

VILLAGE OF PORT CLEMENTS

BY-LAW NO. 36

A By-law to establish the Administration of the Wharf and Floats in the Port Clements Harbour.

Whereas, the Municipal Council of the Village of Port Clements are empowered under Section 518(1), (2) and (3) of the "Municipal Act" to construct or acquire, by purchase, lease, or otherwise, wharves, docks, warehouses, and slips, and may regulate the use of same or any part thereof and provide for the use thereof upon such terms and conditions as may be prescribed.

NOW THEREFORE, the Municipal Council of the Village of Port Clements in open meeting assembled enacts as follows:

1. That the Village of Port Clements be and is hereby empowered to lease from the Ministry of Transport the Port Clements Government Wharf, as provided in the lease agreement attached to and forming part of this by-law, as Schedule "A" thereof.
2. That the said lease, shall be signed on behalf of the Corporation by the Mayor and Municipal Clerk and the Corporate Seal affixed thereto.
3. The Municipal Council is hereby empowered to establish the following rates and regulations for the operation of the wharf and floats in the said Port Clements Harbour.
4. That the rates and regulations as provided and set out in the "Government Harbours and Piers Act" January 23, 1964, under Order in Council P.C. 1964-104, as amended, and any amendments thereto, shall apply to all boats using the said wharf and floats.
5. A copy of the said rates is hereby attached and marked "Schedule "B".
6. The Municipal Council may pay out such monies as may be requisite for any expenses involved in the operation of the aforesaid wharf and floats.
7. The Municipal Council may by resolution and are hereby empowered to:
 - (a) Employ such person or persons as may be necessary for the supervision of the said wharf and floats, and to fix the rate of remuneration such person or persons shall receive.
8. The Municipal Council deem it expedient to set forth the following regulations:
 - (a) It shall be unlawful for any person or persons to berth any boat in front of that section of the floats or wharfhead marked "Loading Zone" except for the purpose of loading and unloading, and such boats shall not be left unattended in the said "Loading Zone".
 - (b) The Municipal Council or its representatives are hereby empowered to move or direct to be moved any boat or boats from one location at the wharf or floats to another location at the said wharf or floats whenever it is deemed necessary.
 - (c) It shall be unlawful for any person or persons to leave any gear, small boats or other material on the floats, this to prevent interference with the floats as a thoroughfare to other users in the interest of public safety.

- (d) It shall be unlawful for the owner of any boat to moor the same at any float unless the said boat has conspicuously displayed upon it a name or registration number or both.
- (e) The Municipal Council or its representatives may allot berths to vessels at the wharf and floats in such order of precedence as he deems fit.
- (f) The Municipal Council or its representatives may at any time require a non-commercial vessel to leave its position at the floats in order to accommodate a licenced commercial fishing vessel.
- (g) The Municipal Council or its representatives shall determine the length of the vessel and if the vessel is registered the length shall be the registered length, and such determination shall be conclusive.
- (h) The Municipal Council or its representatives are hereby empowered to order the removal of any boat moored directly or indirectly to the floats which in their opinion is in danger of sinking or is a hazard to water bourne traffic. If in the opinion of the Municipal Council or its representatives the foregoing conditions exist and the owner of person responsible for the boat cannot be found they may beach the boat on the beach contained within the Boat Harbour.
- (i) If, in the opinion of the Municipal Council or its representatives, any boats, gear, or material beached on the beach or abandoned on or berthed at the floats or wharfhed, are considered to be abandoned or derelict, the Municipal Council or its representatives may order the owners to remove such boats, gear or materials, and if, after advertising by a Notice in the local newspaper and posting a copy of such Notice at the Boat Harbour, such boats, gear or materials have not been removed by the owner or owners thereof within thirty (30) days of the date of such notice, then such boats, gear and or materials may be disposed of by the Municipal Council or its representatives as they see fit.
9. Every vessel while occupying a berth or while fast to or tied up alongside any other vessel occupying a berth at the Port of Clements Government Wharf, and all goods handled, brought to (to) placed in or on the Government Wharf, shall be entirely at the owner's risk.
10. It shall be unlawful for any person or persons to berth a derelict hull, piledriver, scow, log float, log or logs, aircraft or houseboat or boat house at the Port Clements Government Wharf.
11. It shall be unlawful for any person or persons to connect to any outlet an extension cord of less than #12 wire-3 wire grounded cord.
12. It shall be unlawful for any person or persons to attach lines to lamp standards or to any fire line outlet.
13. It shall be unlawful for any person or persons to pump engine room bilge into the water of the Port Clements Harbour.
14. It shall be unlawful for any person or persons to dispose of garbage at the Port Clements Government Wharf except into the containers provided at the Port Clements Government Wharf for the purpose.
15. It shall be unlawful for any person or persons to park or leave standing any vehicle, except for the purpose of loading or unloading, on the approach to or on the wharfhed.
16. Any charge levied against any boat under Schedule "B" of this By-Law of the Village of Port Clements shall be recoverable by action taken against the owner in any competent Court having jurisdiction.

