination of this lease for any reason Lessee shall return the Leased Assets or their replacements to Lessor.
- (b) The Leased Assets and their replacements shall be returned to Lessor at the end of the Term in good mechanical and working order, repair, condition and appearance.

**(12) Early Termination**

At any time during the Term, the Lessee shall have the right, exercisable on one year written notice to the Lessor, to terminate this lease and the Ground Lease. On the termination date, the Lessee shall surrender the Leased Assets in the condition required to be maintained by the Lessee under this Lease. The Lessee shall not have any claim or remedy against the Lessor in the event that it elects early termination of this lease as set out herein, except in the case of breach by the Lessor of the terms set out in this lease or the Ground Lease, in which case a claim may only be made pursuant to arbitration in accordance with this lease.

**(13) Adjustment of Net Book Value**

Each of the parties agree at the end of the Term (and in any case of early termination by the Tenant or for default) to make or to accept (as the case may be) a one-time payment to adjust for any increase or decrease in the Net Book Value of the Leased Assets that may arise between the commencement date and the expiration date of this lease, applying generally accepted accounting principles. If any payment due from the Lessee to the Lessor under this section arises as a result of the Lessee's use of its own staff, equipment and other resources to effect repairs to the Leased Assets or any part thereof, the payment due from the Lessee may be reduced to the extent that the Lessee establishes the net value of such repairs, provided that no claim for any payment by the Lessor to the Lessee shall be made on this basis. If the parties at the expiration of the Term are unable to agree upon the amount of the payment to be made under this Section, then the amount shall be determined by a single arbitrator in accordance with the dispute

resolution provisions set out herein. The remedy under this Section shall be the sole remedy available to the parties in respect of the value of, or their investment in, the Leased Assets.

(14) **Dealing with Leased Assets in Ordinary Course of Business**

Without limiting the obligation of the Lessee to maintain the Leased Assets and account for them, in accordance with this Agreement, the Lessee shall, during the Term, have full authority to deal with and dispose of the Operating Assets in the ordinary course of business.

6. **Default; Remedies of Lessor**

(1) **Events of Default**

Each of the following shall constitute an event of default (an "Event of Default") under this lease:

- (a) if Lessee assigns this lease or sublets, transfers, surrenders or loses possession (except by theft) of any of the Leased Assets, except in the ordinary course of business, whether by seizure, expropriation, abandonment or otherwise;
- (b) if Lessee makes an assignment for the benefit of creditors;
- (c) if Lessee states in writing its inability to pay its debts as they fall due or demonstrates an intention to cease carrying on business;
- (d) if a receiver, receiver-manager, trustee or similar official is appointed for Lessee or any of its property which appointment is not contested by Lessee or which, if contested, is not vacated within ten (10) days of the appointment;
- (e) if a petition in bankruptcy or other proceeding or application for reorganization or liquidation of Lessee under any federal or provincial law is filed or commenced by or against Lessee which is not contested by Lessee or which, if contested, is not discharged within ten (10) days of filing;
- (f) if Lessee suspends business, or transfers to one or more other entities all or a substantial part of Lessee's property, or seeks any proposal, arrangement or compromise with its creditors under the Bankruptcy and Insolvency Act (Canada) or any other statute or otherwise, or becomes subject to or does or fails to do any act or thing reasonably considered by Lessor to result in the material impairment of Lessee's ability to perform its obligations under this lease, or as evidencing a lack of intention on the part of Lessee so to do;
- (g) if Lessee commits an act of bankruptcy;
- (h) if Lessee fails to comply with or to perform any other term of this lease provided;
  - (i) Lessee has been given notice of such failure by or on behalf of Lessor and a

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period of sixty (60) days has elapsed from the date of such notice without Lessee having cured the same, or (ii) where by its nature such failure is capable of being cured but is not capable of cure within sixty (60) days. Lessee has not proceeded diligently to cure such failure or, in any event, if such failure has not been cured within 180 days of such notice; and

- (i) the Lessee shall be in default under the Ground Lease.

**(2) Consequences of Default; Remedies**

- (a) Upon the occurrence of any Event of Default, Lessor may, subject to any provision of applicable law which cannot be waived:
  - (i) take any proceedings and pursue any remedies available to it under this lease, at law, equity or by statute to compel performance by Lessee of its obligations under this lease or to cure any default by Lessee and/or in the alternative, to recover damages;
  - (ii) with or without terminating this lease, enter personally, or by agents or attorneys, upon any premises where the Leased Assets or any part thereof may be located and repossess all or any part of the Leased Assets without any prior or further demand, notice, court order or other process of law, and may use such force as may be lawful and as circumstances may require, and Lessee hereby releases Lessor from all liability for damage occasioned by such repossession and agrees to indemnify and save Lessor harmless against all claims for such damage;
  - (iii) as agent for Lessee, without terminating this lease and without in any way releasing Lessee from any of its obligations hereunder, re-lease the Leased Assets for such period and upon such terms as Lessor deems fit and apply the net proceeds of such re-leasing against amounts payable hereunder (including amounts payable under subsection 6(2)(v));
  - (iv) provided such Event of Default has continued unremedied for not less than (insert period) days, or if Lessee has expressed or demonstrated an intention not to remedy such Event of Default, or such Event of Default is not by its nature reasonably capable of being remedied within such period of time, elect to terminate this lease, in which event Lessor may elect to retain or dispose of the Leased Assets in whole or in part, whether by public sale, private sale, lease or otherwise, and at such time and place and upon such terms and conditions (including sale for deferred payments) as are commercially reasonable in the circumstances, and

(3) Exercise of Remedies

The remedies specified in this lease, except the right to monetary compensation in accordance with sections 5(13) and 8(5) hereof, are in addition to any other rights Lessor may have at law, equity or under this lease, and Lessor may exercise any one or more of such rights successively or concurrently.

(4) Waiver, Amendment

No covenant or condition of this lease to be performed or observed by Lessee can be waived except by written consent of the other party. Forbearance by either party in any regard shall not constitute a waiver. No waiver of a single default shall be deemed a waiver of any other, nor shall any single or partial exercise of any remedy preclude any further exercise thereof or of any other remedy of the party not in default. This lease shall not be amended except in writing signed by authorized representatives of each party.

