

LEASE dated as of the 1st day of April 2003

With respect to

PRINCE RUPERT

BETWEEN:

BC TRANSPORTATION FINANCING AUTHORITY
(hereinafter referred to as the "**Landlord**")

of the first part

AND:

BRITISH COLUMBIA FERRY CORPORATION
(hereinafter referred to as the "**Tenant**")

of the second part

TERMS OF INSTRUMENT - Part 2

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WHEREAS:

- A. The Landlord is a Crown corporation and, pursuant to the *Build BC Act*, is an agent of the government and has agreed to hold all right, title and interest to the Ferry Terminal Properties as Landlord pursuant to this Lease;
- B. The Tenant and the Province have entered into the Coastal Ferry Services Contract under which the Tenant has agreed to operate the BC Ferry System;
- C. The parties wish to enter into this Lease on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the rents, premises, terms, conditions, covenants and agreements herein set out, the sufficiency and receipt of same being hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1 In this Lease:

“Additional Rent” means all sums of money to be paid by the Tenant to the Landlord under this Lease, except Basic Rent and Renewal Rent;

“Authority” means the municipality, region or district in which the Ferry Terminal Properties are located;

“Basic Rent” means the sum of money described in Paragraph 13.1 of this Lease to be paid by the Tenant to the Landlord;

“BC Ferry System” has the meaning given to that term in the Coastal Ferry Services Contract;

“Coastal Ferry Services Contract” means the agreement between the Province and the Tenant made as of April 1, 2003 under which the Tenant has agreed to operate the BC Ferry System;

“Commencement Date” means the 1st day of April, 2003;

“Competent Authority” means any statutory, regulatory, governmental, administrative or public authority which has jurisdiction with respect to any matter referred to in this Lease;

“Development Agreements” means those written agreements made by the Tenant with third parties to have an interest in or access to the Ferry Terminal Properties, or any part thereof, that run with the Ferry Terminal Properties and that may continue to be binding upon the owner of the Ferry Terminal Properties after the termination of this Lease;

“Dispute” means any disagreement, dispute, controversy, difference of opinion or claim between the Landlord and the Tenant arising out of, relating to or in connection with the lease of the Ferry Terminal Properties or the interpretation of, or compliance or non-compliance with the provisions in this Lease;

“End Date” means the day before the sixtieth (60th) anniversary of the Commencement Date;

“Event of Force Majeure” means an event that is beyond the reasonable control and without the fault of a party and includes acts of God, changes in the laws of Canada, governmental restrictions or control on imports, exports or foreign exchange, wars (declared or undeclared), fires, floods, storms, strikes (including illegal work stoppages or slowdowns), lockouts (other than lockouts initiated by the Tenant in compliance with the Labour Relations Code of British Columbia), labour shortages, freight embargoes and power failures; provided always that a lack of money, financing or credit will not be and will not be deemed to be an "Event of Force Majeure";

“Existing Facility” means any building, facility, utility, improvement, pavement, landscaping, filled foreshore, infrastructure or structure, including Leasehold Improvements and Marine Structures that are on the Ferry Terminal Properties as of the Commencement Date;

“Existing Landlord Agreements” means those agreements which exist as of the Commencement Date and are made between the Landlord or the Province or their respective predecessors and one or more third parties (including the Tenant) granting such third party an interest in or access to such parts of the Ferry Terminal Properties which were highway on March 31, 2003 and more particularly described in Schedule "2" as the same may be altered from time to time as contemplated by Paragraph 9.2 ;

"Existing Tenant Agreements" means all liens, charges, encumbrances and tenancies registered against title to any of the Ferry Terminal Properties as of the Commencement Date and any agreements which exist as of the Commencement Date between the Tenant, Land and Water British Columbia Inc. or their respective predecessors and one or more third parties (including either the Landlord, the Province or either of their predecessors) to have an interest in or access to parts of the Ferry Terminal Properties more particularly described in Schedule "3" as the same may be altered from time to time as contemplated by Paragraph 9.3 ;

“Ferry Terminal Properties” means more or less all and singular those certain parcels or tracts of lands and water lots more particularly described in Schedule "1" as the same may be altered from time to time as contemplated by Paragraph 42.2 ;

“Hazardous Substances” means:

- (a) any oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, or pollutants which

pose a hazard to all or any part of the Ferry Terminal Properties, or any person, business, occupant or user of the Ferry Terminal Properties; or cause all or any part of the Ferry Terminal Properties or any user or occupant of the Ferry Terminal Properties to be in violation of any Hazardous Substances Laws;

- (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation or transformers; and
- (c) any chemical, material or substance defined as or included in the definition of "dangerous goods", "deleterious substance", "extremely hazardous wastes", "restricted hazardous waste", "toxic substances", "waste" or words of similar import under any Law or under the publications promulgated pursuant thereto;

"Hazardous Substances Laws" means any local, provincial or federal laws, statutes, ordinances, rules, regulations, bylaws and enforceable orders, decisions or directives relating to the environment, any Hazardous Substances or the environmental conditions on, under or about the Ferry Terminal Properties including soil, groundwater, and indoor and ambient air conditions;

"Laws" means all federal, provincial, regional, municipal or local laws, statutes, ordinances, rules, regulations, bylaws and enforceable orders, decisions or directives including Hazardous Substances Laws, the *Coastal Ferry Act* and any permit authorizations required under any of the foregoing and including all applicable federal and provincial environmental assessment legislation and requirements and all applicable labour and human rights legislation;

"Leasehold Improvements" means all fixtures (excluding Tenant's or Occupant's trade fixtures), fixed equipment, improvements, infrastructure, filled foreshore and alterations existing on the Ferry Terminal Properties or any part thereof and those which from time to time are made, constructed, erected or installed by, for or on behalf of the Tenant or any Occupant of the Ferry Terminal Properties or any part thereof;

"Marine Structures" means dolphins, floating leads, wingwalls, transfer decks, trestles, docks, ramps and associated structures and equipment on the Ferry Terminal Properties or any part thereof;

"Master Agreement" means the agreement dated March 31, 2003 and made between the Landlord, the Tenant, the Province and Land and Water British Columbia Inc. with respect to the entering into of this Lease amongst other matters;

"New Facility" means any building, facility, utility, structure, improvement, pavement, landscaping, filled foreshore, infrastructure or structure, including Marine Structures created, installed or constructed on the Ferry Terminal Properties after the Commencement Date and includes any addition to, improvement to, alteration of or replacement of any Leasehold Improvement, Existing Facility or New Facility after the Commencement Date;

“Occupant” means a subtenant, licensee, concessionaire, franchisee, user or other third party, excluding a transferee or assignee of the Tenant’s interest in this Lease, who has entered into an Occupant Agreement, and who regularly occupies any part of the Ferry Terminal Properties, but does not include anyone who occupies the Ferry Terminal Properties solely as a result of having purchased a ticket allowing them to travel on a ferry or who is using the pick up and drop off facilities located on the Ferry Terminal Properties;

“Occupant Agreement” means a sublease, licence, concession, franchise, user or any other agreement, between the Tenant and an Occupant whereby the Tenant grants a right to such Occupant to occupy or use all or part of the Ferry Terminal Properties, but does not include a Security Interest, a Transfer or Assignment Agreement or any other agreement whereby there is a transfer or assignment of the Tenant’s interest in this Lease,

“Permits” means any and all zoning, rezoning, development, building, environmental, community plan, community charter, access or other permits which may be required by any Laws relating to the Tenant, any Occupant or any employee, agent, customer, contractor, subcontractor, invitee or licensee of the Tenant or any other person the Tenant is responsible for at law and any of their respective operations at, use and occupancy of the Ferry Terminal Properties or any part thereof;

“Province” means Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation;

“Renewal Rent” means the sum of money described in Paragraph 13.3 to be paid by the Tenant for the Renewal Term;

“Renewal Term” means twenty (20) years immediately following the expiration of the initial Term;

“Rent” means all Basic Rent, Additional Rent and any Renewal Rent;

“Security Interest” means a mortgage, trust deed, security interest, financial charge or other debt instrument of the Tenant’s or of an Occupant’s interest in the Ferry Terminal Properties or any part thereof;

“Taxes” means the aggregate of all, if any, applicable to the Landlord or the Tenant, taxes, local improvement or similar rates, duties, assessments and charges, municipal realty taxes, water taxes, school taxes or any other taxes, rates, duties, assessments both general or special or any rate, duty, assessment, charge or tax levied, charged or assessed in their place by any taxing authority levied or imposed on or in respect of the Ferry Terminal Properties, or any part thereof, by any taxing authority;

“Tenant’s Obligations” means the covenants, agreements, responsibilities, conditions and obligations required to be kept, performed or observed by the Tenant under this Lease;

“Term” means sixty (60) years commencing on April 1, 2003;

“Transfer or Assignment Agreement” means any agreement, arrangement or understanding, including a partnership or joint venture, which results in the assignment or transfer of the whole or any part of this Lease by the Tenant or any interest of the Tenant herein but does not include any Security Interest or Occupant Agreement made in accordance with the provisions in Paragraphs 34.1, 34.3 and 34.4 or any agreement where the effective control or beneficial ownership of the Tenant may change; and

“Work” means any proposed or actual New Facility which adversely impacts the integrity of, efficient functioning of, capacity of, or safe public passage on, any highway adjacent to all or any part of the Ferry Terminal Properties, any third party rights, any Provincial need which is greater than the lease of the Ferry Terminal Properties under this Lease (as determined by the Province in its sole and absolute discretion) or the Tenant’s covenants, agreements and obligations under the Coastal Ferry Services Contract.

2. ENTIRE AGREEMENT

- 2.1 This Lease, the Master Agreement and the Coastal Ferry Services Contract constitute the entire agreement between the parties with respect to the subject matter of this Lease and supersede and revoke all prior negotiations and representations. No understanding, agreement, representation or warranty, oral or otherwise, exists between the parties with respect to the subject matter of this Lease except as expressly set out in this Lease, the Master Agreement and the Coastal Ferry Services Contract.
- 2.2 In the event of any inconsistency amongst the provisions in this Lease, the Master Agreement or the Coastal Ferry Services Contract, the provisions in the Coastal Ferry Services Contract will take precedence over this Lease and the Master Agreement.

3. INTERPRETATION

- 3.1 This Lease will be interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia.
- 3.2 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Lease, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect. Unless otherwise indicated, all enactments referred to in this Lease are enactments of the Province of British Columbia.
- 3.3 The headings in this Lease are for reference purposes only and are not to be relied upon for purposes of interpretation.
- 3.4 Wherever the masculine, feminine, body corporate, singular or plural is used in this Lease, the parties agree to substitute feminine, masculine, individual, plural or singular where the

context so requires. This principle applies to all words in this Lease, including defined terms.

- 3.5 Each obligation or agreement contained in this Lease is to be construed as and considered for all purposes as a covenant.
- 3.6 If any part of this Lease is found to be illegal or unenforceable, that part will be considered separate and severable and the remainder of this Lease will remain binding and enforceable insofar as is required to give effect to the intent of the parties as evidenced by this Lease.
- 3.7 The words "including," "include" or other variations thereof, when following any general statement, term or matter is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather such general statement, term or matter is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.
- 3.8 Any reference in this Lease to a designated "Paragraph," "Schedule" or any other subdivision is a reference to the designated Paragraph, Schedule or other subdivision of this Lease unless the context requires otherwise.
- 3.9 The parties acknowledge that the Tenant is, as at the date of this Lease, applying to be converted to a company under the *Company Act*, R.S.B.C. 1996, c. 62 and the parties each covenant and agree that all rights and obligations of the parties as set out in this Lease will continue on such conversion.

4. TIME OF THE ESSENCE

- 4.1 Time is of the essence in this Lease.

5. NET LEASE

- 5.1 Subject to the limits on the financial obligations of the Tenant as expressly set out in this Lease or in the Master Agreement, the Tenant acknowledges and agrees that this Lease is intended to be a completely carefree absolutely net lease to the Landlord and that the Landlord will not be responsible for any costs, charges, expenses or outlays of any nature or kind whatsoever arising from or relating to this Lease or any matters contemplated in this Lease, the Tenant, any Occupant, the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities, including the use, repair, maintenance, development, management, lease or operation of same, or any part thereof, and the Tenant covenants with the Landlord to pay promptly all of such costs, charges, expenses or outlays.

