

THIS AGREEMENT made as of the 1st day of October, 1990,

BETWEEN:

CITY OF VANCOUVER,
(Board of Parks and Recreation).
c/o 2009 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

(the "Board")

OF THE FIRST PART

AND:

JERICHO SAILING CENTRE ASSOCIATION
a society incorporated under the laws of the
Province of British Columbia under number
S11235, having a registered office at
1300 Discovery Street, Vancouver,
British Columbia, V6R 4L9

(the "Association")

OF THE SECOND PART

WHEREAS:

- A. The Board is lawfully entitled to exercise management and control of that certain parcel or tract of land and premises situate in the City of Vancouver, Province of British Columbia, known as:

City of Vancouver
Parcel Identifier: 015-849-511
District Lot 5098

("Lot 5098")

a portion of which is outlined in red on the plan attached hereto as
Schedule "A":

- B. A building (the “Building”) exists on the portion of Lot 5098 outlined in red on the plan attached hereto as Schedule “A”, (the Building and the said portion are hereinafter collectively called the “Premises”) :
- C. The Association has applies to the Board for a non-exclusive licence to use and occupy the Premises for the purposes hereinafter described;
- D. The Board, at its meeting of November 18, 1985 consented to a grant of a non-exclusive licence to the Association to use and occupy the Premises to operate the Jericho Sailing Centre (the “Centre”) upon and subject to the terms and conditions hereinafter set forth;
- E. The Association has requested a renewal of the non-exclusive licence, and the Board, as its meeting on February 18, 1991 consented to a renewal upon the terms and conditions hereinafter set out,

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the matters referred to in the foregoing recitals, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledge and agreed to by the parties, the parties hereto hereby covenant and agree as follows:

ARTICLE I

LICENCE

1.01 The Board, subject to the terms and conditions hereof, hereby grants, to the Association, for the purposes described in Schedule “B” for a term of five (5) years as and from the 1st day of October, 1990, a non-exclusive licence to use and occupy the Premises in common with the Board and its officers, servants, agents, licensees and invitees.

1.02 The Association shall pay to the Board a licence fee in the sum of One Dollar (\$1.00) upon execution of this Agreement and shall use its best efforts to

promote the goals and aims which include those matters referred to in Schedule “B” and shall work cooperatively with other community groups and organizations (private, public and professional) having similar objectives to the Association.

1.03 The Association shall not assign this licence, grant sublicences or agree with anyone else for operation of the Center without the consent of the Board, which may be arbitrarily withheld.

1.04 This licence is subject to the following reservations:

(a) The General Manager of the Board (hereinafter called the “General Manger”) may after consultation with the Association designate portions of the Premises including portions of the Building for the exclusive use of the Board for the purpose of storing equipment belonging to the Board.

(b) The General Manager may after consultation with the Association designate that changing rooms and or washrooms shall be available to the public or such groups as he may designate.

(c) It is understood and agreed that pursuant to section 490(1) of the *Vancouver Charter* this licence shall be terminated if the land of which the Premises form part cease to be a permanent public park.

ARTICLE II

OPERATING AGREEMENT

2.01 The Association shall appoint and pay staff to operate the Centre in a manner satisfactory to the General Manager and shall be:

- (a) responsible for allocating space for storage of boats, maintaining a waiting list to ensure new member's boats may be accommodated when space becomes available, handling all public enquiries concerning programs and special events; and
- (b) responsible for the security of the Premises and the Building; and the General Manager may require the Association to state the procedures for operation of the Centre in writing to his satisfaction.

2.02 The Association hereby agrees with the City of Vancouver (the "City") and the Board to indemnify and save harmless the City and Board and their respective servants, agents, officials, licensees and invitees for and from all costs, losses, damages, builders' liens, compensation and expenses of any nature whatsoever relating to or arising from the Association's use or occupation or operations on the Premises and from all actions, claims, demands, suits, costs, expenses and judgements against the City or the

Board or their respective servants, agents, officials, licensees and invitees on account of injury, death or damage to or loss of property occurring in or about the Premises.