7. Dispute Resolution

Any controversy, question, claim or other dispute arising out of or relating to this lease (a "Dispute") which is not resolved in the first instance by negotiation in good faith between the parties within 14 business days of the Dispute arising, shall be resolved by either party giving written notice to the other that the Dispute is to be submitted to arbitration in accordance with this paragraph. For any Dispute submitted to arbitration, the following provisions shall apply:

- (a) the arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Lessor and the Lessee or in the event of failure to agree within 10 business days following delivery of the written notice to arbitrate, any party may apply to a judge of the Superior Court of Justice (Ontario) to appoint an arbitrator. The arbitrator shall be qualified by education and training to pass upon the particular matter to be decided;
- (b) the submissions of each party shall be in writing, and provided to the arbitrator and the other party within two business days of the dispute being submitted to arbitration;
- (c) the arbitration shall take place in Hamilton, Ontario;
- (d) the arbitrator will make a decision and advise both the parties in writing of the decision no later than 15 business days following the day on which the written submissions are provided to the arbitrator;
- (e) the costs of the arbitration shall be borne equally by the parties;
- (f) the parties shall co-operate promptly and in good faith with the arbitrator to provide full disclosure of information relevant to the dispute;



- (g) the arbitration award shall be given in writing and shall be final and binding on the parties, not subject to any appeal except as set out in the *Arbitration Act, 1991* (Ontario), and shall deal with the questions of costs of arbitration and all related matters;
- (h) all Disputes referred to arbitration (including the scope of the agreement to arbitrate, any statute of limitations, set-off claims, conflict of laws rules, torts claims and interest claims) shall be governed by the substantive law of Ontario;
- (i) the arbitrator shall make such other rules of procedure, evidence and other matters for an arbitration as are reasonable having regard to the timing requirements set out herein;

the parties agree that the arbitration shall be kept confidential and that the existence of the proceedings and any elements of it (including any pleadings, brief or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrator, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may lawfully be recorded in judicial proceedings relating to the arbitration or otherwise.

## 8. General

### (1) Time

Time is of the essence of this lease and of the parties obligations.

### (2) Notices

Any notice to be given pursuant to the provisions of this lease must be in writing and may be personally served in which case service shall be immediate or may be given by prepaid registered post mailed at a post office in the City of Hamilton and shall be deemed to have been served 72 hours following the day of mailing. The address of the Landlord and Tenant for such purpose is set out in Schedule \*. Either party may from time to time notify the other of any change of address.

### (3) Successors and Assigns

This lease shall enure to the benefit of and be binding upon the successors and assigns of the Lessor and the successors and permitted assigns of the Lessee, as the case may be. In addition it is acknowledged by Lessee that the benefit of any release or agreement to indemnify Lessor hereunder shall also extend to and be enforceable by any and all directors, officers, employees, agents and representatives of Lessor from time to time, and may be enforced by any one or more of such persons directly against Lessee, or by Lessor as agent, trustee or otherwise for the benefit of such persons.

(4) **Waiver**

If the Lessor shall overlook or excuse any default by the Lessee of any obligation hereunder this shall not operate as a waiver of such obligation in respect of any continuing or subsequent default and no waiver shall be effective unless expressed in writing. The acceptance of rent by the Lessor from the Lessee or any other entity will not be considered to be a waiver of a breach by the Lessee of its obligations hereunder regardless of the knowledge of the Lessor of the breach at the time of acceptance of the rent.

(5) **Force Majeure**

If and to the extent that either the Lessor or the Lessee shall be prevented, delayed or restricted in the fulfilment of any obligation hereunder other than the payment of money by the Lessee because of any cause beyond the control of the party affected thereby which prevents the performance by such party of any obligation hereunder and not caused by its default and not avoidable by the exercise of reasonable effort including, without limitation, strikes, labour disturbances, civil disturbance, acts, orders, legislation, regulations or directives of any government or public authority, acts of a public enemy, war, riot, sabotage, earthquake, fire, storm, hurricane, flood, explosion or act of God, it shall be deemed not to be a default in the performance of such obligation and any period for the performance of such obligation shall be extended accordingly and the other party to this lease shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

(6) **Audit**

The Lessor shall have the right to conduct an annual audit of the Leased Assets to review

and confirm the Tenant's compliance with its obligations to repair, replace and maintain, and to account for the same as provided herein and in the Ground Lease. The Lessee agrees to make available to the Lessor such of its books and records, including the working papers of its accountants or auditors, as may be required to be reviewed in order to confirm the Tenant's compliance with such obligations, available for review and copying by the Lessor or its representatives in connection with such audit.

(7) **Further Assurances**

Lessee shall at its own expense do, execute, acknowledge or deliver all such further things, agreements, documents and conveyances as may from time to time be requested by Lessor to give effect to or better protect the rights of Lessor hereunder, including but not limited to completion of such public registrations, except registrations under the *Personal Property Security Act* (Ontario), of or with respect to this lease and Lessor's rights hereunder as Lessor may require.

(8) Assignment

- (a) Lessee shall not assign any of its rights hereunder nor sublet the Leased Assets without the prior written consent of Lessor which shall not be unreasonably withheld. No purported assignment or sub-letting by Lessee in contravention of this subsection shall be of any effect as against Lessor.
- (b) Lessor may assign its rights or transfer any of its obligations under this lease, or both, in whole or in part without notice to Lessee, provided that Lessee shall be bound by any such assignment only upon receipt of notice thereof, and that the Lessor shall continue to be bound by its obligations.

EXECUTED by the parties as of the date first written above.

