

## LEASE

### BAR HARBOR FERRY TERMINAL PROPERTY

**THIS LEASE** (the "Lease") is dated February 19, 2019.

BY AND BETWEEN:

**THE TOWN OF BAR HARBOR**, a Maine municipal corporation with a principal office at 93 Cottage Street, Bar Harbor, Maine 04609 (the "Landlord")

and

**ATLANTIC FLEET SERVICES CORPORATION**, a Maine corporation with a principal office of 2 Harbor Lane, Bar Harbor, Maine 04609 (the "Tenant")

WHEREAS Landlord is the owner of certain real property formerly comprising a ferry terminal operation which includes, among other things, a terminal building structure (the "Terminal Building") at 121 Eden Street, Bar Harbor, Maine 04609, and related berthing, queuing and parking areas located in Bar Harbor, Maine; and is the lessee of certain underwater lands pursuant to a Submerged Lands Lease (the "SL Lease") issued by the State of Maine (collectively the "Bar Harbor Ferry Terminal Property");

AND WHEREAS Tenant is a contractor of Bay Ferries Limited ("BFL"), a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada, C1A7L3;

AND WHEREAS BFL, with the financial contribution by the Province of Nova Scotia (the "Province"), intends to operate an international ferry service between Bar Harbor, Maine and Yarmouth, Nova Scotia (the "Ferry Service") on a ferry vessel known as "Alakai" (commercially branded as "The CAT"), 106.5 meters in length (the "Vessel");

AND WHEREAS Tenant has contracted with BFL to provide US land-side operations for the Ferry Service;

AND WHEREAS Landlord and Tenant desire to enter into a lease for certain premises at the Bar Harbor Ferry Terminal Property in order for Tenant to provide services to the Ferry Service;

AND WHEREAS Landlord intends to develop long-term plans for development of those portions of the Bar Harbor Ferry Terminal Property not subject to this Lease (the "Landlord Retained Area");

NOW THEREFORE in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

#### 1. LEASED PREMISES AND RIGHTS OF USE

- (a) Landlord does hereby lease, demise and let unto Tenant, to have and to hold on the terms herein, subject to the reservations and conditions below, the premises identified collectively as Area A, Area B, Area C, and Area D shown on Exhibit A attached hereto and incorporated herein (collectively the "Leased Premises") in accordance with the following:

- (i) Customs Operations Area – This area, comprising the area depicted as Area A on Exhibit A, shall be used and occupied by the Tenant on an exclusive basis. Tenant shall, in turn, have the right to permit United States Customs and Border Protection ("USCBP") to occupy such portions of Area A as are required for USCBP operations on such terms and conditions as may be agreed between Tenant and USCBP;
  - (ii) Terminal Building Public Area – This area, comprising the area depicted as Area B on Exhibit A, shall be used and occupied by the Tenant on a priority basis during Tenant's operations but otherwise available to the Landlord in support of Landlord's operations on the Landlord Retained Area. All such operations and usage shall be subject to the Tenant's consent and sharing of building operations and security costs;
  - (iii) Terminal Building Tenant and USCBP Area – This area, comprising the area depicted as Area C on Exhibit A, shall be used and occupied by the Tenant on an exclusive basis. Tenant shall, in turn, have the right to permit United States Customs and Border Protection ("USCBP") to occupy such portions of Area C as are required for USCBP operations on such terms and conditions as may be agreed between Tenant and USCBP;
  - (iv) Ferry Operations Zone – This area, comprising the area depicted as Area D on Exhibit A, is to be used and occupied by the Tenant on an exclusive basis; provided that upon agreement by Tenant, and the making of appropriate security and other arrangements, Landlord may use the Ferry Operations Zone for other purposes at times other than Tenant's times of ferry operation at the sole and exclusive risk of Landlord.
- (b) Landlord does hereby further grant to Tenant the exclusive license and rights to use and occupy, in accordance with the terms set out herein, the Marine Operations Zone, being the area identified as Area E on Exhibit A. Such rights shall include:
- (i) The right to berth the Vessel in the Marine Operations Zone;
  - (ii) The right to install ramp structures comprising, as may be required:
    - (1) Fixed and floating bridges;
    - (2) Transition ramp and apron;
    - (3) Supporting pontoons;
    - (4) Hydraulic cylinders and other related equipment;
    - (5) Other equipment relating to the foregoing;

- (iii) The right (but not the obligation) to undertake work on and near the North Pier as Tenant determines necessary to safely conduct ferry operations, including, without restriction, installation and/or repair of piles, fenders, and other components in or adjacent to the North Pier;

provided that upon agreement by Tenant, and upon the making of appropriate security and other arrangements acceptable to Tenant, Landlord may use the Marine Operations Zone, or portions thereof, for other purposes. Tenant's employees shall have the right to access the Marine Operations Zone through the Landlord Retained Area should that be necessary.

