

THIS MODIFICATION AGREEMENT (the "**Agreement**") is made effective as of July 1, 2019 (the "**Effective Date**")

BETWEEN:

CITY OF VANCOUVER, represented by
its **BOARD OF PARKS AND RECREATION**
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

(the "**Park Board**")

AND:

OCEAN WISE CONSERVATION ASSOCIATION
(Incorporation No. S0003892), a society incorporated
under the *Society Act* having its registered office at
20th Floor, 250 Howe Street
Vancouver, British Columbia
V6C 3R8

(the "**Society**")

BACKGROUND:

- A. The City of Vancouver (the "**City**") is the lessee of certain lands and premises situated in the City of Vancouver, Province of British Columbia, generally known as Stanley Park;
- B. The Park Board has exclusive possession, jurisdiction and control of Stanley Park subject to a perpetually renewable agreement between the City and the Government of Canada (the "**Head Lease**");
- C. By way of a licence agreement made as of January 1, 1999 (the "**Original Licence**"), a copy of which is attached to this Agreement as Exhibit "A", as extended and modified by a modification agreement made effective as of December 31, 2009 (the "**2009 Modification**"), a copy of which is attached to this Agreement as Exhibit "B", and as further modified by a modification agreement made effective September 7, 2011 (the "**2011 Modification**"), a copy of which is attached hereto as Exhibit "C", the Society agreed to manage and operate those certain premises in Stanley Park referred to as the Vancouver Aquarium (the "**Aquarium**") and as further described therein;
- D. The Original Licence as modified by the 2009 Modification and the 2011 Modification is herein called the "**Licence**";
- E. The parties have agreed to enter into this Agreement to modify the Licence on the terms and conditions set out herein; and
- F. All capitalized terms in this Agreement have the meaning ascribed to them in the Licence unless the context otherwise requires or unless otherwise stated in this Agreement.

CONSIDERATION:

In consideration of the respective covenants and agreements herein contained, the parties agree as follows:

The Licence is hereby modified as of the Effective Date as follows:

1. Grant of Term

Subject to the provisions and conditions of the Licence, as modified herein, and to the performance by the Society of its obligations, the Park Board does hereby grant to the Society the right and licence to use the Premises to manage and operate the Aquarium for thirty-five (35) years from the Effective Date to and including the 30th day of June, 2054 (the "Term") on the same terms and conditions as the Licence except as modified by this Agreement.

2. Waiver of Licence Fee for 5 years

The Park Board agrees that, from the Effective Date until June 30, 2024, the Society is not required to pay the Licence Fee. For greater certainty, the Licence Fee is defined in Section 2 of the 2011 Modification.

3. Fees Payable

In the 2011 Modification the Society agreed that, once the expansion was completed and the Food Service Outlet was operational, the Society would pay a fixed annual fee to the Park Board to offset lost revenues associated with the removal of the Bistro from the construction plan and the loss by the Park Board of lost revenues. In addition to the License Fee payable pursuant to the Licence as modified by this Agreement, the Society hereby agrees, as of the Effective Date, to pay the Park Board, during each year of the Term, without prior demand or any declaration or setoff whatsoever, a fixed annual fee as follows:

- (a) Years 1 to 5 - July 1, 2019 - June 30, 2024 Nil
- (b) Years 6 to 10 - July 1, 2024 - June 30, 2029 \$175,000
- (c) Years 11-15 - July 1, 2029 - June 30, 2034 \$200,000
- (d) Years 16-20 - July 1, 2034 - June 30, 2039 \$225,000
- (e) Years 21-25 - July1, 2039 - June 30, 2044 \$250,000
- (f) Years 26-30 - July 1, 2044 - June 30, 2049 \$275,000
- (g) Years 31-35 - July1, 2049 - June 30, 2054 \$300,000

4. The Licence is also hereby modified as of the Effective Date by:

- (a) deleting Sections 1 and 3 of the 2009 Modification; and
- (b) deleting the provision added to the Original Licence pursuant to Section 3(b) of the 2011 Modification.

5. **Terms and Conditions of the Original Licence to Apply**

The parties agree that all of the terms and conditions of the Original Licence as modified by the 2009 Modification and the 2011 Modification, are deemed to be incorporated into this Agreement unless the context otherwise requires or unless otherwise stated in this Agreement.

6. **Ratification**

The Park Board and the Society mutually ratify and confirm all of the terms and conditions of the Original Licence as modified by the 2009 Modification, the 2011 Modification, and by this Agreement.

7. **Further Assurances**

The parties hereto will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.


8. **Enurement**

This Agreement will enure to the benefit of and be binding upon the successors and assigns of the Park Board and the Society.

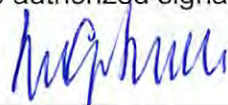
IN WITNESS WHEREOF the parties have executed and delivered this Agreement to be effective as of the Effective Date.

CITY OF VANCOUVER, as represented by
its **BOARD OF PARKS AND RECREATION**
by its authorized signatory:


Signature


Print Name:

OCEAN WISE CONSERVATION ASSOCIATION
by its authorized signatory:


Signature



Print Name:

EXHIBIT "A"

STANLEY PARK AQUARIUM

THIS AGREEMENT made as of the 1st day of January, 1999

BETWEEN:

CITY OF VANCOUVER by its
BOARD OF PARKS AND RECREATION, created under the
Vancouver Charter, having an office at 3099 Beach Avenue,
Vancouver, British Columbia, V6G 1Z4

(hereinafter called the "Park Board")

OF THE FIRST PART

AND:

VANCOUVER AQUARIUM MARINE SCIENCE CENTRE, a society
incorporated under the *Society Act*, having its registered office at
1500-1040 West Georgia Street, Vancouver, British Columbia, V6E
4H8

(hereinafter called the "Society")

OF THE SECOND PART

WHEREAS:

A. The Society was incorporated as a non-profit society for the purpose of financing, constructing and operating an aquarium for the use of the public and for the purpose of engaging in activities ancillary thereto and the Society has been instrumental in constructing and maintaining the buildings and structures in Stanley Park known as the Vancouver Aquarium Marine Science Centre (which is hereinafter referred to as the "Aquarium");

B. Subject to the lease in favour of the Government of Canada (the "Head Lease"), Stanley Park has been designated as a permanent public park by Vancouver City Council and as a result the Park Board has exclusive possession of, and exclusive jurisdiction and control of Stanley Park;

C. Pursuant to a series of agreements made by the Park Board with the Society that commenced with an agreement dated August 17, 1955, the Society has continuously owned and operated the Aquarium;

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D. The Society's current agreement with the Park Board (dated September 10, 1985, as amended February 23, 1989 and November 4, 1996, and hereinafter collectively referred to as the "Agreement") expires on September 9, 2000 and the Park Board and Society wish to enter into a new agreement upon the terms and conditions herein set forth; and

E. The Park Board and Society acknowledge, as governing principles of their relationship, that:

- (a) the public has a valid and *bona fide* interest in the purposes for which Stanley Park is used; and
- (b) in accordance with the Park Control Bylaw (1992) section 4(a)(i) "Except with the permission of the Board, no person shall, in any park, sell, offer to sell, or expose for sale any food, beverage or article or thing of any kind, and this Agreement provides such permission to the Society; and
- (c) the day-to-day administration of the Aquarium shall always properly remain within the Society's control, without interference by the Park Board, unless such interference is permitted or required by this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the respective covenants and agreements herein contained, the parties hereto agree as follows:

TERM

1. The term of this Agreement shall be for a period expiring October 30, 2007 (the "Term"), being one day prior to the current expiry date of the Head Lease.

