

MARINA LEASE – RESTAURANT EQUIPMENT AGREEMENT

THIS AGREEMENT dated for reference the 22nd day of March, 2023

AMONG:

THE CORPORATION OF THE DISTRICT OF OAK BAY

(the “**Lessor**”)

OF THE FIRST PART

AND:

OAK BAY MARINA (1992) LTD.

(Incorporation Number BC0326013)

(the “**Lessee**”)

OF THE SECOND PART

WHEREAS:

- A. The Lessor and the Lessee are parties to a Marina Lease Agreement dated for reference October 14, 2022 (the “New Lease Agreement”).
- B. Under the New Lease Agreement, the Lessee agreed to lease, on a month to month basis, the Restaurant and Coffee Shop that are situated within the buildings on the Marina Upland, subject to the right of either the Lessor or the Lessee to provide thirty days written notice of the termination of that month to month lease.
- C. By written notice dated February 27, 2023 the Lessee notified the Lessor of the Lessee’s termination of the month to month lease of the Restaurant (5,958 sq. ft.) effective on March 31, 2023. By that same notice, the Lessee indicated that it would continue to lease the Coffee Shop (as described on Schedule D of the New Lease Agreement) on a month to month basis.
- D. The New Lease Agreement provides that unless otherwise agreed by the Lessor, the Lessee shall remove from the Restaurant, as of the effective date of termination of the month to month lease, all of its tangible personal property and tenant improvements capable of removal without damage to buildings (referred to hereafter as the “Restaurant Equipment”) in accordance with section 12.7 of the Original Lease Terms.

E. The Lessor and the Lessee have both agreed that it is in their mutual interest for the Lessee to be allowed to leave the Restaurant Equipment in its present location within the Restaurant following the effective date of termination of the month to month lease of the Restaurant, on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of the covenants and consent herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties agree as follows:

1.0 DEFINED TERMS

1.1 Save as otherwise defined herein, capitalized expressions used in this Agreement shall have the meanings ascribed to those expressions in the New Lease Agreement.

2.0 RESTAURANT EQUIPMENT TO REMAIN

2.1 Despite section 8.4 of the New Lease Agreement, the Lessee may leave the Restaurant Equipment in place following the effective date of termination of the month to month lease of the Restaurant, on the following terms and conditions:

- (a) the Lessee shall not be obliged to remove the Restaurant Equipment or fulfill its other obligations under section 8.4 of the New Lease Agreement as of the effective date of termination of the month to month lease of the Restaurant, unless and until the Lessor provides the Lessee with thirty days notice in writing to remove the Restaurant Equipment, such removal to be in accordance with section 12.7 of the Original Lease Terms;
- (b) the Restaurant Equipment shall remain in the Restaurant entirely at the risk of the Lessee, and the Lessor shall not be liable to the Lessee for any loss or damage to the Restaurant Equipment;
- (c) the Lessee may have access to the Restaurant for the purpose of inspecting and maintaining the Restaurant Equipment, provided the Lessee provides the Lessor with one Business Day's notice in writing of its request for access to the Restaurant (a "Business Day" being a day other than a Saturday, Sunday or statutory holiday);
- (d) the Lessee shall ensure that the Restaurant Equipment continues to be insured against loss or damage by fire and similar perils in accordance with the requirements of section 10.2 of the Original Lease Terms;
- (e) if the Lessor finds a new tenant for the Restaurant who wishes to continue operating a restaurant within that part of the Marina Upland, the Lessee will make the Restaurant Equipment available to the new tenant for purchase on commercially reasonable terms.

3.0 RATIFICATION

3.1 Except as expressly amended by this Agreement, the Lessor and the Lessee ratify and confirm the New Lease Agreement. In particular the Lessor and the Lessee confirm that the Lessee’s month to month lease of the Coffee Shop under the New Lease Agreement shall remain in effect and subject to the terms and conditions of the New Lease Agreement, including but not limited to section 8.4, notwithstanding the termination of the month to month lease of the Restaurant.

