



CITY OF PORT ALBERNI

CLERK'S DEPARTMENT REPORT TO COUNCIL

TO: Ken Watson, City Manager

FROM: Davina Hartwell, City Clerk

COPIES TO: Mayor and Council

DATE: June 5, 2014

I concur, forward to next
Regular Council Meeting
for Consideration:

Ken Watson, City Manager

SUBJECT: Lease to Port Alberni Port Authority – Lots A&B Former Plywood Site

ISSUE:

Council's consideration of a lease agreement with Port Alberni Authority (PAPA) for Lots A&B of the former Plywood Mill site.

BACKGROUND:

The City issued a request for proposals for Lot A of the site for industrial redevelopment in September, 2013. Two expressions of interest were received, one of which was from the Port Alberni Port Authority. Council provided direction to retain the site as is and advise the respondents that detailed proposals would be considered should they be provided.

PAPA and Canadian Alberni Engineering (CAE) provided a proposal to Council in April, 2014 for lease of Lots A&B for a marine shipbuilding/repair centre. Council directed staff to enter into lease negotiations with PAPA for the site and identified terms and conditions to be included in the lease.

Lease Highlights:

The following terms and conditions agreed by both parties are included in the lease:

- 25 year term with investment thresholds:
 - Lease terminated if no industrial activity on the Land within the first year
 - Lease terminated if a minimum \$500,000 in site improvements not expended in first two years
 - Lease terminated if industrial activity on the site ceases for a period of two consecutive years
- Years one to three: base rent \$1,200 per month + taxes
Years four and five: base rent \$1,700 per month + taxes
Year six onward: base rent \$1,700 per month + CPI increases + taxes
- Property taxes will apply
- Retention of current fence alignment which provides additional 50-62' for public use; provision of landscaping improvements in the form of a greenbelt adjacent to fence
- Shared use parking on Lot B for users of beach

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- Construction of stairs from Lot B to Lots A/C which public may access to beach
 - PAPA provision of utilities required to Lot A; City permitted to extend to Lot C
 - Rent of Waterlot Block B lease to the City reduced to \$1.00/year

Public Notice has been provided in accordance with Community Charter requirements of Council's intent to enter into a lease with the PAPA for Lots A&B of the former Plywood Mill site (copy attached).

STRATEGIC GOALS:

The following strategic goals will be achieved upon Council's endorsement of lease of Lots A&B:

Strategic Goal 3: Economic Sustainability

- 3.1:1 Develop Plywood Site for combination of industrial and public access use
- 3.2 To encourage business retention and development

Recommendation:

That the report from the City Clerk dated June 5, 2014, be received and Council for the City of Port Alberni authorize the Mayor and Clerk to enter into a lease with Port Alberni Port Authority for Lots A&B of the former Plywood Mill Site for a twenty five (25) year term effective July 1st, 2014 at the commencement rent of \$1,200 per month plus taxes.

Respectfully submitted,

Davina Hartwell

Davina Hartwell
City Clerk

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LEASE AGREEMENT – Lots A and B, Former Plywood Mill Site

THIS LEASE AGREEMENT made for reference this 1st day of June, 2014 is

BETWEEN:

CITY OF PORT ALBERNI
of 4850 Argyle Street
in the City of Port Alberni
in the Province of British Columbia

herein called the "Landlord"
OF THE FIRST PART

AND:

PORT ALBERNI PORT AUTHORITY
2750 Harbour Road
Port Alberni BC V9Y 7X2

hereinafter called the "Tenant"
OF THE SECOND PART

WHEREAS:

- A. The Landlord is the registered owner in fee simple of those parcels of land located in the City of Port Alberni, British Columbia, legally described as:

Lot A, District Lot 1, Alberni District, Plan VIP 73079 (2120 Plywood Road) ("Lot A")
Lot B, District Lot 1, Alberni District, Plan VIP 73079 (2160 Plywood Road) ("Lot B")

(hereinafter, Lot A and Lot B are together called the "Land");

- B. The Tenant is incorporated under the *Canada Marine Act*, and wishes to lease the Land on an as is basis for sublease for development of the Land for a combination of industrial and public use, and the Landlord wishes to grant a lease of the Land to the Tenant on the terms and conditions set out in this Lease;
- C. In accordance with sections 26 and 94 of the *Community Charter*, the Landlord has published notice of its intention to dispose of the Land by this Lease.

THIS LEASE is evidence that in consideration of the preceding recitals, the mutual promises contained in this Lease and the payment of rent annually by the Tenant to the Landlord as outlined in section 6, the parties agree as follows:

Lease of Land

1. The Landlord leases the Land to the Tenant ("Lease") for the Term, on the terms and conditions of this Lease and for the purposes set out in this Lease.

Term

2. The term of this Lease is for a period of twenty five (25) years, beginning on July 1, 2014 and terminating on June 30, 2039, subject to earlier termination pursuant to the terms of this Lease ("Term").

