

This Indenture is made on the 17<sup>th</sup> of July 2023.

BETWEEN:

THE CORPORATION OF THE TOWN OF GODERICH

{hereinafter “Goderich”) OF THE FIRST PART

-and-

GODERICH PORT MANAGEMENT CORPORATION

{hereinafter “GPMC”) OF THE SECOND PART

## **BACKGROUND**

1. GPMC has been retained by Goderich to operate, manage and maintain the Goderich port pursuant to an Amended and Restated Operating, Management and Maintenance Agreement dated as of August 13, 2012 “**OMM Agreement**”.
2. In order to assist GPMC in performing its obligations un the OMM Agreement, Goderich has agreed to lease the Demised Premises to GPMC for use as an office, storage space, and workshop, on the terms set forth in this lease.

**IN CONSIDERATION** of the mutual covenants herein contained and of other consideration, the parties agree with one another as follows.

## **ARTICLE I – INTERPRETATION**

### **1.1 Number and Gender**

This lease shall be read with all changes of gender and numbers required by the context.

### **1.2 Headings and Captions**

The article numbers, paragraph numbers, article headings, and paragraph headings are inserted for convenience of reference only and are not to be construed when interpreting the lease.

### **1.3 Entire Agreement**

This lease contains all representations, warranties, covenants, agreements, conditions, and understandings between the parties concerning the Demised Premises and the subject matter of this lease. In the event of any conflicts between the terms of this lease and the terms of the OMM Agreement, the terms of the OMM Agreement shall prevail.

### **1.4 Obligations and Covenants**

Each obligation of the parties expressed in this lease, even though not expressed as a covenant, is

considered to be a covenant for all purposes.

## 1.5 **Successors**

It is agreed by the Parties hereto that this lease and all of the terms and provisions thereof shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors, and assigns.

# ARTICLE 2 – DEMISE AND TERM

## 2.1 **Demise**

Goderich, in consideration of the rents and covenants hereinafter stipulated to be paid and performed by GPMF, leases to GPMC for the Term the building(s) known as the Goderich Search and Rescue Building(s) (herein called the “**Demised Premises**”) located at 245 North Harbour Road in the Town of Goderich.

## 2.2 **Term**

GPMC Shall have the right to hold and occupy the Demised Premises and all privileges and appurtenances pertaining thereto for a full term of ten (10) years commencing July 17, 2023, and continuing until July 17, 2033 (the “**Term**”).

## 2.3 **Renewal**

GPMC shall, at its option, have the right to renew this Lease for an additional period of ten (10) years, such renewal to be subjected to negotiations with Goderich of a mutually satisfactory rent for the renewal period.

## 2.4 **Termination**

GPMC may, at any time during the Term, terminate the lease by providing written notice six (6) months prior to the date of the planned termination.

## 2.5 **Holdover**

In the absence of any new agreement to the contrary, any holdover after the end of the Term or any extensions or renewals thereof shall be considered as a tenancy from month to month at the same rent and on the same terms as specified herein.

## 2.6 **Town Use of Buildings**

If, at any time during the lease, GPMC permanently ceases to use any of the buildings on the Demised Premises, Goderich and GPMC will enter into negotiations to provide for the use of that building (or buildings) by Goderich.

## **ARTICLE 3 – RENT**

### **3.1 Base Rent**

GPMC shall pay to Goderich, without setoff or abatement, rent payable at the rate of One Dollar (\$1.00) plus HST per year. Goderich acknowledges payment of \$11.30 by GPMC as payment for all rent due during the Term.

### **3.2 Net Lease**

It is the intention of the parties that the rent herein provided to be paid shall be net to Goderich and clear of all taxes, costs and charges arising from or related to the Demised Premises.

### **3.3 Costs**

GPMC shall pay to Goderich all legal fees (on a full indemnity basis) and disbursements incurred in enforcing any covenants contained in this lease or in recovering possession and re-letting of the Demised Premises or with respect to any other litigation arising from this lease.

### **3.4 Arrears in Payment on Behalf of GPMC**

When and so often as GPMC shall neglect or omit to pay any water, sewer, gas or electric rates, telephone charges, business or other taxes, costs or any other amount, which in accordance with the terms and provisions hereof is payable by GPMC, Goderich may pay the same and then a sum equal to the amount so paid shall forthwith become due and payable to Goderich as if the same were rent in arrears. Goderich shall not pay any amount on behalf of GPMC unless the amount to be so paid is an amount to be paid by GPMC in accordance with the terms of this lease and remains unpaid after ten (10) days' written notice from Goderich. All arrears of rent arising under this paragraph, or otherwise, shall bear interest at the rate of 1 (one) percent per month.