2. It is acknowledged that the Society and Park Board wish this Agreement to expire October 30, 2015 but the parties are prevented from doing so due to the length of time remaining on the Head Lease. It is agreed that if the Head Lease is extended from time to time beyond October 30, 2007 then the Term shall automatically extend to the sooner of:

- (a) one day prior to the new expiry date of the Head Lease; and
- (b) October 30, 2015.

GRANT

3. Subject to the provisions and conditions herein contained and to the performance by the Society of its obligations hereunder, the Park Board does hereby grant to the Society the right and licence to use those lands and premises (the "Premises") outlined in red on the sketch attached hereto and marked Schedule "A", to operate the Aquarium thereon pursuant to this Agreement during the Term and all extensions thereof.



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SOCIETY'S COVENANTS

4. Except as otherwise provided herein, the Society covenants with the Park Board that during the Term, and any extension thereof, it will, within the boundaries of the Premises:

- (a) operate and manage the Aquarium (and all activities undertaken in connection therewith) in an efficient and businesslike manner;
- (b) exercise the control, management and operation of the Aquarium through the Board of Governors of the Society, and the Park Board shall be entitled to designate one (1) commissioner as a liaison person who may attend meetings of the Society's Board;
- (c) install suitable equipment and use the Aquarium for year-round display for public benefit;
- (d) provide as many facilities as practicable for scientific research in cooperation with the appropriate federal and provincial ministries, and the universities and other educational institutions of British Columbia;
- (e)
 - (i) limit the size of permanent food preparation and service facilities to the footprint approved by the Park Board when approving this Agreement;
 - (ii) gain approval from the Park Board for any proposed addition to or expansion of the food services facilities beyond its size as of October 1, 1998;
 - (iii) provide food service only to Aquarium patrons within the boundaries of the Premises; and
 - (iv) not place promotional signs for its food services either on the plaza area in front of the Aquarium or in places within the Aquarium displayed to be viewed from the plaza area.
- (f) at all times during the Term the Society at its own expense shall maintain with one or more companies duly authorized to carry on business in the Province of British Columbia the following insurance policies:
 - (i) a commercial property insurance policy covering loss of or damage to the Aquarium to its full replacement value. The policy shall name the Society, City of Vancouver and the Board of Parks and Recreation as loss payees as their interests may appear. The policy shall cover the risk of fire and other risks customarily included within such a policy of insurance. The policy shall not have a limit of deductibility greater than Ten Thousand (\$10,000) Dollars. The Society shall save harmless and indemnify the City of Vancouver and the Board of Parks and Recreation for any deductible amount under such policy;
 - (ii) a comprehensive general liability insurance policy naming the Society, and its servants and agents as insureds thereunder, and adding as additional insureds the City of Vancouver and its Park Board and their servants and agents and

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shall indemnify and protect the Society, the City of Vancouver and its Park Board and their servants and agents against all claims for any loss, damage, injury or death to any person or persons and for damage to any public or private property occurring within or about the Aquarium or arising by virtue of the Society's operation of the Aquarium. The policy shall also provide for cross actions by each insured against another and shall provide for the severability of the interest of each insured. The policy shall also include the Society's contractual liability and in particular the Society's contractual liability to the City of Vancouver and its Park Board created by this Agreement. The policy shall also cover owners and contractor's protective liability, contingent employer's liability broad form completed operation. The limit of such insurance shall not be less than Five Million (\$5,000,000.00) Dollars for loss, damage, injury or death arising out of any one occurrence and in the aggregate with respect to products and completed operation or such higher limit of coverage as the Park Board's Director of Risk and Emergency Management may reasonably require from time to time and the policy shall not provide for a limit of deductibility greater than Two Thousand Five Hundred (\$2,500.00) Dollars or such other minimum limit as the Park Board's Director of Risk and Emergency Management may sanction from time to time; and

- (iii) insurance policies on property of every description and kind owned by the Society or for which the Society is legally liable or installed by or on behalf of the Society and which is located in or about the Aquarium including without limitation furniture, fittings, installations, alterations, additions, partitions, fixtures, trade fixtures and any display model, project, prototype, tool, instrument or device to the full replacement cost thereof with coverage against at least the perils of fire and standard extended coverage including sprinkler leakages (where applicable), earthquake, flood and collapse.

If the Society fails to provide, upon request by the Park Board, satisfactory proof of such coverage being in full force and effect at all times, the City of Vancouver and its Park Board may secure such insurance and the Society shall pay the cost of same as additional rent.

All insurance policies shall be in a form and in amounts satisfactory from time to time and with insurers acceptable to the Park Board's Director of Risk and Emergency Management and shall provide the City of Vancouver with thirty (30) days prior written notice of material change, lapse or cancellation. Notice must identify the type of agreement, society, and location.

Neither the providing of insurance by the Society in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing shall be held to relieve the Society from any other provisions of the Agreement with respect to liability of the Society or otherwise.

The insurance coverage shall be primary insurance as respecting the City of Vancouver and its Park Board. Any insurance or self-insurance maintained by or on

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behalf of the Park Board, its officers, officials, employees, servants or agents shall be excess of this insurance and shall not contribute with it.

The Society shall provide, upon execution of this Agreement, evidence of each policy of insurance required to be taken out by the Society hereunder in the form of a detailed certificate of insurance and a copy of the insurance clauses so provided in such policies or if requested by the Board, certified copies of the policies signed by the insurers. The certificate of insurance shall identify the type of agreement, society and location.

Similar evidence of renewals, extensions or replacement of said policies shall be forwarded to the Park Board, Attention: Director of Risk and Emergency Management, within fifteen (15) days of the renewal, extension or replacement of such policies. A certificate of insurance provided by the Society shall not contain any disclaimer whatsoever.

