THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

BY-LAW NUMBER 59-2012

Being a By-law to Authorize the Mayor and Clerk to Sign a Lease Agreement with Wiarton Marina Ltd.

WHEREAS Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues;

AND WHEREAS Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS the Town owns Part 1 Plan 3R9282 in the former Town of Wiarton;

AND WHEREAS Wiarton Marina Ltd. is desirous of leasing the said premises and the Town is desirous of entering into a lease agreement with Wiarton Marina Ltd for the premises.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA ENACTS AS FOLLOWS:

1) THAT the Mayor and Clerk are hereby authorized to sign the lease agreement with Wiarton Marina Ltd.

2) THAT a copy of the lease as referred to herein shall be attached hereto and form part of this by-law.

READ a FIRST and SECOND time this 1st day of May, 2012.

READ a THIRD time and FINALLY PASSED this 1st day of May, 2012.
THIS AGREEMENT is made and executed this 1st day of May, 2012.

BETWEEN

The Corporation of the Town of South Bruce Peninsula,
hereinafter referred to as the “LESSOR”

AND

Wiarton Marina Ltd.,
hereinafter referred to as the “LESSEE”

WHEREAS, the Lessor is the owner of a certain piece or parcel of land situated in the Town of South Bruce Peninsula, County of Bruce, Province of Ontario, more particularly described as Water Fronts or Land Covered with Water in Front of North Half of Lot 9 and All of Lots 10, 11 and 12, East of Berford Street and North of Division Street and All of Water Lot 1 and Part of Water Lot 3, Registered Plan Number 142A, Town Plot of Wiarton, Geographic Town of Wiarton, Town of South Bruce Peninsula, County of Bruce and being Part 1, Plan No. 3R9282 (the “Lands”);

AND WHEREAS, the Lessee has leased the Lands since 1975 pursuant to a lease dated the 20th day of October, 1975 and amended on September 18, 1980 which form was approved by the Corporation of the Town of Wiarton by Council on October 14, 1980 (the “Existing Lease”);

AND WHEREAS the Lessor and the Lessee have agreed to mutually terminate the Existing Lease and enter into this new Lease;

AND WHEREAS, the Lessee desires to lease the Lands together with the three-storey timber frame building, wharf and pier thereon, hereinafter collectively referred to as the “PREMISES”, from Lessor for a term of twenty (20) years in accordance with the terms and conditions hereinafter set forth;

AND WHEREAS, the Lessor agrees to lease the Premises to the Lessee in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, the parties hereto intending to be legally bound hereby, in consideration of the above covenants and conditions and those hereinafter stated, mutually covenant and agree as follows:

1. PREMISES

The Lessor hereby leases to the Lessee and the Lessee leases from the Lessor, the Premises for the purpose of operating a marina on the Premises, being 1.454 ha more or less.
2. TITLE

The Lessor does not warrant the title to the Premises to be free from all and every kind and nature of encumbrance and adverse claim against the Premises and in the event of any defect thereof, the Lessor shall not be liable howsoever to the Lessee in respect of such defect. Notwithstanding the foregoing, the Lessor agrees at all times to defend the title to the Premises from all claims, actions or threats which may now or hereafter be brought by any party or parties.

3. INITIAL TERM

The term of this Lease is for twenty (20) years commencing on the first day of May 2012, and terminating on the last day of April, 2032 (the “Term”).