## **ARTICLE 4 – USE OF DEMISED PREMISES**

### **4.1 Quiet Enjoyment**

Goderich covenants that GPMC shall and may peacefully and quietly have, hold. Occupy, possess and enjoy the Demised Premises for the Term, provided that GPMC keeps, observes and performs all of the covenants and provisions as required in this lease.

### **4.2 Enter Premises**

Goderich or its agents, during normal business hours, may enter upon and view the state of repair of the Demised Premises and GPMC agrees to comply with all reasonable requirements of Goderich with regard to the care, maintenance and repair thereof to the extent that GPMC is responsible under this lease for such care, maintenance and repair.

#### **4.3 Use**

GPMC shall use the Demised Premises for purposes of offices, storage and workshop for its operations and for no other business or purpose without the written consent of Goderich, which consent shall not be unreasonably withheld.

GPMC will not, during the Term, permanently vacate the Demised Premises, either or in whole or in part, either actually or constructively.

GPMC will, at the conclusion of the lease, leave the Demised Premises in as good or better condition as when the lease commenced, with reasonable wear and tear excepted.

#### **4.4 Alterations**

GPMC shall maintain the Demised Premises in a reasonable manner with minimal disruption to public vehicles and pedestrian access. GPMC is to be responsible at its own expense for any alterations and/or renovations to the Demised Premises with Goderich's approval. GPMC is also responsible for all utility costs consumed by it at the Demised Premises.

#### **4.5 Mold, Asbestos and any Hazardous Substance**

GPMC acknowledges having been advised by Goderich of the presence of mold and asbestos in the building. GPMC accepts the building as is and agrees that it will be responsible, at its own expense, for complying with all laws and regulations with respect to the presence of mold, asbestos and any hazardous substances in such buildings.

#### **4.6 Fixtures**

All fixtures, improvements, erections, changes, or alterations shall be left within the Demised Premises on the termination of this lease and shall thereafter belong to Goderich, or at Goderich's option shall upon the termination of this lease, be removed from the Demised Premises by GPMC its expense; provided, however, that if any injury or damage shall be caused to the Demised Premises by such removal, GPMC shall forthwith cause such injury or damage to be repaired at its expense, and if GPMC does not make such repairs or cause them to be made promptly. The repairs may be made by Goderich for the account of GPMC.

#### **4.7 Nuisance and Garbage**

GPMC covenants not to cause, permit or suffer any unusual or objectionable noises or odours to emanate from the Demised Premises. GPMC shall deposit all garbage, debris, trash and refuse in the areas and manner designated by Goderich. If garbage, debris, trash and refuse is not collected and picked up by the appropriate municipal authorities, such collection and pickup shall be at the expense of GPMC.

#### **4.8 Signs**

GPMC shall have the right to erect a sign or signs on the Demised Premises, such signs at all times to be in accordance with municipal by-laws and other applicable law.

## **ARTICLE 5 - REPAIR AND MAINTENANCE OBLIGATION**

### **5.1 GPMC Repairs**

If it should be necessary to conduct any work to bring the building(s) into compliance with the Ontario Building Code Act or other applicable legislation, such work will be performed by GPMC at its cost.

### **5.2 Destruction of Premises**

If, during the Term of this lease or any renewal thereof, the building or the Demised Premises are destroyed or damaged by any cause, then the following provisions shall apply:

- a. if the Demised Premises shall be so badly damaged as to be unfit for occupancy and as to be incapable of being repaired with reasonable diligence within three hundred and sixty-five (-365) days of the happening of such damage; then the Term hereby granted shall cease and be at an end for all intents and purposes from the date of such damage or destruction and GPMC shall immediately surrender same and yield up possession of the Demised Premises to Goderich and the rent from the time of such surrender shall be apportioned; or
- b. if the Demised Premises shall be capable, with reasonable diligence, of being repaired and rendered fit for occupancy .within three hundred and sixty-five days (365) from the day happening of such damage.as aforesaid, that the damage is such as to render the Demised Premises wholly unfit for occupancy, then the rent hereby reserved shall not run or accrue after such damage, or while the process of repair is going on and Goderich shall repair the same with all reasonable speed and the payment of rent shall recommence immediately after such repairs have been completed; or
- c. if the Demised Premises shall be repaired within three hundred and sixty-five (365) days as aforesaid and if the damage is such that the Demised Premises are capable of being partially used, then until such damage has been repaired, the rent shall abate in the proportion that the part of the Demised Premises rendered unfit for occupancy bears to the whole of the Demised Premises.

## **ARTICLE 6 • OTHER OBLIGATIONS**

### **6.1 GPMC's Utility Payments**

GPMC shall pay water, gas and electric rates separately metered to the Demised Premises, including its heating, ventilating and air conditioning equipment, and shall ensure that the Demised Premises are heated as required.