6. DEMISE AND TERM

- 6.1 Subject to the terms of this Lease and the rights of the parties as set out herein, the Landlord demises and leases to the Tenant the Ferry Terminal Properties from 12:01 a.m. on the Commencement Date, for and during the Term, which will end at midnight on the 31st day of March, 2063, subject only to any earlier termination hereunder and the renewal of this Lease in accordance with the terms and conditions set forth in Paragraph 7.

7. RENEWAL

- 7.1 In the event that the Tenant becomes entitled to renew the Coastal Ferry Services Contract in accordance with the provisions of that contract, then, provided that the Tenant is not in default of any of the Tenant's Obligations, the Tenant may, by written notice delivered to the Landlord at least 12 months prior to the End Date, renew this Lease and extend the Term for one additional period of twenty (20) years commencing on the date immediately following the End Date and this Lease will be renewed on the same terms and conditions as set out in this Lease except that there will be no further right of renewal.

8. RIGHT TO TERMINATE

- 8.1 In the event that the Tenant wishes to discontinue all such Designated Ferry Routes (as defined in the Coastal Ferry Services Contract) operating to or from the Ferry Terminal Properties, the Tenant must first:
- (a) provide the Landlord with written notice, at least two (2) years in advance of the date upon which the Tenant will discontinue all such Designated Ferry Routes; and
 - (b) have duly complied with all of the Tenant's Obligations and its obligations as set out in the Coastal Ferry Services Contract;

and in such event the Lease will terminate on the date specified by the Tenant in its notice given under Paragraph 8.1(a) and the Tenant will not be entitled to a rebate or refund of any prepaid Rent.

- 8.2 (a) If the British Columbia Ferries Commissioner appointed under the *Coastal Ferry Act* or any other person of Competent Authority issues an Order authorizing the Tenant to discontinue all Designated Ferry Routes to or from the Ferry Terminal Properties, then the Tenant will deliver to the Landlord a true copy of such Order within five (5) days of the Tenant's receipt thereof and this Lease will terminate on the effective date of the discontinuance under the Order, and

- (b) only if such Order was not due to any default of the Tenant's Obligations, any negligence or misconduct of the Tenant, any Occupant or any employee, agent, customer, contractor, subcontractor, invitee or licensee of the Tenant or any other person the Tenant is responsible for at law, then the Tenant will be entitled to receive, from the Landlord, a refund of the remaining net book value of the Existing Facilities, Leasehold Improvements or New Facilities then remaining on the Ferry Terminal Properties, with such value being determined by amortizing their original costs on a straight line basis over their respective useful lives, as determined in accordance with Canadian generally accepted accounting principles.

8.3 If, as a result of any Event of Force Majeure, the whole or any part of the Ferry Terminal Properties, the Leasehold Improvements, the Existing Facilities or the New Facilities are destroyed or so damaged that they are unfit for occupancy, then the Tenant will only be obligated to repair or restore the Ferry Terminal Properties to a condition that reasonably allows the Tenant to use the Ferry Terminal Properties in accordance with the provisions of this Lease if the restoration or repairs

- (a) will be, or, as provided in this Lease, should have been, paid by an insurer of the Tenant's, or
- (b) will be paid by the Landlord, the Province or any other third party.

In the event that the Tenant is unable to confirm that such restoration or repairs will be so paid or in the event that the Tenant was not insured or was not required to insure against the Event of Force Majeure that occurred, then the Tenant may terminate this Lease by giving the Landlord written notice of the Tenant's intention to terminate within six (6) months of the destruction or damage having occurred and this Lease shall terminate on the date set out in the notice.

8.4 In the event that the Tenant does not notify the Landlord of the Tenant's intention to terminate this Lease in accordance with the provisions in Paragraph 8.3, the Tenant will forthwith restore or repair so much of the Ferry Terminal Properties, the Leasehold Improvements, the Existing Facilities and the New Facilities in order for the Tenant to use the Ferry Terminal Properties in accordance with the provisions of this Lease but without hindrance to the Tenant's ability to remove, demolish or redesign as many of the improvements or other structures located on the Ferry Terminal Properties as it determines appropriate for its operations provided it does so in compliance with the provisions in Paragraphs 20.1 to 20.4 .

9. AGREEMENTS WITH THIRD PARTIES

- 9.1 The Landlord agrees not to grant any licenses, rights of way, easements or any other privileges granting an interest in or access to the Ferry Terminal Properties or any part thereof to any other person or entity without the prior written consent of the Tenant, which consent may not be unreasonably withheld. The parties agree that it is reasonable for the Tenant to withhold such consent where the granting of such consent would have a material impact on the Tenant's provision of ferry and related services in accordance with the provisions of the Coastal Ferry Services Contract and *Coastal Ferry Act*, whether existing or part of the Tenant's future plans.
- 9.2 Notwithstanding the provisions of Paragraph 9.1 and subject to the Tenant's obligations as set out in Paragraph 9.4, the Landlord and the Tenant agree to respect and abide by the Existing Landlord Agreements described in Schedule "2". The Landlord may, at any time during the first ten (10) years of the Term, advise the Tenant of additional or of terminated Existing Landlord Agreements, in which case the parties agree that the Landlord will amend Schedule "2" accordingly to include or remove, as the case may be, such additional Existing Landlord Agreements. The Landlord acknowledges and agrees that its right to amend Schedule "2" does not include the right to revise any Existing Landlord Agreements on or after the Commencement Date.
- 9.3 The Landlord and the Tenant agree to respect and abide by the Existing Tenant Agreements described in Schedule "3" and the Landlord further agrees that, in the event that this Lease is terminated or expires, the Landlord will, subject only to the consent of the third party if required, assume responsibility for all of the Tenant's rights and obligations under such Existing Tenant Agreements. The Tenant may, within the first ten (10) years of the Term, advise the Landlord of all additional or of terminated Existing Tenant Agreements, in which case the parties agree that the Landlord will amend Schedule "3" accordingly to include or remove, as the case may be, such additional Existing Tenant Agreements. The Tenant acknowledges and agrees that its right to amend Schedule "3" does not include the right to revise any Existing Tenant Agreements on or after the Commencement Date unless such revisions comply with the requirements for Development Agreements set out in Paragraph 9.4.
- 9.4 The Landlord agrees that the Tenant may, without the prior consent of the Landlord unless otherwise provided herein and as a result of its development of the Ferry Terminal Properties, enter into Development Agreements solely for any use or purpose permitted under Paragraph 20.1; however, the Tenant agrees to provide the Landlord with a true copy of each Development Agreement and all amendments thereto within ten (10) days of the Landlord's request for the same from time to time. Notwithstanding the foregoing, if any such Development Agreement is expected to:
- (a) extend beyond the expiry of the Term,

- (b) reduce the number of vehicles capable of being held within any existing holding compound on the Ferry Terminal Properties by more than ten percent (10%);
- (c) be contrary to any provision in this Lease, any Existing Landlord Agreement, any Existing Tenant Agreement or the Coastal Ferry Services Contract; or
- (d) affect the integrity of, efficient functioning of, capacity of or safe public passage on, any highway adjacent to the Ferry Terminal Properties or any part thereof;

then the Tenant will not enter into, or agree to enter into, such Development Agreement unless the Tenant has obtained the Landlord's prior written consent to the same and the Tenant will comply with all terms and conditions which the Landlord may advise the Tenant of in connection with any consent to any such Development Agreement. In the event that a Development Agreement is expected to extend beyond the expiry of the Term, the Landlord may, in its sole discretion, require that the terms of the Development Agreement be satisfactory to the Landlord, who shall then also be made a party to it.

- 9.5 The parties acknowledge that the Tenant or any of its predecessors may have entered into agreements with third parties granting rights of access, an interest in or other rights over lands adjacent to or near the Ferry Terminal Properties which are required for the Tenant's use of the Ferry Terminal Properties as described in Paragraph 20.1. The Tenant covenants and agrees with the Landlord to use the Tenant's reasonable efforts to provide the Landlord with true copies of all of such agreements, if any, as soon as possible after the Commencement Date.
- 9.6 The parties acknowledge that the Landlord may have entered into agreements with third parties granting rights of access, an interest in or other rights over lands adjacent to or near the Ferry Terminal Properties which are required for the Tenant's use of the Ferry Terminal Properties as described in Paragraph 20.1. The Landlord covenants and agrees with the Tenant to use the Landlord's reasonable efforts to provide the Tenant with true copies of all of such agreements, if any, as soon as possible after the Commencement Date.
- 9.7 On the expiry of the Term or of any Renewal Term, or on any termination of this Lease, the Tenant agrees to deliver to the Landlord a copy of any agreements relating to lands, water or improvements outside of the Ferry Terminal Properties and made between the Tenant and a third party that are essential or necessarily incidental to the operation of the BC Ferry System from the Ferry Terminal Properties in accordance with the provisions of the Coastal Ferry Services Contract. In the event that this Lease is terminated or expires, the Landlord agrees that it will, subject only to the consent of the third party if required, assume responsibility for all of the Tenant's rights and obligations under such agreements.

10. OWNERSHIP OF FACILITIES

- 10.1 Except as otherwise provided for herein, the parties agree that, during the Term, or any Renewal Term, or from the Commencement Date to such earlier termination date if this Lease is terminated for any reason, the Existing Facilities, New Facilities and Leasehold Improvements are and will be the separate property of the Tenant and not of the Landlord. Notwithstanding that Existing Facilities and some of the Leasehold Improvements are, as at the Commencement Date, attached to the Ferry Terminal Properties, the Landlord acknowledges that, by executing this Lease, the Tenant is the owner of the Existing Facilities and such Leasehold Improvements together with all rights, interests, obligations and liabilities in connection with, arising from or related to the Existing Facilities.

11. SURRENDER ON TERMINATION

- 11.1 Except as otherwise provided herein, the Tenant agrees that it will, on the expiry of the Term, or any Renewal Term, or any earlier termination of this Lease, surrender to the Landlord vacant possession of the Ferry Terminal Properties, and all Leasehold Improvements, Existing Facilities and New Facilities then in existence in a state of good order, condition and repair, free and clear of any encumbrance of any kind including any Occupant Agreement, Development Agreement or Security Interest, other than the Existing Landlord Agreements, the Existing Tenant Agreements and the Development Agreements consented to by the Landlord in writing in accordance with Paragraph 9.4 .
- 11.2 Subject to the provisions of Paragraph 8.2(b), on the expiry of the Term, any Renewal Term or any earlier termination of this Lease, all Leasehold Improvements, Existing Facilities and New Facilities then in existence will become the absolute property of the Landlord without any payment being made therefor and free and clear of all mortgages, charges and encumbrances of any kind, other than the Existing Landlord Agreements, the Existing Tenant Agreements and the Development Agreements consented to by the Landlord in writing in accordance with Paragraph 9.4 .
- 11.3 Within ten (10) days of the expiry of the Term, any Renewal Term or any earlier termination of this Lease, the Tenant will deliver to the Landlord as-built drawings of all Leasehold Improvements, Existing Facilities and New Facilities which may exist at that time and may remove from the Ferry Terminal Properties:
- (a) any trade fixtures normally removable by tenants;
 - (b) all goods, chattels, supplies, articles, equipment, materials, effects or other moveable items;

and will repair and restore, on or before the expiry of the Term, any Renewal Term or any earlier termination of this Lease, any damage occasioned to the Ferry Terminal Properties

and remaining Leasehold Improvements, Existing Facilities or New Facilities resulting from such removal.

- 11.4 If the Tenant fails to remove any of the items that it is entitled or required to remove under Paragraph 11.3 on the expiry of the Term, any Renewal Term, or any earlier termination of this Lease, then the Landlord may, at its sole discretion, either take title to same, free and clear from all claims of any kind whatsoever, or remove same and repair any damage resulting from such removal in which case the Tenant will pay to the Landlord, on demand, all costs incurred by the Landlord as a result of such removal, repair and storage.

12. OVERHOLDING

- 12.1 If the Tenant remains in possession of all or part of the Ferry Terminal Properties after the expiry of the Term, or Renewal Term, if any, whether with or without the consent of the Landlord, and without executing and delivering a new lease, there will be no renewal or extension of this Lease or the Term. In this event, the Tenant will be deemed to be occupying the Ferry Terminal Properties as a monthly tenant, on the same terms as set forth in this Lease insofar as they are applicable to a monthly tenancy, except that monthly basic rent will be the then fair market value rent as determined by the Landlord acting reasonably, and the monthly tenancy can be terminated by either party upon thirty (30) days prior written notice to the other party.