## 2. USES WITHIN LANDLORD RETAINED AREA

- (a) Exterior Common Areas – Tenant shall have the right to use walkways, driveways, and roadways in the Landlord Retained Area on a non-exclusive basis, in common with others, including the use of appropriate drop off/pick up zones adjacent to the Terminal Building;
- (b) Parking - Landlord will assign up to a maximum of 50 parking spaces in the Landlord Retained Area to Tenant for employee and walk-on passengers during Tenant's operating season. If requested by Landlord, and on terms agreed between Tenant and Landlord, Tenant will collect, on Landlord's behalf, and remit, revenues deriving from customer parking activity.

## 3. TERM, OPERATING SCHEDULE, AND USE OF LEASED PREMISES

- (a) Term - Except as provided below, the Term of this Lease shall be from February 19, 2019, (the "Effective Date") through October 31, 2023, (the "Initial Term"). Tenant shall have the option to renew this Lease for a period of one (1) year extending to October 31, 2024; provided that, at the time of exercise of such option:
  - (i) This Lease is in full force and effect;
  - (ii) Tenant is not in default of the Lease (either at the time of exercise or at the commencement of the applicable Renewal Term);
  - (iii) Tenant gives written notice to Landlord of Tenant's exercise not later than ninety (90) days prior to the expiration of the Term or Renewal Term then in effect. This, and any subsequent, Renewal Term shall be upon the terms and conditions of this Lease unless modified by mutual agreement of the parties.

provided that such option may only be exercised with the agreement of Landlord on terms mutually agreed between Landlord and Tenant;

- (b) Operating Schedule – Tenant shall conduct Vessel operations based on a mid-day arrival of the Vessel in Bar Harbor and departure of the Vessel on or about 3:00 pm local time, with the Vessel to overnight in Yarmouth, Nova Scotia, during normal operations;

- (c) Use of Premises - During the Term of this Lease, Tenant is permitted to use the Leased Premises solely for the purpose of conducting international ferry service between Bar Harbor, Maine, and Yarmouth, Nova Scotia by means of the Vessel. Tenant shall have the right to substitute the Vessel. Tenant's operating season will generally extend from late May/early June to October. Subject to mechanical breakdowns, weather, and other exigencies of ferry service, Tenant intends to provide daily service during the months of July and August;
- (d) Commencement of Use/Non-Conforming Use - With the consent of the Landlord, Tenant commenced its use of the Leased Premises for Ferry Service "Use" prior to the entry into this Lease. Such Use is acknowledged by Landlord as one that is consistent with current local land use laws applicable to the Leased Premises. For purposes of this Lease, Use of the Leased Premises for Ferry Service shall include any substantial activity related to development of the Leased Premises for Ferry Service Use, including, but not limited to, physical improvements to the Leased Premises required in order to undertake said Use. In the event that future local legislative acts could be interpreted to prohibit Use of the Leased Premises for Ferry Service, the Landlord shall recognize the Ferry Service to be a lawfully existing non-conforming use and refrain from any action that would limit or alter Tenant's use of the Leased Premises as contemplated under this Lease.