- (g) (i) rebuild or repair the Aquarium in the event of fire or other perils insured against, provided that the Society shall be entitled to use any insurance monies payable to the Society, the City of Vancouver or its Park Board as a result of the fire or other perils in rebuilding and repairing the Aquarium; and
- (ii) maintain the Aquarium, its contents and equipment including building services (such as saltwater intake, fibre optic line, power and other services or service lines to where they join the service or utility system) beyond the area of the Premises in a reasonable state of repair (and the Park Board hereby agrees to allow such work to be done) and permit the General Manager of the Park Board (or designate) upon giving reasonable notice to enter the Aquarium and view the state of repair thereof at any and all reasonable times;

PROVIDED that in requiring the Society to comply with its obligations to maintain, repair and rebuild as set out above, the Park Board shall give due regard to the financial ability of the Society to effect such maintenance, repair and reconstruction and to the causes necessitating such maintenance, repair and reconstruction, and to all other relevant circumstances, and the Park Board, in its absolute discretion, may relieve the Society of all or part of such obligations;

- (h) not make or permit or suffer to be made any additions or alterations to the Aquarium requiring a development permit, without first obtaining a development permit, and to obtain the approval of the Park Board to any proposed design prior to applying to the City for a development permit;
- (i) obtain written consent from the General Manager (acting reasonably) prior to any proposed erection of any sign or advertising device or structure outside of the Premises and within Stanley Park;
- (j) keep good and sufficient books of account of the operation of the Aquarium and permit the Park Board, their auditors or other servants that the Park Board may appoint to examine such books at all times as may be mutually convenient;

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- (k) deliver to the Park Board no later than March 31st of each year of the Term an audited statement of revenue and expenditures of its operation of the Aquarium for the past year;
- (l) indemnify and save harmless the City of Vancouver and its Park Board from and against all manner of actions, suits, proceedings, costs, charges, expenses, claims, liens, demands, damages, matters and things whatsoever which at any time may be brought or arise from or may be made against the Park Board or the City of Vancouver in respect of any injury done or suffered or sustained by any person by reason or on account of any act or omission of the Society or its Board of Governors in the management, control, operation and maintenance of the Aquarium or any other act, matter or thing done or permitted to be done or suffered by the Society, its Board of Governors, employees, agents, contractors and sub-contractors, on, in or incidental thereto or by reason of the execution of this Agreement;
- (m) comply with the bylaws of the Park Board and the City of Vancouver which may be in force from time to time governing the conduct and use of park property;
- (n) not bring into Stanley Park or keep or otherwise maintain in Stanley Park any aquatic mammal of the Cetacean order including, but not limited to, baleen whales, narwhals, dolphins, porpoises, killer whales and beluga whales, which has been captured or otherwise taken from its natural wild habitat, except that this prohibition shall not apply to:
 - (i) captive cetaceans caught from the wild prior to September 16, 1996 and cetaceans born into captivity at any time;
 - (ii) cetaceans which are already being kept or maintained in Stanley Park as of September 16, 1996;
 - (iii) a member of an endangered cetacean species provided that approval for bringing it into Stanley Park has first been obtained from the Park Board; and
 - (iv) an animal that has been captured or otherwise taken from its natural wild habitat for the purpose of rehabilitating it from injury or preventing its death due to stranding provided that its capture or taking and subsequent release to natural habitat is done under the jurisdiction and approval of the federal agency responsible for such decisions, and provided that the Park Board has been informed in as timely a manner as possible by the Society.
- (o) (i) investigate and, where viable, implement alternatives to whale exhibitory and research whale release and whale rehabilitation (and for purposes of this clause it is agreed that "viable" means an alternative to which the Society and the Park Board mutually agree will maintain the financial viability of the Aquarium); and

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- (ii) continuing to use means at its disposal to discourage institutions with whom it is exchanging whales to not capture wild whales to replace whales exchanged with the Society;
- (p) (i) to pay annually to the Park Board commencing with the 1999 calendar year the sum of Forty Thousand dollars (\$40,000.00) (the "Annual Amount") either in cash or profits to the Park Board from joint Society/Park Board initiatives (the "Joint Initiatives") agreed to in writing by the General Manager of the Park Board;
- (ii) representatives of the Society may periodically meet with the General Manager (or designate) to examine proposed Joint Initiatives. The General Manager may accept or decline in writing any such Joint Initiatives and will determine the pro rata share of the profit from each Joint Initiative that each party will be entitled to. On December 31, 1999 and every December 31st thereafter the General Manager shall determine the sum of the profits received by the Park Board from the Joint Initiatives for the preceding calendar year. If the sum received for the preceding calendar year is less than the Annual Amount then the Society shall pay such difference to the Park Board within 15 days of the General Manager providing the Society with written notice of the amount due.
- (iii) The Annual Amount under this clause shall be reviewed by the parties as of January 1, 2002 and as of January 1st every three (3) years thereafter. If the parties cannot agree upon a new Annual Amount then the new Annual Amount shall be determined by resolution of the Park Board; and
- (q) the Society covenants to pay to the Park Board interest on any amounts over due from the date that such amount became due and owing and continuing until paid in full at the per annum rate of the prime rate of the Bank of Montreal from time to time plus two per cent (2%), such prime rate being the rate given to its most favoured commercial customers on unsecured loans and declared by such bank to be its "prime rate".

PARK BOARD COVENANTS

5. Except as otherwise provided herein, the Park Board covenants with the Society that during the Term, and any extensions thereof, it will:

- (a) ensure that the gates to the Public Viewing Area (as shown on Schedule "A") are open during the times when the Aquarium is open to the public;
- (b) not make changes to the parking in the central portion of Stanley Park which will materially and adversely affect the operations of the Aquarium without first advising and consulting with the Society about such changes, provided however that it is in the Park Board's sole discretion as to what changes it wishes to make in connection with such matters as long as adequate parking for Aquarium use and for use by Aquarium visitors remains in reasonable proximity to the Aquarium; and

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- (c) not interfere with the day-to-day administration of the Aquarium unless such interference is permitted or required by this Agreement.

The Park Board has approved in principle the extension of the footprint occupied by the Aquarium by 392 square metres as shown hatched on Schedule "A" and in detail on Schedule "B" (the "Extended Area"), provided that development in these areas shall require design approval by the Park Board and a development permit. Upon a development permit being granted then the Extended Area shall be added to this Agreement to form part of the "Premises".

SOCIETY PROJECTS

6. The Society intends to continue the following activities, subject to obtaining funding where necessary:

- (a) continuing to engage in outreach efforts to Vancouver residents, through the utilization of community centres with the consent of the centres and otherwise, as part of its general activities;
- (b) continuing to develop new exhibits and research on a range of subjects related to its general objectives including the science of release of whales within the Premises; and
- (c) planning new areas (e.g. Learning Centre, Exhibit Holding and Research Area, changes to Plaza and Aquarium entrance).

The Park Board will use reasonable efforts to assist the Society in obtaining funding for the above activities.

JOINT PROJECTS/WORKING RELATIONSHIP

7. The Society and the Park Board agree to work together to:

- (a) meet at least twice yearly during the term and any extensions thereof to discuss items of mutual concern;
- (b) continue to ensure that each party is informed of issues that affect the other through continued good faith communications and the ongoing system of liaison attendance at their respective meetings; and
- (c) develop proposals for joint projects or initiatives in the public interest on a case by case basis (e.g. the Stanley Park Salmon Stream).

MISCELLANEOUS

8. It is further expressly agreed and declared between the parties hereto that if either party hereto defaults in the observance of the performance of any of the covenants or agreements herein contained, then the party not in default shall have the right to give to the party in default notice in writing of any such default, and if the party in default fails to remedy or to take appropriate reasonable steps to commence to remedy such default within a period of three (3) months after the

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delivery of such notice as herein provided, then and in such event the party not in default shall, by notice in writing to the other, be entitled to declare this Agreement terminated, and this Agreement shall be thereupon terminated and at an end.