4. EXTENSION OF INITIAL TERM

Provided that the Lessee is not in default under this Lease, the Lessee shall have the option exercisable on no less than one (1) years’ written notice to the Lessor prior to the expiry of the Term to extend the Lease with respect to the Premises for one (1) additional term of twenty (20) years (the “Extended Term”) on the same terms and conditions as the Term save and except:

(i) there will be no further right to extend the Term; and

(ii) the rent rate for the Extended Term shall be negotiated between the Lessor and the Lessee and shall be the fair market rent (the “Fair Market Rent”) for similar premises on the date the option is exercised, which, if not agreed by the parties sixty (60) days before the end of the Term, shall be established in accordance with section 24. Until the determination of the than Fair Market Rent, the Lessee shall pay Rent at a rate equal to 100% of the Rent payable during the last year of the Term with adjustments to be made following such determination. Upon the determination of the Fair Market Rent in accordance with this subsection, any adjustments in Rent shall be made effective the commencement of the Extended Term and shall be paid by the relevant party within fifteen (15) days following the determination of the Rent in accordance with this subsection. For the purposes of this Lease, Fair Market Rent shall mean the annual rent, including tenant inducements, which could reasonably be obtained by the Lessor for the Premises from a willing Lessee dealing at arms-length in the market, having regards to all relevant circumstances, including without limitation, the condition and location of the Premises, the facilities afforded (excluding the value of the Lessee fixtures, leasehold improvements and/or any other improvements made by the Lessee).
5. YEARLY TENANCY

In the event that the Lessor permits the Lessee to remain in occupation of the Premises or any part or parts thereof after the expiration of the Term or the Extended Term, and where no written extension has been executed, the Lessee shall be deemed to continue to be a Lessee from year to year (the "Yearly Tenancy") and at an annual rental rate equal to the Rent payable during the last year of the Term or the Extended Term, as the case may be, adjusted for each Yearly Tenancy in a proportion equal to the Consumer Price Index for Canada, as published by Statistics Canada, for the twelve month period commencing on January 1 to December 31, immediately proceeding the commencement of such Yearly Tenancy. All covenants and provisions of this Lease shall be applicable to the Yearly Tenancy. The Lessor or Lessee may terminate the Yearly Tenancy by giving at least nine (9) months written notice one party to the other.

In the event that Statistics Canada or its successor no longer publishes a Consumer Price Index for Canada, then the amount of Rent as provided for in this subsection shall be determined by agreement between the parties hereto or, in default of such agreement, in accordance with Section 24. If an arbitrator is appointed in accordance with section 24, the arbitrator shall have the power to select the index, the region, or to impose any other system, that he deems appropriate in order to calculate the amount of Rent as provided for by this subsection.

Until the determination of the Rent as provided by this subsection, the Lessee shall pay Rent at a rate equal to 100% of the Rent payable during the last year of the Term, the Extended Term or the previous Yearly Tenancy, with adjustments to be made following such determination. Upon the determination of the Rent as provided by this subsection, any adjustments in Rent shall be made effective the commencement of the Yearly Tenancy and shall be paid by the relevant party within fifteen (15) days following determination of the Rent as provided by this subsection.

6. RENT

Lessee shall pay Lessor without demand the sum of six thousand dollars ($6,000) as rent (inclusive of HST but exclusive of any other tax imposed on the Landlord or Tenant with respect to the rent payable by the Tenant, if applicable) (the "Rent") during the first year of the Term.

For the duration of the Term, the Rent shall be increased on each yearly anniversary date during the Term or any extension thereof, in a proportion equal to the Consumer Price Index for Canada, as published by Statistics Canada (the “CPI”), for the twelve month period commencing on January 1 to December 31, immediately proceeding the commencement of such anniversary date. In the event the CPI decreases in any year over year, the Rent paid shall remain constant with the Rent for the previous year. For clarification, if the CPI decreases, the Rent shall not decrease.

In the event that Statistics Canada or its successor no longer publishes a Consumer Price Index for Canada, then the amount of Rent as provided for in this subsection, shall be determined by agreement between the parties hereto or, in default of such agreement, in accordance with Section 24. If an arbitrator is appointed in accordance with section 24, the arbitrator shall have
the power to select the index, the region, or to impose any other system, that he deems appropriate in order to calculate the amount of Rent as provided for by this subsection.