13. BASIC RENT AND RENEWAL RENT

- 13.1 Basic Rent for the Ferry Terminal Properties will be the sum of Four Million, Six Hundred and Eight-four Thousand, Eight Hundred Dollars (\$4,684,800.00) for the Term.
- 13.2 The Tenant agrees that it will prepay the Basic Rent at the Commencement Date, without abatement. The Landlord agrees that the Tenant may pay the Basic Rent by providing the Landlord with a signed, interest-free, demand promissory note in favour of the Landlord for the total amount of the prepaid Basic Rent, or by set-off only against any monies owing by the Landlord to the Tenant under section 3.3 of the Master Agreement.
- 13.3 Renewal Rent for the Ferry Terminal Properties will be the sum of Twenty Dollars (\$20.00) for the Renewal Term, being a yearly rent of One Dollar (\$1.00) for each year of the Renewal Term.
- 13.4 The Tenant agrees that it will prepay the Renewal Rent at the commencement of the Renewal Term, without abatement.

14. ADDITIONAL RENT

- 14.1 The Tenant agrees to pay the Landlord, as Additional Rent, during the Term and any Renewal Term, any sums of money as set out in this Lease that may be or become owing to the Landlord from time to time, other than Basic Rent and Additional Rent.
- 14.2 If and so often as any Additional Rent is not paid when due, the Landlord has the same rights and remedies and may take the same steps for its recovery as for the recovery of Rent in arrears.
- 14.3 Subject to Paragraph 13.2, the Tenant covenants and agrees to pay all monies payable under this Lease to the Landlord, or as the Landlord may direct in writing, in lawful money of Canada, without any set off, compensation or deduction whatsoever on the days and at the times specified in this Lease.
- 14.4 If the Tenant fails to pay any Basic Rent or Additional Rent payable by the Tenant to the Landlord under this Lease promptly when due, then the Tenant will pay to the Landlord interest on any unpaid Basic Rent and Additional Rent at a rate equal to equal to 6% per annum above the then applicable prime rate established from time to time by the Landlord's bank from the date on which such Basic Rent and Additional Rent was due until actual receipt of payment of the unpaid Basic Rent, Additional Rent and the interest due hereunder.

15. TAXES PAYABLE BY TENANT

- 15.1 The Tenant agrees that it will promptly pay or cause to be paid when due:
- (a) any Taxes;
 - (b) any tax, rate, duty, assessment and fees with respect to any Leasehold Improvements, Existing Facilities, New Facilities, personal property and facilities on the Ferry Terminal Properties or any part thereof;
 - (c) any taxes and licence fees including any penalty, interest or cost imposed against the Tenant or its business or operations with respect to any business or undertaking carried on the Ferry Terminal Properties or any part thereof;
 - (d) any business transfer tax, value added tax, multi-stage sales tax, goods and services tax or any other tax relating to the Rent or lease of the Ferry Terminal Properties or any part thereof; and

- (e) any and all other taxes, fees or charges that in any way relate to the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities or any and all uses on the Ferry Terminal Properties.

16. UTILITY CHARGES PAYABLE BY TENANT

- 16.1 The Tenant agrees to pay or cause to be paid the amount of any water, garbage collection, electrical, gas, power, other fuel and any other similar service or utility charges, costs or expense rendered to the Ferry Terminal Properties, or assessed against the Leasehold Improvements, Existing Facilities or New Facilities or any business or undertaking carried on therein and further agrees that the Landlord will not be responsible or liable in any way for payment of any such charges, costs or expenses or for any losses suffered by the Tenant or any person as a result of the Tenant's failure to pay such charges, costs or expenses in a prompt manner.

17. LANDLORD'S RIGHT TO PAY

- 17.1 If the Tenant fails to pay or cause to be paid any Taxes, fees, fines, charges or other monies required to be paid pursuant to this Lease, then the Landlord may, but will not be obliged to, pay the same and the amount paid will be payable by the Tenant on demand and will be recoverable as Additional Rent.

18. TENANT TO PROVE PAYMENT

- 18.1 The Tenant will, upon the request of the Landlord, forthwith provide the Landlord with proof of payment of any matters described in Paragraphs 15 or 16.

19. RIGHT TO APPEAL

- 19.1 Each of the Landlord and the Tenant (provided the Tenant is legally entitled to do so) will have the right to contest in good faith the validity or amount of any Taxes or to appeal any assessment therefor. Notwithstanding anything to the contrary in this Lease, the Tenant may, if it is not then in default under the Tenant's Obligations and on giving the Landlord at least 15 days prior written notice, defer payment of any Taxes to the extent permitted by applicable Laws, provided that no contest by the Tenant will involve the possibility of forfeiture, sale or disturbance of the Landlord's interest in the Ferry Terminal Properties (or any part thereof) or the imposition of any penalty or interest, charge or lien and that, upon the final determination of any contest or appeal by the Tenant, the Tenant will immediately pay and satisfy the amount found to be due, together with any costs, penalties and interest. If as a result of any contest or appeal by the Tenant, any Taxes are increased, the Tenant will be responsible for the full amount of such increase in respect of the period to which the contest relates and to any subsequent tax periods which commence during the Term (or

any Renewal Term). If the Tenant contests any amount payable by it under this Paragraph 19.1 or appeals any assessment therefor, the Tenant will:

- (a) deliver to the Landlord any notices of appeal or other similar instrument immediately on the Tenant giving or receiving the same;
- (b) promptly and diligently prosecute the contest or appeal at its sole cost and expense; and
- (c) keep the Landlord fully informed thereof and forthwith provide the Landlord with such information as the Landlord may reasonably request in connection therewith.

20. USE, DEVELOPMENT AND REPAIRS

- 20.1 Provided that the Tenant first complies with all Laws and the provisions in the Coastal Ferry Services Contract, is a ferry operator (as defined in the *Coastal Ferry Act*) and obtains any and all applicable Permits, the Ferry Terminal Properties may only be used by the Tenant or by any Occupant, agent, permitted transferee or assign pursuant to any Transfer or Assignment Agreement consented to by the Landlord in accordance with Paragraph 34.6, or any customer of the Tenant, for any use or purpose consistent with provision of the ferry transportation services and ancillary services, as those terms are defined in the *Coastal Ferry Act* and in accordance with the provisions of the Coastal Ferry Services Contract.
- 20.2 Notwithstanding anything contained in this Lease, the Landlord agrees that the Tenant may, in the normal course of business and in compliance with the Coastal Ferry Services Contract, remove, demolish, construct or redesign any Existing Facilities, New Facilities or Leasehold Improvements at any time during the Term or the Renewal Term. The Tenant agrees that it will notify the Landlord in writing of details of any removal, demolition, construction or redesign that it intends to undertake which may require the Landlord to redesign any adjacent highway, may interfere with any established third party rights or may create a Work, in which case the Tenant must obtain the Landlord's prior written consent before proceeding with any such removal, demolition, construction or redesign. The Landlord, acting reasonably, will notify the Tenant whether it consents or not within ninety (90) days from the Landlord's receipt of the Tenant's notice given under this Paragraph. If the Landlord so consents, it may impose such terms and conditions as it sees fit and the Tenant will take all necessary steps to eliminate such impact of the removal, demolition, construction or redesign and will comply with any terms and conditions the Landlord may notify the Tenant of in writing. If the Tenant fails to comply with the foregoing in this Paragraph, it must not proceed with such removal, demolition, construction or redesign. In the event that the Landlord fails to so notify the Tenant of the Landlord's decision to consent or not within such ninety (90) day period, the Tenant may proceed with such substantial removal, demolition, construction or redesign without further notice to the Landlord.

- 20.3 In doing any maintenance, repairs, replacements, decorations, removal, demolition, construction or redesign, the Tenant will only use contractors or other workers qualified and licensed, where applicable.
- 20.4 The Tenant agrees that all removal, demolition, construction or redesign of Existing Facilities, New Facilities or Leasehold Improvements will be at its sole risk, cost and expense.
- 20.5 The Tenant covenants and agrees with the Landlord that the Tenant will, at the Tenant's sole cost and expense:
- (a) keep the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities and New Facilities in a clean and sanitary condition and will not place or leave, or permit to be placed or left in, on or under any part of the Ferry Terminal Properties outside of any building thereon any debris, garbage, trash or refuse, but will deposit the same in areas and at times and in a sanitary manner and in compliance with all applicable Laws and if there are any costs for removal of debris, garbage, trash or refuse additional to the removal service provided by the Authority or if the Authority charges for such service, then the Tenant will pay such costs;
 - (b) repair, maintain and keep the Ferry Terminal Properties in good order and repair, as a careful owner would do;
 - (c) repair, maintain and keep all buildings, improvements, equipment and fixtures in the Ferry Terminal Properties, including any Leasehold Improvements, Existing Facilities and New Facilities in good order and repair and replace them when necessary, as a careful owner would do, and keep any improvements now or hereafter made to the Ferry Terminal Properties, equipment and fixtures in good order and repair, as a careful owner would do, and the Tenant covenants to perform such maintenance, to effect such repairs and replacements at its own cost and expense as and when necessary;
 - (d) repair any damage caused to the Ferry Terminal Properties by reason of any structural or any other type of defect in any Leasehold Improvements, Existing Facilities or New Facilities;
 - (e) make whole all damaged glass, including plate glass, in or on the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities and New Facilities;
 - (f) cultivate, plant, keep free from weeds and keep in a neat, tidy and trimmed condition all landscaping on the Ferry Terminal Properties as a careful owner would do;
 - (g) keep the roadways and parking areas in the Ferry Terminal Properties free and clear of all ice and snow; and

- (h) conduct, at least once every seven (7) years, a survey, carried out by an accredited professional engineer, of the condition of the Marine Structures located on the Ferry Terminal Properties, provide the Landlord with a copy of the written report and promptly ensure that all steps are taken to correct any deficiencies in the Marine Structures.

21. OPERATION OF FERRY TERMINAL

- 21.1 The Tenant agrees that it will, throughout the Term and any Renewal Term, continuously, actively, diligently and carefully, manage, operate and maintain the services of the BC Ferry System on the Ferry Terminal Properties in accordance with the terms and conditions of the Coastal Ferry Services Contract.

22. OBSERVANCE OF LAW

- 22.1 The Tenant agrees to promptly comply with and observe, and will ensure that all Occupants comply with and observe, any applicable Laws now or hereafter in force including any regulation, order or requirement of any fire underwriters association or any similar body having similar functions or of any liability or fire insurance company by which the Landlord or the Tenant may be insured at any time during the Term, or any Renewal Term, and in so doing, the Tenant will be required to make any necessary alterations, repairs, improvements or replacements in, on or to the whole or any part of the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities.

23. RIGHT OF ACCESS

- 23.1 In the event of an emergency or in the event that the Landlord believes, acting reasonably or as a result of having been provided with information from a Competent Authority or insurer, that the Tenant is in breach of the provisions of this Lease or of the Coastal Ferry Services Contract, then the Landlord, its servants and agents, will have full and free access to the Ferry Terminal Properties or any part thereof, including Existing Facilities and New Facilities for examination purposes and to exercise any rights and remedies available to the Landlord under this Lease, at law, in equity or otherwise.
- 23.2 In addition to all rights of the Landlord under Paragraph 23.1, the Tenant agrees that the Landlord, its servants or agents, will, for a period of no more than ten (10) days per calendar year, have full and free access to the Ferry Terminal Properties, including Existing Facilities and New Facilities, for examination purposes. The Landlord agrees that such examination will take place in the presence of a representative of the Tenant and the Tenant agrees to make such representative available as required by the Landlord. The Landlord agrees to provide the Tenant with at least one (1) month's prior written notice of examination times and dates. The Landlord agrees that this right to examine under this Paragraph 23.2 is not

cumulative and that its failure to exercise its right in any calendar year does not entitle it to additional examination time in any following year.

- 23.3 Any entry onto the Ferry Terminal Properties, or any part thereof, by the Landlord under this Paragraph 23 will not be deemed to be a re-entry.