Investment Milestones

3. If, during the first year of the Term of the Lease, the Tenant has not commenced industrial activity on the Land to the satisfaction of the Landlord, the Lease will be terminated upon 90 days written notice by the Landlord to the Tenant, and if the Tenant has not caused the commercial activity to commence during such notice period the Tenant shall return the Land to the Landlord in the condition required upon expiry or earlier termination of this Lease. For certainty, if the Tenant has subleased the Land or a substantial portion of the Land to Canadian Alberni Engineering Ltd. or other approved subtenant (with the exception of any tenant already occupying a portion of the Land as of the reference date of this Lease), and that subtenant has submitted a satisfactory proposal to the Landlord for operation of the site, the Landlord will consider this satisfactory commencement of industrial activity on the Land.
4. If, within the first two years of the Term, the Tenant or an approved subtenant has not expended at least \$500,000 in new site improvements on the Land the Lease will be terminated upon 90 days written notice by the Landlord to the Tenant, and the Tenant will return the Land to the Landlord in the condition required upon expiry or earlier termination of this Lease. For certainty, the value of a site improvement will be the value of construction set out on the approved building permit application for construction of that improvement.
5. If, during the Term of the Lease, the Tenant ceases to carry on industrial activity on the Land satisfactory to the Landlord for a period of two consecutive years, the Lease will be terminated upon 90 days written notice by the Landlord to the Tenant, and if the Tenant has not caused industrial activity to have been re-commenced during the notice period the Tenant will return the Land to the Landlord in the condition required upon expiry or earlier termination of this Lease. For clarity, the Landlord must be satisfied that the Tenant (or approved subtenant) is actively operating its industrial or marine commercial enterprise on the Land and has not allowed the Land to lie dormant for a period of two consecutive years. Industrial or marine commercial enterprise does not include Log salvage operations similar to those being undertaken on the Land prior to the effective date of this lease.

Rent

6. The Tenant shall pay rent to the Landlord throughout the Term ("Rent") as follows:
 - (a) from July 1, 2014 to June 30, 2017, the Tenant shall pay to the Landlord a base rent of \$1,200 per month plus GST and any other applicable taxes, which amount is payable on the first day of each month;
 - (b) from July 1, 2017 to June 30, 2019, the Tenant shall pay to the Landlord a base rent of \$1,700 per month plus GST and any other applicable taxes, which amount is payable on the first day of each month;
 - (c) from July 1, 2019 to the end of the Term, the Tenant shall pay to the Landlord rent based on the monthly rent payable during the preceding year, increased each year at a rate equal to the percentage increase in the B.C. Consumer Price Index for all items for the twelve (12) month period of the preceding calendar year. For certainty, the monthly rent payable from July 1, 2019 to June 30, 2020, shall be \$1,700 increased by the percentage increase in the B.C. Consumer Price Index for all items

for 2018; the monthly rent payable from July 1, 2020 to June 30, 2021 shall be the monthly rent payable from July 1, 2019 to June 30, 2020, increased by the percentage increase in the B.C. Consumer Price Index for all items for 2019; and so on.

The Consumer Price Index increase will be limited to 7% in any year that it exceeds that amount and no reduction in the Rent amount due will apply if there is a percentage decrease in the B.C. Consumer Price Index for the preceding twelve (12) month period.

If this Lease is terminated for any cause whatsoever, no part of any Rent paid or payable in respect of the month in which the Lease is terminated shall be refundable.

Tenant's Covenants

7. The Tenant covenants and agrees with the Landlord as follows:

- (a) to pay when due its proportionate share of all taxes, rates, duties and assessments whatsoever, whether federal, municipal, provincial or otherwise, charged upon the Tenant or the Landlord as a result of the Tenant's occupation of or use of the Land;
- (b) to use and permit the use of the Land only for the purpose of development of the Land for industrial or marine commercial use and for other purposes that are exclusively ancillary to those purposes;
- (c) to provide all equipment, fencing and supplies necessary to secure the Land at the Tenant's own expense;
- (d) to retain the current fence alignment on Lot A, which is situated approximately 19.0 metres (62.3') north of the southern Lot A boundary on the east side and approximately 15.0 metres (49.2') north of the southern Lot A boundary on the west side, not to build in or otherwise obstruct that portion of Lot A lying south of the fence line, and to permit free and unrestricted use of that portion of Lot A lying south of the fence line by the public for recreational use;
- (e) to, within the first year of the Term, provide landscaping improvements in the form of a greenbelt adjacent to the current fence line located on Lot A, in a form approved by the Landlord acting reasonably;
- (f) to allow public parking, in an amount and location and at times satisfactory to the Landlord, acting reasonably, on Lot B following development of the site, for users of the public beach located on that parcel of land legally described as Lot C District Lot 1 Alberni District Plan VIP73079 ("Lot C"), the location of which is shown on the site drawing attached as Schedule A;
- (g) to, as part of its development of Lot B and prior to obtaining an occupancy permit for any new building on Lot B, construct stairs from Lot B to Lot A and Lot C and allow public use of said stairs for access to the public beach on Lot C;
- (h) not to make or erect in, on or to the Land any buildings, structures, improvements, extensions, installations, alterations or additions, or alter the existing state of the Land in any way (including installation of the landscaping required by subsection (e) and construction of the stairs required by subsection (g) above), without obtaining

the Landlord's prior written consent and in obtaining such consent to provide the Landlord with all plans and specifications relating to any such alterations, as requested by the Landlord;