17. Every person who violates any of the provisions of this By-law, or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this By-law, or who neglects to do, or refrains from doing anything required to be done by any of the provisions of this By-law, shall be deemed to be guilty of an infraction of this By-law, and shall be liable on summary conviction to a fine not exceeding One Hundred Dollars (\$100.00) in addition to costs and in default of payment to imprisonment for not more than thirty (30) days.

18. This By-law may be cited as "Village of Port Clements Government Wharf Regulation By-law No. 36, 1977".

READ A FIRST TIME THIS 26th day of June, 1976.

READ A SECOND TIME THIS 26th day of June, 1976.

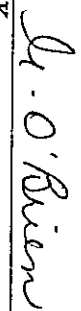
READ A THIRD TIME THIS 25th day of April, 1977.

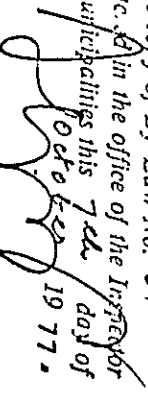
RECONSIDERED AND ADOPTED THIS 29th day of September, 1977.


ACTING MAYOR


CLERK

Certified a true copy of By-law No. 36 of the Village of Port Clements, cited as "Village of Port Clements Government Wharf Regulation By-law No. 36, 1977".


CLERK

A true copy of By-Law No. 36
reside in the office of the Inspector
of Municipalities this 7th day of
 October 19 77.

Deputy Inspector of Municipalities

No. _____

DEPARTMENT OF TRANSPORT

LEASE

HER MAJESTY THE QUEEN

TO

THE CORPORATION OF THE VILLAGE OF PORT CLEMENTS

Date of Authorizing Order in Council P.C. 1967-12/1070 dated June 1, 1967

Date of Lease

Port Clements, B.C.

Public Work Affected

Lands or Rights Demised The Government Wharf, so-called, and facilities situate, lying and being at the end of the main road in the Village of Port Clements on the east shore of Masset Inlet on Graham Is., Queen Charlotte Is., B.C.

Beginning of Term May 1, 1975

End of Term 3 Years

Rental: Payable (See Reddendum Clause)

Departmental Reference 9656-1414-1 Vol. 1

MEMORANDA

MINISTRY OF TRANSPORT

REQUIREMENTS

For the execution of contracts, leases and other legal documents to be entered into with Her Majesty the Queen in right of Canada as represented by the Minister of Transport

There are different procedures for execution depending on the status of the person signing:

INCORPORATED BUSINESS:

(a) Those incorporated in ANY PROVINCE EXCEPT QUEBEC.

The document **MUST** be sealed with the corporate seal and countersigned by the president or secretary of the company, with the position of that signing officer indicated below the signature. If any other person other than such persons signs the document, a certified copy, under the corporate seal, of the by-law or resolution authorizing such person to sign on the company's behalf must accompany the document.

(b) Those incorporated in QUEBEC.