#### 4. PAYMENTS

- (a) Fee Payment - On or before the fifteenth (15th) day of each October during the Term, Tenant shall pay to Landlord the per-passenger, per-vehicle, and per-bus fees (collectively the "Fees") on Exhibit B that were incurred in the just completed operating season. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below;
- (b) Rent Payment - With effect from the earlier of June 1, 2019, or the date on which Tenant takes occupancy of the Leased Premises for operational purposes, Tenant shall pay Rent (the "Rent") as set out in Exhibit B, which Rent shall be payable on the final day of each month;
- (c) Minimum Annual Payment - On or before each October 31 during the Term, Tenant shall calculate the total payments of all Rent and Fees that Tenant made to Landlord for the Ferry Service in the last 12-month period beginning on November 1 of the previous year and ending October 31 of the current year (the "Total Annual Payment"). Such calculation of the Total Annual Payment shall include the Fees to be paid on or before said October 31 for the Ferry Service incurred in September. If the Total Annual Payment is less than the Minimum Annual Payment (as defined in Exhibit B), Tenant shall make an additional payment to Landlord on or before said October 31 in an amount equal to the excess of the Minimum Annual Payment over the Total Annual Payment. If the Total Annual Payment is equal to or greater than the Minimum Annual Payment for any year, no such additional payment shall be paid by Tenant to Landlord in the given year. Because the initial measurement period is less than a 12 month period, the minimum annual payment for the period from the date of entry into this Lease until October 31, 2019, shall be in the amount of \$168,500;

- (d) Contribution Against Capital - Only to the extent that annual rents and payment of Fees to the Landlord exceed \$250,000, a maximum amount up to \$100,000 per year (in excess of the \$250,000) will be deducted by Tenant as a contribution against capital expenditures made by the Province;
- (e) Province Guarantee - Concurrent with the execution of this Lease, the Province will provide to Landlord, in a form acceptable to Landlord, a binding guarantee with limit in the amount of \$1 million US funds (the "Province Guarantee") as to amounts otherwise payable by Tenant under this Lease. The maximum liability of the Province to the Landlord under the Province Guarantee shall reduce in an amount equal to the ongoing aggregate amount of payments of Rent and Fees under this Lease;
- (f) Address - All payments hereunder shall be written to the Town of Bar Harbor and sent to the attention of the Town Treasurer at the Landlord's principal office first above written or such other place as the Landlord may designate in writing from time to time. Any invoices shall be sent to Tenant and sent to the attention of Annette Higgins at the Tenant's principal office first above written or such other place as the Tenant may designate in writing from time to time;
- (g) Tenant Statements - Tenant shall submit appropriate supporting documentation (or electronic equivalent) showing the number of passengers, vehicles, and buses transported by Tenant both to and from the Town of Bar Harbor each month when it submits its Fees under Exhibit B. No amount of Fees shall be payable to Landlord in respect of passengers, vehicles, and/or buses transported by Tenant on a complimentary basis;
- (h) Audit - Landlord reserves the right to conduct an audit of Tenant's traffic records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid in Fees.

**5. CONDITION OF LEASED PREMISES, IMPROVEMENTS TO LEASED PREMISES**

- (a) "As Is" - Tenant has had the full opportunity to inspect the Leased Premises prior to execution of this Lease and takes all such space "as is" except as specifically provided herein;
- (b) Improvements - Tenant and Landlord agree that Tenant shall make the following capital and non-capital improvements to the Leased Premises at the Tenant's sole expense:
  - (i) Customs Operations Areas - Tenant shall make improvements to the Customs Operations Area in order to render the area suitable for provision of service by USCBP which shall include infilling and demolition; installation of conduits and subsurface structures; installation of lane infrastructure including protective barriers, inspection booths, and canopies; installation of various equipment required by USCBP including, but not limited to, radiation portal monitors and license plate reading equipment;

- (ii) Terminal Building Public Area and Terminal Building Tenant and USCBP Area - Tenant shall renovate and make significant structural alterations to the Terminal Building in order to bring the existing structure into compliance with the requirements of USCBP and to enable efficient use of the existing Terminal Building by USCBP and Tenant in ferry operations and by Landlord to support Landlord's activities on the Landlord Retained Area;
- (iii) Ferry Operations Zone - Tenant shall make improvements so as to enable the efficient conduct of ferry operations, including, without restriction, installation of ticket booths, security fencing, security cameras and other security apparatus, and general preparation of the area for ferry operations;
- (iv) Marine Operations Zone - In accordance with Section 1 of this Lease, Tenant shall install a ramp and related equipment so as to enable loading of the Vessel by the stern and shall have the right (but not the obligation) to make repairs and improvements to the North Pier so as to enable safe ferry operations.