Until the determination of the Rent as provided by this subsection, the Lessee shall pay Rent at a rate equal to 100% of the Rent payable in the proceeding year, with adjustments to be made following such determination. Upon the determination of the Rent as provided by this subsection, any adjustments in Rent shall be made effective the commencement of such anniversary date and shall be paid by the relevant party within fifteen (15) days following determination of the Rent as provided by this subsection.

Payment shall be in Canadian dollars. Rent shall be paid in equal half yearly installments in advance on the 1st day of May and the 1st day of November in each year. Lessee agrees to pay the Rent to Lessor at Town Hall, 315 George Street, Wiarton ON N0H 2T0, or at such other place as Lessor may from time to time request.

If the Lessee fails to pay Rent when the same is due and payable, such unpaid amount shall bear interest at the rate of 1.25% per month, such interest to be calculated from the time such Rent becomes due until paid by the Lessee.

7. TAXES

Lessee shall be solely responsible to pay all property taxes, assessments, rates and charges and other government imposition, general or special, ordinary or extraordinary, of every kind which may at any time during the course of this Lease or any extension thereof be assessed and/or levied in respect of the Premises and all fixtures and improvements from time to time thereon or which howsoever imposed might constitute a lien upon the Premises or any part thereof or a liability of the Lessor (the “Taxes”).

In the event of non-payment by the Lessee of any taxes, rates, charges and assessments, as and when the same become due and payable, the Lessor may pay the same and may charge the same to the Lessee and said amounts paid by the Lessor shall be deemed to be Rent and shall be collectible as though Rent were in arrears.

Any Taxes relating to a fiscal period of the taxing authority, a part of which is within the Term or extension thereof and a part of which is prior to the commencement of the Term or subsequent to the termination date of the Term or extension thereof, whether or not such Taxes shall be assessed, levied, imposed or become a lien upon the Premises or shall be payable during the Term or extension thereof, shall be apportioned and adjusted between the Lessor and the Lessee as of the stated date of commencement or the actual date of termination of the Term or extension thereof, as the case may be.

8. APPEAL OF ASSESSMENT

The Lessee has the right to contest or review any assessment for Taxes using the legislative framework available at the time. Any such challenge or review shall be conducted diligently at
its own expense and free of expense to the Lessor, including, without limitation, any expenses for fines, penalties or interest. No such contest shall defer or suspend the Lessee’s obligation to pay the Taxes as herein provided, unless by law it is necessary or if the opinion of the Lessee that such payment be suspended to preserve or perfect the Lessee’s contest.

9. UTILITIES

The Lessee shall pay all utility charges, including but not limited to water, sewer, electricity, telephone and any other utilities.

10. QUIET ENJOYMENT

The Lessee shall have quiet enjoyment of the Premises during the Term or any extension thereof.

11. IMPROVEMENTS

The parties hereto agree that the condition of the Premises are not in such a condition where there is a guarantee of safety, desirability or suitability for the use thereof as a marina.

The Lessee shall have the right to make and construct leasehold improvements and/or any other improvements of the Premises with the written permission and consent of the Lessor consistent with the normal operation of a marina which consent shall not be unreasonably withheld. If Lessor does not advise the Lessee within thirty (30) days following its receipt of the Lessee’s written request for consent, the Lessor shall be deemed to have consented to such leasehold improvements and/or other improvements to the Premises. The Lessee shall be solely responsible for obtaining all permits, licences and permissions as required by law, and shall provide same to the Lessor upon request. All improvements shall be completed in a good and workmanlike manner and in accordance with all applicable law, at the sole expense of the Lessee.

The Lessee shall not suffer or permit any valid, uncontested lien under the Construction Lien Act or any other act or statute to be filed or registered against the Premises.