- (i) not to cause, maintain or permit anything that may be or become a nuisance or annoyance on the Land to the owners or occupiers of adjoining lands or to the public, including the unsightly accumulation of rubbish or unused personal property. For greater certainty the Landlord confirms that the proposed use of the Land by the Tenant's intended subtenants, Canadian Alberni Engineering Ltd. and Tony Winters (or companies owned or otherwise controlled by them) for marine commercial purposes and log salvage purposes, respectively, shall not be a nuisance or annoyance for the purposes of this section;
- (j) to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Land and improvements constructed or otherwise located thereon, including, without limitation, property taxes, all permit and license fees, development cost charges, repair and maintenance costs, administration and service fees, telephone, electrical, gas, water, garbage collection, sewage disposal and other utility charges, and payments for work and materials;
- (k) to make application, obtain permits, and pay all costs required to install and provide utility services to the Land as may be necessary to suit the Tenant's needs, including water, sewer, electrical, natural gas, telephone, cable or other telecommunications services and to provide for extension of such services as requested by the Landlord to the southern boundary of Lot A in order to allow further extension to provide services to Lot C to the south, as shown on the site drawing attached as Schedule A;
- (l) to pay to the Landlord all goods and services taxes which may be payable in respect of this Lease;
- (m) to carry on and conduct its activities in, on and from the Land in compliance with any and all statutes, enactments, bylaws, regulations and orders from time to time in force and to obtain the required approvals and permits thereunder and not to do or omit to do anything upon or from the Land in contravention thereof;
- (n) not to erect any sign on the Land without the prior written consent of the Landlord;
- (o) to promptly discharge any builders' lien which may be filed against the title to the Land relating to any improvements, work or construction which it undertakes on the Land and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, work or construction undertaken on the Land, and the Tenant acknowledges that the Landlord may file a notice of interest against title to the Land pursuant to section 3 of the *Builders Lien Act*.

Waterlot Sublease

8. Pursuant to a sublease agreement between the Landlord and the Tenant dated for reference November 1, 1993 (the "Waterlot Sublease"), the Tenant subleased to the Landlord certain land and land covered by water as that area is more particularly described and shown in Schedule "A" to the Waterlot Sublease (the "Sublease Area"), and the parties acknowledge and agree that the Landlord is a validly overholding tenant pursuant to the

terms of the Waterlot Sublease and continues to pay annual rent to the Tenant and occupy the Sublease Area on a year-to-year basis. The Landlord and the Tenant covenant and agree that:

- (a) throughout the Term of this Lease, the annual rent payable by the Landlord under the Waterlot Sublease shall be \$1.00, the receipt and sufficiency of which the Tenant hereby acknowledges;
- (b) throughout the Term of this Lease, the Landlord shall sublease back to the Tenant, at no cost to the Tenant, that northerly portion of the Sublease Area shown above the broken line and labelled "North Portion of Block B DL232" on the site drawing attached hereto as Schedule A, for use by the Tenant in connection with its use of the Land pursuant to this Lease; and
- (c) if the Tenant terminates the Waterlot Sublease for any reason, without immediately granting the Landlord a new sublease in a form satisfactory to the Landlord, the Landlord may terminate this Lease upon 90 days written notice to the Tenant.

Landlord's Covenants

9. The Landlord covenants and agrees with the Tenant as follows:

- (a) to permit the Tenant, so long as the Tenant is not in default of the Tenant's obligations under this Lease, to peaceably possess and enjoy the Land for the Term, without interference or disturbance from the Landlord or those claiming by, from or under the Landlord, other than use by the public as set out in subsections 7(d), (f) and (g) above;
- (b) where services are extended under subsection 7(k), the Landlord shall measure consumption and reimburse the Tenant for costs of services arising due to use on Lot C, including water, sewer, electrical, telephone and cable service.

Net Lease

10. Without limiting any other provisions in this Lease, the Tenant agrees that this Lease is absolutely net to the Landlord and the Tenant must promptly pay when due on its own account and without any variation, set-off, or deduction all amounts, charges, costs, duties, expenses, fees, levies, rates, sums and taxes and increases in any way relating to the Land.