The document may be executed in the same manner as (a) above or signed without a corporate seal by any director of the company. The person signing **MUST** indicate his position below his signature. If the document is not sealed the signature **MUST** be witnessed. If any person other than a director signs the document, a copy of the by-law or resolution authorizing such person to sign on the company's behalf, signed by a director, **MUST** accompany the document.

UNINCORPORATED BUSINESS:

(a) Where the business name contains the name of the proprietor (e.g. John Doe Contracting) the document may be signed and sealed by that proprietor (e.g. John Doe) without further proof of authority to sign. If it is not signed by that person, some proof of authority to sign must accompany the document.

(b) Where the business name is other than that of the proprietor (e.g. Acme Contracting) the document **MUST** be signed and sealed and proof of authority to sign, such as a notarial copy of its registration, **MUST** accompany the document.

THESE SIGNATURES MUST BE WITNESSED.

MUNICIPALITY:

The document **MUST** be sealed with the corporate seal and signed by the Mayor or Reeve, or other officer authorized to sign, **AND** the Clerk of the municipality. A certified copy of the by-law authorizing execution **MUST** accompany the document.

INDIVIDUAL:

The document **MUST** be signed and sealed by the individual and the signature **MUST** be witnessed.

EXECUTION BY POWER OF ATTORNEY:

The document **MUST** be accompanied by the original power of attorney or a notarial copy thereof.

THIS INDENTURE made this day of
One thousand nine hundred and seventy-six;

B E T W E E N -

HER MAJESTY THE QUEEN, represented herein by the Minister of Transport, acting under the provisions of Section 16 of the Government Harbours and Piers Act, Chapter G-9 of the Revised Statutes of Canada, 1970, and under the authority of an Order in Council dated the first day of June, 1967, (hereinafter called "the Lessor"),

OF THE FIRST PART;

- and -

THE CORPORATION OF THE VILLAGE OF PORT CLEMENTS, in the Province of British Columbia, (hereinafter called "the Lessee"),

OF THE SECOND PART.

WITNESSETH that the Lessor, in consideration of the rents, covenants, provisos and conditions hereinafter reserved and contained, hath demised and leased, and by these Presents doth demise and lease unto the Lessee:-

The Government Wharf, so-called, and facilities (hereinafter referred to as "the said wharf and the said facilities") situate, lying and being at the end of the main road in the Village of Port Clements on the east shore of Masset Inlet on Graham Island of the Queen Charlotte Islands in the Province of British Columbia; the location of the said wharf and the said facilities being more particularly shown outlined in red and identified on the Plan dated June 8, 1940, (Revised November 14, 1966) hereto annexed.

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TO HAVE and TO HOLD the said wharf and the said facilities unto the Lessee, from and after the first day of May one thousand nine hundred and seventy-five, for a term or period of three (3) years and then fully to be complete and ended.

YIELDING and PAYING therefor, during the currency of this Lease, unto the Lessor, through the Honourable the Receiver General of Canada for the time being, in lawful money of Canada, the following rent or sums, namely:-

- (a) ONE DOLLAR (\$1.00) per annum, payable on the first day of May, in each and every year; and, in addition,
- (b) FIFTEEN PER CENT. (15%) of all gross revenue derived by the Lessee from the use and management of the said wharf and the said facilities, as determined to the satisfaction of the Minister, payable on the first day of each succeeding month; or

- (c) ONE HUNDRED DOLLARS (\$100.00) per annum, which ever is the greater amount.

It is agreed that the word "Lessor" when used herein shall mean the Sovereign and shall include the Successors and Assigns of the Sovereign; the word "Lessee" or other words relative thereto, or of like import, shall mean and include, irrespective of gender or number, the party or parties of the second part as above designated or described, and their or any of their executors, administrators, successors or assigns; the word "Minister" shall mean the person holding the position, or acting in the capacity, of the Minister of Transport, for the time being, and shall include the person holding the position, or acting in the capacity, of the Deputy Minister of Transport, for the time being; the words "Director" - - - - -, shall mean the Chief, Harbours and Ports - - - - -, for the time being, of the Department of Transport of Canada, or such person duly appointed to act in that behalf.