24. NOTICES OF NON-COMPLIANCE

- 24.1 The Tenant agrees that it will forthwith deliver to the Landlord a copy of any claim, writ, legal proceeding or written notice of non-compliance from any Competent Authority in relation to the Tenant, Occupant, Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities received by either the Tenant or by any Occupant and will ensure that such non-compliance is forthwith remedied.
- 24.2 The Tenant will provide to the Landlord, promptly upon any request by the Landlord, evidence of compliance with any provisions in this Lease.

25. TENANT TO INSURE

- 25.1 The Tenant will, at its own expense, throughout the Term and any Renewal Term, ensure the following insurance in forms and amounts as a prudent owner would obtain are in fact obtained:
- (a) comprehensive general liability insurance, including Sudden and Accidental Pollution, to cover the obligations contemplated under this Lease, as amended from time to time, which will include a cross-liability clause, in an amount of not less than Twenty Five Million Dollars (\$25,000,000), exclusive of interest and costs, per occurrence, the Landlord will be added as an additional insured as interests may appear;
 - (b) the Tenant will also place at its expense and for its benefit insurance upon property of every kind owned by the Tenant or for which the Tenant is legally responsible that is located on the Ferry Terminal Properties, including all Leasehold Improvements, Existing Facilities, New Facilities and stock in trade;
 - (c) this insurance shall be subject to regular review and agreement as to any increase in limits required given the nature and use of the Ferry Terminal Properties;

and the Tenant agrees to provide the Landlord with written evidence of insurance, upon the request of the Landlord.

- 25.2 The Landlord agrees that the Tenant may self-insure, subject to the consent of the Landlord, such consent not to be unreasonably withheld, with respect to the liabilities and hazards against which insurance is required under this Lease and in such case the Tenant agrees to fully indemnify and save the Landlord harmless against any claims, demands, suits or otherwise made against the Landlord with respect to such liabilities and hazards and for all

legal expenses incurred by the Landlord in the defence of same, on a solicitor and own client basis. The indemnity in this paragraph will survive the expiry of the Term, or any renewal thereof, or any earlier termination of this Lease.

- 25.3 In the event of any construction being carried out on the Ferry Terminal Properties, including the construction of any Work, the Tenant will ensure that the construction is diligently carried through to completion and that prior to the commencement of such construction, ensure appropriate insurance coverage to protect its assets, without right of subrogation against the Landlord:
- (a) against claims for personal injury, death or property damage or other third-party or public liability claims arising from any accident or occurrence upon, in or about the Ferry Terminal Properties and from any cause, including the risks occasioned by such construction, for any personal injury, death, property or other claims in respect of any one accident or occurrence;
 - (b) to the Work and all fixtures, equipment, improvements and building materials on the Ferry Terminal Properties from time to time, both during and after construction, against fire, earthquake and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners in an amount sufficient for rebuilding of the assets; and
 - (c) the Tenant will consider any other form or amended form of insurance in such amounts, and against such risks as the Landlord may, from time to time, reasonably require;

and the Tenant further agrees to provide the Landlord with written evidence of insurance, upon the request of the Landlord.

- 25.4 Each policy of insurance required to be carried by the Tenant hereunder will provide that the insurer will not have any right of subrogation against the Landlord on account of any loss or damage covered by such insurance or on account of payments made to discharge claims against or liabilities of the Landlord or Tenant covered by such insurance and an undertaking from such insurer to notify the Landlord in writing at least 30 days prior to any material change to, or cancellation of, the policy.
- 25.5 The Tenant will not do, permit to be done or omit to do anything in, on or about the Ferry Terminal Properties which causes or has the effect of causing the insurance on the whole or any part of the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities or New Facilities to be cancelled. If the Tenant receives notice that its insurance is going to be cancelled, then the Tenant will immediately advise the Landlord and the Tenant will work diligently to remedy the situation or to obtain replacement insurance.

26. LANDLORD'S RIGHT TO INSURE

- 26.1 In the event that the Tenant fails to comply with any of the provisions in paragraph 25.1 or there is a cancellation or threat of cancellation of any insurance required thereunder, then, if the Tenant fails to either remedy the situation or obtain replacement insurance within a reasonable period of time, the Landlord may place such coverage as the Landlord acting reasonably sees fit and the Tenant will pay the cost thereof as Additional Rent to the Landlord on demand.

27. LANDLORD NOT LIABLE

- 27.1 The Tenant agrees that the Landlord will not be liable for the following:

- (a) any injury or death occurring to any person while on the Ferry Terminal Properties;
- (b) any loss of or damage to any property of the Tenant or any other person located on the Ferry Terminal Properties;
- (c) any damage, loss of profits or consequential loss caused or contributed to by the condition of the Ferry Terminal Properties, of any Existing Facility or of any New Facility, Leasehold Improvements, or any utility, service or road, or any interruption or failure in any business located on the Ferry Terminal Properties;
- (d) any injury, loss or damage required to be insured against by the Tenant under this Lease;
- (e) anything for which the Tenant is in any way responsible under this Lease;
- (f) anything for which the Tenant has indemnified the Landlord under this Lease; and
- (g) any claim, action, loss, writ or legal proceeding by any person in any way related to the uses permitted or not by the Tenant or any Occupant under this Lease.

28. INDEMNITY

- 28.1 The Tenant hereby agrees to indemnify and save the Landlord, its servants, employees, heirs and assigns harmless, against any claims, losses, suits, proceedings, actions, causes of action, demands, judgments, executions, liabilities and responsibilities arising as a result of any loss advanced by any person or entity for an injury or damage of any nature caused, resulting or arising from or contributed to by reason of any one or more of the following:
- (a) the ownership of Existing Facilities, Leasehold Improvements or New Facilities, the occupancy or use of the Ferry Terminal Properties or any part thereof by the Tenant, any Occupant, or any person occupying or using the Ferry Terminal Properties or

any part thereof with the consent, express or implied, of the Tenant or of an Occupant;

- (b) the Ferry Terminal Properties, the Leasehold Improvements, Existing Facilities or New Facilities, or any part of any of them;
- (c) any claims or costs related to any dispute including the filing of any construction or builders liens, certificates of pending litigation or any other encumbrance against the Landlord or the Ferry Terminal Properties or any part thereof;
- (d) the presence of any Hazardous Substance or the existence of any Hazardous Substance on, in or about the Ferry Terminal Properties or any part thereof, including any Hazardous Substance for which the Tenant is responsible at law before the Commencement Date;
- (e) any act or omission of the Tenant, any Occupant, or any employee, agent, customer, contractor, sub-contractor, invitee or licensee of the Tenant;
- (f) any Development Agreements, Occupant Agreements, Leasehold Mortgages, or Existing Tenant Agreements;
- (g) any losses described in paragraph 17; and
- (h) any matter described in paragraph 27;

provided however, that such indemnity does not apply to any negligent acts or omissions, or to any acts or omissions done in bad faith, by the Landlord or by anyone acting on behalf of the Landlord.

- 28.2 Except for matters arising directly as a result of the Tenant's breach of its obligation to abide by and respect any Existing Landlord Agreement, the Landlord agrees to indemnify and save the Tenant, its directors, officers, agents and employees harmless from any claims, losses, suits, proceedings, actions, causes of action, demands, judgments, executions, liabilities and responsibilities, including negligence, arising as a result of any loss advanced by any person or entity for any injury or damage of any nature caused, resulting or arising from or contributed to by reason of any Existing Landlord Agreement.

29. INDEMNITIES SURVIVE TERMINATION

- 29.1 The indemnities set out in this Lease shall survive the expiry of the Term, the Renewal Term, if any, or any earlier termination of this lease.

30. TENANT TO DEFEND ACTION

- 30.1 The Tenant will, in any event in which the Landlord is made a party to any action, suit or proceeding in respect of a claim to which the Tenant's obligation to indemnify and hold the Landlord harmless arises, defend such action, suit or proceeding in the name of the Landlord and will pay all costs of the Landlord, excluding legal costs incurred by the Landlord, in connection with any litigation and the Tenant may, in its sole discretion, elect to compromise, pay or satisfy any such action, suit or proceeding.

31. LANDLORD NOT OBLIGED TO REPAIR, MAINTAIN OR PROTECT

- 31.1 The Tenant agrees that the Landlord is not obliged to furnish any utilities, services, equipment or facilities, to make repairs or alterations, or to perform any maintenance to the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities and New Facilities, and the Tenant agrees that it assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Ferry Terminal Properties and anything contained therein.

32. "AS IS" CONDITION

- 32.1 The Tenant agrees that it has fully inspected and is familiar with the physical attributes and condition (including environmental condition) of the Ferry Terminal Properties, Leasehold Improvements, Existing Facilities and anything contained therein and accepts them on an "as is" condition, without any representations or warranties being given by the Landlord with respect thereto or to the utilities or any other services. Any additional work required to make the Ferry Terminal Properties, Leasehold Improvements or Existing Facilities suitable for the operations of the Tenant will be at the sole risk and expense of the Tenant.

33. LIENS AND CLAIM

- 33.1 The Tenant covenants that it will not permit, do or cause anything to be done, at any time which would allow any valid lien, certificate of pending litigation, judgment or certificate of any court, financial charge or encumbrance of any nature whatsoever to be imposed or to remain on the Ferry Terminal Properties, or any part thereof, excluding Security Interests which comply with the provisions in Paragraphs 34.1, 34.3 and 34.4.

- 33.2 At all times during the Term or any Renewal Term, the Tenant will, at its own expense, ensure that there is full workers' compensation coverage in respect of all workmen, employees, servants and others engaged in or on any work, non-payment of which may create a lien on the Ferry Terminal Properties or any part thereof. The Tenant will immediately notify the Landlord in writing of any dispute involving third parties which may arise in connection with obtaining and maintaining the workers' compensation coverage required under this Paragraph if such dispute results in the requisite coverage not being in place, and the Tenant will take all reasonable steps to ensure the resolution of such dispute forthwith. If the coverage required by this Paragraph is not in place within five (5) days of the date of the notice to the Landlord mentioned above, the Landlord will be entitled to have recourse to the remedies of the Landlord in this Lease, at law or in equity.
- 33.3 The Tenant agrees that the Landlord may, in its sole discretion and at its sole expense, without prior notice to the Tenant and at any time on or after the Commencement Date, file a Form 1 Notice of Interest under section 3(2) of the *Builders Lien Act*, S.B.C. 1997, c. 45, against title to all or any part of the Ferry Terminal Properties.

34. MORTGAGES, TRANSFERS, ASSIGNMENTS AND SUBLETTING

- 34.1 Provided that any rights granted to a third party do not exceed those granted to the Tenant by this Lease, and subject to the provisions of Paragraph 34.4 and 34.5, the Tenant may enter into an Occupant Agreement or Security Interest without the prior consent of the Landlord. In the event that the Tenant wishes to grant rights to a third party that do exceed those granted to the Tenant by this Lease, the Tenant must obtain the prior written consent of the Landlord, which consent may, in the Landlord's sole and absolute discretion, be withheld without having to give any reason.
- 34.2 The Tenant will provide the Landlord with either the names and addresses of any third parties to, or true copies of, any Occupant Agreement or Security Interest within ten (10) days of the Landlord's request for the same from time to time.
- 34.3 The Landlord acknowledges that the Tenant will be entering into one or more Security Interests to secure borrowings, which Security Interest will:
- (a) contain a mortgage of the Tenant's property interests and a fixed charge on all of the other assets of the Tenant, and
 - (b) grant to Her Majesty the Queen in Right of the Province of British Columbia the right in its absolute discretion to purchase all of the issued and outstanding bonds under the Security Interests at any time at a price established under the Coastal Ferry Services Contract.
- 34.4 The Landlord agrees to enter into an acknowledgement agreement directly with the mortgagees or trustees under any Security Interest acknowledging that:

- (a) the mortgagees or trustees will have the right on default, under the Security Interest, to take possession of all the assets of the Tenant and to appoint a receiver to operate the BC Ferry System in accordance with the terms of the Coastal Ferry Services Contract only for so long as they comply with the provisions of this Lease, the Coastal Ferry Services Contract and the *Coastal Ferry Act*; and
 - (b) without limiting the rights of the Province described in section 2.04(b) of the Coastal Ferry Services Contract, the Landlord will not exercise the rights and remedies that it may have under Paragraph 35.2 of this Lease, at law or in equity for so long as the mortgagee or trustee and its receiver comply with the provisions of this Lease, the Coastal Ferry Services Contract and the *Coastal Ferry Act*, however, in the event of their failure to do so, the Landlord may proceed with the exercise of its rights and remedies.
- 34.5 Notwithstanding any Occupant Agreement, Security Interest, Development Agreement, or Transfer or Assignment Agreement, or any consent of the Landlord thereto, but subject only to the rights of mortgagees or trustees under any acknowledgement agreement made pursuant to Paragraph 34.4, the Tenant will remain bound to the Landlord for the fulfillment of all of the terms, covenants, agreements or conditions contained in this Lease for the entire Term and any Renewal Term.
- 34.6 The Tenant agrees that it will not enter into a Transfer or Assignment Agreement without the prior consent of the Landlord, which consent may not be unreasonably withheld. The Landlord acknowledges and agrees that the conversion of the Tenant to a company, as more specifically described in Paragraph 3.9, neither constitutes a Transfer or Assignment nor requires the prior consent of the Landlord.
- 34.7 The rights of the Landlord under this Lease may be transferred or assigned to the Crown, any agent of the Crown or any Crown corporation and in the event of such transfer or assignment, the Tenant agrees to become the Tenant of such transferee or assignee under the terms of this Lease and to the extent that the transferee or assignee has assumed the covenants and obligations of the Landlord under this Lease, then the Landlord will, without further written agreement, be freed and relieved of all liability on such covenants and obligations. The Tenant will, from time to time at the request of the Landlord, certify or acknowledge to any actual or proposed transferee or assignee, the status and validity of this Lease, the state of the Landlord's and the Tenant's account under this Lease and any other information reasonably requested by the Landlord.