## 6. OTHER USES OF BAR HARBOR FERRY TERMINAL PROPERTY

Tenant acknowledges that Landlord is entering into this Lease as part of Landlord's long-term vision to expand the public use of the Bar Harbor Ferry Terminal Property. Tenant agrees to work in good faith with Landlord in Landlord's consideration and development of plans for future use of the Bar Harbor Ferry Terminal Property, including consideration of marina installation and other potential public uses.

Tenant agrees that it shall, at all applicable times, provide to United States Coast Guard for approval Facility Security Plans for Tenant's operations which contemplate offshore components of the Bar Harbor Ferry Terminal Property, other than the Marine Operations Zone, being used for other purposes including marinas, other recreational uses, and other facilities for public use. Tenant confirms that approval of such Facility Security Plans is a legal requirement for the conduct of ferry service from the Bar Harbor Ferry Terminal Property.

## 7. OBLIGATIONS OF LANDLORD

Landlord agrees, during the Term of this Lease, to:

- (a) Make available to Tenant the Leased Premises and Marine Operations Zone subject to and in accordance with the terms of this Lease (to include entry into such submerged lands leases with the State of Maine as are required to do so);
- (b) Maintain the Landlord Retained Area in a condition which will not interfere with or derogate from ferry operations, including Tenant's ability to efficiently permit the ingress and egress of vehicles to and from the Customs Operations Area and the Ferry Operations Zone;
- (c) Pay all costs associated with Landlord's operations relating to the Landlord Retained Area, including all electricity and other utility costs;

- (d) Contribute to electrical, utility, or personnel costs which otherwise would not have been incurred by Tenant in order to maintain the Terminal Building Public Area available to the public when such costs otherwise would not have been incurred for purposes of ferry operations or USCBP operations; and
- (e) Ensure the continued availability of the North Pier during the term of this Lease.

## 8. OBLIGATIONS OF TENANT

Tenant covenants that it shall, at its expense:

- (a) Pay when due, all Rent, Fees, and other charges or assessments hereunder;
- (b) Pay all costs associated with the Ferry Service (except as otherwise stipulated herein), including, but not limited to, office and ticketing staff, provision of all office and ticketing equipment, and direct Vessel costs including, but not limited to, fuel, water, electricity, stevedoring, screening and security staff, staff to direct and supervise vehicle traffic and queuing, trash removal and pilotage;
- (c) Pay all expenses for all installation and periodic charges associated with communications systems, including, but not limited to, phone systems and services, computer systems and communication services, television and cable access, satellite services, and security and video equipment and services within the exclusive use areas and used, except as provided herein, solely by the Tenant;
- (d) Maintain and repair the Terminal Building in a state sufficient to comply with all applicable laws, enable ferry operations to continue, and to satisfy the requirements of USCBP, recognizing that Tenant shall, under no circumstances, be obliged to reconstruct or rebuild the Terminal Building;
- (e) To conduct such repairs, maintenance, modifications, as Tenant considers necessary at its discretion in the Marine Operations Zone and to equipment contained therein;
- (f) Properly contain and dispose of all trash and garbage from its operations, including, but not limited to, all vessel trash and garbage, in containers suitable for pickup by Tenant or Tenant's contractor. Landlord shall provide regular trash pickup for the Exterior Common Areas only;
- (g) Maintain in full force and effect the insurance coverage required below, and such fire and extended coverage or business interruption insurance for its own property or benefit as it may deem to be appropriate. Tenant shall hold its property, including fixtures, furniture, equipment and the like, or that of any other owner, on the Leased Premises at Tenant's own risk;
- (h) Notify the Landlord in advance of any proposed alterations to the Leased Premises. All such alterations are subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld;