9. Any notice required or desired to be given under or in respect hereof may be effectually given by mailing the same by prepaid registered post at Vancouver addressed as follows:

To the Park Board:

General Manager
Board of Parks and Recreation
2099 Beach Avenue
Vancouver, B.C.
V6G 1Z4

To the Society:

Executive Director
Vancouver Aquarium Marine Science Centre
P.O. Box 3232
Vancouver, B.C.
V6B 3X8

or by delivering the same to the person to whom it is addressed as aforesaid.

10. The Society shall not assign or sublicence any of its rights under this Agreement except with the written consent of the Park Board, such consent not to be unreasonably withheld.

11. The Society agrees that this Agreement does not create any interest in land in favour of the Society with respect to the Premises. The Park Board agrees that the Society owns the buildings that comprise the Aquarium during the Term (or as it may be extended or as similar agreements are made to replace this Agreement). Upon expiration of this Agreement and if this Agreement is not to be extended or so replaced such that the Society shall no longer use or occupy the Premises then the ownership of buildings (excluding the Society's chattels and any fixtures or exhibits that are similar in nature to a tenant's trade fixtures, all of which may be removed by the Society) that are then on the Premises will automatically transfer to the Park Board.

12. This Agreement replaces all others dealing with the subject matter of this Agreement.

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IN WITNESS WHEREOF the Park Board has caused these presents to be executed under the hands of its proper officers duly authorized in that behalf and the Society has hereunto affixed its seal under the hand of its duly authorized officers .

BOARD OF PARKS AND RECREATION

Per: *Mundich*
Per: *General Manager*

THE COMMON SEAL of VANCOUVER
AQUARIUM MARINE SCIENCE CENTRE
was hereunto affixed in the presence of:

[Signature]
Authorized Signatory

[Signature]
Authorized Signatory

C/S

Approved by Resolution of the
Board of Parks and Recreation
November 30, 1998.

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dm @

Schedule B



SCALE 1:250

R98-12456-LSE

DRIVEWAY

EDGE OF HIGHWAY

AREA = 288.7 m²
= 3108 sq. ft.

EDGE OF DRIVEWAY

VANCOUVER PUBLIC AQUARIUM

AREA = 103.3 m²
= 1112 sq. ft.

ACCESS ROAD

EDGE OF ASPHALT

MATSON, PECK & TOPPLIS
SURVEYORS AND ENGINEERS
210-1171 COOK ROAD
RICHMOND, B.C.
V6T 3T8
604 279-8331
(604) 279-1137

R98-12456-LSE

DATE OF SURVEY: OCTOBER 20, 1998

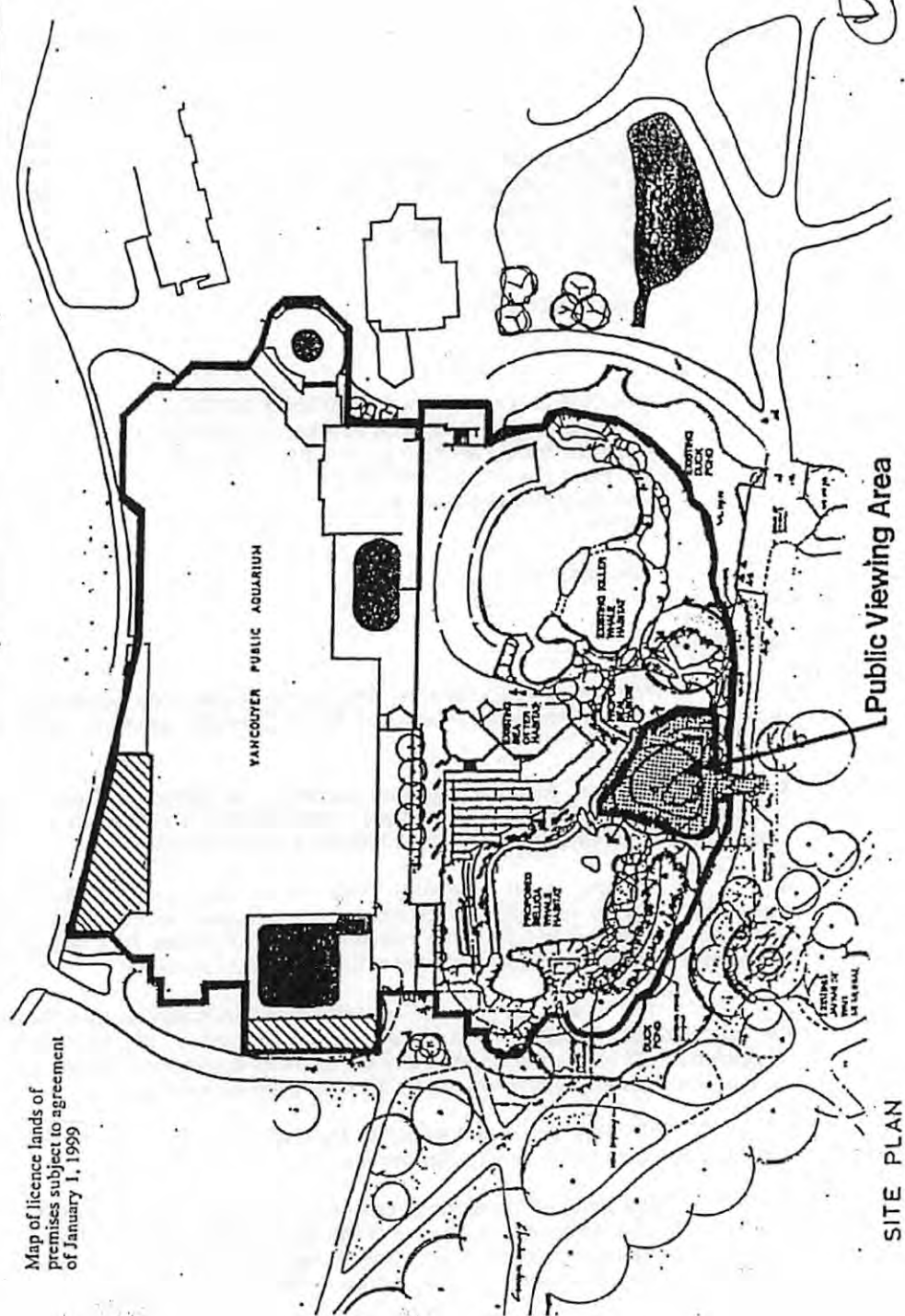
SKETCH PLAN OF PROPOSED
EXTENSIONS TO LEASE OF
VANCOUVER PUBLIC AQUARIUM

2



Schedule A - Vancouver Aquarium Marine Science Centre

Map of licence lands of premises subject to agreement of January 1, 1999



SITE PLAN

EXHIBIT "B"

THIS AGREEMENT is made effective as of December 31, 2009 (the "Effective Date")

BETWEEN:

CITY OF VANCOUVER, represented by
its BOARD OF PARKS AND RECREATION
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z3

(the "Park Board")

AND:

VANCOUVER AQUARIUM MARINE SCIENCE CENTRE,
(Incorporation No. S0003892), a society incorporated
under the *Society Act* having its registered office at
15th Floor, 1040 West Georgia Street
Vancouver, British Columbia
V6E 4H8

(the "Society")

BACKGROUND:

A. The City of Vancouver (the "City") is the lessee of certain lands and premises situate in the City of Vancouver, Province of British Columbia, generally known as Stanley Park;

B. The Park Board has exclusive possession, jurisdiction and control of Stanley Park subject to an agreement between the City and the Government of Canada (the "Head Lease") which Head Lease was renewed in 2007 for a further 99-year term;

C. By way of an agreement made as of January 1, 1999 (the "Original Agreement"), a copy of which is attached to this Agreement as Exhibit "A", the Society agreed to manage and operate those certain premises in Stanley Park referred to as the Vancouver Aquarium (the "Aquarium") and as further described therein;

D. The Society has proposed an upgrade and an expansion (the "Expansion") of the Aquarium to include the area shown hatched on Exhibit "B" attached hereto (the "Expanded Area") and as more particularly set out in its development permit application to the City of Vancouver under number DE411499 (the "Development Permit");

E. The Park Board has agreed to the Expansion subject to certain terms and conditions as set out in the Development Permit;

F. As a result of the approved Expansion the Park Board has agreed to extend the term of the Original Agreement by a period of twenty (20) additional years from the effective date of this Agreement and to modify the Original Agreement to include the Expanded Area in the definition of the Aquarium and to further modify the Agreement to provide that the

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December 22, 2009

Vancouver Aquarium
Renewal and Modification Agreement



Society has agreed to pay four percent (4%) of its annual gross revenues from direct, retail food and beverage sales to daytime Aquarium visitors (including alcoholic beverages) to the Park Board and to pay one hundred and seventy thousand dollars (\$170,000) per annum for lost revenues from the existing plaza concession at the Aquarium during that period of this license when the construction of the Expansion is underway; and

G. All defined terms in this Agreement have the meaning ascribed to them in the Original Agreement unless the context otherwise requires or unless otherwise stated in this Agreement;

CONSIDERATION

In consideration of the respective covenants and agreements herein contained, the parties agree as follows:

The Original Agreement is hereby modified as follows:

1. Term

The Park Board hereby grants the Society the right and licence to manage and operate the Aquarium for a term of twenty (20) years from the Effective Date to and including the 31st day of December, 2029 (the "Term") on the same terms and conditions as the Original Agreement except as modified by this Agreement.

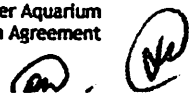
2. License Fee

The Society hereby agrees to pay the Park Board during the Term, without prior demand or any declaration or setoff whatsoever a fee for each year of the Term (the "Term Year") which, subject to Section 5(e) (iii), will be the amount which is equal to four per cent (4%) of Gross Revenue (the "License Fee") for each Term Year provided that:

- (a) "Gross Revenue" means the entire amount of the total sale prices whether for cash or credit of all retail sales of food and beverages, including alcoholic beverages, to regular daytime visitors to the Aquarium through all onsite outlets including, but not limited to, the Café and all mobile and fixed kiosks, ("Retail Food and Beverage Services") but excluding:
 - (i) Special events catering;
 - (ii) income derived from meals provided to staff, volunteers and members of the Board of Directors and other internal consumption;
 - (iii) gratuities from patrons;
 - (iv) all sums collected and paid out for any direct retail sales tax imposed by any government authority, including GST, PST and HST or equivalent;
 - (v) the "free" food portion of any bona fide coupon promotion, public relations or promotional program applicable to the food services operations, including Entertainment Book, Solid Gold, Gastronomic, Budget Rent-A-Car or any other discount promotion applicable to the retail food services operations, including sales to Society members; and

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December 22, 2009

Vancouver Aquarium
Renewal and Modification Agreement



- (vi) proceeds of insurance in reimbursement of any losses, damages or claims suffered by the Society, except for reimbursement for loss of revenue which will be included in Gross Revenue;

less:

- (vii) any credit card fees, including charges for rejected credit cards.
- (b) the License Fee will be paid monthly based on the Gross Revenue for the immediately preceding month, payment commences on the 15th day of February 2010, and continues on the 15th day of each remaining month during the Term and on the 15th day of the month following the month in which this Agreement is terminated, which payment will be accompanied by a Revenue Report prepared and submitted in accordance with Section 4.1;
- (c) if the Term commences on any day other than the 1st or ends on any day other than the last day of a calendar month the credits towards the License Fee for the fraction of a month at the commencement and at the end of the Term will be adjusted pro rata.

3. Lost revenue from Plaza concession

The Society agrees that it will pay the Park Board for lost revenue from the existing plaza concession at the Aquarium once operation of the existing plaza concession ceases due to the construction of the Expansion. The parties agree that the amount to be paid for lost revenue will be \$170,000 per annum, pro-rated as required and payable in equal monthly instalments on the first day of each and every month until such time as the proposed replacement food service operation has been built and an occupancy permit has been obtained.

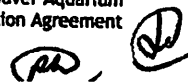
4. Revenue Report

4.1 The Society will deliver to the Park Board the following Revenue Reports during the Term:

- (a) commencing on the 15th day of February, 2010 and continuing on the 15th day of each remaining month during the Term, a Revenue Report for the previous month, together with the License Fee payable pursuant to Section 2;
- (b) a Revenue Report for each Term Year, to be delivered on or before 90 days after the end of the Term Year, together with the balance of the License Fee payable if such Revenue Report indicates that, based on the Gross Revenue for the Term Year, the amount owing on account of the License Fee exceeds that paid for that Term Year pursuant to Section 2;
- (c) within 90 days of the date of the expiry or earlier termination of this Agreement, a Revenue Report for the period between the most recently submitted Revenue Report for a Term Year and the date of expiry or earlier termination, together with the balance of the License Fee payable if such Revenue Report indicates that, based on the Gross Revenue for that period, the

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amount owing on account of the License Fee exceeds that paid for such period pursuant to Section 2;

- (d) if any Revenue Report for a Term Year indicates that, based on the Gross Revenue for that period, the amount owing on account of the License Fee was less than that paid by the Society for such period pursuant to Section 2, the Park Board will forthwith reimburse to the Society the amount of such overpayment; and
- (e) "Revenue Report" means a report on revenue collected by the Society from the Retail Food and Beverage Services at the Aquarium, provided by the Society to the Park Board, which report must:
 - (i) be in writing and certified by its author as being complete and true as to its contents;
 - (ii) indicate both the actual revenue and the Gross Revenue collected by the Society from the Retail Food and Beverage Services at the Aquarium for all of the reporting period and separately indicate:
 - A. the value of all Retail Food and Beverage Services provided to staff, volunteers, members of the Board of Directors and other internal consumption;
 - B. the value of all Retail Food and Beverage Services provided for promotional purposes, including the discount applied to sales to Society members;
 - C. the Gross Revenue derived from any Retail Food and Beverage Services from any sitdown restaurant; and
 - E. the Gross Revenue derived from any Retail Food and Beverage Services from any take out service; and
 - (iii) indicate the License Fee for the reporting period based on the Gross Revenue from the Retail Food and Beverage Services.

