

OPERATING LEASE AGREEMENT

THIS AGREEMENT made as of the ____ day of _____, 2009.

BETWEEN:

THE CORPORATION OF DELTA, a municipal corporation
under the *Community Charter* having an address at 4500
Clarence Taylor Crescent, Delta, British Columbia V4K 3E2

(the "**Landlord**")

AND:

**MR. MUNI RATTAN, doing business as Tilbury Sports Bar
& Grill**, 11753 Fern Way, Delta, British Columbia V4C 7M5

(the "**Tenant**")

WHEREAS:

- A. Delta is the registered owner of those lands and premises located in the Municipality of Delta, in the Province of British Columbia, which are described below:

Parcel Identifier 023-081-473
Lot C District Lot 128 Group 2
New Westminster District Plan LMP23443

(the "**Lands**");

- B. The Tenant wishes to lease from the Landlord, and the Landlord has agreed to lease to the Tenant a portion of the Building (as defined below) located on the Lands and certain assets for the purpose of operating a restaurant, all on the terms and subject to the conditions set forth in this Agreement; and

- C. The Municipal Council of the Landlord, by resolutions made on the ____ day of _____, 2009, has authorized the lease to the Tenant of the Leased Premises and the Restaurant Assets to this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the parties hereto hereby covenant and agree with each other as follows.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Agreement:

- (a) **"Additional Rent"** has the meaning ascribed to it in Section 7.1(c);
- (b) **"Agreement"** means this Agreement, inclusive of all Schedules hereto, and all amendments made hereto from time to time;
- (c) **"Basic Rent"** has the meaning set forth in Section 5.1;
- (d) **"Building"** means that Building located on the Lands that contains the Leased Premises and which is shown on Schedule A hereto;
- (e) **"Business"** means the restaurant, lounge and food service business to be operated by the Tenant on the Leased Premises pursuant to this Agreement;
- (f) **"Commencement Date"** means September 1, 2009;
- (g) **"Container"** has the meaning ascribed to it in Section 3.2;
- (h) **"Contaminants"** means any and all contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, dangerous goods, microwaves, waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, special waste and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, regulated, controlled or licensed under Environmental Laws;
- (i) **"Direct Costs"** means:
 - (i) all costs and expenses incurred by or levied on the Landlord in connection with the Landlord performing on behalf of the Tenant, or enforcing, any covenant or agreement of the Tenant hereunder, including without limitation solicitors' costs and fees calculated on a solicitor-client basis; and
 - (ii) all amounts stated by any clause of this Agreement to be included in or collectable by the Landlord as Direct Costs;
- (j) **"Director"** means the Director of the Parks, Recreation and Culture Department of Delta, or his designate;
- (k) **"Environmental Laws"** means any and all laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any governmental authority respecting environmental protection, or regulating, controlling, licensing or prohibiting Contaminants;
- (l) **"Goods and Services Taxes"** means any and all goods and services taxes, sales taxes, value added taxes, business transfer taxes, or any other taxes imposed on the Landlord under or pursuant to this Agreement or the rental of the

Leased Premises or the provision of any goods, services or utilities whatsoever by the Landlord to the Tenant under this Agreement, whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax, or otherwise;

- (m) **"Initial Term"** has the meaning ascribed to it in Section 4.1 of this Agreement;
- (n) **"Leased Premises"** has the meaning set forth in Section 2.1;
- (o) **"Renewal Term"** has the meaning set forth in Section 4.2 (b);
- (p) **"Rent"** means all or any part of Basic Rent, Additional Rent and Direct Costs owing to the Landlord hereunder;
- (q) **"Restaurant Assets"** means all equipment, furniture, materials, decorations and other items located in the Leased Premises as of the Commencement Date and used in connection with the restaurant, lounge and food services business operated from the Leased Premises prior to the Commencement Date, but excluding all food and beverage products;
- (r) **"Tenant Asset List"** has the meaning set out in Section 6.2;
- (s) **"Tenant Assets"** has the meaning set out in Section 6.1;
- (t) **"Taxes"** means all taxes, rates, duties, licences, levies, fees and costs levied by a Taxing Authority (but excluding Goods and Services Taxes) on the Landlord or the Tenant in respect of:
 - (i) the Leased Premises or any portion thereof;
 - (ii) any works undertaken by such Taxing Authority as local improvements benefiting or deemed to benefit the Lands;
 - (iii) the business or profession of the Tenant; or
 - (iv) improvements, fixtures, machinery, chattels or equipment brought onto or installed in the Leased Premises by the Tenant or at the request of the Tenant,