35. EVENTS OF DEFAULT

35.1 If the Tenant fails to keep, perform or observe any of the Tenant's Obligations or its obligations under the Coastal Ferry Services Contract and:

- (a) such failure continues for a period of thirty (30) business days after written notice thereof has been given by the Landlord to the Tenant; or
- (b) if any such failure because of its nature would reasonably require more than thirty (30) business days to rectify, the Tenant has not commenced rectification within the thirty (30) day notice period and, thereafter, promptly, effectively and continuously proceeds with the rectification of the failure;

then and in every such case, it will be lawful for the Landlord at any time thereafter to enter into and on the Ferry Terminal Properties or any part thereof in the name of the whole and the Landlord to have again, repossess and enjoy as of its former estate, notwithstanding anything to the contrary in this Lease. Whenever the Landlord is entitled to re-enter the Ferry Terminal Properties, it may, at its option and without limiting its other rights and remedies, terminate this Lease in which case all prepaid Rent will remain the property of the Landlord and the provisions in Paragraph 11 will apply.

35.2 Subject to the provisions of the Coastal Ferry Services Contract and to any acknowledgement agreement made in accordance with the provisions of Paragraph 34.4, upon the occurrence of an "Event of Default" as that term is defined under the provisions of the Coastal Ferry Services Contract, by the Tenant, this Lease will, at the sole option of the Landlord, cease and determine at which time the Term will immediately become forfeited and void and the Landlord may

- (a) immediately claim Rent together with any arrears then unpaid and any other amounts owing to the Landlord by the Tenant under this Lease; and
- (b) without notice or any form of legal process, forthwith re-enter on and take possession of the Ferry Terminal Properties and remove the Tenant's effects therefrom;

without prejudice to, and under reserve of, all other rights, remedies and recourses of the Landlord.

35.3 If at any time an action is brought for recovery of possession of the Ferry Terminal Properties, for the recovery of Rent or any other amount due under this Lease, or because of a breach by act or omission of any Tenant's Obligations, the Tenant will pay to the Landlord all costs and expenses incurred by the Landlord in obtaining professional advice regarding the same and in the exercise or enforcement of its rights and remedies under this Lease, including legal costs on a solicitor and own client basis.

35.4 If, at any time and so often as it happens, the Tenant fails to keep, perform or observe any of the Tenant's Obligations, then the Landlord may, but is not obligated so to do, without waiving or releasing the Tenant from the Tenant's obligations, itself observe and perform the Tenant's Obligations in respect of which the Tenant has made default or make payment of the moneys the Tenant has failed to pay; and the Tenant will promptly pay all costs and expenses reasonably incurred by the Landlord, excluding the costs of any salary, wages and benefits payable by the Landlord to any of its employees but including legal costs as between solicitor and own client, in the observance or performance of such Tenant's Obligations.

35.5 Any money paid by the Landlord as provided in Paragraph 35.4 will, be payable by the Tenant to the Landlord and the Tenant covenants to pay the Landlord forthwith on demand, with interest accruing on that money from the date of demand at a rate equal to 6% per annum above the prime rate established from time to time by the Landlord's bank, and all money payable under this Paragraph will be treated as Rent due and payable to the Landlord under this Lease and the Landlord will have the same rights and remedies and may take the same steps for their recovery as for the recovery of Rent in arrears.

35.6 Except as otherwise provided in this Lease, all rights and remedies of the Landlord in this Lease contained will be cumulative and not alternative and will be in addition to all rights and remedies available to the Landlord at law, in equity or otherwise.

36. BINDING UPON PERMITTED SUCCESSORS AND ASSIGNS

36.1 This Lease will enure to the benefit of and be binding on the Landlord, its successors and assigns, the Tenant, and the Tenant's permitted successors and assigns.

37. WAIVER

37.1 The failure of either party to insist on the strict performance of any provisions in this Lease or the failure of either party to exercise any right, option or remedy will not be construed as a waiver of any continuing or subsequent default or breach; and no waiver will be inferred from or implied by anything done or omitted by either party except if there is an express waiver in writing by that party.

38. FORCE MAJEURE

38.1 No party will be liable to another for any delay, interruption or failure in the performance of their respective obligations under this Lease if caused by an Event of Force Majeure, in which case the time period for the performance or completion of any such obligation will be automatically extended for the duration of such Event of Force Majeure.

39. NOTICES

- 39.1 Any notices to be given pursuant to this Lease will be sufficiently given if delivered or sent by fax as follows:

To the Landlord: BC Transportation Financing Authority
300 – 940 Blanshard Street
Victoria, British Columbia V8W 3E6
Attention: Director, Land Management Branch

FAX NO: 250.356.6970

And to the Tenant: British Columbia Ferry Corporation
1112 Fort Street
Victoria, British Columbia
V8V 4V2
Attention: Manager of Properties and Planning

FAX NO: 250.388.7481

and any notice will be deemed to have been given and received on the business day immediately following delivery or successful facsimile transmission.

- 39.2 Either party may change its address or fax number for notices by giving the other notice of such change in one of the manners set out herein.

40. AMENDMENTS

- 40.1 Except as otherwise provided herein, this Lease may only be modified or amended by a subsequent agreement in writing signed by both parties.

41. NO PARTNERSHIP, JOINT VENTURE OR AGENCY

- 41.1 The parties agree that nothing in this Lease creates any relationship between the parties of partnership, joint venture or of principal and agent and that the relationship is only one of landlord and tenant. The Tenant covenants and agrees that it will cause all third parties under any and all Occupant Agreements, Security Interests and Development Agreement to acknowledge and agree that there is no partnership, joint venture or principal and agent relationship between the Landlord and the Tenant under this Lease.

42. SURVEYS AND REGISTERED TITLE

- 42.1 The Landlord agrees that legal surveys of the exterior boundaries of the Ferry Terminal Properties where the Landlord and Tenant have agreed to do so, will be completed by the Tenant as soon as possible and, in any event, by March 31, 2004 and the parties agree that the description of Ferry Terminal Properties in Schedule "1" will be amended accordingly. The Tenant agrees to pay for all costs and expenses of such surveys incurred by the Landlord or the Province forthwith upon its receipt of any invoice therefor. If any of the Ferry Terminal Properties are not registered at the appropriate land title office as at March 31, 2004, the Landlord may cause them to be so registered and the Tenant will promptly pay all costs and expenses incurred by the Landlord in so doing.
- 42.2 Nothing in this Lease will be construed so as to prevent or restrict the parties from agreeing to alter the boundaries of the Ferry Terminal Properties in accordance with the *Coastal Ferry Act* by deleting portions of the Ferry Terminal Properties or adding other adjacent lands in order to correct any lands or water lot areas which were incorrect descriptions of any of the Ferry Terminal Properties in Schedule "1". When and so often as such addition or deletion is made pursuant to this Paragraph, the reference in this Lease to "Ferry Terminal Properties" will mean and refer to the lands after such deletion or addition.

43. REGISTRATION OF LEASE

- 43.1 The Tenant may, at its own expense, take any steps required to register this Lease although, upon the expiry of the Term (or any Renewal Term) or any earlier termination of this Lease, the Tenant will forthwith, at its own expense, remove and discharge any such registration, and provide the Landlord with a copy of such discharge with registration particulars thereon, and an updated title search, if available, of the Ferry Terminal Properties evidencing registration of such discharge.

44. QUIET ENJOYMENT

- 44.1 For so long as the Tenant pays all monies owing under this Lease and complies with all the Tenant's Obligations, the Landlord agrees that the Tenant will be entitled to quiet enjoyment of the Ferry Terminal Properties, without interruption or hindrance by the Landlord or by anyone acting on behalf of the Landlord.

45. SCHEDULES

- 45.1 Each Schedule to this Lease is an integral part of this Lease.

46. PERFORMANCE

- 46.1 Each party will, upon the request of the other, do or cause to be done all lawful acts and execute and deliver such documents and assurances necessary for the performance of the provisions of this Lease.

47. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 47.1 Each of the Landlord and the Tenant will treat as confidential and will not, without the prior written consent of the other of them, disclose or permit to be disclosed, any information supplied to, obtained by or which comes to the knowledge of the party as a result of this Lease, except insofar as the disclosure is necessary for registration under Paragraph 43.1, to enable the party to fulfill its obligations under this Lease or the Coastal Ferry Services Contract, to their respective legal counsel or as required by Law.
- 47.2 Any documentation relating to this Lease or the Coastal Ferry Services Contract that is in the custody or under the control of the Landlord is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

48. DISPUTE RESOLUTION


- 48.1 If at any time and so often as a Dispute occurs, then the Landlord and the Tenant will use their commercially reasonable efforts to resolve such Dispute by amicable negotiations and, in this regard, will provide frank, candid and timely disclosure of all relevant facts, information and documents pertaining to any Dispute.
- 48.2 Either the Landlord or the Tenant may refer any Dispute for resolution to the Landlord's Director, Land Management Branch, Ministry of Transportation, Partnerships, and to the Tenant's Manager of Properties and Planning. Either party may designate a replacement or equivalent representative by giving the other party prior written notice of such designation.
- 48.3 If any Dispute is not resolved by the persons in Paragraph 48.2 within one month of such Dispute being referred to them, or such longer time as the Landlord and the Tenant may agree, then either the Landlord or the Tenant may elect in writing to refer the Dispute for resolution to the Landlord's Vice-President (or if not available, then to an Assistant Deputy Minister, Ministry of Transportation) and to a Vice-President of the Tenant. Either party may designate a replacement or equivalent representative by giving the other party prior written notice of such designation.
- 48.4 If any Dispute is not resolved by the persons in Paragraph 48.3 within one month of such Dispute being referred to them, or such longer time as the Landlord and the Tenant may agree, then either the Landlord or the Tenant may elect in writing to refer the Dispute for resolution to the Landlord's President, or if not available, then the Deputy Minister, Ministry

of Transportation (or any replacement or equivalent representative) and to the Tenant's President.


- 48.5 In any Dispute is not resolved by the persons in Paragraph 48.4 within one month of such Dispute being referred to them, or such longer time as the Landlord and the Tenant may agree, then either the Landlord or the Tenant may elect in writing to refer the Dispute to arbitration in accordance with the provisions of the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55.

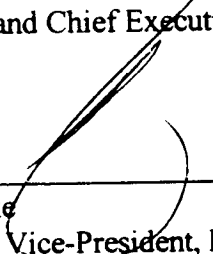
WHEREFOR the parties have hereunto, by their duly authorized signatories, executed this Lease as set out below.