Tenant's Representations and Warranties

11. The Tenant represents and warrants that it has the power and to enter into and carry out the obligations under this Lease and that all necessary resolutions and other preconditions to the validity of this Lease have been completed by the Tenant.

Acknowledgment and Agreements of the Tenant

12. The Tenant acknowledges and agrees that:

- (a) the Landlord has given no representations or warranties with respect to the Land, including, without limitation, with respect to the suitability of the Land for the Tenant's intended use for, or development of, the Land;

- (b) the Tenant leases the Land on an as is basis and the Landlord has not made any representations, warranties or agreements as to the environmental condition of the Land except as has been identified in the Reports (as defined in subsection 12(c)) and any other reports or documents in the possession of the Landlord or which the Landlord has knowledge of; and
- (c) it is the sole responsibility of the Tenant to satisfy itself with respect to the environmental conditions on and of the Land, including, without limitation, by conducting any reports, tests, investigations, studies, audits and other inquiries as the Tenant, in its sole discretion, considers necessary in order to satisfy itself as to the environmental condition of the Land. The Landlord will provide upon the Tenant's request access to any records, reports or other documents in the Landlord's possession regarding investigation of environmental conditions on the Land. The Tenant acknowledges having received a copy of those reports regarding pre-existing environmental contamination on the Lands, attached as Schedule "B" hereto and all other reports or documents which are in the Landlord's possession or of which the Landlord has knowledge, relating to Contamination of the Land, as of the reference date of this Agreement (collectively, the "Reports").

Routine Repair and Maintenance

- 13. The Tenant must, at its own cost, keep the Land, including all improvements located from time to time thereon, in good repair consistent with standards of repair generally accepted in British Columbia with respect to comparable premises and the Tenant is responsible for and must do all routine maintenance and repairs with respect to the Land and improvements, including to all utilities, services and snow removal necessary for the use, occupation and operation of the Land and improvements and upon written notice from the Landlord, the Tenant must make such reasonable repairs as are required by the Landlord in the notice. At the end of the Term (either by expiry or earlier termination of this Lease), the Tenant must surrender the Land to the Landlord in good repair, excepting reasonable wear and tear.

Damage and Destruction

- 14. If any improvements on or to the Land are destroyed or damaged by any cause so that in the opinion of the Landlord the Land is no longer reasonably fit for use by the Tenant for the purposes set out in this Lease for any period of time in excess of 180 then the Landlord may, exercising its sole discretion:
 - (a) require the Tenant to repair the damage, in which case the Tenant must repair the damages to the satisfaction of the Landlord using the insurance proceeds payable in respect of the damaged improvements under the insurance policy required by section 15(b); or
 - (b) terminate this Lease in accordance with section 37.

Insurance

- 15. The Tenant must, at its sole expense, obtain and maintain during the Term:
 - (a) comprehensive general liability insurance providing coverage for death, bodily injury, property loss and damage, sudden and accidental pollution, and all other

losses, arising out of or in connection with the use of the Land in an amount of not less than five million dollars (\$5,000,000) per occurrence; and

- (b) all risk insurance, for replacement cost, on all improvements on or to the Land, and all of the Tenant's fixtures and personal property on the Land, in such an amount as may be reasonably required by the Landlord.
16. All policies of insurance required to be taken out by the Tenant must be with companies satisfactory to the Landlord and must:
- (a) name the Landlord as an additional named insured;
 - (b) include that the Landlord is protected notwithstanding any act, neglect or misrepresentation by the Tenant which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
 - (c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
 - (d) be primary and non-contributing with respect to any policies carried by the Landlord and that any coverage carried by the Landlord is in excess coverage;
 - (e) not be cancelled without the insurer providing the Landlord with thirty (30) clear days written notice stating when such cancellation is to be effective;
 - (f) be maintained for a period of twelve (12) months per occurrence;
 - (g) include a cross liability clause; and
 - (h) be on other terms acceptable to the Landlord, acting reasonably.
17. The Tenant must obtain all required insurance at its sole expense and must provide the Landlord with certificates of insurance confirming the placement and maintenance of the insurance prior to commencement of the Term, and throughout the Term promptly after a request to do so by the Landlord.
18. If the Tenant fails to insure as required, the Landlord may, after five (5) days' notice to the Tenant, effect the insurance in the name and at the expense of the Tenant and the Tenant must promptly repay the Landlord all costs reasonably incurred by the Landlord in doing so, and such costs shall be additional to the Rent for the Land, and may be collected by the Landlord as Rent.
19. For clarity, the Landlord has no obligation to insure the Land during the Term nor any obligation to repair any improvements on or to the Land.

Environmental Matters

20. In this Lease:

- (a) "Contaminants" means any explosives, radioactive materials, asbestos materials, urea formaldehyde, chlorobiphenyles, hydrocarbon contaminants, underground

tanks, pollutants, contaminants, hazardous, corrosive substances, toxic substances, special waste, or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws; and

- (b) "Environmental Laws" means any and all statutes, laws, regulations, orders, bylaws, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Land now or hereafter in force with respect in any way to the environment or health, or occupational health and safety, including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities from time to time.