Should any such lien under the Construction Lien Act or other act or statute be made or filed against the Premises related to any work done by or on behalf of the Lessee, the Lessee shall discharge the same no later than ten (10) days after written notice by the Lessor, at the Lessee’s expense. If the Lessee does not discharge such liens and/or certificates by payment to the claimant, payment into court, or otherwise after such ten (10) days written notice by the Lessor, the Lessor reserves the right to immediately terminate this Lease if it determines that such lien is a valid, uncontested lien that has been registered against the Premises. The Lessee will ensure that all invalid and/or contested liens registered against the Premises are removed from the title in an expeditious manner and that the Lessee will notify the Lessor immediately of any liens registered against the Premises.

For the purposes of this section “Lessee’s Facility” shall mean all installations, alterations, additions, fixtures, trade fixtures, personal property, and anything in the nature of a leasehold
improvement, affixed, constructed or to be constructed on the Premises by the Lessee including but not limited to buildings owned by the Lessee, steel sheet piling, steel piling, steel ramps, limestone armour rock and all associated with the boat lifting well and boat service area, but excluding any such installations, alterations, additions, fixtures, trade fixtures or leasehold improvements affixed, constructed or to be constructed on the Premises by the Lessee in buildings owned by the Lessor. The title to and ownership of the Lessee’s Facility are at all times during the Term and any extension thereof deemed to be vested in the Lessee notwithstanding any rule of law as to immediate vesting of the title to and ownership of the Lessee’s Facility in the Lessor as owner of the freehold. Title to and ownership of the Lessee’s Facility, other than those items which the Lessee is entitled to remove in accordance with this Lease or as agreed between the Lessor and Lessee in writing, shall become vested in the Lessor in accordance with Section 19 of this Lease.

Provided the Lessee is not in breach under this Lease, at any time and from time to time throughout the Term and upon the expiry or sooner termination of the Term, the Lessee may remove the Lessee’s Facility. Without limiting the generality of the foregoing, the Lessor agrees that all trade fixtures, chattels and other personal property on the Premises or forming part of the Lessee’s improvements from time to time may be removed by the Lessee, in its discretion, whether or not same are or are deemed at law to be fixtures, at any time and from time to time during the Term or as otherwise provided in this Lease, provided the Lessee repairs any damage caused to the Premises by such removal.

12. MAINTENANCE OF PREMISES

The Lessee hereby covenants and agrees that it will use due care at the Premises and that it will be responsible to pay for any and all needed repairs thereof including but not being limited to repairs which are necessitated by any error, act or omission on the part of Lessee. The Lessee shall maintain the Premises in good condition and repair. Notwithstanding any clause or statement herein, the Lessee will maintain the three story timber frame building so long as practical. The Lessee shall notify the Lessor of any maintenance issues which would render maintenance to be impractical. Upon such notification by the Lessee, the Lessee and Lessor will reach agreement on the maintenance, destruction and responsibility of associated costs as they relate to the three story timber frame building.

13. INSURANCE

The Lessee is responsible for insuring the buildings and all improvements located on the Premises against, fire, theft and any and all other casualty and loss including personal injury, death, third party liability, and public liability. The Lessee shall at all times keep in force during the Term of this Lease and any extension thereof a general liability insurance policy, naming the Corporation of the Town of South Bruce Peninsula as an additional insured and having a protection value of not less than $2,000,000 per accident or occurrence. Where it is deemed advisable by the Lessor’s insurer that a greater amount of general liability insurance is required, said amount will be communicated to the Lessee and the Lessee will insure the Premises in the
greater amount. Failure to obtain the requisite insurance or to maintain same in good standing, provided the Lessee fails to remedy same within 10 days of receiving any written notice of any such breach, shall constitute a material breach of this Lease and shall be grounds for immediate termination of the Lease. The Lessee shall provide the Lessor with evidence of the required insurance as requested.

Security of the Premises is completely and solely the responsibility of the Lessee, and the Lessor will not be held liable due to theft or vandalism of the Premises.

14. DESTRUCTION

In the case of damage to or total or partial destruction of the Premises or any building or structure thereon, the Lessee shall immediately notify the Lessor and may proceed to restore the property so damaged to the same condition as prevailed immediately prior to the occurrence of such damage.