**THE CORPORATION OF THE CITY OF  
HAMILTON**

By: \_\_\_\_\_  
Title:

**HAMILTON HARBOUR COMMISSION**

By: \_\_\_\_\_  
Title:

CURRENT HHC MARINA EMPLOYEES

Salaried Employees

<u>Name</u>	<u>Date of Hire</u>
Robert W. Hollander	09/15/80
Alan Ross	02/15/88
Timothy J. Mudge	04/10 89
Dennis Ogilvie	05/04/92
Brent Kinnaird	04/18/95
Jeffrey P. Papiez	10/20/80
Phillip S. Prew	01/21/89
John Vandasselaar	03/02/87
Alfred S. Smagacz	04/21/97
Glenn Lethbridge	04/30/80
Leslie Makins	01/12/98

Unionized Employees - C.U.P.E. Local 958

<u>Name</u>	<u>Date of Hire</u>
Alan R. Powell	07/30/79
William K. Souter	10/17/90
Chris Gifford	04/19/93
Zhi-Wei Wang	10/09/90
Geophrey E. Archbold	10/06/97
Gary Sequillion	08/10/98
Ron W. Tremain	02/06/97
Jerry Vermeltfoort	09/25/89

mm  
CAG: 37 KE

Framework Agreement

This Agreement made this    day of    , 2000.

Between:                    Her Majesty the Queen in Right of Canada as represented by  
                                  the Minister of Canadian Heritage ("Canada")

and

The Hamilton Harbour Commissioners ("Commissioners")

and

The Corporation of the City of Hamilton ("City")

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. The Commissioners covenant and agree:
  - a) to deed to Canada a parcel of land 8.25 acres in area located on Pier 8 comprising part of Hamilton Harbour lands, and more particularly, shown on a sketch, attached as Schedule "A" (the "Lands").
  - b) that commercial vessels using the Hamilton Harbour will be allowed to tie-up along the northern perimeter of Pier 8 in front of the Lands used for the Interpretive Centre for the purpose of queuing for loading and unloading along the northern perimeter. Queuing for such loading and unloading purpose will only be allowed if no other place along the northern perimeter for such queuing is available, and only then for the shortest amount of time practicable. No tie-up of vessels in front of the Lands used for the Interpretive Centre will occur between December 31 and April 1 of each year. If queuing for the loading and unloading purpose during the April 2 to December 30 period is unduly interfering with the operation of the Interpretive Centre, the Commissioners shall upon the request of Parks Canada review its practices and effect changes so as to eliminate such undue interference.

*Handwritten signatures and initials:*  
JM  
S.F.  
KC

**2. Canada covenants and agrees:**

- a) to develop an Interpretive Centre on the Lands which will tell the story of national protected heritage areas in Canada, have an explicit focus on national marine conservation areas in Canada's oceans and great lakes as well as tell the specific stories on marine conservation in Lake Ontario.
- b) to sell the Lands in the event that either construction of the Interpretive Centre facility is not completed on or before that date which is 36 months from the termination of any existing leases, or the Lands are no longer used as an Interpretive Centre (the "Event") and that before the Lands are offered for sale to any person or body, Canada shall provide written notice (the "Notice") to the City of the Event and the City shall have the right for a period of one hundred and eighty (180) days after receipt of the Notice to elect to purchase the Lands upon the following terms and conditions:
  - (i) the closing date shall be within one hundred and eighty (180) days from the time the City elects to purchase the Lands;
  - (ii) the purchase price for the Lands shall be the lesser of (1) the fair market value of the Lands; or (2) the undepreciated capital cost of the Interpretive Centre building determined in accordance with generally accepted accounting principles; and
  - (iii) all other terms and conditions of the purchase shall be mutually agreed by the parties, acting reasonably.

Fair market value for the purposes of this agreement means the most probable price available in an open and unrestricted market, between informed and prudent parties, acting at arm's length and being under no compulsion to act, expressed in terms of a dollar value of the average of the estimates provided by each of two real estate appraisers. The real estate appraisers shall have regard to the current nature of the Lands, the then current zoning affecting the Lands, and other factors generally affecting the marketability of lands in making the estimates.

- c) In the event that the City shall be entitled to exercise its right of first refusal and chooses not to do so, the Commissioners shall be entitled to exercise a right of second refusal to purchase the Lands for one dollar and upon such other terms and conditions of the purchase as shall be mutually agreed to by the parties acting reasonably.

3. The City covenants and agrees:

- a) to provide full municipal services to the lot line of the Lands.
- b) to construct and maintain to City of Hamilton municipal standards a fully-built access road to the southern limits of the site.
- c) to ensure that the City's by-laws, existing and future, permit the use and location as an Interpretive Centre on the Lands.

4. If the parties disagree as to the fair market value of the Lands or the amount of the undepreciated capital cost, the dispute shall be subject to arbitration in accordance with the *Commercial Arbitration Act* R.S. 1985 c. 17 (2<sup>nd</sup> Supp.) as amended.

5. Canada acknowledges that damages will not be sufficient compensation for the injury suffered to the City should the Lands be transferred in any manner other than as set out herein and that the equitable remedy of a declaration would be appropriate.

6. The parties agree that this agreement may be registered on title to the Lands.

The rights and obligations of the parties under this Agreement are subject to:

- 1. Finalization of definitive agreements to resolve a number of outstanding issues between Canada, the Commissioners and the City with respect to Hamilton Harbour.

2. Canada obtaining all necessary approvals including those of the Treasury Board.

IN WITNESS WHEREOF, the Minister of Canadian Heritage on behalf of Her Majesty has hereunto set her hand and Hamilton Harbour Commissioners and The Corporation of the City of Hamilton have hereunto affixed their corporate seals attested to by their proper signing officers duly authorized in that behalf.