21. The Tenant is prohibited to, at any time during the Term:

- (a) use, exercise, or carry on or permit or suffer to be used, exercised or carried on, in or upon the Land, or any part, any dangerous, noxious, noisome, odorous or offensive activity, or keep, use, handle or dispose of any goods or things which are objectionable, or by which any of the Land, or any part, may be damaged or injuriously affected; or
- (b) use or permit to be used the Land or any part thereof for the storage, manufacture, disposal, treatment, generation, use, transport, remediation, release into the environment of, or any other dealing with, any Contaminants, and without limiting the generality of the foregoing, the Tenant must take all reasonable measures to ensure that any effluent or other substance discharged, spilled, emitted, released or permitted to escape, seep or leak into any ditches, culverts, drains or sewers on or adjacent to the Land does not contain any Contaminants or any other substances harmful to any fish or animal habitat, sewage disposal works or to the bacteriological process of sewage purification; or
- (c) do anything on the Land that results in or could reasonably be expected to result in the release of pre-existing Contaminants on the Land as identified in the Reports.

Notwithstanding the foregoing, the Landlord confirms that the proposed use of the Land by the Tenant's intended subtenants, Canadian Alberni Engineering Ltd. and Tony Winters (or companies owned or otherwise controlled by them) for marine commercial purposes and log salvage purposes, respectively, shall not be uses in contravention of this section 21.

- 22. The Tenant must promptly and strictly comply with and conform to the requirements of all Environmental Laws at any time or from time to time in force, together with any requirement of insurers, regarding the proper and lawful storage, manufacture, disposal, treatment, generation, use, transport, remediation, release into the environment of, or other dealing with, Contaminants on, in under or from the Land.
- 23. The Tenant must at the Landlord's request provide the Landlord with a Stage I Preliminary Site Investigation at any time during the Term for the purpose of confirming that the Tenant is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Land caused by the Tenant. The Landlord shall not unreasonably make such request.

24. The Tenant must provide the Landlord, promptly upon request, with such written authorizations as the Landlord may require from time to time to make inquiries with any governmental authority regarding the Tenant's compliance with Environmental Laws.
25. Without derogating from the prohibitions in section 21, the Tenant must promptly notify the Landlord in writing of:
 - (a) the existence of any Contaminants in, on or under the Land or any part thereof;
 - (b) the existence of any Contaminants, or any occurrence or condition, on the Land which could subject the Tenant, the Landlord or the Land to any fines, penalties, orders or proceedings under Environmental Laws;
 - (c) any enforcement, order, investigation, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Tenant or the Land pursuant to Environmental Laws; and
 - (d) all claims, actions, orders or investigations, made or threatened by any third party against the Tenant or the Land relating to damage, contribution, cost recovery, compensation, loss or injuries resulting from any Contaminants brought onto or created on the Land by the Tenant or its employees, agents, contractors, subtenants, licensees or invitees or arising from the use or occupation of the Land hereunder or the exercise of the Tenant's rights hereunder, or any breach of any Environmental Laws arising from any of the foregoing.
26. Without derogating from the prohibitions in section 21, the Tenant must, promptly at its own cost and at the Landlord's request from time to time, remove any and all Contaminants from the Land and remediate any contamination of the Land or any other lands, resulting from the Contaminants brought onto or created on the Land by the Tenant or its employees, agents, contractors, subtenants, Tenants, licensees, invitees, Tenants, caretakers or volunteers or arising from the use or occupation of the Land under this Lease or the exercise of the Tenants' rights under this Lease, all in accordance with Environmental Laws. On termination of this Lease, the Tenant must leave the Land free from any and all Contaminants brought onto or created on the Land by the Tenant or its employees, agents, contractors, subtenants, Tenants, licensees, invitees, Tenants, caretakers or volunteers or resulting from the use or occupation of the Land hereunder or the exercise of the Tenant's rights hereunder.
27. Despite the prohibitions in section 21, if the Tenant brings or creates upon the Land any Contaminants then, notwithstanding any rule of law to the contrary, such Contaminants are and remain the sole and exclusive property of the Tenant and do not become the property of the Landlord, notwithstanding the degree of affixation of the Contaminants or the goods containing the Contaminants to the Land and notwithstanding the expiry or earlier termination of this Lease. This section supersedes any other provision of this Lease to the contrary.
28. Notwithstanding section 29 of this Lease, the Landlord must indemnify and save harmless the Tenant and its directors, officers, employees, agents, caretakers and volunteers from any and all liabilities, actions, damages, claims, losses, costs and expenses (including without limitation, the full amount of all legal fees, costs, charges and expenses and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Land) which may be paid by, incurred by or asserted against the Tenant or its directors,

officers, employees, agents, caretakers or volunteers for, with respect to or as a direct or indirect result of the presence of Contaminants on the Land on or before the reference date of this Lease, other than liabilities, actions, damages, claims, losses, costs and expenses resulting from the Tenant's own negligence or wilful misconduct..