4.2 Accounting Procedures and Controls

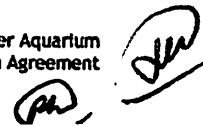
The Society will maintain a commercially reasonable standard of internal accounting procedures and controls over all revenues collected by the Society with respect to the Retail Food and Beverage Services at the Aquarium and will ensure that all revenues collected with respect to the Retail Food and Beverage Services at the Aquarium are clearly and accurately accounted for in accordance with the terms of this Agreement. The Society will maintain records for the Retail Food and Beverage Services at the Aquarium which are separate from the records which the Society maintains for other businesses conducted by the Society.

4.3 Audited Revenue Reports

The Society will, at its expense, prepare and submit to the Park Board an audited Revenue Report for each Term Year during the Term and the following will apply:

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- (a) such audited Revenue Report must be submitted on or before 90 days after the end of the Term Year and for any partial Term Year to the expiry or earlier termination of this Agreement, within 90 days of such expiry or earlier termination;
- (b) the audited Revenue Report must be certified by an independent Certified General Accountant or a Chartered Accountant who is in good standing in the Province of British Columbia and is acceptable to the Park Board acting reasonably;
- (c) the audited Revenue Report must be unqualified and state that the auditor has examined the Revenue Report and that such examination included a general review of the Society's accounting procedures and such tests of the Society's books and records and other supporting evidence as the auditor considers necessary in the circumstances and must be in the form recommended by the Canadian Institute of Chartered Accountants for such an engagement;
- (d) the audited Revenue Report must be supplemented by a management letter prepared by the auditor that states whether the audited Revenue Report presents fairly and accurately the Gross Revenue for that reporting period in accordance with the provisions of this Agreement and generally accepted accounting principles applied on a basis consistent with that used for the immediately preceding Term Year, if any, or, if the audited Revenue Report is inaccurate, sets out the correct Gross Revenue for that reporting period and identifies and comments on any internal control weaknesses regarding the collection and reporting of revenue and, if no such weaknesses are identified, the audited Revenue Report must be supplemented by a letter from the auditor in which this is indicated;
- (e) the Society will retain possession of all documents pertaining to the business at the Aquarium or at the Society's head office in the Province for not less than 7 years;
- (f) the Park Board reserves the right to:
 - (i) audit the books, records and accounts of the Society with respect to the Retail Food and Beverage Services at any reasonable time and the Society will make available to the Park Board, at any reasonable time, all documents pertaining to the Retail Food and Beverage Services; and
 - (ii) require that the Society submit audited financial statements of the Society for each Term Year during the Term, and the requirements with respect to the audited Revenue Reports set out in this Section 4.3 will apply to such audited financial statements;
- (g) if any audit conducted by the Park Board discloses that the actual Gross Revenue for any Term Year is greater by 2% or more than that disclosed by the audited financial statements provided by the accountant for the Society, the Society will pay the cost of such audit forthwith on demand by the Park Board; and

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- (h) if any audit conducted by the Park Board discloses that the actual Gross Revenue for any Term Year is greater by 5% or more than that disclosed by the audited financial statements provided by the accountant for the Society, if in the reasonable opinion of the General Manager of the Park Board the misstatement of Gross Revenue is intentional, the Park Board, in addition to its other rights in this Agreement, may terminate this Agreement on 30 days' written notice to the Society.

5. As of the Effective Date the Original Agreement is also hereby modified as follows:

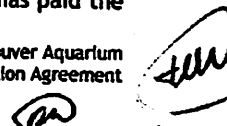
- (a) by including the Expanded Area in the definition of the Premises;
- (b) by deleting Section 4(p);
- (c) by deleting section 4(n)(as this is now dealt with by a general Park By-Law).
- (d) by adding the following provision to the Original Agreement:

"The Society covenants and agrees with the Park Board as follows:

- (i) the Society will locate the gift shop inside the Aquarium building. Such gift shop will be accessible to the public whether or not they have paid admission to enter the Aquarium;
- (ii) the Society will reimburse the Park Board on an annual basis, within 30 days of receipt of an invoice from the Park Board for the maintenance costs for the new plazas and the salmon stream. Such costs will be agreed to on an annual basis by the Park Board and the Society in advance of the costs being incurred;
- (iii) the Society acknowledges that the License Fee payable by the Society to the Park Board will be reviewed by the parties on December 31, 2014 and every five (5) year period thereafter. If the parties cannot agree upon the License Fee to be paid prior to the commencement of each five (5) year period then either of the parties may elect to arbitrate the issue by so notifying the other in writing of such election whereupon each party will forthwith appoint one (1) arbitrator and the two (2) arbitrators so appointed will appoint a third arbitrator and the three (3) arbitrators will determine the market rental values of the Premises] which will be the License Fee payable by the Society during such five (5) year period, and the provisions of the *Commercial Arbitration Act* of British Columbia, as amended or substituted from time to time, will apply to the selection of the arbitrators and the arbitration provided however if the parties can agree upon a single arbitrator the arbitration will be conducted by a single arbitrator. If the License fee has not been determined on the first day of any such five (5) year period then, until such determination is made, the Society will continue to pay the License Fee applicable on the last day prior to the commencement of any such five (5) year period, provided however that that when the license fee is determined as aforesaid, the parties, within ten (10) days of such determination having been made, will make such payment or repayment as may be necessary to ensure that the Society has paid the

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same amount that it would have paid if such determination had been made on the first day of such five (5) year period. Any amounts payable by the Society to the Park Board pursuant to this Section will bear interest at the rate of two (2%) per annum above the prime rate of the Bank of Montreal from time to time calculated monthly not in advance from the first day of such five year period;

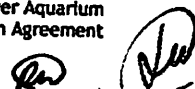
- (iv) the Society will supply a maximum of one thousand individual passes, at no cost, to each Park Board Community Centre on an annual basis. The Park Board will administer said passes and ensure that the intent of these passes is retained, that intent being to enable low-income citizens of Vancouver an opportunity to attend the Aquarium. Such passes will not be valid between June 15 and September 15 of any year and will not be transferable, subject to resale or valid in conjunction with any other offer;
- (v) beyond the Expansion facilities, the Society and the Park Board will jointly pursue such enhanced safety features as are mutually agreed to by the Park Board and the Society, in Stanley Park, including but not limited to, pathway lighting to the bus loop and enhanced traffic management features which will improve the bike and pedestrian connections to the Aquarium plaza parking lot areas to and from the entrance to Stanley Park. The costs of such enhancements will be shared between the Park Board and the Society at a mutually -agreed allocation.
- (vi) the Society will obtain the Park Board's prior written consent to any proposed amendments to the Development Permit; and
- (vii) as part of the project's phased development, the Society agrees that it will provide the following features of the proposed plan, all as more particularly set out in the Development Permit. Such features will be constructed to current Park Board standards. The actual scope of these features will be agreed between the Park Board and the Society in advance of the start of construction:
 - a. New public washrooms
 - b. A newly finished food service facility;
 - c. Two new Plazas
 - d. An expanded Salmon stream; and
 - e. All related landscape mitigation

6. Terms and Conditions of the Original Agreement to Apply

The parties agree that all of the terms and conditions of the Original Agreement are deemed to be incorporated into this Agreement unless the context otherwise requires or unless otherwise stated in this Agreement.