\_\_\_\_\_  
Minister of Canadian Heritage

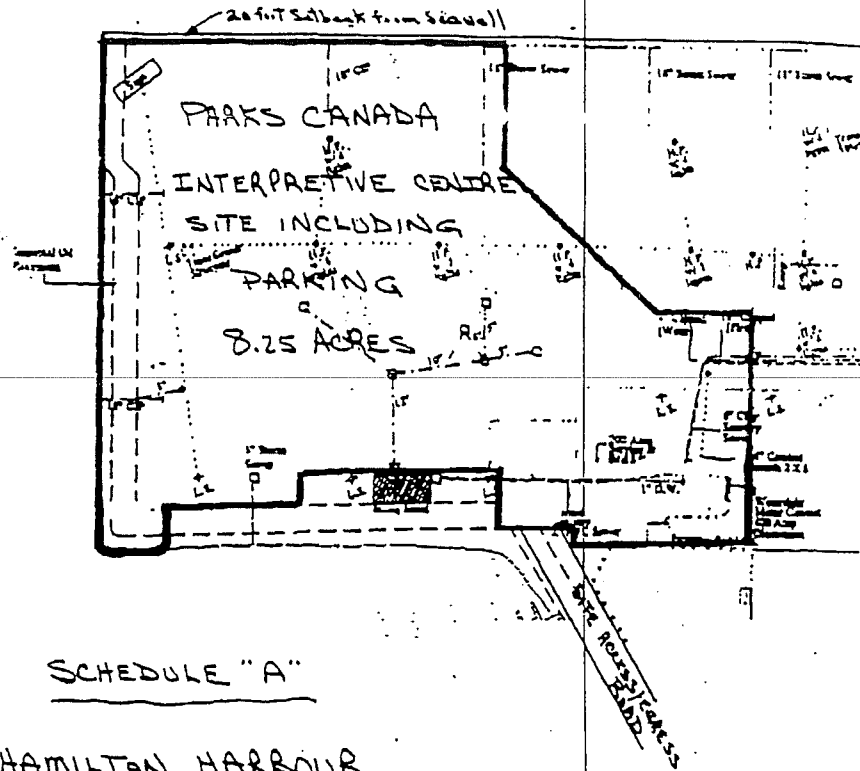
\_\_\_\_\_  
Hamilton Harbour Commissioners

The Corporation of the City of Hamilton

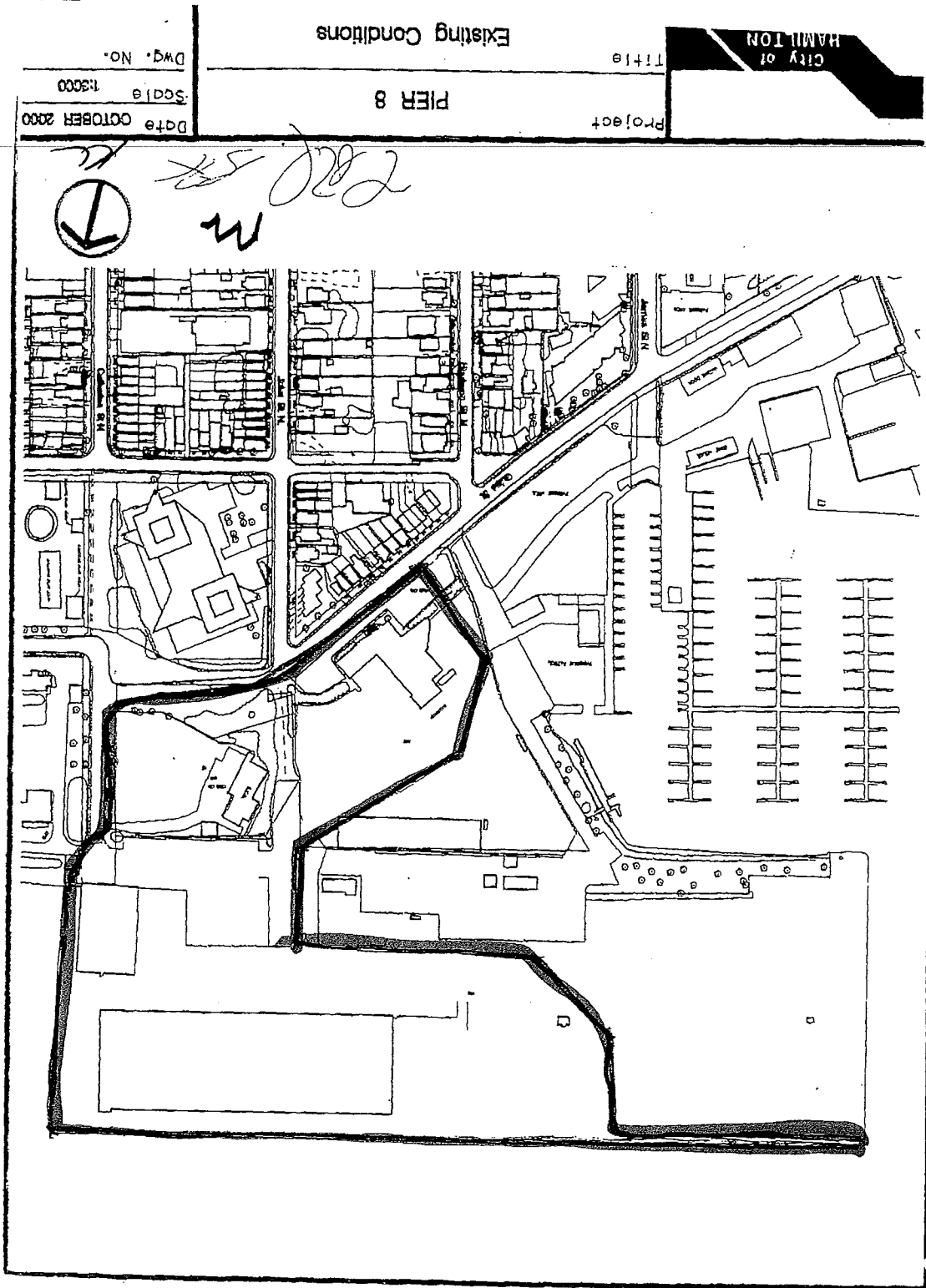
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk





TM  
CC

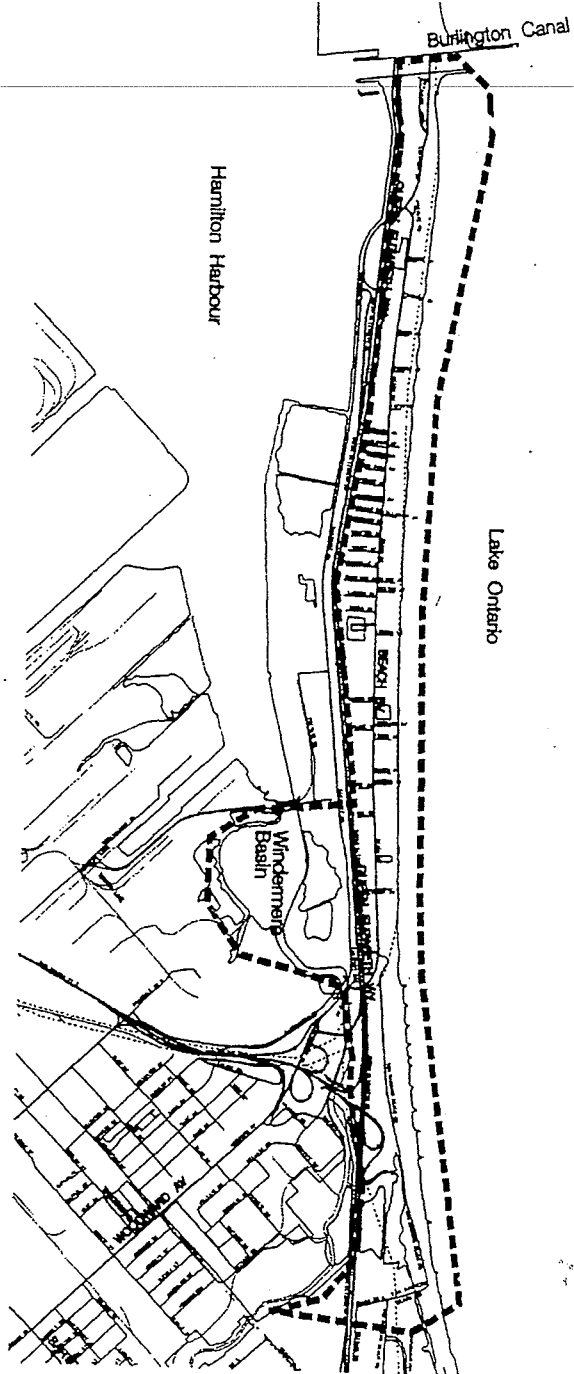


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SCHEDULE 9

*APR 59 KC*

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*SCHEDULE 10*

# SCHEDULE II

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(00-06-27)

Appendix "B" to Report PED15070 / LS15015

Page 60 of 71

## PIER 9 LANDS RIGHT OF FIRST REFUSAL AGREEMENT

This Agreement made in duplicate as of the      day of      , 2000.

**BETWEEN:**      **HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of National Defence (the "Crown")

and

**THE CORPORATION OF THE CITY OF HAMILTON**  
(the "City")

WHEREAS pursuant to Order-in-Council P.C. 11404 dated December 19, 1941 the Crown accepted an offer to purchase, and did purchase for the sum of \$20,000.00 certain lands in the City of Hamilton lying north of the production easterly of the southern limit of Guise Street between the easterly limit of Catherine Street and the production northerly of the westerly limit of Ferguson Avenue and extending north to the revetment wall on the Hamilton Harbour Front, the said lands aggregating 9.23 acres more or less (the "Pier 9 Lands");

AND WHEREAS the resolution of the City Council dated February 9, 1943 records the interest of the City in obtaining a first option to re-purchase the Pier 9 Lands for the sum of \$20,000.00 in the event that they should cease to be used for purposes relating to national defence;

AND WHEREAS the Crown has erected certain buildings, fixtures and improvements on the Pier 9 Lands;

NOW THEREFORE, in consideration of [refer to relevant Settlement Agreements] and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto agree as follows:

1. If and when the Minister of National Defence, in his sole and exclusive discretion, decides that the Pier 9 Lands have become surplus to the needs of the Department of National Defence, the Crown shall sell the Pier 9 Lands, and that, before the Pier 9 Lands are offered to sale to any other person or body, the Crown agrees to give written notice of the Minister's decision in accordance with [notice provisions herein] and the City shall have the right of first refusal, for a period of one hundred and eighty (180) days after receipt of such notice, to elect to purchase the Pier 9 Lands for the price and upon the terms and conditions contained herein.

M

POD 57 KC

2. If the City elects to exercise its right of first refusal under this agreement, the terms of the purchase of the Pier 9 Lands shall be as follows:

- (a) the purchase price shall be the lesser of:
  - (i) the fair market value of the Pier 9 Lands; or
  - (ii) \$20,000.00 plus the undepreciated capital cost to the Crown of any buildings, fixtures and improvements erected by the Crown on the Pier 9 Lands, determined in accordance with generally accepted accounting principles.

less, in either case, the amount of all costs relating to any remedial measures which may be required further to screening under the *Canadian Environmental Assessment Act*, in so far as the remedial measures have not been taken into account in the estimation of the fair market value;

- (b) the City shall use the Pier 9 Lands, or provide for its use, for open space, parks, recreation, or other purposes that are not incompatible with surrounding port uses;
- (c) the City will accept the land on an as is where is basis, and will assume all costs relating to any remedial measures which may be required further to screening under the *Canadian Environmental Assessment Act*;
- (d) the closing date shall be within one hundred and eighty (180) days from the time when the City elects to purchase the Pier 9 Lands; and
- (e) all other terms and conditions of the purchase shall be mutually agreed by the parties, acting reasonably.

Fair market value for the purpose of this agreement means the most probable price available in an open and unrestricted market, between informed and prudent parties, acting at arm's length and being under no compulsion to act, expressed in terms of a dollar value of the average estimates provided by each of two real estate appraisers, such value to be adjusted by the real estate appraisers having regard to the current nature of the Pier 9 Lands, and other factors generally affecting the marketability of lands.

3. If the parties disagree as to the fair market value of the Pier 9 Lands or the amount of the undepreciated capital cost, the dispute shall be subject to arbitration in accordance with the *Commercial Arbitration Act*, R.S., 1985, c. 17 (2<sup>nd</sup> Supp), as amended.