- (i) Pay and discharge punctually all generally applicable taxes and governmental assessments on any of Tenant's activities or property. The parties understand and agree that there are no real estate property taxes to be assessed against the Leased Premises hereunder and chargeable to Tenant, but Tenant shall be responsible for payment of any personal property taxes which may be assessed. Tenant reserves the right to contest the imposition or amount of any such taxes or assessments by any means provided by law;
- (j) Permit Landlord at reasonable times to inspect the Leased Premises;
- (k) Not permit any employee, agent, contractor or invitee of Tenant to violate any covenant or obligation of Tenant hereunder nor create a nuisance at the Leased Premises or any Town of Bar Harbor owned property;
- (l) Keep the Leased Premises equipped with all safety appliances required by law or any public authority to the extent such results from the exclusive use made by Tenant of the Leased Premises;
- (m) Provide any required security personnel or traffic control at Tenant's cost and expense (except to the extent such requirements arise from operations associated with the Landlord Retained Area);
- (n) Provide any facilities, utility connections and utilities services at Tenant's cost and expense, as may be required by, or for compliance with, USCBP or the United States Coast Guard, and such additional security personnel as may be deemed reasonably necessary by Tenant. It is the mutual intent of the parties that all such requirements be identified prior to the entry into this Lease;
- (o) Should any maintenance or repair of the Leased Premises, or the systems serving those facilities require repair or replacement as a result of the negligence or willful act of the Tenant or the Tenant's invitees, agents or contractors, Tenant shall be responsible for the timely repair or replacement of same.

## **9. SIGNAGE**

Tenant shall have the right to have signage on the Leased Premises, including, but not limited to, outdoor signage, which signage shall be approved by the Landlord and shall be at Tenant's sole cost. It is the intent of the parties to prominently promote Tenant's Ferry Service. Tenant may also display flags referencing, as applicable, Tenant, the Vessel, the Tenant's Ferry Service, and the Province of Nova Scotia. Installation of such signage and flags may be done by the Landlord, or by the Tenant by a contractor acceptable to the Landlord, at Tenant's expense. All signage and flags shall be installed and maintained in accordance with all applicable local and state governmental codes. Subject to Landlord's approval which shall not be unreasonably withheld, Tenant may, at its expense, place murals and/or photographs and/or graphics on interior walls of the Terminal Building for promotion of its Ferry Service.

Subject to applicable local and state governmental laws and codes, Landlord and Tenant shall cooperate to ensure prominent directional signage within the Town of Bar Harbor to direct customers to the Ferry Service and to request the State of Maine to provide appropriate signage on its interstate highway system. Tenant acknowledges and agrees that the Town of Bar Harbor is acting as landlord, and not in its regulatory capacity, in connection with this Lease.

#### **10. BUILDINGS, FIXTURES AND EQUIPMENT**

Any and all fixtures, equipment or furniture installed in the Leased Premises by Tenant shall remain Tenant's property for the term of this Lease and shall be Tenant's responsibility to maintain, reasonable wear and tear and damage by fire or other casualty excepted. Any property of Tenant shall be removed by Tenant at or before the end of the term hereof and Tenant shall repair any damage to the Leased Premises caused by such removal.

#### **11. COMPLIANCE WITH LAWS**

Tenant agrees to comply with all present and future laws, ordinances, orders, rules, regulations and requirements of the federal, state and local governments or any of their departments, bureaus, boards, commissions and officials thereof (collectively the "Laws") with respect to Tenant's use or occupancy of the Leased Premises, including without limitation, all Laws relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution, or (v) any other environmental and health matter during the Term in connection with its use and occupancy of the Leased Premises. Tenant shall not be responsible for any compliance attributable to the obligations of Landlord hereunder nor to any event, condition, act, or omission which occurred prior to the execution date or after the expiration date of this Lease, unless caused by the error or omission of Tenant, its officers, agents, employees, contractors or invitees.

#### **12. INDEMNIFICATION**

- (a) General - Tenant shall defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees, from and against any and all liability, claims, damages, or judgments, just or unjust, arising from injury or death to any person, or damage to, or loss of use of, property sustained by anyone (including, but not limited to, Landlord's employees or property) and arising, in whole or in part, out of Tenant's use, activities at or on, or occupancy of the Leased Premises, except that such obligation of indemnification shall not include indemnification for claims to the extent such claim is caused by (i) the acts or omissions of Landlord, its officers, agents, employees, contractors, other tenants and/or invitees, (ii) the acts or omissions of third parties (including, but not limited to, other users of the Leased Premises), or (iii) a breach by Landlord of its obligations under this Lease. Tenant shall include Tenant, its officers, agents, employees, contractors, subcontractors and/or invitees.