2.03 Neither the Board nor the City shall be liable for any death or injury arising from or out of any activities carried on, or from, or for any occurrence in, upon, at or relating to, the Premises, or any damage to or loss of property of the Association or others on the Premises. Without limiting the generality of the foregoing, neither the Board nor the City shall be liable for injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Premises or from the pipes, appliances, plumbing works, roofs or subsurface of any floor or ceiling from the street or any other place or by dampness, or total or partial collapse of the Building, or by any other cause whatsoever. All property of the Association kept or stored in the Building shall be so kept or stored at the risk of the Association only and the Association shall indemnify the Board and the City and save them harmless from any claims arising out of any damages to same, including without limitation, any subrogated claims by the Association's insurers.

2.04 The Association shall, at its own expense, take out a comprehensive public liability policy and shall keep the same in force throughout the terms hereby granted. The policy shall be effected with insurers and shall contain such terms and conditions as required from time to time by the General Manager in his discretion. Without derogating from the foregoing, policy shall name the Board and the Association and the City and their employees, agents, officer, contractors and subcontractors as

insureds thereunder and shall protect all of the same from all claims for any loss, damage, injury or death to any person or persons and from all claims for damage to any public or private property caused by any act or omission on the part of any or all of them. Such policy shall provide for cross liability and fire legal liability. The limit of such insurance shall be not less than \$2 Million inclusive in respect of bodily injury or death of persons and damage to property. The insurance policy or policies requires by this Agreement shall contain a provision that the insurer shall not cancel or amend the policy or policies or allow it to or them to lapse without first giving the Board not less than forty (40) days written notice. The Association shall deliver to the Board the original or certified copy of the insurance policy for the time being in force and of any extensions or renewal thereof and evidence satisfactory to the Board that the insurance premiums have been paid. The provisions of this paragraph shall not operate so as to limit the provisions of paragraphs 2.02 and 2.03.

2.05 The Association shall arrange storage of boats and parking of automobiles and trailers in such a manner that they shall not interfere with the Board's use of the Premises.

2.06 The Association shall at all times maintain records of name and address of the owner of each boat stored on the Premises and the storage fee paid.

2.07 The Association shall not permit or suffer any waste to the Premises and the Association agrees to pay for al hydro, gas, electricity and other utilities consumed or used in or around the Premises.

2.08 The Association agrees not to carry on, nor do, nor allow to be carried on or done on the Premises any work, business or occupation other than for the purposes specified in paragraph 1.01 that may increase the hazard of fire or liability upon, at or near the Premises or liability of any kind, or that may increase the cost of fire insurance covering damage or loss by fire to the Premises or buildings adjacent thereto or the cost of liability insurance or concerning the Premises or buildings adjacent thereto, or invalidate any policy of insurance of any kind upon or in respect of any of the same. The Association hereby irrevocably waives notice of the provisions of any policy of insurance effected by the Board, if any.

2.09 The Board reserves the right to eject any objectionable person or persons from the Premises together with his property, including boat, automobile and trailers, and Association hereby waives any right to and all claims for damages or compensation by reason of the Board exercising this right.

2.10 The Association agrees that in respect of the use and occupation of the Premises or any part thereof, it shall comply at its own expense with all laws, orders, rules and regulations of any and all Federal, Provincial and other authorities, and the Board shall obtain and pay for all necessary permits and licenses and shall indemnify and save harmless the Board from and against all manner of actions, causes of action, damages, loss, costs and expenses which the Board may incur or sustain or be put to by reason of any neglect of the same or non-compliance therewith.

2.11 Without derogation or reduction of the Association's obligations under any provisions of the Agreement, the Association agrees to comply with and to cause the Building and the Premises and the construction and use thereof and otherwise to comply with, and not to suffer or permit any breach of, any and all by-laws (including by-laws of the City from time to time in existence), laws, statutes and rules

Touching or affecting any or all of the Building or the Premises or anything thereon or the use or construction thereof any operations thereon, even if such by-laws, statutes and rules are enforceable against or only against an owner or the Board so long as the same, in order to be complied with, require a change, alteration of, addition or amendment or anything else to all or any part of the Building, the Premises or anything thereon or the use or construction thereof of any operations thereon.