In the event of such destruction, the Lessee shall continue to pay to the Lessor Rent unless an abatement or diminishment is agreed to in writing by both parties.

The destruction of the Premises or any building or structure thereon does not release the Lessee from any obligation set forth herein and shall not constitute an immediate termination of this Lease.

15. INDEMNIFICATION BY LESSEE

Provided such liabilities, costs (including legal fees on a solicitor and client basis), fines, suits, claims, demands or actions of any kind are not caused by the Lessor’s negligence or wilful misconduct or the negligence or wilful misconduct of the Lessor’s agents, servants, contractors, invitees, employees or others for whom the Lessor is in law responsible, the Lessee shall indemnify and save harmless the Lessor against all liabilities, costs (including legal fees on a solicitor and client basis), fines, suits, claims, demands or actions of any kind for which the Lessor may become liable for reason of any breach, violation or non-performance by the Lessee of any covenant, term or provision of this Lease, or any injury, death or damage to property occasioned to or suffered by any person or any property by reason of any act, negligence, or default by the Lessee or its employees, volunteers or agents at the Premises, or by reason of the occupation of the Premises, including any environmental matters that arise and which the Landlord can demonstrate relates to the use and operations of the Premises by the Lessee, its sublessees and invitees.

16. EXPROPRIATION

If at any time during the Term or any extension thereof any public body or paramount authority shall take or expropriate the whole or a portion of the Premises, then the following provisions shall apply:

(a) if such expropriation does not materially affect the Lessee’s use or enjoyment of the Premises, then the whole of the compensation awarded or settled shall be paid to the Lessor, and the Lessee shall assign, transfer and set over unto the Lessor all of the right,
title and interest of the Lessee therein and thereto, and this Lease shall thereafter continue in effect with respect to the remainder of the Premises, without abatement or adjustment of Rent; and
(b) if such expropriation does materially affect the Lessee’s use or enjoyment of the Premises then, at the Lessee’s option: (i) this Lease shall be deemed to terminate on the date upon which the expropriating authority requires possession of the Premises so expropriated and all Rent shall be paid up to that date; or (ii) the Premises shall be adjusted to exclude the area so expropriated, and the Rent shall be adjusted if the area of the Premises changes as a result of such expropriation. In either event the Lessor shall be entitled to receive the entire compensation awarded or settlement, save and except for that portion thereof as is specifically awarded or allocated in respect of the leasehold improvements or other interests of the Lessee.

The Lessor and the Lessee shall cooperate with each other regarding any expropriation of the Premises or any part thereof so that each receives the maximum award to which it is entitled at law.

17. LAWS, REGULATIONS AND CODES

The Lessee shall at all times during the Term or any extension thereof comply with all local, provincial and federal laws, building, fire and sanitation regulations and codes as they affect the Premises.

18. WASTE AND NUISANCE

The Lessee hereby covenants and agrees not to commit waste on or at the Premises or allow it to be committed nor permit maintenance of a nuisance or any other noxious matter which may interfere with or affect the Premises.

19. SURRENDER OF PREMISES

Unless otherwise agreed between the parties or unless as otherwise provided for by the terms of this Lease, the Lessee hereby covenants and agrees to surrender the Premises at the end of the Term or any extension thereof, and to remove within one-hundred and eighty (180) days of said expiration all of the Lessee’s Facility in accordance with Section 11, so that it is restored to at least the same or similar condition it was in when the Lessee commenced use of the Premises in 1975. Any and all property not removed from the Premises within one-hundred (180) days, or such other time as mutually agreed upon by both parties, at the end of the Term or any extension thereof, will be considered to have reverted to the status of building improvements belonging to the Lessor or to have been abandoned as to any and all rights or claims of the Lessee, and will be at Lessor’s sole right of disposal.