BC TRANSPORTATION FINANCING AUTHORITY
by its duly authorized signatory:


per: Dan Doyle
Chief Executive Officer

BRITISH COLUMBIA FERRY CORPORATION
by its duly authorized signatory:


per: Doug Allen
President and Chief Executive Officer


per: Rob Clarke
Executive Vice-President, Finance
and Chief Financial Officer

SCHEDULE "1" (Ferry Terminal Properties)
SCHEDULE "2" (Existing Landlord Agreements)
SCHEDULE "3" (Existing Tenant Agreements)

SCHEDULE "1"

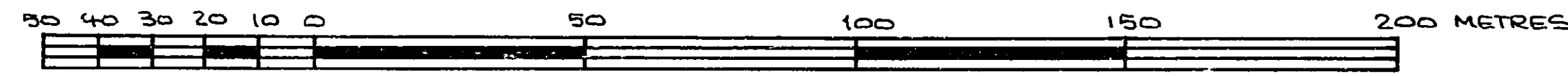
DESCRIPTION OF FERRY TERMINAL PROPERTIES

Terminal Name: Prince Rupert			
Property Type	Number	P.I.D.	Legal Description
Lands Covered by Water: includes foreshore plus fill	1	014-480-271	Parcel A (Plan 9665) of Waterlot in front of Waterfront Block C District Lot 1992 Range 5 Coast District Plan 1161
Uplands –Titled	2	012-942-308	Parcel B (Plan 9664) Block 11 Waterfront Block C District Lot 1992 Range 5 Coast District Plan 1617
		011-022-001	Waterfront Block B District Lot 1992 Range 5 Coast District (Section 2) Plan 923, together with all the foreshore and bed of the sea fronting said Block which the Grantor has now or at any time hereafter may acquire except Plans 3664 4423 4609 4658 4788 12079 and PRPR14395
Highway Lands	0		
Air Space Parcel	0		
Unsurveyed Crown Land	0		

25

REFERENCE PLAN OF PART OF BLOCK 11, DISTRICT LOT 1992,
RANGE 5, COAST DISTRICT, PLAN 1617,
CITY OF PRINCE RUPERT,
(DEPOSITED PURSUANT TO SECTION 99h OF THE LAND TITLE ACT.)

SCALE 1:1250



~LEGEND~


BEARINGS ASTRONOMIC AND ARE DERIVED FROM PLAN 4658

① OP CON DENOTES STANDARD B.C. CONCRETE POST FOUND

○ MON DENOTES OLD CITY OF PRINCE RUPERT MONUMENT FOUND

● OIP DENOTES STANDARD IRON POST FOUND

- IP DENOTES STANDARD IRON POST SET

 DENOTES STAINLESS STEEL
 OLP DENOTES LEAD PLUG FOUND

ALL DISTANCES ARE IN METRES
UNLESS OTHERWISE NOTED.

PLAN 9664

DEPOSITED IN THE LANDTITLE OFFICE
AT PRINCE RUPERT, B.C. THIS 10TH
DAY OF JULY 1980.

CA Valay
A.D. REGISTRAR

THE POST FOUND
RUPERT MONUMENT FOUND
FOUND
ET

PRINCE RUPERT HARBOR HEAD LINE AS ESTABLISHED BY ORDER-IN-COUNCIL DATED 25TH JANUARY, 1913

WATERLOT IN FRONT OF WATER FRONT BLOCK C

WATERLOT IN FRONT OF

WATERFRONT BLOCK B

LOT 1

PLAN

4658

RAILWAY COMPANY

PLAN

4161

AVENUE

OCK 11
GRAHAM
OMON

P.K.M.
CANADIAN NATIONAL RAILWAY COMPANY
[REGISTERED OWNER]

E. Smith
GENERAL MANAGER OF REAL ESTATE

[Signature]
ASSISTANT SECRETARY

I, DONALD F. HIGHE, A BRITISH COLUMBIA LAND SURVEYOR, OF TERRACE, IN BRITISH COLUMBIA, CERTIFY THAT I WAS PRESENT AT AND PERSONALLY SUPERINTENDED THE SURVEY REPRESENTED BY THIS PLAN, AND THAT THE SURVEY AND PLAN ARE CORRECT.

THE SURVEY WAS COMPLETED ON THE 10TH OF JANUARY, 1980.

Donald P. Hieb

THIS PLAN LIES WITHIN THE SKEENA ~
QUEEN CHARLOTTE REGIONAL DISTRICT.

HIGHE SURVEYS
B.C. LAND SURVEYORS
4647 LAZELLE AVE.
TERRACE, B.C.

79-091

SCHEDULE "2" - EXISTING LANDLORD AGREEMENTS

All portions of the Ferry Terminal Properties which were highway or road immediately before they were at any time transferred to BCTFA under the Coastal Ferry Act are subject to all agreements or privileges, verbal or written, which exist on the Commencement Date which permit any person rights to use, an interest or access onto such portions of the Ferry Terminal Properties for any of the following purposes:

- (a) public and private utilities, improvements for the transmission of communications or optical energy or electrical energy, natural gas lines, artificial gas lines, lines for oil and other gaseous or liquid hydrocarbons, sanitary sewers, water lines, water conduit pipes, water mains, water distribution systems, storm sewers, pump stations, drainage ways, ditches, culverts, cat basins, signal distribution and processing equipment, and any other similar systems;
- (b) to gain access to lands, docks, boat launch ramps or water adjacent to any of the Ferry Terminal Properties, and
- (c) all systems, equipment, facilities and improvements related or ancillary to any of the foregoing.

SUBLEASE

BETWEEN **BRITISH COLUMBIA FERRY SERVICES INC.**
a company duly incorporated under the laws of the Province
of British Columbia and having its head office
in the City of Victoria, in the Province of British Columbia

("BC Ferries")

AND **VIA RAIL CANADA INC.,**
a corporation duly incorporated under the laws of
Canada and having its head office in the City of Montreal,
in the Province of Quebec

("VIA Rail")

WHEREAS BC Ferries is the tenant under a sixty (60) year lease ending on
March 31, 2063, subject to a twenty (20) year right of renewal, of lands located in
the City of Prince Rupert, British Columbia legally identified as:

PID: 012-942-308
Parcel B (Plan 9664), Block 11, Waterfront Block C, District Lot 1992,
Range 5, Coast District, Plan 1617 (the "**Lands**")

as shown on the part of the drawing attached hereto as **Schedule "A"**;



AND WHEREAS BC Ferries operates an administration building located on the
Lands (the "**Prince Rupert Terminal**") in which it sees fit to permit the operation
of certain businesses or activities;

AND WHEREAS VIA Rail desires to continue its passenger rail operation in the
Prince Rupert Terminal in accordance with the policies of BC Ferries;

THEREFORE IN CONSIDERATION OF THE PREMISES, COVENANTS AND
AGREEMENTS HEREIN CONTAINED AND FOR OTHER GOOD AND
VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH
IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

CONFIDENTIAL

VIA Rail Canada Inc.

VIA) 	(BC Ferries) 
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ARTICLE 1 OBJECT OF THE AGREEMENT

- 1.1 BC Ferries hereby subleases to VIA Rail, and VIA Rail hereby accepts the sublease of a space hereinafter called the "**Subleased Premises**" located inside the Prince Rupert Terminal.

ARTICLE 2 SUBLEASED PREMISES

- 2.1 The Subleased Premises, located on the main floor of the Prince Rupert Terminal, consist of a space of approximately one hundred and fifty (150) square feet and more clearly indicated in bold outline on the drawing attached as **Schedule "B"** hereto.
- 2.2 Subject to the terms of this sublease, VIA Rail shall also have the reasonable access to the waiting areas, washrooms, walkways, access roadway and parking areas and baggage handling areas in common with other occupants of the Prince Rupert Terminal.

ARTICLE 3 USE OF THE SUBLEASED PREMISES



- 3.1 VIA Rail shall use the Subleased Premises for the following purposes :
- Operation of passenger rail services including but not limited to ticket sales, promotion (including signage), storage, baggage handling and such other services as may be reasonably related thereto.
- 3.2 The Subleased Premises may be used for no other purpose. Any other use of the Subleased Premises may result in cancellation of this sublease, at the sole discretion of BC Ferries unless BC Ferries has given its prior written consent, which consent shall not be unreasonably withheld. *May or may not be granted, in the sole discretion of BC Ferries.*

ARTICLE 4 TERM OF THE SUBLEASE

Subject to the terms and covenants contained in this sublease, this sublease is granted for a period of three (3) years beginning on the 20th day of December, 2006 and ending on the 19th day of December, 2009 (the "**Term**").

CONFIDENTIAL

VIA Rail Canada Inc.

(VIA) 	(BC Ferries) 
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ARTICLE 5 POSSESSION

The parties acknowledge that VIA Rail has taken possession of the Subleased Premises and operated its business on the date on which the Term began.

ARTICLE 6 RENT AND ADDITIONAL RENT

- 6.1 During the Term, VIA Rail shall pay to BC Ferries an annual rent of FOURTEEN THOUSAND FOUR HUNDRED DOLLARS (\$14,400.00), inclusive of any applicable Goods and Services taxes or Social Services taxes, in equal, consecutive monthly instalments of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00), payable in advance on the first day of each month.
- 6.2 During the Term, and any renewal thereof, VIA Rail shall also pay to BC Ferries, as additional rent, all other sums of money owing by VIA Rail to BC Ferries as provided in this sublease.

ARTICLE 7 ELECTRIC POWER, HEAT



- 7.1 BC Ferries shall provide, at its expense, electric power in the Subleased Premises but only to the extent that such electric power is already supplied through the existing distribution system, for lighting and other uses that are acceptable to BC Ferries, acting reasonably.
- 7.2 BC Ferries shall provide, at its expense, heat in the Subleased Premises but only to the extent that such heat is already supplied through the existing distribution system.

ARTICLE 8 TAXES, ASSESSMENTS AND CHARGES

BC Ferries shall pay only the property taxes imposed on the Subleased Premises and shall be liable for the payment of any Goods and Services taxes or Social Service taxes included in the rent paid by VIA Rail. In addition to the rent, VIA Rail shall pay its business taxes in respect of its operation in the Subleased Premises as well as all other taxes, assessments or charges payable by BC

CONFIDENTIAL

VIA Rail Canada Inc.

(VIA) 	(BC Ferries) 
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Ferries or VIA Rail, as the result of the presence of VIA Rail in the Subleased Premises or the existence of this sublease arising from this sublease or from the presence of VIA Rail in the Subleased Premises. VIA Rail's goods and services tax registration number is 105521785.

ARTICLE 9 REPAIR, MAINTENANCE AND ACCESS

- 9.1 BC Ferries shall, at its sole expense, repair and maintain the Prince Rupert Terminal and the Lands, including every sidewalk and motor vehicle parking area contiguous or appurtenant to the Prince Rupert Terminal, in a state of reasonable cleanliness and repair and BC Ferries agrees to have in place a reasonable snow and ice removal process, when, where and so often as need shall be; PROVIDED HOWEVER that, notwithstanding the foregoing, VIA Rail shall, at its expense, repair and make good any damage to the Prince Rupert Terminal and the Lands caused by VIA Rail or any of its employees, agents, invitees or licensees, regardless of the manner in which such damage arose or was caused.



VIA Rail shall also maintain responsibility and the expense of repairing and maintaining, including snow and ice removal, of areas used solely for its purposes such as the train boarding platform and all other areas within the bounds of the fence lining the railway tracks.

Included in the foregoing is the responsibility of BC Ferries to provide all required janitorial services for the Subleased Premises as and when required to keep the Subleased Premises in a state of reasonable cleanliness for conducting business with the public.

- 9.2 Subject to Articles 9.3 and 9.4 of this sublease, BC Ferries shall permit VIA Rail and any of its employees, agents, invitees, licensees, or members of the public access to and use of the Prince Rupert Terminal for the purpose of embarking or disembarking from passenger trains and use of all passenger related facilities including but not limited to the platform, waiting areas and washrooms.
- 9.3 VIA Rail shall, at all times, ensure that neither it, nor any of its employees, agents, invitees or licencees, operate or park :
- (a) baggage carts on any sidewalks, passenger walkways, parking or drop-off areas located on the Lands; or

CONFIDENTIAL

VIA Rail Canada Inc.