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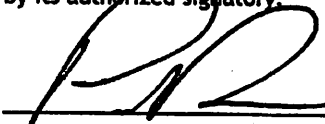


7. Enurement

This Agreement will enure to the benefit of and be binding upon the successors and assigns of the Park Board and the Society.

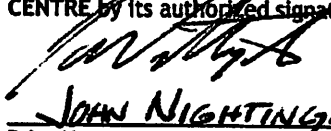
IN WITNESS WHEREOF the parties have executed and delivered this Agreement to be effective as of the Effective Date.

CITY OF VANCOUVER, as represented by
its BOARD OF PARKS AND RECREATION
by its authorized signatory:



ACTING GENERAL MANAGER

VANCOUVER AQUARIUM MARINE SCIENCE
CENTRE by its authorized signatory:



Print Name:

JOHN NIGHTINGALE

PRESIDENT & CEO

28 DECEMBER 2009

#126385v5
December 22, 2009

Vancouver Aquarium
Renewal and Modification Agreement



NOTE:

Duplicate exhibits omitted - see 2019 Modification Agreement for full copies of referenced agreements

EXHIBIT "A"

STANLEY PARK AQUARIUM

THIS AGREEMENT made as of the 1st day of January, 1999

BETWEEN:

CITY OF VANCOUVER by its
BOARD OF PARKS AND RECREATION, created under the
Vancouver Charter, having an office at 3099 Beach Avenue,
Vancouver, British Columbia, V6G 1Z4

(hereinafter called the "Park Board")

OF THE FIRST PART

AND:

VANCOUVER AQUARIUM MARINE SCIENCE CENTRE, a society
incorporated under the *Society Act*, having its registered office at
1500-1040 West Georgia Street, Vancouver, British Columbia, V6E
4H8

(hereinafter called the "Society")

OF THE SECOND PART

WHEREAS:

A. The Society was incorporated as a non-profit society for the purpose of financing, constructing and operating an aquarium for the use of the public and for the purpose of engaging in activities ancillary thereto and the Society has been instrumental in constructing and maintaining the buildings and structures in Stanley Park known as the Vancouver Aquarium Marine Science Centre (which is hereinafter referred to as the "Aquarium");

B. Subject to the lease in favour of the Government of Canada (the "Head Lease"), Stanley Park has been designated as a permanent public park by Vancouver City Council and as a result the Park Board has exclusive possession of, and exclusive jurisdiction and control of Stanley Park;

C. Pursuant to a series of agreements made by the Park Board with the Society that commenced with an agreement dated August 17, 1955, the Society has continuously owned and operated the Aquarium;

COA/AV/ANB1500/199503.8

John 

EXHIBIT "C"

THIS MODIFICATION AGREEMENT (the "Agreement") is made effective as of September 7, 2011 (the "Effective Date")

BETWEEN:

CITY OF VANCOUVER, represented by
its **BOARD OF PARKS AND RECREATION**
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

(the "Park Board")

AND:

VANCOUVER AQUARIUM MARINE SCIENCE CENTRE,
(Incorporation No. 50003892), a society incorporated
under the *Society Act* having its registered office at
20th Floor, 250 Howe Street
Vancouver, British Columbia
V6C 3R8

(the "Society")

BACKGROUND:

A. The City of Vancouver (the "City") is the lessee of certain lands and premises situate in the City of Vancouver, Province of British Columbia, generally known as Stanley Park;

B. The Park Board has exclusive possession, jurisdiction and control of Stanley Park subject to an agreement between the City and the Government of Canada (the "Head Lease") which Head Lease was renewed in 2007 for a further 99-year term;

C. By way of an agreement made as of January 1, 1999 (the "Original Licence"), a copy of which is attached to this Agreement as Exhibit "A", the Society agreed to manage and operate those certain premises in Stanley Park referred to as the Vancouver Aquarium (the "Aquarium") and as further described therein;

D. The Society proposed an upgrade and an expansion (the "Expansion") of the Aquarium as more particularly set out in its development permit application to the City of Vancouver under number DE411499 (the "Development Permit") and the Park Board agreed to the Expansion subject to certain terms and conditions as set out in the Development Permit;

E. By way of an agreement made effective December 31, 2009, copy of which is attached to this Agreement as Exhibit "B", the Park Board, as a result of the approved Expansion, agreed to extend the term of the Original Licence by a period of twenty (20) additional years and to modify the Original Licence to include the Expanded Area, as defined

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therein, in the definition of Premises and to further modify the Agreement to, among other things, provide that the Society would pay one hundred and seventy thousand dollars (\$170,000) per annum for lost revenues from the existing plaza concession at the Aquarium during the period of the license when the construction of the Expansion is underway (the "2009 Modification");

F. Originally it was proposed by the Society that a free standing food outlet would be constructed adjacent to the Aquarium plaza to be leased by the Park Board (the "Bistro"), however, the Society has now proposed and the Park Board has agreed that said proposed Bistro be deleted from the construction plans and instead that a food service outlet operated by the Society which adjoins the Aquarium be constructed (the "Food Service Outlet");

G. The Society has agreed that once the expansion is completed and the Food Service Outlet is operational to pay a fixed annual rent to the Park Board to offset lost revenues associated with the removal of the Bistro from the construction plan and the lost revenues to the Park Board;

H. The size of the expansion area has now been reduced, as more particularly set out in Development Permit Application Number DE411499 (the "New Expansion Area");

I. The parties have agreed to enter into this Agreement to modify the definition of Premises to include the New Expansion Area, to incorporate the payment referred to in Clause G and to amend the Licence Fee, all on the terms and conditions set out herein;

J. All defined terms in this Agreement have the meaning ascribed to them in the Original Licence, as modified by the 2009 Modification, unless the context otherwise requires or unless otherwise stated in this Agreement; and

K. The Original Licence as modified by the 2009 Modification is herein called the "Licence".

CONSIDERATION

In consideration of the respective covenants and agreements herein contained, the parties agree as follows:

The Licence is hereby modified as follows:

1. Grant

Subject to the provisions and conditions of the Licence, as modified herein, and to the performance by the Society of its obligations, the Park Board does hereby grant to the Society the right and licence during the Term to use those lands and premises, including the New Expansion Area, outlined in heavy bold on the sketch attached hereto and marked Schedule "A" (the "Premises"), to operate the Aquarium on the same terms and conditions as the Licence except as modified by this Agreement.