Landlord shall, at its own expense, defend, indemnify, and hold harmless the Tenant, its officers, agents, and employees, from and against any and all liability, claims, damages, or judgments, just or unjust, arising from injury or death to any person, or damage to, or loss of use of, property sustained by anyone (including, but not limited to, Tenant's employees or property) and arising, in whole or in part, out of (i) Landlord's use, and use by the general public, of either the Terminal Building Public Area, the Ferry Operations Zone, or Marine Operations Zone as might occur from time to time by agreement of the

Tenant, provided that, for greater certainty, such indemnity shall not apply to any persons present in such areas as a result of or associated with, the ferry operations of Tenant; and (ii) use by the general public (including customers of the Ferry Service) of the Landlord Retained Area;

- (b) Covenant Against Liens - Tenant shall not cause nor permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien, or provide other security acceptable to Landlord, in the event Tenant contests such lien;
- (c) Environmental - Tenant shall, at all times during the Term, comply with all environmental laws applicable to the Leased Premises and Tenant's use and occupancy thereof. Except to the extent applicable to Landlord or any other tenant at the Leased Premises or attributable in whole or in part to a preexisting environmental condition, Tenant will defend, indemnify and save harmless Landlord and its directors, officers, shareholders, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed, based upon any environmental laws or resulting from any environmental condition on or about the Leased Premises which is exclusively caused by Tenant during the Term of this Lease, which indemnity, in the case of an environmental condition exclusively caused by Tenant shall include costs incurred by Landlord to remediate such environmental condition to clean-up or remediation standards consistent with Tenant's use of the Leased Premises specified in this Lease;
- (d) Enforcement of Tenant Covenants and Indemnities – Concurrent with the execution of this Lease, and if so requested by Landlord, Tenant will provide to Landlord a binding agreement by Province (which may be incorporated in the Province Guarantee) or by Bay, in a form acceptable to Landlord, to support and guarantee the performance by Tenant of its covenants, indemnities, and other obligations under this Lease.

### 13. INSURANCE

- (a) Amounts - Without expense to the Landlord, and with no lapse in coverage, Tenant shall procure and maintain, at its own cost, and show evidence to the Landlord of the following insurance to protect the Landlord from claims and damages which may arise from Tenant's operations under this Lease, whether such operations shall be performed by the Tenant or by anyone directly or indirectly employed by it in the types and minimum amounts set forth below:

Coverage *	Minimum Limit (per occurrence)	Entity
Commercial General Liability	\$5,000,000	Tenant and BFL
Marine Terminal Operator's Liability	\$5,000,000	Tenant
Sudden & Accidental Pollution Liability	\$5,000,000	Tenant and BFL
Protection & Indemnity/Collision Liability incl. crew coverage (unless covered by Canadian Worker's Comp scheme)	\$5,000,000	BFL
Worker's Comp incl. USL&H	Statutory	Tenant and BFL
Vessel Pollution Liability	\$5,000,000	BFL

\* NOTE: It is understood that, provided applicable risks are covered to the limits indicated, actual policy names/titles may vary from those indicated above and multiple coverages may be included under other applicable policies.

- (b) Landlord Protected - The Landlord shall be named as an additional insured under items (i) and (ii) above. Item (iii) shall include a waiver of subrogation against Landlord. To the extent that Tenant has any employees who are not covered by the Longshoremen & Harbor Workers, Federal Maritime, and Jones Act coverages, Tenant shall provide evidence of Workers Compensation coverage in the statutory amounts, including a waiver of subrogation against Landlord;
- (c) Notice to Landlord - All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine rated by AM Best at least "A" rating. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Landlord.

All policies required hereunder shall be primary to any insurance or self-insurance which Landlord may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to Landlord-owned or Landlord-leased property and Landlord personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees, and/or contractors;

- (d) Certificates - Certificates or other evidence of insurance coverages required of Tenant in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Landlord prior to use of the Leased Premises. Such certificate or certificates shall at all times while this Lease is in effect provide Landlord with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier;

- (e) Tenant Property Insurance - Tenant shall procure and maintain, at its option and election, such all-risks fire and casualty insurance covering its property on the Leased Premises as it deems necessary;
- (f) Landlord reserves the right to require a commercially reasonable increase in the minimum insurance limits hereunder at the commencement of any Renewal Term of this Lease.