 (VIA)	 (BC Ferries)
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- (b) motorized vehicles on any sidewalks or passenger walkways located on the Lands.
- 9.4 VIA Rail shall, at all times, ensure that none of its operations, its equipment or its employees, agents, invitees or licencees, interferes with the operations of BC Ferries, including, but not necessarily limited to, access by BC Ferries' employees, agents, invitees and licencees and their vehicles to the BC Ferries loading ramp.
- 9.5 VIA Rail may, upon one month's prior written notice to BC Ferries, assume sole responsibility for all janitorial services for the Subleased Premises, and upon receipt of such notice, BC Ferries shall no longer enter upon the Subleased Premises for the purposes of providing janitorial services for it.

ARTICLE 10 BUSINESS HOURS

VIA Rail will have access to the Subleased Premises during regular business hours as well as two (2) hours prior to the arrival of VIA Rail's trains until two (2) hours following the departure of VIA Rail's trains, as well as any other hours to which the parties may have agreed. For reference, a current VIA train schedule is attached as **Schedule "C"**. VIA Rail agrees that, in the event that its trains or vehicles arrive after regular business hours, it shall ensure that all buildings and gates are locked upon completion of its activities and it shall assume responsibility for all persons on the Lands.



ARTICLE 11 IMPROVEMENTS

11.1 Examination of the Subleased Premises

VIA Rail declares that it has examined the Subleased Premises, that it has taken possession of them "as is" and that it is fully and entirely satisfied therewith.

11.2 Improvements and alterations

Any alteration or improvement to or installation made in the Subleased Premises by VIA Rail, including signage and colour schemes shall be at VIA Rail's own expense and shall be in conformity with detailed plans and specifications submitted in accordance with BC Ferries' instructions, acting reasonably. BC Ferries' prior written approval shall be required and the work shall be performed by a contractor approved by BC Ferries and shall

(VIA) 	(BC Ferries) 
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be at VIA Rail's expense. VIA Rail agrees to use its best efforts to ensure that its signage and colour schemes can be clearly distinguished from those used by BC Ferries. VIA Rail also agrees that all improvements to the Subleased Premises shall comply with all applicable building codes and other municipal, provincial and federal laws and that the workers performing those improvements shall be adequately protected by the Workers Compensation Board and by any other applicable insurance programs, all at the sole expense of VIA Rail.

11.3 Telephone and other communications equipment

VIA Rail shall be solely responsible for the installation and use of its own telephone, fax, computer, data, and communications equipment and any associated costs.

11.4 Removal of improvements

Upon the expiration, termination or cancellation of this sublease, BC Ferries may request VIA Rail to remove from the Subleased Premises any or all of the improvements, alterations and installations that it has made and VIA Rail shall comply and return the Subleased Premises to their original state at the beginning of this sublease, wear and tear excepted. Such alterations, improvements or installations that VIA Rail is not required to remove or does not remove despite BC Ferries' request to do so shall become the property of BC Ferries without any compensation to VIA Rail.

**ARTICLE 12
ASSIGNMENT OF SUBLEASE AND SUBLETTING**

12.1 BC Ferries consent required



VIA Rail shall not transfer, assign, mortgage or encumber this sublease, or any of its rights, titles or interests in it or by virtue thereof or sublet all or part of the Subleased Premises or permit the Subleased Premises or any portion of them to be used, occupied or possessed by any other person, without the consent of BC Ferries, which consent shall not be unreasonably withheld.

12.2 Assignment by BC Ferries

VIA Rail agrees that this sublease may be assigned by BC Ferries to any person, corporation or partnership as BC Ferries sees fit and that such assignment carries with it the obligation on the part of the assignee to comply with the terms and conditions of this sublease.

CONFIDENTIAL

VIA Rail Canada Inc.

(VIA) 	(BC Ferries) 
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ARTICLE 13 INSURANCE

13.1 Risk increase

VIA Rail shall not do or cause to be done on or about the Lands or the Subleased Premises, or bring or keep there anything which may in any way whatsoever increase the risk of fire or the premium for fire or other insurance for the building, or invalidate or violate the fire insurance policies covering the building.



13.2 Insurance

VIA Rail shall, at its own expense, obtain and maintain in force throughout the Term of this sublease, in the joint names of BC Ferries and VIA Rail, the following insurance in forms and amounts and with insurance carriers that are satisfactory to BC Ferries and as a prudent sub-lessee would obtain:

- (a) Comprehensive general liability insurance (meaning insurance against any liability imposed upon VIA Rail for damages, including damages for care and loss of service because of bodily injury, sickness, disease or death at any time resulting therefrom and sustained by any person AND for damage to or destruction of property, including the loss of use thereof caused by accident or by other negligence occurring or arising from the Subleased Premises or VIA Rail's operations on the Lands or the Subleased Premises), which shall include a cross-liability clause, in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00), exclusive of interest and costs, per occurrence;
- (b) insurance upon property of every kind owned by VIA Rail or for which VIA Rail is legally responsible that is located on the Lands, including VIA Rail's fixtures, fittings, equipment, leasehold improvements and stock in trade in an amount not less than the full replacement value thereof and on an "all risks" basis, including theft, robbery, sprinkler leakage, earthquake and flood;
- (c) business interruption insurance; and
- (d) any other form of insurance in such amounts and against such risks as BC Ferries may from time to time reasonably require.

CONFIDENTIAL

VIA Rail Canada Inc.

(VIA) 	(BC Ferries) 
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- (e) Notwithstanding the foregoing, it is agreed that VIA Rail, if so elects in writing, shall have the right to self-insure or maintain a high self insured retention (SIR) with respect to the General Liability and other hazards referred to in paragraphs (a) through (d). Such right shall be limited to VIA Rail and shall not be transferred to anybody without the written consent of BC Ferries.

13.3 Deductible

Any deductible not paid by the insurance carrier(s) shall be the sole responsibility of VIA Rail and VIA Rail shall indemnify and save BC Ferries harmless with respect to any claims regarding same.

13.4 Notice of Cancellation or Non-Renewal

As a condition of providing insurance, VIA Rail agrees to require the insurance carrier(s) to give BC Ferries at least thirty (30) days prior written notice of any cancellation or non-renewal of the insurance coverage provided in accordance with this sublease.

13.5 Proof of insurance



Unless VIA has elected in writing for self-insurance as provided under paragraph 13.2 (e), VIA Rail shall produce evidence of insurance required under section 13.2 (a) through (d) at the execution of the sublease by the parties and, thereafter on each subsequent anniversary of insurance coverage renewal.

13.6 Provisions of insurance policies

- (a) All policies of insurance shall provide that they shall not be invalidated with respect to the interests of BC Ferries by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies.
- (b) All such policies shall waive recourse and rights of subrogation against BC Ferries.

13.7 Self-insurance

It is agreed that VIA Rail, as long as it is VIA Rail Canada Inc., shall have the right to self-insure with respect to the liability and hazards referred to in this article and in such case VIA Rail agrees to fully indemnify and save harmless BC Ferries, with respect to such liability and hazards, from any claims, demands, suits, or otherwise made against BC Ferries and for all legal expenses incurred by BC Ferries in the defence of same, on a solicitor and client basis.

(VIA) 	(BC Ferries) 
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ARTICLE 14 DESTRUCTION OF SUBLEASED PREMISES

14.1 Fire and destruction of the premises: BC Ferries' options

If during the Term the Prince Rupert Terminal (which houses the Subleased Premises) or the Subleased Premises is destroyed or damaged in whole or in part and the Subleased Premises become totally or partially unusable, BC Ferries may, within thirty (30) days of the occurrence of such loss, notify VIA Rail in writing of its intention to rebuild or repair or to terminate this sublease, which decision shall be at the sole discretion of BC Ferries.

14.2 Rebuild or repair

If BC Ferries decides to repair or rebuild, it shall do so within a reasonable time and, for so long as VIA Rail is able to continue its operations or any part of them on the Lands, VIA Rail shall be obligated to do so and to pay rent, which shall be reduced on a pro-rata basis to reflect the actual useable area of the Subleased Premises by VIA Rail. During the period of rebuilding or repair, BC Ferries shall have access to the Subleased Premises. BC Ferries shall also have the option of relocating VIA Rail to allow it to continue its operations.

14.3 Termination of the Sublease

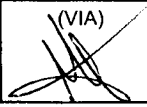
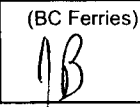
If BC Ferries decides, in its sole discretion, not to rebuild or repair the Prince Rupert Terminal or the Subleased Premises, the sublease shall terminate upon receipt of a six month's written notice from BC Ferries and VIA Rail shall have no claim, whatsoever against BC Ferries in respect of indemnification, damages, inconvenience, loss of profits or otherwise.

ARTICLE 15 EXPROPRIATION

In the event that all of the Subleased Premises or any part thereof or the building in its entirety or a portion thereof deemed by BC Ferries sufficient to render its commercial operation uneconomic, is condemned, expropriated or requisitioned in any way whatsoever by any appropriate authority other than BC Ferries and for any purpose whatsoever, BC Ferries may, at its discretion, cancel this sublease with effect from the date on which possession of the Subleased Premises or the building is required by the expropriating authority for the stated use and purpose. VIA Rail shall have no claim or remedy against BC Ferries for indemnification, damages, inconvenience, loss of profits or otherwise.

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ARTICLE 16
ACCESS TO THE SUBLEASED PREMISES

16.1 Inspection and repair

VIA Rail shall allow BC Ferries to install and maintain in the Subleased Premises anything reasonably useful or necessary for the use of VIA Rail's operations or the convenience of its agents or employees. BC Ferries, its agents and representatives may enter the Subleased Premises at any time to perform inspections or repairs.

16.2 Labour dispute

In the event of a labour dispute or other similar situation, BC Ferries undertakes to use its best efforts to maintain access to the Subleased Premises to allow VIA Rail to continue its operations. However, BC Ferries may not be held responsible for any inconvenience, loss or loss of profit suffered by VIA Rail during the labour dispute or other similar situation.

16.3 Visit



During the last three (3) months of this sublease, VIA Rail shall permit visits to the Subleased Premises by persons interested in renting them.

ARTICLE 17
LIABILITY

Indemnification of BC Ferries by VIA Rail



17.1 VIA Rail shall indemnify and save harmless BC Ferries its agents, contractors, employees, officers and directors from any claim, action, damage, loss, expense and any liability whatsoever, direct or indirect, incurred during the term of this sublease or afterwards, in respect of any event occurring on the Lands or any part thereof or the occupation or use by VIA Rail of the Lands or any part thereof, or caused in whole or in part by an act or omission, including any act or omission due to negligence, of VIA Rail or of any person present on the Lands or any part thereof with VIA Rail's permission, express or implied. If BC Ferries, its agents, contractors, employees, officers or directors become party to any litigation resulting from same, VIA Rail shall pay all costs and expenses, including reasonable legal fees, incurred or paid by BC Ferries in respect of such litigation.

17.2 VIA Rail shall indemnify and save harmless BC Ferries from all costs, expenses and legal fees incurred or paid by BC Ferries in order for BC

(VIA) 	(BC Ferries) 
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Ferries to enforce compliance with the terms, obligations and conditions of this sublease.

- 17.3 VIA Rail acknowledges that a portion of its train and railroad operations, such as the platform, are not located on the Lands. VIA Rail agrees that it shall indemnify and save harmless BC Ferries, its agents, contractors, employees, officers or directors from any claim, action, damage, loss, expense and any liability whatsoever, direct or indirect, incurred during the term of this sublease or afterwards, in respect of any event occurring on that portion of VIA Rail's operations that are not located on the Lands, or caused in whole or in part by an act or omission, including any act or omission due to negligence, of VIA Rail or of any person present with VIA Rail's permission, express or implied. If BC Ferries, its agents, contractors, employees, officers or directors or any other person or entity acting through or under the authority of BC Ferries becomes party to any litigation resulting from same, VIA Rail shall pay all costs and expenses, including reasonable legal fees, incurred or paid by BC Ferries, its agents, contractors, employees, officers or directors or any other person or entity acting through or under the authority of BC Ferries in respect of such litigation.
- 17.4 In the event that a train arrives outside of BC Ferries' normal hours or days of operation, VIA Rail agrees that it shall indemnify and save harmless BC Ferries against and that it shall pay, within thirty (30) days of written demand for same, all costs incurred by BC Ferries, including but not limited to labour and equipment costs, in order to ensure that the Lands are safe for the train and the people arriving on it. VIA Rail further agrees to notify BC Ferries of such arrivals within one (1) hour of becoming aware of them.
- 17.5 **Indemnification of VIA Rail by BC Ferries**
BC Ferries shall indemnify and save harmless VIA Rail from any claim, action, damage, loss, expense and any liability whatsoever, direct or indirect, incurred during the term of this sublease or afterwards, in respect of any event occurring in the Prince Rupert Terminal or any part thereof, or caused in whole or in part by an act or omission, including any act or omission due to negligence, of BC Ferries or of any person present in the Subleased Premises with BC Ferries' permission, express or implied. If VIA Rail, its agents, contractors, employees, officers or directors becomes party to any litigation resulting from same and initiated by or against BC Ferries, BC Ferries shall pay all costs and expenses, including reasonable legal fees, incurred or paid by VIA Rail in respect of such litigation. BC

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Ferries shall indemnify and save harmless VIA Rail from all costs, expenses and legal fees incurred or paid by VIA Rail in order for VIA Rail to enforce compliance with the terms, obligations and conditions of this sublease.