2.12 The Association shall at its expense post a sign at the main entrance to the Premises in a size with wording satisfactory to the General Manager to indicate:

- (a) the name of the Association;
- (b) persons entitled to the admission to the Premises;
- (c) conditions of use of the Premises;

And such other wording as may be required by the General Manager.

2.13 The Association agrees that it shall at its expense maintain and repair the Premises to the satisfaction of the General Manager and the keep the Premises in a neat and tidy

condition. The exterior of the Building and any structure of the Premises shall be painted to the General Manager's satisfaction and the Association shall, at its expense comply with all requirements of the City with respect to the maintenance and repair to the Building. Provided that the Board, at its sole discretion, may bear a portion of the cost of structural repairs and replacements and major renovation or replacements to the building but in any event the Board shall not be required to bear any of such cost unless it has agreed to do so before the commencement of such work and expenses which it agreed in writing to pay prior to commencement of the work in question.

2.14 The Association agrees that it shall not:

(a) carry out cause to be carried out any additions, renovations, alterations to or redecoration of the Premises, or

(b) install any sign upon the Premises

Without the prior written consent of the Board, which consent may be arbitrarily withheld, and the Board in giving such consent may attach whatever conditions, directions, stipulations or prohibitions or deadlines as the Board deems appropriate.

2.15 Notwithstanding anything to the contrary in the Agreement contained, the Board may terminate this Agreement immediately by giving notice to the Association at the address above set forth if the Association breaches any provision of this Agreement. In addition, and notwithstanding any other provision of this agreement, the Board may terminate this Agreement in the absence of an breach of an provision of this Agreement. In addition, and notwithstanding any other provision of this Agreement in the absence of any breach of any provision hereof upon sixty (60) days written notice to the Association at the address set forth.

2.16 The Premises shall not be used to commercial purposes except with the prior consent in writing to the General Manager, which consent may be arbitrarily withheld. Without restricting the generality of the foregoing, the following activities shall be deemed to be “commercial.”

- (a) sale, rental or display of boats, equipment or other merchandise or services;
- (b) meetings or conventions for groups which are not recreational sailing organizations and which are non-profit organizations;
- (c) dances or other entertainment except where such dance or entertainment forms part of an activity to be attended principally by members of the Association;
- (d) the provision of instruction in sailing and other forms of instruction where the charge for such instruction is more than a nominal sum

2.17 The Association may require that any person using the Premises for the purposes referred to in paragraph 1.01 become a member of Association.

2.18 The Association shall establish reasonable, nominal membership fees, boat storage fees and other fees and charges for the use of the Center and its facilities, but no fee revised fee may be collected or charges unless first approved in writing by the General Manger.

2.19 Membership shall be open to members of the public but such memberships may be terminated or refused if the member fails or refuses to comply with the by-laws, and reasonable rules and regulations established by the Association and the Association may, subject

to approval of the General Manager, require that an applicant for membership establish that he or she has an interest in the activities of the Association.

2.20 The Association shall:

(a) at its own cost, prepare and submit to the Board for approval annual budgets or budgets for such other periods as the Board may from time to time require. The first budget shall be for the period October 1, 1990 to September 30, 1992 and shall be submitted to the Board by March 1, 1991. All budgets shall detail anticipated revenues and expenses. The Board may approve, refuse to approve, or require changes to the budgets as conditions of approval. The Association shall not expend monies at variance with a budgets approved by the Board and shall, if the Board so requires, expend monies in accordance with and for purposes set forth in any approved budget.

(b) at its own cost, prepare and submit to the Board for approval a short term plan and budget respecting capital improvements to the Premises. The first such plan and budget must be submitted for approval on or before March 31, 1991.

(c) at its own cost, prepare and submit to the Board for approval a long range plan and budget respecting capital improvements to the Premises. The first such plan and budget must be submitted for approval on or before March 31, 1991.

(d) cause all revenues in excess of expenditure set forth in any approved budget to be set aside in each year and such excess revenues shall be applied to such capital improvements to the Premises as the Board may from time to time stipulate.