**14. ASSIGNMENT/SUBLETTING**

- (a) By Tenant - Tenant shall not sublease, transfer or assign this Lease or the rights granted hereunder at any time during the Term of this Lease (except as to any sublease by Tenant to USCBP as permitted hereunder) without the prior written approval of Landlord, which may not be unreasonably held. No such assignment or subletting shall relieve Tenant of any obligations hereunder and any person accepting such assignment shall take the Lease subject to all prior breaches and shall be liable therefor in the same manner as Tenant;
- (b) By Landlord - Landlord reserves the right to assign this Lease to a quasi-municipal or State entity, provided, however, that in such event such entity shall agree to assume all the terms and obligations of the Landlord under this Lease. Landlord shall not assign this Lease to a private party without the prior written approval of Tenant, which may be granted or withheld in Tenant's discretion.

**15. CASUALTY DAMAGE**

- (a) If the Leased Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of damages sustained, shall be suspended or abated, until the Leased Premises shall have been put in proper condition for use by Tenant; provided, however, in the event of such destruction or damage, Tenant shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Lease shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant;
- (b) Landlord and Tenant each hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Leased Premises or to the property of either party, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. Landlord and Tenant shall each be responsible for maintaining such casualty insurance on its property as it deems necessary and such policies shall waive any right of subrogation thereunder against the other party.

## **16. DEFAULT**

Tenant shall be determined to be in default hereunder if it shall fail to perform any obligations or comply with any terms or conditions stated herein within fifteen (15) days after receipt of written notice of such failure from the other party or (when the default is of such nature that it cannot be cured within such period) if it shall fail to commence to cure the default within such period and diligently prosecute the cure to completion within a reasonable time. Upon such default and failure to cure, Landlord shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Leased Premises in accordance with the provisions of this Lease. Further, upon any termination of this Lease, Tenant shall remain liable to Landlord for all Rents and Fees accrued and unpaid up to the date of such termination. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, that are incurred by Landlord on account of Tenant's failure to comply with any of the terms of this Lease, holding-over, and/or as a result of Tenant's default under this Lease.

## **17. RETURN OF LEASED PREMISES, HOLDING OVER**

- (a) At the expiration or earlier termination of this Lease, Tenant shall quit and surrender the Leased Premises to Landlord broom clean and in good order and condition, ordinary wear excepted, and free from debris, trash and waste, and shall cease its operations from the Leased Premises. Tenant shall, if, and only if, so requested by Landlord, remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Leased Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant at its sole expense. All trade fixtures, equipment, furniture, furnishings and personal effects not removed by Tenant within thirty (30) days after expiration or termination of this Lease shall, at Landlord's option, be deemed to have been conveyed to Landlord in fee title, and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without obligation to account therefor, or, at Landlord's option, Landlord can have such trade fixtures and items removed and the cost of any such removal and the expense of any repair necessitated by such removal shall be borne by Tenant. Tenant shall have the right to remove any equipment and fixtures installed by it within the Marine Operations Zone within a reasonable time after termination of this Lease;
- (b) If Tenant or any party claiming through or under Tenant shall remain or continue to be in possession of the Leased Premises or any part thereof after the termination of the Lease or any renewal thereof, without Landlord's consent, then, at Landlord's option, Tenant or such party or both shall be deemed to be illegally retaining possession or, at Landlord's option, shall be deemed to be a month-to-month Tenant of the Leased Premises and subject to all the terms and conditions of this Lease except that the monthly rent hereunder shall be One Hundred and Fifty Percent (150%) of the rent payable during the month prior to such termination. This section shall not be construed as giving Tenant any right to hold over after the expiration of the Term or to limit Landlord's rights to obtain possession of the Leased Premises upon termination by any lawful means available to Landlord if Landlord does not elect to treat the continued

possession by Tenant or any party claiming through or under Tenant as a month-to-month tenancy;

- (c) Landlord lawfully may upon termination of this Lease, enter into and upon the said Leased Premises or any part thereof in the name of the whole, and repossess the same as of its former estate, and expel Tenant, and those claiming through or under Tenant, by any lawful means, and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant.

**18. QUIET ENJOYMENT**

So long as Tenant shall observe and perform the covenants and agreements binding on it hereunder, Tenant shall at all times during the term herein granted peacefully and quietly have and enjoy possession of the Leased Premises without any encumbrance or hindrance by, from or through the Landlord.