Notwithstanding the foregoing, VIA Rail agrees that BC Ferries shall not be required to indemnify or save harmless VIA Rail from any claim, action, damage, loss, expense or liability arising as a result of the actions, omissions or negligence of any person present on the Lands or any part thereof as a result of the rights and privileges granted to VIA Rail or to its invitees, agents, contractors, employees, officers or directors under this sublease.

ARTICLE 18 COMPLIANCE WITH LAWS



- 18.1 Neither BC Ferries nor VIA Rail shall do or cause to be done, in or about the Subleased Premises or the Lands, nor bring to or keep therein anything which in any way violates the regulations or bylaws of fire, police or health services, or the regulations, decrees or ordinances of the municipality or any authority having jurisdiction over the Subleased Premises or the business conducted therein, and BC Ferries and VIA Rail undertake to comply with such regulations, decrees and ordinances and to comply with them in all respects.
- 18.2 If a permit is required from any authority for the installation of any equipment or structure used or installed by VIA Rail, VIA Rail shall furnish BC Ferries with a copy of such permit.

ARTICLE 19 TERMINATION

- 19.1 In the event that VIA Rail is authorized to discontinue passenger rail services to the City of Prince Rupert, VIA Rail may terminate this sublease, by giving BC Ferries at least six (6) months advance written notice, in which case this sublease, and any renewal thereof shall be terminated without any compensation to BC Ferries.
- 19.2 BC Ferries may terminate this sublease, by giving VIA Rail at least six (6) months advance written notice, in which case this sublease, and any

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
(VIA) 	(BC Ferries) 
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renewal thereof, shall be terminated without any compensation to VIA Rail in the event of any one or more of the following:

- (a) BC Ferries being authorized to discontinue services to the City of Prince Rupert;
- (b) VIA Rail making changes to the train operations at or near the Prince Rupert Terminal resulting in increased usage of the Lands or any part thereof, including but not necessarily limited to the following:
 - (i) allowing more than five (5) train arrivals per week;
 - (ii) allowing more than five (5) train departures per week;
 - (iii) allowing more than three hundred (300) passengers per train arrival/departure;
 - (iv) scheduling more cars per train than the current passenger platform permits.

ARTICLE 20 RENEWAL OPTION

- 20.1 This sublease may be renewed for one (1) additional term of three (3) years on the same terms and conditions, with the exception of rent as provided in article 6, set out in this sublease, provided that VIA Rail delivers to BC Ferries notice of its intention to renew at least six (6) months prior to the expiry of the Term of this sublease.
- 20.2 The rent to be paid by VIA Rail for any additional term shall be as agreed between the parties, however, in the event that the parties are unable to reach agreement within three (3) months of VIA Rail having delivered its notice of intention to renew, then such rent shall be as determined by a single arbitrator, appointed by agreement of the parties, or failing such agreement, in accordance with the provisions of the Commercial Arbitration Act of British Columbia and the decision of the arbitrator shall be final and binding upon the parties thereto; provided always, however, that the rent payable by VIA Rail for the renewal term shall in no event be less than the amount paid by VIA Rail during the Term of this sublease and shall be increased to reflect increases in

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- (a) the cost of living in the Prince Rupert area;
- (b) the cost to BC Ferries of operating the Prince Rupert Terminal;
- (c) any use, by VIA Rail, its employees, agents, licensees, officers, or invitees that is greater than either:
 - (i) Five (5) train arrivals and five (5) train departures per week, or
 - (ii) an average of three hundred (300) passengers per train arrival/departure.

ARTICLE 21 REGULATIONS

VIA Rail agrees to comply with and apply all regulations which BC Ferries, acting reasonably, shall promulgate as he deems necessary and desirable, including those regarding the good reputation and cleanliness of the building or of the Subleased Premises. Such regulations shall enter into force once BC Ferries has given notice to VIA Rail in writing.

ARTICLE 22 AMENDMENT AND WAIVER

- 22.1 No consent to any amendment of any of the provisions of this sublease shall be valid unless given in writing and signed by both parties.
- 22.2 The failure of BC Ferries to insist upon strict performance of any of the terms and conditions hereof shall not be deemed waiver of any rights or remedies that BC Ferries may have.

ARTICLE 23 NOTICE


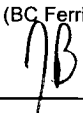
- 23.1 Any notice addressed by one party to the other shall be deemed to have been duly given when delivered in person, or mailed to the party by certified or registered mail at the following address:

For BC Ferries:

British Columbia Ferry Services Inc.
1112 Fort Street
Victoria, British Columbia V8V 4V2
Attention: Manager, Properties and
Planning

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For VIA Rail:

VIA Rail Canada Inc.
146-123 Main Street
Winnipeg, Manitoba R3C 1A3
Attention: Senior Manager Real Estate
(West)

- 23.2 VIA Rail elects domicile in the Subleased Premises for the purposes of any lawsuit, legal proceedings or action that may be instituted in respect of this sublease.

ARTICLE 24 PROHIBITION OF REGISTRATION

VIA Rail may not register any caveat, notice of sublease, this sublease or any interest hereunder.

ARTICLE 25 LAWS GOVERNING THE SUBLEASE

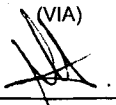

This sublease shall be governed and interpreted in accordance with the Laws of the Province of British Columbia.

ARTICLE 26 EMERGENCY SHUTDOWN

- 26.1 Notwithstanding anything contained in this sublease to the contrary, VIA Rail agrees that BC Ferries, at all times, has the right to temporarily stop operations or shut down the operations conducted on the Lands or any part of them in the event of an emergency, which shall include, but not necessarily be limited to, extreme weather conditions, resulting in heavy snowfalls, high winds or risk of land slumping and any other conditions that cause BC Ferries, or anyone acting under its authority, to determine that there may be an immediate risk to persons or property. BC Ferries agrees that it shall use its best efforts to return the operations of the Lands to their normal schedule as soon as practicable.

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(VIA) 	(BC Ferries) 
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IN WITNESS WHEREOF the parties have signed by their duly authorized signatories

British Columbia Ferry Services Inc.By: [Signature]Print Name: Jason M. BaumanTitle: Manager Terminal OperationsDate: Dec 23, 2006Location: Prince Rupert, B.C.**VIA Rail Canada Inc.**By: [Signature]Print Name: Magdy FahmyTitle: Senior Director,
Purchasing and Real
EstateDate: Dec 14/2006Location: Montreal, Qc.**CONFIDENTIAL****VIA Rail Canada Inc.**



(VIA) <u>[Signature]</u>	(BC Ferries) <u>[Signature]</u>
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SCHEDULE "A"

LANDS

CONFIDENTIAL

VIA Rail Canada Inc.



VIA) 	(BC Ferries) 
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SCHEDULE "B"

PLAN

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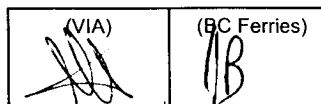
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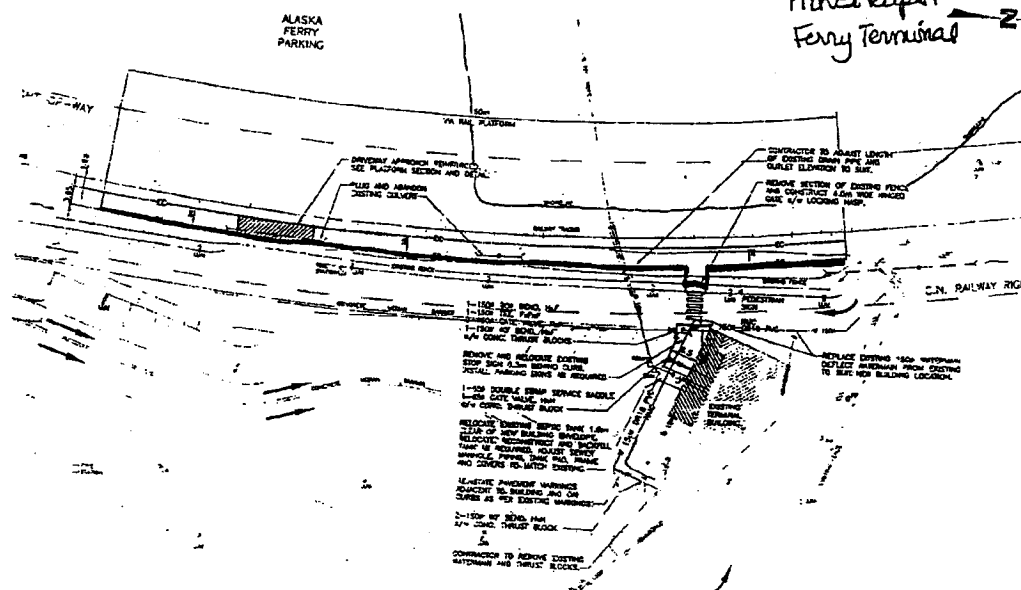
SCHEDULE "C"
VIA TRAIN SCHEDULE

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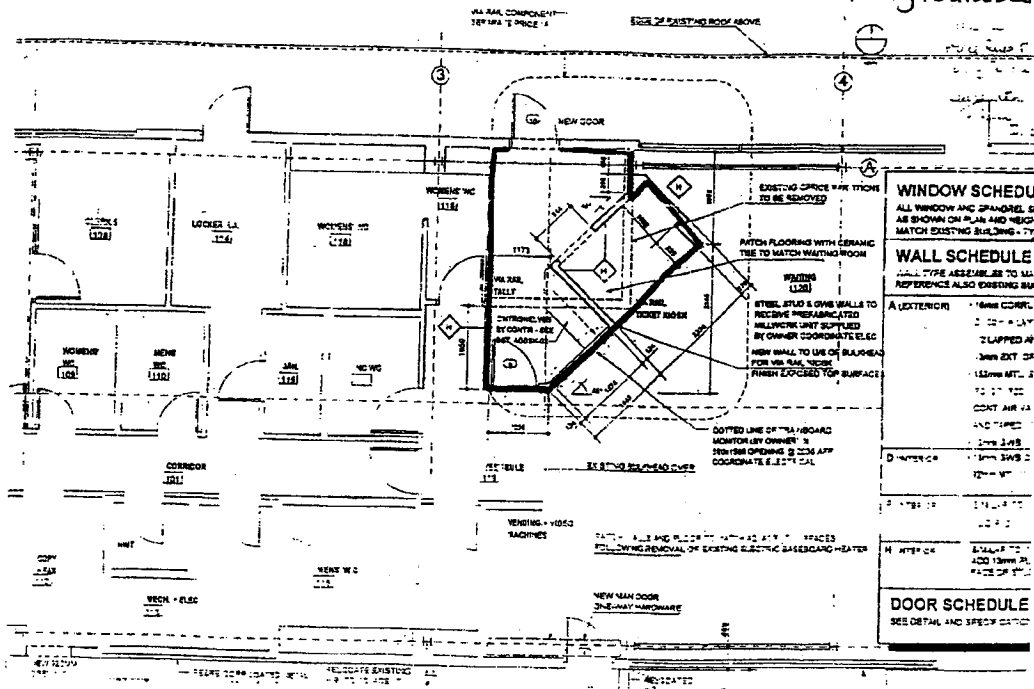
VIA Rail Canada Inc.



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Schedule B
Price Report
Ferry Terminal



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