4. [Notice Provisions]

5. The Crown acknowledges that damages will not be sufficient compensation for the injury suffered to the City should the Pier 9 Lands be transferred in any manner other than as set out herein and that the equitable remedy of a declaration would be appropriate.

6. This agreement is conditional upon the settlement of the Superior Court of Ontario action Court File No. 4820/89 between the City, the Crown and The Hamilton Harbour Commissioners and the full and final release of the Crown from all claims contained therein.

7. The parties agree that this agreement may be registered on title to the Pier 9 Lands.

IN WITNESS WHEREOF, the parties have executed this Agreement as evidenced by the signatures of their duly authorized directors, officers or representatives as of the day and year first above written.

HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA as represented by  
the Minister of National Defence

Per: \_\_\_\_\_

THE CORPORATION OF THE CITY  
OF HAMILTON

Per: \_\_\_\_\_

REMAINDER LANDS RIGHT OF FIRST REFUSAL AGREEMENT

This Agreement made in triplicate as of the \_\_\_\_\_ day of \_\_\_\_\_, 2000.

**BETWEEN:** HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Transport (the "Crown")

and

THE HAMILTON HARBOUR COMMISSIONERS (the "HHC")

and

THE CORPORATION OF THE CITY OF HAMILTON (the "CITY")

WHEREAS following the enactment of *The Hamilton Harbour Commissioners' Act*, S.C. 1912, c. 98, as amended, the City transferred to HHC the lands set out in Schedule "A" attached hereto (the "Lands");

WHEREAS the *Canada Marine Act*, S.C. 1998, c. 10, as amended (the "Act") provides a scheme under which it is proposed that HHC may be continued as the Hamilton Port Authority (the "HPA") for the purposes of operating a port at the harbour located at Hamilton, Ontario (the "Hamilton Harbour");

AND WHEREAS, in the event that

- (i) HHC, or any successor to HHC constituted under legislation enacted by the Parliament of Canada (a "Successor"), including but not limited to the HPA, is required to liquidate its assets prior to its dissolution under subsection 55(1) of the Act, or under any successor legislation enacted by the Parliament of Canada in relation to the operation of a port at Hamilton Harbour (a "Liquidation"), or
- (ii) HHC, or a Successor, is dissolved without liquidation of its assets, under subsection 55(2) of the Act, or under any successor legislation enacted by the Parliament of Canada in relation to the operation of a port at Hamilton Harbour (a "Dissolution"), or
- (iii) neither HHC, nor a Successor, continues to operate, directly or indirectly, any port facilities, at Hamilton Harbour, under the Act, or under any successor legislation enacted by the Parliament of Canada (a "Cessation"),

the parties intend that HHC, a Successor or the Crown, as applicable, shall sell the Lands, or any part thereof, held by HHC or a Successor, at the time of the Liquidation, Dissolution or Cessation (the "Remainder Lands") and that, before the Remainder Lands are offered for sale to any other person or body, the City shall have a contractual right of first refusal to elect to purchase the Remainder Lands in accordance with the terms and conditions of this Agreement;

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*jm*  
*PR 58*

**NOW THEREFORE**, in consideration of [refer to relevant Settlement Agreements] and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties:

1. The parties agree that, in the event of a Liquidation, Dissolution or Cessation (the "Event"), HHC, a Successor or the Crown, as applicable, shall sell the Remainder Lands and that, before the Remainder Lands are offered for sale to any other person or body, HHC, a Successor or the Crown, as applicable, shall provide written notice (the "Notice") of the Event to the City, in accordance with the notice provisions in paragraph 13 below, and the City shall have a contractual right of first refusal, for a period of one hundred and eighty (180) days after receipt of the Notice, to elect to purchase the Remainder Lands from HHC, a Successor or the Crown, as applicable, upon the following terms and conditions:

(a) the closing date shall be within one hundred and eighty (180) days from the time when the City elects to purchase the Remainder Lands;

(b) the purchase price for the Remainder Lands shall be the greater of either: (i) the Liabilities Amount (as such term is defined below); or (ii) the Fair Market Value (as such term is defined below) of the Remainder Lands at the time of the Event;

(c) the City will accept the land on an "as is, where is" basis, excepting encumbrances related to secured liabilities which can be satisfied as a result of the payment of the purchase price; and

(d) all other terms and conditions of the purchase shall be mutually agreed by the parties, acting reasonably.

2. For the purposes of this Agreement, "Fair Market Value" means the most probable price available in an open and unrestricted market, between informed and prudent parties, acting at arm's length and being under no compulsion to act, expressed in terms of a dollar value of the average of the estimates provided by each of two real estate appraisers, less the amount of all costs relating to any remedial measures which may be required to be undertaken pursuant to the *Canadian Environmental Assessment Act*, or other applicable legislation, in so far as the remedial measures will be undertaken by the City and the estimates have not been reduced on account of the cost of those measures. The real estate appraisers shall have regard to the current nature of the Remainder Lands, the then current zoning affecting the Remainder Lands, and other factors generally affecting the marketability of lands, in making the estimates.

3. For the purposes of this Agreement, "Liabilities Amount" means: (a) the total amount of all secured liabilities of HHC, or a Successor, at the time of the Event, relating solely to the Remainder Lands, but if the secured liabilities of HHC, or a Successor, at the time of the Event relate to other lands as well as the Remainder Lands, without distinction as to the proportion of the liabilities attributable to the Remainder Lands and other lands, then this portion of the Liabilities Amount shall be the proportion of the total amount of all of the secured liabilities of HHC, or a Successor, relating to all of the lands, at the time of the Event, which the Fair Market Value of the Remainder Lands bears to the Fair Market Value of all of the lands, at that time; plus (b) that proportion of the total



amount of all of the unsecured liabilities of HHC, or a Successor of HHC, at the time of the Event, which the Fair market Value of the Remainder Lands bears to the Fair Market Value of all of the assets of HHC, or a Successor, at that time.

4. The parties agree to execute, or cause to have executed, all documents necessary to effect the conveyance to the City in the event that the City exercises the contractual right of first refusal in accordance with paragraph 1 above, including without limitation, transfers, deeds, assignments, or assumption agreements, in registrable form, as applicable.