**19. NOTICES**

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent:

To Tenant:	Atlantic Fleet Services Corporation 2 Harbor Lane Bar Harbor, Maine, USA 04609  Attention: Annette Higgins, President Phone: 207-266-5893 Email: <a href="mailto:ahiggins@atlantic-fleet.com">ahiggins@atlantic-fleet.com</a>
With Copies to:	Transportation and Infrastructure Renewal and Internal Services Johnson Building, 1st Floor 1672 Granville Street Halifax, Nova Scotia, B3J 2N2  Attention: Diane Saurette, CPA, CMA Executive Director, Finance and Strategic Capital and Infrastructure Planning Department of Finance and Treasury Board  Phone: (902)-722-1411 Email: <a href="mailto:Diane.Saurette@novascotia.ca">Diane.Saurette@novascotia.ca</a>  and

	<p>Bay Ferries Limited  94 Water Street  Charlottetown, Prince Edward Island, Canada, C1A 7L3</p> <p>Attention: Mark MacDonald  Chairman and Chief Executive Officer</p> <p>Phone: 902-423-7863  Email: <a href="mailto:mmacdonald@nfl-bay.com">mmacdonald@nfl-bay.com</a></p>
To Landlord:	<p>Town of Bar Harbor  93 Cottage Street  Bar Harbor, Maine, USA 04609</p> <p>Attention: Cornell Knight  Town Manager</p> <p>Phone: (207) 288-1792  Email: <a href="mailto:cknight@barharbormaine.gov">cknight@barharbormaine.gov</a></p>

**20. AMENDMENT, AUTHORITY**

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties. Each party warrants that this Lease has been signed by a representative duly authorized to bind that party to this Lease.

**21. GOVERNING LAW**

This Lease shall be governed by and construed in accordance with the laws of the State of Maine. Tenant warrants to Landlord that it is licensed to do business in the State of Maine and has an agent authorized to accept service of process in said State. Tenant shall provide such information upon request to Landlord.

**22. FORCE MAJEURE**

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and the party prevented from performance has given written notice thereof to the other party.

**23. NON-WAIVER**

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

**24. BROKERS**

Landlord and Tenant each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Lease. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim.

IN WITNESS WHEREOF the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS:

**ATLANTIC FLEET SERVICES CORPORATION**

Sharon M. Linsides

Per: Annette M. Higgins  
Annette Higgins  
President

WITNESS:

**TOWN OF BAR HARBOR**

Sharon M. Linsides

Per: Cornell F. Knight  
Name: Cornell F. Knight  
Title: Town Manager



**EXHIBIT B**

**SCHEDULE OF RENT AND FEES**

Tenant shall remunerate Landlord as follows:

1. Rent:
  - (a) \$4,500/month in non-operating months; and
  - (b) \$7,500/month for operating months (pro-rated for partial months).
2. All costs for heat, utilities, and related services during operating months.
3. Per unit Fees payable (all figures are US dollars):
  - (a) \$2.00/passenger;
  - (b) \$3.00/vehicle;
  - (c) \$20.00/bus.
4. Minimum Annual Payment (per section 4(c)) \$200,000

**ILLUSTRATIONS**

Assume: 60,000 passengers, 24,000 vehicles, 40 buses (\$120,000 + \$72,000 + \$800)	\$192,800
June-October base rent (5 x \$7,500)	\$37,500
November-May base rent (7 x \$4,500)	\$31,500
<b>TOTAL:</b>	<b>\$261,800</b>

Assume: 70,000 passengers, 28,000 vehicles, 50 buses (\$140,000 + \$84,000 + \$1,000)	\$225,000
June-October base rent (5 x \$7,500)	\$37,500
November-May base rent (7 x \$4,500)	\$31,500
<b>TOTAL:</b>	<b>\$294,000</b>

Assume: 80,000 passengers, 32,000 vehicles, 60 buses (\$160,000 + \$96,000 + \$1,200)	\$257,200
June-October base rent (5 x \$7,500)	\$37,500
November-May base rent (7 x \$4,500)	\$31,500
<b>TOTAL:</b>	<b>\$326,200</b>