4.0 GENERAL PROVISIONS

4.1 This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument. Further, the parties agree that this Agreement may be signed and/or transmitted by electronic mail of a .PDF document or electronic signature (e.g., DocuSign or similar electronic signature technology) and thereafter maintained in electronic form, and that such electronic record shall be valid, and effective to bind the party so signing, as a paper copy bearing such party’s hand-written signature. The parties further consent and agree that the electronic signatures appearing on this Agreement shall be treated, for the purposes of validity, enforceability, and admissibility, the same as hand-written signatures.

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

CORPORATION OF THE DISTRICT OF OAK BAY, by its authorized signatories

Kevin Murdoch

Kevin Murdoch (Mar 31, 2023 08:47 PDT)

Kevin Murdoch, Mayor

)
)
) Mar 31, 2023
)

Chris Coates

Chris Coates (Apr 3, 2023 09:44 PDT)

Chris Coates, Corporate Officer

)
) Apr 3, 2023
)

OAK BAY MARINA (1992) LTD., by its authorized signatory(ies):

Brook Castelsky

Brook Castelsky (Mar 30, 2023 16:45 PDT)

Name:

)
) Brook Castelsky
) Chief Executive Officer
)

Janine Durette

Janine Durette (Mar 30, 2023 18:15 PDT)

Name:

)
) Mar 30, 2023
)

Janine Durette

Chief Financial Officer

Mar 30, 2023












Restaurant Equipment Storage Agreement

Final Audit Report

2023-04-03

Created:	2023-03-30
By:	Signe Bagh (sbagh@oakbay.ca)
Status:	Signed
Transaction ID:	CBJCHBCAABAAeproM99xIEJCtwAGVsPMTAflbvaorozU

"Restaurant Equipment Storage Agreement" History

-  Document created by Signe Bagh (sbagh@oakbay.ca)
2023-03-30 - 10:33:29 PM GMT- IP address: 172.103.208.249
-  Document emailed to brook_castelsky@obmg.com for signature
2023-03-30 - 10:36:05 PM GMT
-  Email viewed by brook_castelsky@obmg.com
2023-03-30 - 11:44:57 PM GMT- IP address: 154.20.219.94
-  Signer brook_castelsky@obmg.com entered name at signing as Brook Castelsky
2023-03-30 - 11:45:53 PM GMT- IP address: 154.20.219.94
-  Document e-signed by Brook Castelsky (brook_castelsky@obmg.com)
Signature Date: 2023-03-30 - 11:45:55 PM GMT - Time Source: server- IP address: 154.20.219.94
-  Document emailed to janine_durette@obmg.com for signature
2023-03-30 - 11:45:56 PM GMT
-  Email viewed by janine_durette@obmg.com
2023-03-31 - 1:14:50 AM GMT- IP address: 184.69.107.210
-  Signer janine_durette@obmg.com entered name at signing as Janine Durette
2023-03-31 - 1:15:39 AM GMT- IP address: 184.69.107.210
-  Document e-signed by Janine Durette (janine_durette@obmg.com)
Signature Date: 2023-03-31 - 1:15:41 AM GMT - Time Source: server- IP address: 184.69.107.210
-  Document emailed to mayor@oakbay.ca for signature
2023-03-31 - 1:15:42 AM GMT
-  Email viewed by mayor@oakbay.ca
2023-03-31 - 3:45:24 PM GMT- IP address: 52.102.12.85

 Signer mayor@oakbay.ca entered name at signing as KEvin Murdoch

2023-03-31 - 3:47:12 PM GMT- IP address: 23.16.67.99

 Document e-signed by KEvin Murdoch (mayor@oakbay.ca)

Signature Date: 2023-03-31 - 3:47:14 PM GMT - Time Source: server- IP address: 23.16.67.99

 Document emailed to Chris Coates (ccoates@oakbay.ca) for signature

2023-03-31 - 3:47:15 PM GMT

 Email viewed by Chris Coates (ccoates@oakbay.ca)

2023-04-03 - 4:43:43 PM GMT- IP address: 104.47.75.190

 Document e-signed by Chris Coates (ccoates@oakbay.ca)

Signature Date: 2023-04-03 - 4:44:08 PM GMT - Time Source: server- IP address: 207.194.245.114

 Agreement completed.

2023-04-03 - 4:44:08 PM GMT

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