2. License Fee

The Society hereby agrees to pay the Park Board during each Term Year, without prior demand or any declaration or setoff whatsoever, a fee which will be the amount equal to 4% of Gross Revenue for the first Two Million Five Hundred Thousand Dollars (\$2,500,000) of Gross Revenue and 6% of Gross Revenue in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "License Fee") subject to the terms of the Licence as modified by this Agreement;

3. The Licence is also hereby modified as follows:

- (a) By deleting Schedule "A" to the Licence and replacing it with Schedule "A" attached hereto; and
- (b) By adding the following provision to the Licence:

"The Society has agreed that once the expansion is completed and the Food Service Outlet is operational to pay a fixed annual fee to the Park Board to offset lost revenues associated with the removal of the Bistro from the construction plan and the loss by the Park Board of lost revenues as follows:

Years 1 to 5	\$150,000
Years 6 to 10	\$175,000
Years 11 to 15	\$200,000
Years 16 to 20	\$225,000

3. Terms and Conditions of the Original Licence to Apply

The parties agree that all of the terms and conditions of the Original Licence as modified by the 2009 Modification, are deemed to be incorporated into this Agreement unless the context otherwise requires or unless otherwise stated in this Agreement.

4. Ratification

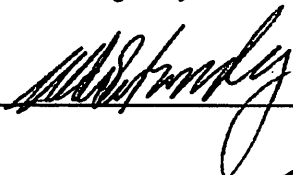
The Park Board and the Society mutually ratify and confirm all of the terms and conditions of the Original Licence as modified by the 2009 Modification and by this Agreement.

5. Enurement

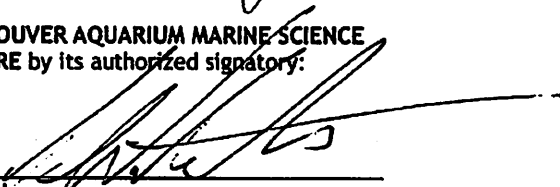
This Agreement will enure to the benefit of and be binding upon the successors and assigns of the Park Board and the Society.

IN WITNESS WHEREOF the parties have executed and delivered this Agreement to be effective as of the Effective Date.

CITY OF VANCOUVER, as represented by
its BOARD OF PARKS AND RECREATION
by its authorized signatory:



VANCOUVER AQUARIUM MARINE SCIENCE
CENTRE by its authorized signatory:



Print Name:
Joan NIGAMTINGALE

NOTE:

Duplicate exhibits omitted - see 2019 Modification Agreement for full copies of referenced agreements

Exhibit "A"
Copy of 1999 Agreement To Be Attached

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Vancouver Aquarium
Renewal and Modification Agreement

NOTE:

Duplicate exhibits omitted - see 2019 Modification Agreement for full copies of referenced agreements

Exhibit "B"
Copy of 2009 Agreement To Be Attached

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July 14, 2011

Vancouver Aquarium
Renewal and Modification Agreement

NOTE:

Duplicate exhibits omitted - see 2019 Modification Agreement for full copies of referenced agreements

EXHIBIT "A"

STANLEY PARK AQUARIUM

THIS AGREEMENT made as of the 1st day of January, 1999

BETWEEN:

CITY OF VANCOUVER by its
BOARD OF PARKS AND RECREATION, created under the
Vancouver Charter, having an office at 2099 Beach Avenue,
Vancouver, British Columbia, V8G 1Z4

(hereinafter called the "Park Board")

OF THE FIRST PART

AND:

VANCOUVER AQUARIUM MARINE SCIENCE CENTRE, a society
incorporated under the Society Act, having its registered office at
1500-1040 West Georgia Street, Vancouver, British Columbia, V6E
4H8

(hereinafter called the "Society")

OF THE SECOND PART

WHEREAS:

A. The Society was incorporated as a non-profit society for the purpose of financing, constructing and operating an aquarium for the use of the public and for the purpose of engaging in activities ancillary thereto and the Society has been instrumental in constructing and maintaining the buildings and structures in Stanley Park known as the Vancouver Aquarium Marine Science Centre (which is hereinafter referred to as the "Aquarium");

B. Subject to the lease in favour of the Government of Canada (the "Head Lease"), Stanley Park has been designated as a permanent public park by Vancouver City Council and as a result the Park Board has exclusive possession of, and exclusive jurisdiction and control of Stanley Park;

C. Pursuant to a series of agreements made by the Park Board with the Society that commenced with an agreement dated August 17, 1955, the Society has continuously owned and operated the Aquarium;

COLOM/VV/JH 1580/159963.8

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Schedule "A"
Attach plan showing all of the Premises outlined in heavy bold
(which includes the Expansion Area)

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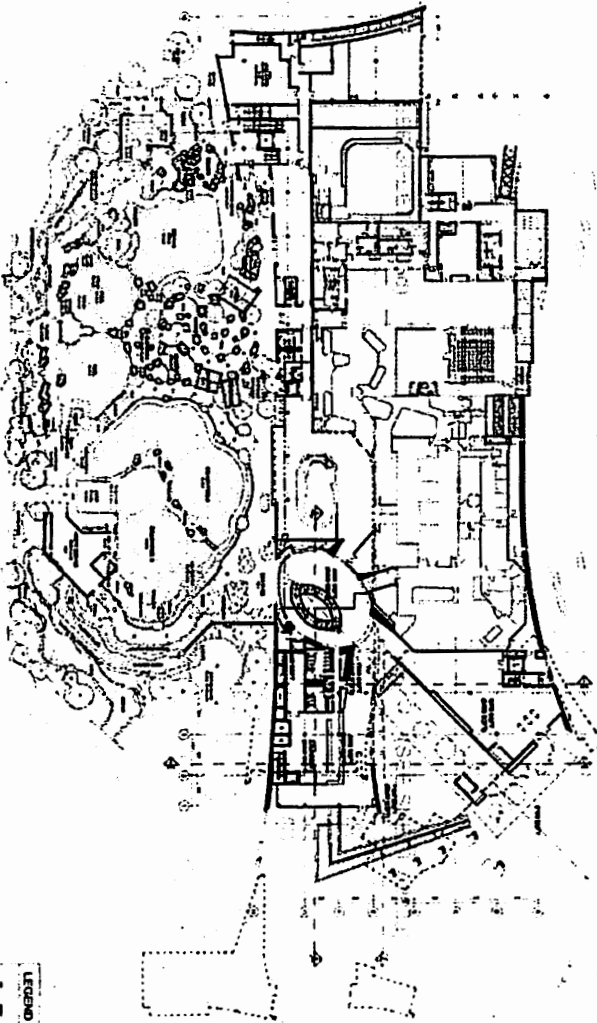
Vancouver Aquarium
Renewal and Modification Agreement

Site Plan

LEVEL 03: ELEVATION 46'

(SEE SHEET A7025)

(SEE SHEET A7026)



LEGEND

- Existing Building Footprint
- Proposed Building Footprint
- Existing Site Boundary
- Proposed Site Boundary
- Existing Landscape
- Proposed Landscape

GENERAL NOTES

1. All construction shall be in accordance with the latest edition of the International Building Code (IBC) and the International Residential Code (IRC).
2. All construction shall be in accordance with the latest edition of the International Mechanical Code (IMC) and the International Plumbing Code (IPC).
3. All construction shall be in accordance with the latest edition of the International Fire Code (IFC) and the International Electrical Code (IEC).
4. All construction shall be in accordance with the latest edition of the International Energy Conservation Code (IECC) and the International Green Building Code (IGBC).