20. ASSIGNMENT

The Lessee may mortgage its lease and leasehold interest in the Premises without the consent of the Lessor for the purpose of financing or refinancing the cost of construction and operation of
its business provided that any such mortgage shall be made expressly subject to the terms of this Lease and shall not include any property except the Lessee’s interest in this Lease, the Lessee fixtures and chattels and equipment of the Lessee situated thereon.

With the exception of subleases of parts of the Premises which shall be permitted by the Lessor, the Lessee shall not assign this Lease without the Lessor’s prior written consent, which consent will not be unreasonably withheld.

If during the Term or any extension thereof the Lessee shall make an assignment for the benefit of creditors or assigns in bankruptcy or takes the advantage in respect of its own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against the Lessee or if the Lessee is adjudged bankrupt or insolvent, or if a liquidator or receiver of any property of the Lessee is appointed by reason of any actual or alleged insolvency, the occurrence of any such contingency shall be deemed to be a breach of this Lease and at the option of the Lessor, this Lease may be terminated and shall expire as fully and completely as if the date of the happening of the default were the date herein fixed for the expiration of the Term and the Lessee shall quit and surrender the Premises to the Lessor but shall notwithstanding remain liable for any loss or damage suffered by the Lessor.

21. LESSOR’S RIGHTS OF ACCESS

In accordance with all applicable law, the Lessor retains the right of entry upon the Premises to perform such inspections as may be required under this Lease or which may be required from time to time in the Lessor’s sole discretion.

22. TERMINATION

It is agreed by both parties that this Lease shall terminate in accordance with the initial Term, extension to Term or Yearly Tenancy as set out herein.

Where the Lessee fails to pay a prescribed Rent payment after one year of the due date of such payment the Lessee shall be declared to be in default and breach of this Lease and the Lease shall be immediately terminated.

Where the Lessee defaults in the performance of any of its other obligations under this Lease, and such default is not remedied within thirty (30) days after written notice from the Lessor, or where such breach cannot reasonably be remedied within thirty (30) days and the Lessee fails to commence to remedy such breach within thirty days (30) after written notice from the Lessor of such breach, or thereafter fails to proceed diligently to remedy such breach, the Lessee shall be declared to be in default and breach of this Lease and the Lease shall be immediately terminated.

Notwithstanding any other provision contained herein, the Lessor may immediately terminate this Lease by serving written notice on the Lessee if the Lessee does not continue to conduct the lawful business normal to the operation of a Marina.
Where an immediate termination of this Lease occurs, the Lessee will be authorized supervised re-entry to the Premises to remove the Lessee’s Facility as is legally and rightfully belonging to the Lessee, subject to applicable law and the written approval of the Lessor.

23. CLAUSES SEVERABLE

The failure of the Lessor to insist upon the strict performance of any covenant of this Lease shall not waive such covenant and the waiver by the Lessor of any breach of any covenant of this Lease shall not waive such covenant in respect of any future or other breach.

It is intended that all provisions of this Lease shall be binding and effective. In the event that any particular provision or provisions or part of a provision is found to be void, voidable or unenforceable for any reason whatsoever, the particular provision or provisions or part of the provision shall be deemed severed from the remainder of the Lease and all other provisions shall remain in full force and effect.

24. DISAGREEMENT AND ARBITRATION

In the event of any disagreement between the parties with regard to the provisions of this Lease, the parties hereto will make every effort to come to a mutually agreed upon decision. Where a disagreement cannot be settled between the parties within sixty (60) days of the commencement of the dispute, the dispute shall resolved through arbitration by a single arbitrator chosen by the Lessor and the Lessee, and if they cannot agree upon the arbitrator within five (5) days after the written request for arbitration by either party to the other, either party may apply to a judge for the appointment of an arbitrator in accordance with the provisions of the Arbitrations Act, 1991 (Ontario) S.O. 1991, c.17 or similar legislation then in force (the “Arbitrations Act”). The provisions of the Arbitrations Act shall govern the arbitration and the decision of the arbitrator shall be final and binding upon the parties. The parties agree that any request for arbitration must be made good faith and on reasonable grounds and such request for arbitration is not used for the purpose of delay by either party.