Indemnity

29. The Tenant must indemnify and save harmless the Landlord and its elected and appointed officials, officers, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses whatsoever) in any way directly or indirectly, arising from the occupation, activities or actions of the Tenant of, on or carried out on the Land or anything done or not done or maintained by the Tenant.
30. Without limiting the generality of section 29, the Tenant must indemnify and save harmless the Landlord and its elected and appointed officials, officers, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, cost, charges and expenses and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Land) which may be paid by, incurred by or asserted against the Landlord or its elected and appointed officials, officers, employees, agents, successors and assigns for, with respect to or as a direct or indirect result of the presence of any Contaminants on, in or under or the escape, seepage, leakage, spillage, discharge, emission or other release of any Contaminants from any part of the Land, except for Contaminants on the Land before the reference date of this Lease, or by reason of the Tenant's failure to pay remuneration in accordance with any applicable collective agreement provisions.

Survival of Indemnities

31. The obligations of the Tenant under sections 29 and 30 and of the Landlord under section 28 survive the expiry or earlier termination of this Lease.

Permission to Enter

32. Despite any provisions of this Lease, the Landlord or its authorized representative may enter upon the Land at all reasonable times on at least 48 hours for the purposes of inspection of the Land and any improvements on or to the Land.

Improvements at Termination

33. On expiry or earlier termination of this Lease, the Tenant shall remove, at its expense, if requested by the Landlord, all improvements and fixtures constructed or installed on the Land by the Tenant or those for whom the Tenant is responsible in law. The Tenant must promptly remove such improvements from the Land and restore the land, at its expense, to the reasonable satisfaction of the Landlord, but under no circumstances will the Tenant be required to restore the Land to a condition greater or better than the condition of the Land at the commencement of the Term.

34. If the Tenant fails to leave the Land in a condition required by this Lease, the Landlord may do so on behalf of the Tenant and all such costs and expenses incurred by the Landlord shall be a debt owing by the Tenant to the Landlord and the Tenant must, on demand, compensate the Landlord for all such costs and expenses incurred by the Landlord.

Remedies Cumulative

35. No reference to or exercise of any specific right or remedy by the Landlord prejudices or precludes the Landlord from any other remedy, whether allowed at law or in equity or expressly provided for in this Lease. No such remedy is exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the Landlord is entitled to commence and maintain an action against the Tenant to collect any Rent not paid when due, without exercising the option to terminate this Lease

No Assignment or Sublease without Consent

36. The Tenant covenants and agrees not to encumber or assign this Lease or sublet all or any part of the Land without the written consent of the Landlord, which consent the Landlord covenants and agrees shall not be unreasonably withheld.

Notwithstanding the above, the Landlord hereby gives its approval to the Tenant for a sublease of a portion of the Land to Canadian Alberni Engineering Ltd. for marine commercial purposes and further subleases of portions of the Land to Tony Winters (or companies owned or otherwise controlled by him) for log salvage purposes. For certainty, commercial or industrial activity by Tony Winters (or by companies owned or otherwise controlled by him) pursuant to a sublease agreement under this section will not be considered sufficient activity to meet the requirements under sections 3 and 5 of this Lease. Activities and improvements constructed by Canadian Alberni Engineering will be applicable for assessing compliance with sections 3 to 5 of this Lease.

Such assignment shall in no way relieve the Tenant from any obligations hereunder for the payment of Rents or the performance of the conditions, covenants and provisions of this Lease.

The Tenant further covenants and agrees to inform the Landlord regarding the lease rates to be charged to any sub-tenant on the Land, which information shall only be disclosed by the Landlord as may be required by law.

The tenant shall be required to advise the Landlord immediately upon termination of a sublease on the Land.

Termination Due to Default

37. If and whenever
- (a) the Term or any of the goods or chattels on the Land are at any time seized or taken in execution or attachment by any creditor of the Tenant or under bill of sale or chattel mortgage;
 - (b) a writ of execution issues against the goods and chattels of the Tenant;