2.21 Without derogating from clause 2.20, the Association shall, at its own cost, prepare and submit to the General Manager financial statements, profit and loss statements, statements of changes in financial position and such other financial information and statements as from time to time required by the General Manager. Such statements shall be for such periods as the General Manager from time to time stipulates shall be certified and verified as the General Manager from time to time requires and shall be submitted at such times as the General Manager stipulates.

2.22 The Association agrees that:

(a) all improvements constructed on the Premises and all fixtures and alterations shall, at the expiration or sooner termination of this Agreement be and remain the absolute property of the Board, with no compensation payable to the Association, and

(b) at the expiration or sooner termination of this Agreement all revenues in excess of the expenditures in any budget approved by the Board shall forthwith be paid to and be and remain the absolute property of the Board.

2.23 The Association shall provide the General Manager with a list of names and addresses of the owners of all boats and equipment stored in the Premises and shall cooperate with the Board for a period of ninety (90) days after termination of this Agreement in contacting such owners and otherwise as the Board may request .

2.24 If the Building is damaged or destroyed by fire or by any other cause, the general Manager may require the Building be demolished at the Board's expense upon giving the Association sixty (6) days notice in writing. The Association shall be responsible for removal of its property and the property of its members and other persons using the Building. Any property

remaining in the building after the date set out in the notice may be removed by the Board for such cost and any claims against the Board or its officers, employees or contractors for loss or damage to such property.

2.25 This Agreement and all rights and permissions and consents given hereunder to the Association shall immediately and automatically, without further act by anyone or both of the parties terminate upon the earlier to occur of any one of the following events:

(a) The Association is petitioned into bankruptcy or makes a voluntary assignment into bankruptcy or makes a voluntary assignment into bankruptcy or takes the advantage of the *Bankruptcy Act* of Canada or legislation governing insolvency; or

(b) The Association is unable generally to meet its financial obligations as a when they become due, whether under this Agreement or otherwise vis-à-vis other creditors.

2.26 All of the obligations of the Association shall survive any termination of this Agreement and shall continue until fully and faithfully observed and performed so far as the same relate to payment of monies, indemnities or to her matters save for obligations to maintain or repair the Building.

2.27 The City may assign all or any part of its rights hereunder or the benefits of any covenants hereunder, retroactively, prospectively, prospectively or at any time. The City hereby assign to the Board the benefit of all covenants and indemnities contained herein made or purported to be made in favour of the Board.

2.28 Wherever this Agreement reserves or delegates to the General Manager the right to consent to anything, such consent may be arbitrarily withheld by the General Manager or may

be given subject to such conditions as the General Manager may in his discretion decide to impose.

2.29 The Association agree to follow and obey and written request and directions issued by the General Manager from time to time, even if such directions are at variance with the terms of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

CITY OF VANCOUVER

By: _____

General Manager

Board of Parks and Recreation

Refer to Park Board Minutes of

JERICHO SAILING CENTER ASSOCIATION

By: _____

Authorized Signatory

By: _____

Authorized Signatory

(DEL0208/90/ IBM)

SCHEDULE "B"

To manage and develop facilities for sailboats and other non motor powered craft and related activities in the Greater Vancouver area.

To promote, conduct and direct programmes for:

- (a) recreational sailing

- (b) instruction in sailing and other boat handling

- (c) instruction in seamanship and safety

- (d) sailing races

- (e) other activities related to recreational competitive sailing

To work co-operatively with other community groups and organizations (private, public and professional) having similar objectives of the Association.

To contract with the Board of Park and Recreation and any other organization (public or private) for the use and management of facilities to meet the objectives of the Association.

That the following clubs, co-ops and fleets be recognized as the Association's affiliated member groups: Canadian Forces Sailing Association; English Bay Racing Club; S.F Sailing Club; U.B.C. Club; U.B.C. Old Boys Rugby Club; U.B.C. Windsurfing Club; Westcoast Boardsailing Club; Companionway Sailing Club; The Corsairs Sailing Club; Disabled Sailing Association; Discovery Sailing Club; Canadian Hostelling Association Sailing Club; K.O. Sail; Vikings Sailing Club; Hobie Fleet #214; Laser Fleet; Mirror Dinghy Association; Tasar Fleet; Tornado Fleet; and the Sea Scouts.