25. COMPLIANCE WITH ENVIRONMENTAL LAWS

In this section, the following terms have the following meanings:

(a) “Environmental Laws” means any law, by-law, order, ordinance, ruling, regulation, certificate, approval, consent or directive of any applicable federal, provincial or municipal government, a governmental department, agency or regulatory authority or any court of competent jurisdiction:

(i) relating to pollution or the protection of human health or the environment (including workplace health and safety);

(ii) dealing with filings, registrations, emissions, discharges, spills, releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances; and/or
(iii) regulating the import, storage, distribution, labeling, sale, use, handling, transport or disposal of a Hazardous Substance.

(b) "Hazardous Substance" means any substance capable of posing a risk or damage to health, safety, property or the environment including, without limitation, any contaminant, pollutant, dangerous or potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable or explosive material, radioactive material, and any other substance or material now or hereafter declared, defined or deemed to be regulated or controlled under any Environmental Law.

Without limiting any other obligation of the Lessee in this Lease, the Lessee covenants and agrees that it shall, at its sole cost and expense, observe and otherwise comply with, and cause its sublessees, invitees and all other occupants of the Premises to observe and comply with all Environmental Laws. Without limiting the generality of the foregoing, the Lessee covenants and agrees that:

1. it shall not cause or permit any Hazardous Substance to be brought into, stored, kept or used in or about the Premises or any part thereof, other than any Hazardous Substance that is used in the ordinary course of the permitted use being carried on at the Premises and which is stored, kept and used in strict compliance with all Environmental Laws pertaining thereto;

2. it shall not permit any emissions, discharges or releases of Hazardous Substances or materials containing Hazardous Substances from the Premises, other than where such occurs in the ordinary course of the permitted use being carried on at the Premises in strict compliance with all Environmental Laws pertaining thereto;

3. it shall not construct or install any additional underground fuel storage tanks on the Premises, provided that nothing in this provision shall preclude the Lessee from being able to replace any existing underground storage tanks; and

4. on the expiration or earlier termination of this Lease, it shall cause any material amounts of each and every Hazardous Substance which is then located on the Premises and has been brought on to the Premises by the Lessee, its sublessees or invitees, to be removed from the Premises in compliance with all Environmental Laws pertaining thereto.

The Lessee shall immediately provide the Lessor with written notice of any order, direction, notice of default or notice of legal action received by the Lessee pursuant to any Environmental Laws and relating to the Premises, the use and occupation of the Premises or the business carried on at the Premises.

26. NOTICE
Notice shall be considered to be served, one party to the other when delivered by hand or registered mail to the last known address of the parties hereto.

27. ENTIRE AGREEMENT

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein, and this Lease constitutes the entire agreement duly executed by the parties, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties.

28. SUCCESSORS AND ASSIGNS

The rights and liabilities of the parties shall enure to the benefit of their respective successors and assigns, subject to any requirement for consent by the Lessor hereunder.

29. This Lease shall be governed by the laws of the Province of Ontario.

30. TERMINATION OF EXISTING LEASE

The parties agree that, upon the commencement of the Term, the Existing Lease shall be terminated, and this Lease shall govern the agreement between the parties for the lease of the Premises.
31. REGISTRATION

The Lessor and Lessee agree that the Lessee may register a notice or caveat of this Lease against the registered title to the Lands.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day, month and year first above written.

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

Per:

Name: John Close
Title: Mayor

Per:

Name: Angela Cathia
Title: Clerk

I/We have authority to bind the municipality.

WIARTON MARINA LTD.

Per:

Name: J. W. Allan
Title: President

Per:

Name:
Title:

I/We have authority to bind the corporation.