- (c) the Tenant makes any assignment for the benefit of creditors or becomes insolvent or bankrupt;
- (d) proceedings are begun to wind up the Tenant;
- (e) the Tenant is in default in the payment of the Rent or any other sum payable under this Lease and the default continues for thirty (30) days after written notice by the Landlord to the Tenant;
- (f) any improvements on or to the Land are destroyed or damaged by any cause so that in the opinion of the Landlord the Land is no longer reasonably fit for use by the Tenant for the purposes set out in this Lease for any period of time in excess of one hundred eighty (180) days;
- (g) the Tenant does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Lease to be observed, performed and kept by the Tenant, and persists in such default for thirty (30) days after written notice by the Landlord; or
- (h) subject to section 5 hereof, the Tenant vacates or abandons the Land or uses or permits or suffers the use of the Land for any purpose other than the purposes permitted by this Lease, and such default persists for thirty (30) days after written notice by the Landlord,

then the Landlord may, at its option, by 30 days' notice in writing to the Tenant, terminate this Lease and if the Tenant has not cured such default during the notice period the Term then becomes immediately forfeited and void, except in the case of termination as a result of the occurrence of the event in section 37(f) hereof in which case termination will be 90 days after delivery of a notice of the occurrence of such event by the Landlord if the Tenant has not cured such default during the notice period or taken reasonable steps to cure the default where the default cannot be reasonably cured within the notice period, and the Tenant must immediately cease all use and occupation of the Land and must vacate and deliver up possession of the Land and the Landlord may without notice or any form of legal process and without any adherence to public law duties or procedural fairness or the principles of natural justice, forthwith re-enter the Land and repossess and enjoy the same.

Holding Over

38. If the Tenant continues to occupy the Land with the written consent of the Landlord after the expiration of the Term or earlier termination of this Lease, then, without any further written agreement, the Tenant shall be a tenant paying from month to month at the monthly amount in effect at the time and subject always to the other provisions in this Lease insofar as the same are applicable to a month to month tenancy and a tenancy from year to year shall not be created by implication of law, and nothing shall preclude the Landlord from taking action for recovery of possession of the Land.

Distress

39. Subject to section 37(e) hereof, if and whenever the Tenant is in default of the payment of any money, whether expressly reserved by this Lease or deemed as Rent, the Landlord may without notice or any form of legal process whatsoever, enter upon the Land and seize, remove and sell the Tenant's goods, chattels and equipment and seize, remove, and

sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them in the same manner as if they had remained and been distained upon the Land, notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.

No Joint Venture

40. Nothing contained in this Lease creates the relationship of principal and agent or of partnership or joint venture between the parties or gives the Tenant any power or authority to bind the Landlord in any way.

Interpretation

41. Reference in this Lease to:

- (a) the singular includes a reference to the plural, feminine, or body corporate or politic where the context requires, and a reference to the plural includes a reference to the singular, unless the context requires otherwise;
- (b) a particular numbered article or section, or lettered appendix is a reference to the correspondingly numbered article or section, or lettered appendix, of this Lease;
- (c) an "enactment" is a reference to an enactment as that term is defined in the *Interpretation Act* on the reference date of this Lease;
- (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced; and
- (e) a party is a reference to a party to this Lease.

Notices

42. Where any notice, request, direction or other communication must be given or made by a party under the Lease, it must be in writing and is effective if delivered in person, sent by registered mail addressed to the party for whom it is intended at the address set forth above in the Lease or sent by facsimile to the Landlord at facsimile number (250) 723-1003 or to the Tenant at facsimile number (250) 723-1114, as the case may be, provided that any notice to the Landlord must be to the attention of the City Clerk. Any notice, request, direction or other communication is deemed to have been given if delivered in person, when delivered; by registered mail, when the postal receipt is acknowledged by the other party; and, by facsimile, when transmitted. The address or facsimile number of a party may be changed by notice in the manner set out in this section.

No Effect on Laws or Powers

43. Nothing contained or implied herein prejudices or affects the Landlord's rights and powers in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Land, all of which may be fully and effectively exercised in relation to the Land as if this Lease had not been fully executed and delivered.

Severance

44. If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Lease.

No Public Law Duty

45. Whenever in this Lease the Landlord is required or entitled at its discretion to consider granting any consent or approval, or is entitled to exercise any option to determine any matter, or to take any action or remedy including, without limiting the generality of the foregoing, the termination of this Lease and the re-entering of the Land, the Landlord may do so in accordance with the contractual provisions of this Lease and no public law duty of procedural fairness or principle of natural justice shall have any application.

Binding on Successors

46. This Lease enures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

Law of British Columbia

47. This Lease must be construed according to the laws of the Province of British Columbia.

Whole Agreement

48. The provisions in this Lease constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of the Lease.

Waiver or Non-action

49. Waiver by the Landlord of any breach of any term, covenant or condition of this Lease by the Tenant must not be deemed to be a waiver of any subsequent default by the Tenant. Failure by the Landlord to take any action in respect of any breach of any term, covenant or condition of this Lease by the Tenant must not be deemed to be a waiver of such term, covenant or condition.

Reference

50. Every reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party wherever the context so requires or allows.

Time of the Essence

51. Time is of the essence of this Lease.

Execution

52. As evidence to their agreement to the above terms, the Landlord and the Tenant each have executed and delivered this Agreement under seal.