5. The City acknowledges and agrees that, notwithstanding paragraphs 1 to 4 above, the City shall not: (i) have any interest in the Lands, or any part thereof, or any other lands now held by HHC, until an Event occurs; or (ii) deal with or enforce its contractual right in respect of the Lands, or any part thereof, in any way, or otherwise interfere with the rights of HHC, or a Successor, in respect of the Lands, or any part thereof, or any other lands now held by HHC, including without limitation, any rights of HHC, or a Successor, to sell, transfer, mortgage, lease, license, or otherwise dispose of or deal with the Lands, or any part thereof, or any other lands now held by HHC, free of any claim by the City under this Agreement or otherwise, until an Event occurs.

6. If the City shall fail to exercise its contractual right of first refusal under paragraph 1 above, within the said one hundred and eighty (180) day period, HHC, or a Successor, or the Crown, as applicable, shall be free to sell the Remainder Lands to any other person or body provided that the purchase price shall not be lower than the purchase price required to be paid by the City in accordance with that paragraph.

7. HHC and the Crown acknowledge and agree that all rights, entitlements, immunities, liabilities and obligations of HHC under the terms of this Agreement shall, in the event that HHC is continued as the HPA under the Act, be preserved and transferred to the HPA pursuant to subsection 10(3) of the Act.

8. The City agrees that it shall not assign its rights under this Agreement to any person, or body, other than a successor municipality.

9. For greater certainty, HHC, or a Successor, and the Crown acknowledge and agree to the terms of this Agreement and agree, that after an Event they will not deal with the Remainder Lands in any way that interferes with the rights of the City herein. HHC further acknowledges that damages will not be sufficient compensation for the injury suffered to the City should the Remainder Lands be transferred by HHC, or a Successor, in any manner other than in accordance with this Agreement and that equitable remedies including, without limitation, specific performance or injunction, would be appropriate. The Crown further acknowledges that damages will not be sufficient compensation for the injury suffered to the City should the Remainder Lands be transferred by the Crown in any manner other than in accordance with this Agreement and that the equitable remedy of a declaration would be appropriate.

10. For greater certainty, the parties agree that, except upon the occurrence of an Event, the City will not call for the return, charge, disposition, or transfer of any lands now held by HHC, which are not expressly conveyed to the City pursuant to definitive

**DRAFT**  
(00-06-27)

agreements to settle the Superior Court of Ontario action Court File No. 4820/89 between the parties.

11. This Agreement is conditional upon the settlement of the Superior Court of Ontario action to which reference is made in paragraph 10 above, and upon the full and final release of HHC and the Crown from all claims therein.

12. If any dispute arises under this Agreement and the parties are unable to resolve such dispute, acting reasonably, such dispute shall be subject to arbitration in accordance with the *Commercial Arbitration Act*, R.S.C. 1985, c. 17 (2nd Supp.), as amended.

13. The parties agree to the following provisions for the giving of Notice under this Agreement: [NOTE TO DRAFT: ADD NOTICE PROVISIONS].

IN WITNESS WHEREOF, the parties have executed this Agreement as evidenced by the signatures of their duly authorized directors, commissioners, officers or representatives as of the day and year above first written.

HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA as represented  
by the Minister of Transport

Per: \_\_\_\_\_

THE HAMILTON HARBOUR  
COMMISSIONERS

Per: \_\_\_\_\_

THE CORPORATION OF  
THE CITY OF HAMILTON

Per: \_\_\_\_\_

**DRAFT**  
(00-06-27)

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE CORPORATION OF THE CITY OF HAMILTON

Plaintiff

and

THE ATTORNEY GENERAL FOR CANADA AND  
THE HAMILTON HARBOUR COMMISSIONERS

Defendants

MINUTES OF SETTLEMENT

WHEREAS The Hamilton Harbour Commissioners (the "HHC") is a corporation established by a special act of the Parliament of Canada entitled *The Hamilton Harbour Commissioners' Act* ("HHCA"), proclaimed in force on April 1, 1912;

AND WHEREAS the Corporation of the City of Hamilton (the "City") has brought this action alleging damages of \$100,000,000.00 in respect of the operation of the HHC and alleging future damages flowing from the proposed repeal of the HHCA by the government of Canada (the "Crown") and the proposed continuation of the HHC as a Port Authority pursuant to the *Canada Marine Act*, S.C. 1998 c. 10 (the "CMA");

*M*  
*[Handwritten signatures]*

AND WHEREAS the City and the HHC, with the assistance of the Crown, have negotiated a resolution of many long-standing areas of disagreement between them including the matters which have given rise to this action, which resolution is more particularly set out in an agreement entitled the Proposal Agreement;

AND WHEREAS the Crown has entered into agreements with the HHC and the City also aimed at resolving areas of disagreement between the parties relating to the lands presently owned by the Crown and known as Pier 9, as well as the Harbour bed and Pier 10;

AND WHEREAS the Crown has also taken the further and separate initiative through its Department of Canadian Heritage to create an Interpretive Centre on 8.25 acres of land on Pier 8 as is more particularly set out in the Interpretive Centre Framework Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the settlement of this action and the mutual covenants herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon, the parties hereto hereby agree as follows:

1. The Crown shall pay \$21,300,000.00 (TWENTY ONE MILLION, THREE HUNDRED THOUSAND DOLLARS) to HHC in settlement of all claims brought against the Crown by the City herein;
2. HHC and the City shall execute and carry out all the matters set out in the Proposal Agreement substantially in the form attached hereto as Schedule "A";

3. The Crown, HHC and the City will execute the Remainder Lands Right of First Refusal Agreement substantially in the form attached hereto as Schedule "B";

4. The Crown and the City will execute the Pier 9 Right of First Refusal Agreement substantially in the form attached hereto as Schedule "C";

5. These Minutes of Settlement shall constitute a full and final settlement of all matters arising from this action and shall, with the Proposal Agreement, Remainder Lands Right of First Refusal Agreement, and Pier 9 Right of First Refusal Agreement, be determinative and conclusive of the rights of the parties with respect to that litigation.