### **6.2 Federal and Provincial Taxes**

GPMC shall pay any federal or provincial taxes, charges, rates, duties and assessments levied in respect of GPMC's occupancy of the Demised Premises or in respect of the personal property or business of GPMC on the Demised Premises as and when the same become due.

### **6.3 Property Taxes Payable by GPMC**

GPMC shall pay to the relevant taxing authority, when due, all taxes, charges, rates, duties and assessments whatsoever which are separately assessed or levied against the Demised Premises and directly billed or invoiced to GPMC, including any local improvements rates or school assessments.

### **6.4 Compliance with Legislation**

GPMC shall observe and fulfill the lawful provisions and requirements of all statutes, by-laws, rules, and regulations, municipal, provincial or federal, relating to the Demised Premises.

## **ARTICLE 7 - INSURANCE AND INDEMNITY**

### **7.1 Damage Insurance**

GPMC shall take out and keep in force all risks direct damage insurance, to the full replacement value, upon its merchandise, furniture, fixtures, and improvements on the Demised Premises. Goderich shall take out and keep in force all risks direct damage insurance, to the full replacement value of the Demised Premises

### **7.2 Comprehensive General Liability Insurance**

GPMC shall comply with the insurance provisions of the OMM Agreement.

### **7.3 Increase in Landlord's Insurance Premiums**

GPMC covenants that nothing will be done, omitted to be done, kept, used, sold or offered for sale on or from the Demised Premises that may contravene any of Goderich's policies insuring any part of the Demised Premises, or that may result in increased insurance premiums, or which will prevent Goderich from procuring policies with companies acceptable to Goderich, and GPMC covenants to pay any increase in insurance premiums charged to Goderich due to GPMC'S use of the Demised Premises. In determining whether increased insurance premiums are the result of the use of the Demised Premises, a schedule issued by the organization setting the insurance rate on the Demised Premises, showing the various components of the rates, will be conclusive evidence of the several items and charges which make up the insurance rates on the premises.

### **7.4 Indemnification of Goderich**

a) GPMC covenants to indemnify Goderich and save Goderich harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury or damage to property arising from any occurrence on the Demised Premises or the occupancy or use of the Demised Premises or occasioned wholly or in part by any act or omission of GPMC, its officers, employees, agents, contractors or other invitees, licensees or by anyone permitted by GPMC to be on the Demised Premises. In case Goderich, without actual (as opposed to merely vicarious) fault on its part, is made a party to litigation begun by or against

GPMC, excepting a bona fide action by GPMC against Goderich, GPMC will protect and hold Goderich harmless and will pay all costs, expenses and reasonable legal fees incurred or paid by Goderich in connection with the litigation.

b) Goderich covenants to indemnify GPMC and save GPMC harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury or damage to property arising from any occurrence on the Demised Premises occasioned wholly or in part by any act or omission of Goderich, its officers, employees, agents, contractors or other invitees, licensees or by anyone permitted by Goderich to be on the Demised Premises. In case GPMC, without actual (as opposed to merely vicarious) fault on its part is made a party to litigation begun by or against Goderich excepting a bona fide action by Goderich against GPMC, Goderich will protect and hold GPMC harmless and will pay all costs, expenses and reasonable legal fees incurred or paid by GPMC in connection with the litigation.

## **ARTICLE 8 - REMEDIES**

### **8.1 Re-entry**

GPMC covenants that Goderich has a right of re-entry on non-performance of covenants, subject to the provisions of this lease.

### **8.2 Failure to Observe Covenants**

If GPMC shall fail after ten (10) days written notice of default, to comply with any covenant, condition or agreement contained herein, then the lease granted may, at the option of Goderich, be terminated and the estate hereby vested in GPMC and any other rights of GPMC hereunder shall thereupon immediately cease and expire.

### **8.3 Right of Entry to Perform Covenants**

If GPMC shall default in the performance of any covenant in this lease and if such default shall continue for ten (10) days after written notice thereof to GPMC, Goderich may perform that covenant on GPMC's behalf and may enter the Demised Premises for that purpose and Goderich shall not be liable to GPMC for any loss or damage to GPMC's property or business caused by so doing. All costs incurred by Goderich in performing covenants on behalf of GPMC, together with an administrative fee of ten (10) percent thereof, shall be payable as rent in arrears.