The Corporate Seal of the City of Port Alberni was hereunto affixed in the presence of:

c/s

Mayor

Clerk

Date

The Corporate Seal of the Port Alberni Port Authority was hereunto affixed in the presence of:

c/s

Authorized Signatory

Authorized Signatory

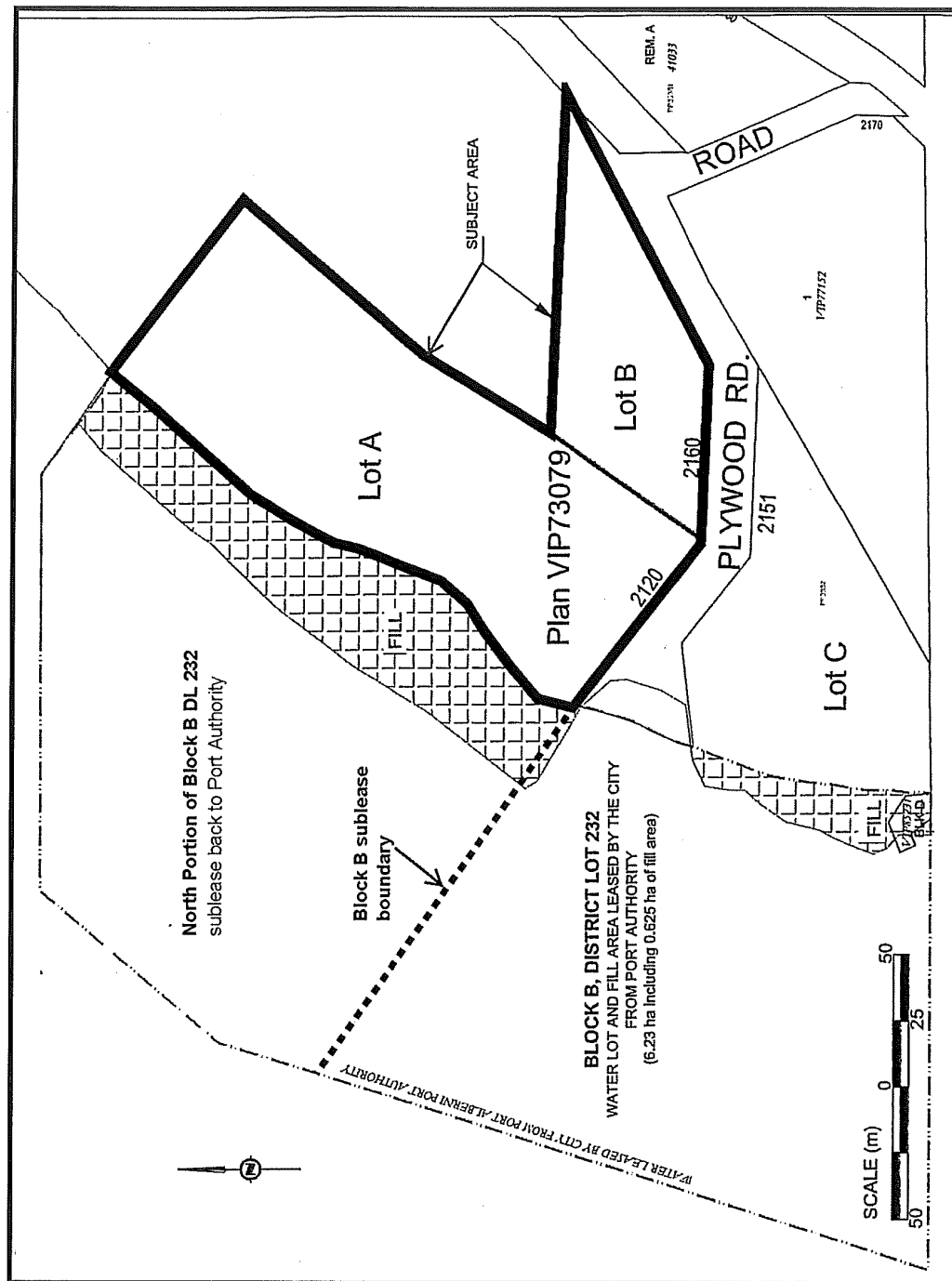
Date

SCHEDULE A

City of Port Alberni

Lease Agreement – Port Alberni Port Authority

Lots A & B Plan VIP 73079 (Former Plywood Mill Site)



SCHEDULE B

City of Port Alberni

Lease Agreement – Port Alberni Port Authority

Environmental Reports

- Report entitled "Former Alberni Plywood Site: A Status Update by the City of Port Alberni" prepared by the Landlord and dated February 2013, prepared by SLR Consulting (Canada) Ltd.
- Report entitled "Product Recovery Pilot Test Results Former Alberni Plywood Site, Lot A – 2120 Plywood Drive, Port Alberni, B.C." dated June 2012, and accompanying cover letter of July 19, 2013, prepared by SLR Consulting (Canada) Ltd.