And further agreed by and between the said parties hereto that these Presents are made and executed upon and subject to the covenants, provisos, conditions and reservations hereinafter set forth and contained, and that the same and every of them, representing and expressing the exact intention of the parties, are to be strictly observed, performed and complied with namely:-

- 1. That the Lessee will pay all rental herein reserved at the time and in the manner in these Presents set forth, without any abatement or deduction whatever.
- 2. That the Lessee will pay or cause to be paid all rates, taxes and assessments, of whatsoever description, that may at any time during the existence of these Presents be lawfully imposed, or become due and payable, upon, or in respect of the said wharf and the said facilities - - - - -, or any part thereof.
- 3. That the Lessee shall in all respects abide by and comply with all lawful rules, regulations and by-laws of municipalities and other governing bodies, in any manner affecting the said wharf and the said facilities.
- 4. That the Lessee shall not make any assignment of these Presents, nor any transfer or sub-lease of any of the lands, rights or privileges demised or leased hereunder, without obtaining the consent in writing of the Minister to such assignment, transfer or sub-lease.

5. That the Lessor, Her servants or agents, shall, at all times and for all purposes, have full and free access to any and every part of the said wharf and the said facilities.

6. That the Lessee shall not have any claim or demand against the Lessor for detriment, damage or injury of any nature whatsoever or howsoever caused to any person or property, including any materials, supplies, goods, articles, effects or things at any time brought, placed, made or being on the said wharf and the said facilities, unless such damage or injury is due to the negligence of any officer or servant of Her Majesty the Queen in right of Canada while acting within the scope of his duties or employment.

7. That the Lessee shall not, during the currency of this Lease, do, suffer or permit to be done any act or thing which may impair, damage or injure the said wharf and the said facilities, beyond the damage occasioned by reasonable user, and shall, at the Lessee's own cost and expense, maintain and repair all portions of the said wharf and the said facilities, which may at any time by the Lessee be damaged, other than in the reasonable user thereof, the Minister to be the sole judge of the meaning of the words "reasonable user".

8. That the Lessee shall, during the currency of this Lease, charge tolls or dues established under the authority of the Government Harbours and Piers Act by regulations approved from time to time by the Governor in Council respecting the said wharf and the said facilities or any part thereof and such tolls and dues become due and payable at the rates prescribed in the regulations in respect of a vessel when it is moored at the said wharf and/or the said facilities and in respect of goods when the goods are placed on, loaded or unloaded at or conveyed over or under the said wharf and/or the said facilities, and the Lessee may collect additional reasonable charges for special services such as electrical power outlets, water outlets, watchman services, etc., provided at the Lessee's expense for the benefit and use of the boating public using the said wharf and the said facilities.

9. That, notwithstanding the demise and lease of the said wharf and the said facilities under the provisions of this Lease, the Lessee shall not interfere with the public use of the said wharf and the said facilities during the currency of this Lease; it being expressly understood and agreed, however, that the Lessee may refuse the use of the said wharf and the said facilities to any vessel on which tolls and dues are outstanding over ten (10) days and the Lessee may take all lawful action to obtain payment of outstanding or overdue wharfage accounts.

10. That, notwithstanding anything in this Lease contained, the Lessee shall carry out the management and operation of the said wharf and the said facilities in accordance with the Government wharves Regulations as amended from time to time.

11. That the books of the Lessee shall be open for audit and inspection at all times during business hours, by the accredited officers of the Lessor.

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12. That during the currency of this Lease, the Lessee shall cause to be kept and at the end of each month, and also from time to time as required by the Minister, to be made up and balanced a true, exact and particular account of the moneys collected and received by the Lessee and of the charges and expenses attending the Lessee's operations hereunder.

13. That the Lessee may make such improvements to the said wharf and the said facilities as may be considered to be in the best interests of the boating public, all at the cost and expense of the Lessee and to the satisfaction of the Director.

14. That, subject as in Clause No. 19 hereof provided, this Lease may be terminated at any time by the Lessee upon thirty days' notice in writing delivered to or mailed addressed to the Department of Transport at Ottawa, Ontario, at any of Her Majesty's Post Offices.