### **8.4 Bankruptcy and Seizure**

If, during the Term, any of the goods or chattels of GPMC shall be at any time seized or taken in execution or in attachment by any creditor of GPMC; a writ of execution shall be issued against all the goods and chattels of GPMC and remain unsatisfied for ten (10) days; the tenant shall make any assignment for the benefit of creditors or shall be adjudged bankrupt or insolvent by any Court of competent jurisdiction under any legislation then in force or shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors GPMC shall attempt to abandon the Demised Premises; or GPMC shall attempt to sell or dispose of its goods and chattels so that there would not remain after such sale or disposal sufficient distress on the Demised Premises, in the opinion of Goderich, any additional rent, shall immediately, at the option of Goderich, become due and payable, and the Term shall, at the option of Goderich, forthwith be terminated

and in each of the above cases, such accelerated rent shall be recoverable by Goderich as if it were rent in arrears.

If GPMC permanently removes any of its goods and chattels from the Demised Premises, Goderich may follow them for thirty (30) clear days in the manner provided in the Commercial Tenancies Act. GPMC covenants with Goderich, in consideration of the making of this lease, that despite anything contained in the Commercial Tenancies Act, none of the goods and chattels of GPMC on the Demised Premises are exempt from levy by distress for rent in arrears and that upon a claim being made for an exemption by GPMC or on distress being made by Goderich, this section may be pleaded as an estoppel against GPMC in any action brought the test the right to levy upon goods named as exempted.

### **8.5 Remedies of Goderich Accumulative**

No exercise of a specific right or remedy by Goderich or by GPMC precludes either from, or prejudices either in, exercising any other right or pursuing any other remedy or maintaining an action to which either may otherwise be entitled at law or in equity.

### **8.6 No Waiver**

The waiver by Goderich or by GPMC of a breach of a term, covenant or condition of this lease will not be considered to be a waiver of a subsequent breach of the same term, covenant or condition or of another term, covenant or condition. A waiver by Goderich or by GPMC shall be in writing and signed by Goderich or GPMC, as the case may be.

## **ARTICLE 9 - GENERAL**

### **9.1 Sublet Assign**

GPMC may not sublet or assign or transfer its interests in this lease without securing the written consent of Goderich, which consent shall not be unreasonably withheld, provided, however, that if such consent is granted, GPMC shall remain liable for all of GPMC's obligations under this lease.

### **9.2 Postponement**

This lease and everything herein contained shall be deemed to be subordinate to any charge or charges from time to time created by Goderich by mortgage or charge on the Demised Premises and GPMC shall promptly, at any time, as required by Goderich, execute all documents and give such further assurances as may be reasonably required to postpone GPMC's rights and privileges to the holder of any such charge or mortgage, provided that the charge or mortgagee has first entered into a non-disturbance agreement with GPMC in a form satisfactory to such charge or mortgagee:

### **9.3 Goderich's Assignment**

The rights of Goderich, under this lease, may be mortgaged, charged, transferred or assigned to a purchaser or to a mortgagee or trustee for bondholders and GPMC agrees that in the event of a sale of or default by Goderich under any mortgage, trust deed or trust indenture and the purchaser, mortgagee or trustee, as the case may be, duly entering into possession of the Demised Premises, GPMC agrees to attorn to and become the tenant of such purchaser, mortgagee or trustee under the terms of this lease. GPMC also agrees to execute, when requested, an acknowledgment of the status of all covenants under this lease for any prospective purchaser, mortgagee or trustee.

#### **9.4 Notice**

Any notice or other document required or permitted to be given to any of the parties shall be validly given if delivered personally, or sent by telecopy, telex or facsimile transmission or sent by regular mail postage prepaid as follows:

Town of Goderich

Attention: Clerk

57 West Street

Goderich, Ontario

N7A 2K5

**Or**

Goderich Port Management Corporation North Harbour Road

Attention: President

PO. Box 370

Goderich, Ontario

N7A 3Y9

Any notice or document so mailed shall be deemed to have been received on the fourth business day after mailing. Any notice or document delivered or sent by telecopy, telex or facsimile shall be deemed to have been received on the date of such delivery, provided that it is received within normal business hours on a business day and, if not, then it shall be deemed to have been received on the next business day. Each party may, at any time, give notice in writing of a new address to which any such notice or document shall thereafter and until further notice be sent.

#### **9.5 Counterparts and Facsimile Execution**

This lease may be executed in any two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail attaching an executed copy of this lease in PDF format

or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**SIGNED SEALED AND DELIVERED** this 17th day of July, 2023.

**THE CORPORATION OF THE TOWN OF GODERICH**

Per: \_\_\_\_\_

Myles Murdock, Mayor

Per: \_\_\_\_\_

Andrea Fisher, Clerk

I/We have the authority to bind the Municipal Corporation.

**GODERICH PORT MANAGEMENT CORPORATION**

Per: \_\_\_\_\_

Rowland Howe, President

Per: \_\_\_\_\_

Witness

I/We have the authority to bind the Corporation.