6. The rights and obligations of the parties under these Minutes of Settlement are conditional upon the receipt by the parties of comprehensive mutual Releases signed by the parties releasing each other from all causes of action and demands they now have or could ever have with respect to events occurring up to the present time in relation to any claims that have or could have been made in this action whether those claims be based upon events occurring prior to or following the present time and whether those claims be in respect of lands held now, formerly held or that are subsequently acquired by HHC or any successor to HHC.

DATED at Toronto, this            day of            , 2000.

Her Majesty the Queen in Right of Canada

Per: \_\_\_\_\_

The Corporation of the City of Hamilton

Per: \_\_\_\_\_

The Hamilton Harbour Commissioners

Per: \_\_\_\_\_

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# PLAN 62R-15XXX

PART 1, PLAN 62R-15XXX

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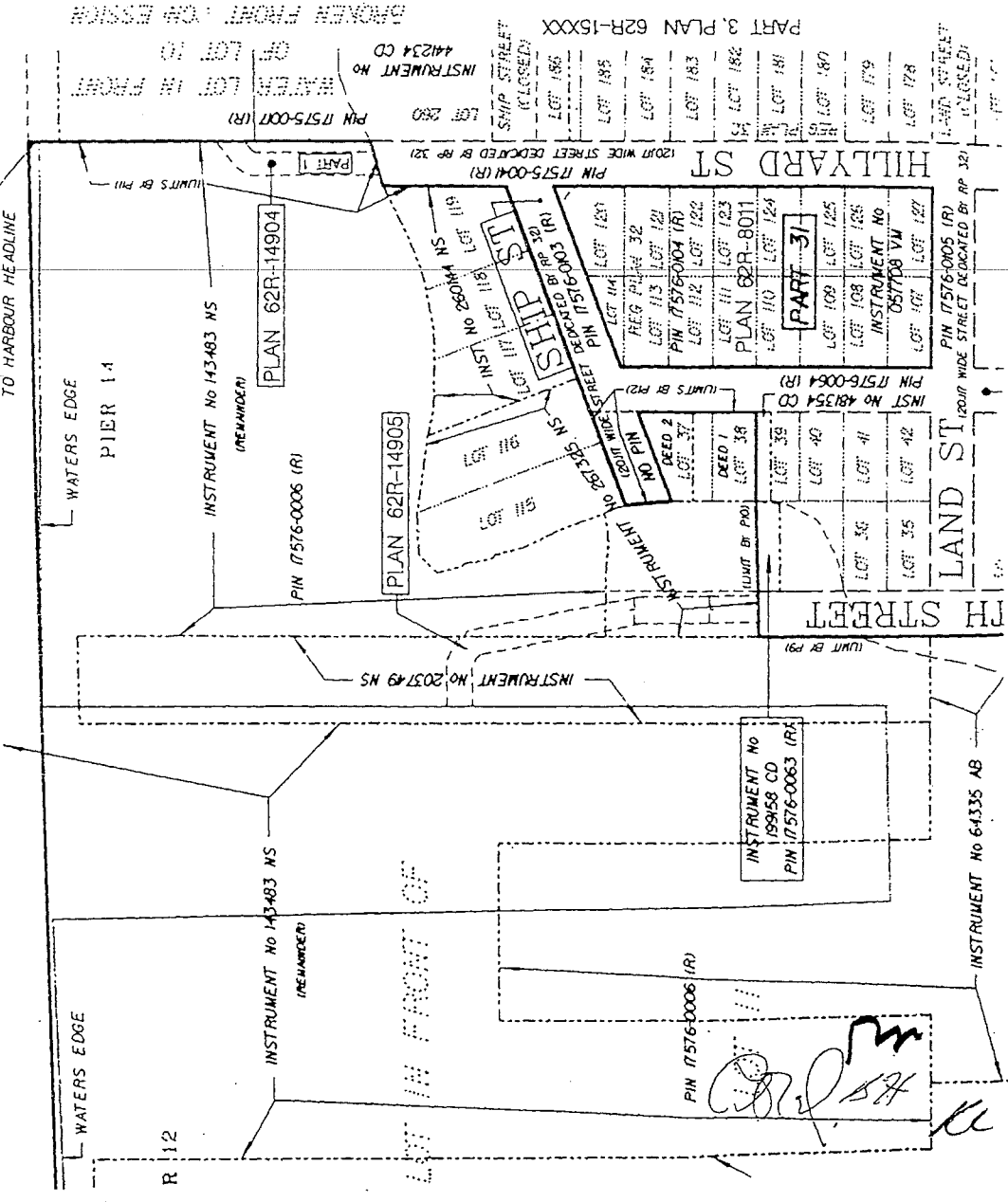
PART LIMIT EXTENDED TO HARBOUR HEADLINE

WATERS EDGE

WATERS EDGE

R 12

PIER 1-4



## LEGEND

- D1 DENOTES INSTRUMENT
- D2 DENOTES INSTRUMENT
- P1 DENOTES PLAN 62R-1
- P2 DENOTES PLAN 62R-2
- P3 DENOTES PLAN 62R-3
- P4 DENOTES PLAN 62R-4
- P5 DENOTES PLAN 62R-5
- P6 DENOTES PLAN 62R-6
- P7 DENOTES PLAN 62R-7
- P8 DENOTES PLAN OF SURVEY
- P9 DENOTES FILE NO 1-14
- P10 DENOTES FILE NO 15-14
- P11 DENOTES FILE NO 15-14
- P12 DENOTES FILE NO 15-14
- P13 DENOTES FILE NO 15-14
- P14 DENOTES FILE NO 15-14
- P15 DENOTES FILE NO 15-14
- P16 DENOTES FILE NO 15-14
- P17 DENOTES FILE NO 15-14
- DEED 1 DENOTES INSTRUMENT
- DEED 2 DENOTES INSTRUMENT

## "NOTE"

WATERS EDGE (ART 1)  
BASED ON...

SCHEDULE  
17.