15. That all applications for permission to establish concessions of any kind on the said wharf and the said facilities shall be forwarded to the Director for consideration and all revenue derived from such operations shall be for the account of the Lessor.

16. That the Lessee shall take all reasonable precautions against fire occurring on the said wharf and shall abide by and comply with the Fire Protection Engineering Standard No. 109-1963.

17. That the Lessee shall not discharge, or cause or permit to be discharged or howsoever to get into the waters adjacent to the said wharf any deleterious material, noxious, contaminated or poisonous substances, including oil and oil products, all as determined by the Minister whose decision shall be final, and if at any time and from time to time during the currency of this Lease, any pollution is caused to the said waters by reason or as a result of the operations of the Lessee, as to all of which the Minister shall be the sole judge, and his decision shall be final, the Lessee shall forthwith upon receipt of a notice in writing from the Lessor undertake, prosecute without interruption and complete the work of removal of such pollution material from the said waters, at the cost and expense of the Lessee and to the satisfaction of the Minister, and in case the Lessee fails to carry out its obligations under this clause to remove such pollution material from the said waters, the Minister may cause such work to be undertaken, prosecuted and completed, all at the cost of the Lessee, and the Lessee shall, forthwith upon demand therefor, reimburse the Lessor for all cost and expense incurred by the Lessor in the performance of such work and all other costs and expenses connected therewith or incidental thereto, and all such costs and expenses shall constitute a debt payable by the Lessee to the Lessor.

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18. That the Lessee shall at all times indemnify and save harmless the Lessor from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the execution of these Presents, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder, except claims for damage resulting from the negligence of any officer or servant of Her Majesty the Queen in right of Canada while acting within the scope of his duties or employment.

19. That the Lessor may at any time terminate this Lease by giving to the Lessee thirty days' ----- notice in writing signed by or on behalf of the Minister, and either delivered to the Lessee or any officer of the Lessee, or mailed addressed to the last known place of residence or business of the Lessee, at any of Her Majesty's Post Offices, and thereupon after the expiration of such period of notification ----- this Lease shall be determined and ended, and the Lessee shall thereupon, and also in the event of the determination of this Lease in any other manner, forthwith remove from the said wharf and the said facilities, all supplies, goods, articles,

materials, effects and things at any time brought or placed thereon by the Lessee, and shall also to the satisfaction of the Minister ----- repair all and every damage and injury occasioned to the Lands and premises of the Lessor by reason of such removal or in the performance thereof, but the Lessee shall not, by reason of any action taken or things performed or required under this clause, be entitled to any compensation whatever; Provided that, unless required by the Minister, no goods, chattels, materials, effects or things shall be removed from the premises of the Lessor until all rent due or to become due under this lease is fully paid.

20. That, notwithstanding anything in this Lease contained, if the rent above reserved, or any part thereof, shall be in arrear, or unpaid for thirty days next after any of the days or times hereinbefore appointed for the payment thereof, whether or not the same shall have been in any manner demanded, or in case default, breach or non-observance be made or suffered by the Lessee at any time or times, in, or in respect of any of the covenants, provisos, conditions and reservations herein contained, which on the part of the Lessee ought to be observed or performed, then, and in every such case, it shall be lawful for the Lessor, Her servants or agents, to re-enter and thereafter to have, possess and enjoy the said wharf and the said facilities and all improvements thereon.

And no acceptance of rent subsequent to any breach or default, other than non-payment of rent, nor any condoning, excusing or overlooking by the Lessor on previous occasions of breaches or defaults similar to that for which re-entry is made shall be taken to operate as a waiver of this condition nor in any way to defeat or affect the rights of the Lessor hereunder.

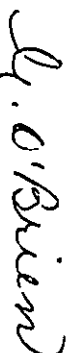
IN WITNESS WHEREOF the parties hereto have executed these Presents the day and year first above written.

SIGNED, SEALED AND DELIVERED
by the Lessor in the presence of-

For Minister of Transport



Mayor



Clerk-Treasurer

SIGNED, SEALED AND DELIVERED
by the Lessee in the presence of-