provided however, that no tax, rate, duty, licence, levy, fee or cost levied by a Taxing Authority in respect of a period extending beyond the expiration or earlier termination of this Agreement (but subject to any over holding period) (including Taxes owing as a result of any decision of the Landlord to pay the commuted value thereof during the Term) will, insofar as such period extends beyond the Term hereof, be included in Taxes, and further provided that "Taxes" will for the purposes of this Agreement exclude all business taxes, capital taxes, large corporation taxes or any other personal income taxes imposed upon the Landlord other than as a result of this Agreement;

- (u) **"Taxing Authority"** means any school, municipal, regional, provincial, federal, parliamentary, or other governmental or statutory body, corporation or authority;

- (v) **“Telecommunications Charges”** means all charges for telephone, internet, cable and other similar utilities and services specifically provided to or made available to the Leased Premises during the Term; and
- (w) **“Term”** means either the initial Term or the Renewal Term, as the case may be.

1.2 **Interpretation.**

- (a) All headings employed in this Agreement are for convenience only and will not in any way constitute a part of or affect the meaning of any provision of this Agreement.
- (b) Time will be of the essence of this Agreement and every part hereof.
- (c) This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- (d) Words in this Agreement importing the singular, masculine or neuter will be construed as meaning the plural, feminine or body corporate or politic and vice versa wherever the context requires.
- (e) Unless otherwise specified, all references to “Sections” and “paragraphs” herein are references to the corresponding Sections and paragraphs of this Agreement.

2. **DEMISE; ACCEPTANCE “AS IS”**

2.1 **Demise.** Subject to the terms and conditions hereof, the Landlord does hereby demise and lease unto the Tenant:

- (a) that portion of the Building shown outlined in bold on Schedule B hereto; and
- (b) 50 square feet of space in the southwest corner of the ice arena contained in the Building (the **“Arena Space”**).

(together, the **“Leased Premises”**) to have and to hold for the Term. The Landlord hereby further grants to the Tenant a Lease of the Restaurant Assets for the duration of the Term and otherwise on the terms and conditions set forth in this Agreement.

2.2 **Acceptance.** The Tenant acknowledges and confirms that it has agreed to lease the Leased Premises and the Restaurant Assets after having examining them and confirmed that they are, as of the date of this Agreement, in a good state of repair and suitable for the Business. The Tenant accepts the Leased Premises and the Restaurant Assets under this Agreement entirely as they are as of the date hereof.

3. **USE OF LEASED PREMISES AND OTHER FACILITIES**

3.1 **Use of Leased Premises and Restaurant Assets.** The Tenant covenants to use the Leased Premises and the Restaurant Assets solely for the purpose of operating the Business. The Tenant will not, and will not permit any other person to use or occupy the Leased Premises or the Restaurant Assets or any part thereof for any illegal or unlawful purpose or for any business or purpose not specifically authorized by the Landlord in this Agreement or otherwise in writing in advance.

- 3.2 Use of Arena Space.** The Tenant will provide and install in the Arena Space a secure, lockable, opaque container (the “**Container**”) approved by the Director for the purpose of storing beer kegs and other alcohol associated with the Restaurant. The Tenant covenants to use the Arena Space solely for the purpose of storing the Container and beer and other alcohol required for the Business.

Without limiting the generality of the covenants set forth in Section 7, the Tenant will:

- (a) at all times during the Term, take all steps necessary to ensure that the Container is locked and secure from unauthorized opening and removal and to maintain the security of the Container;
- (b) notify the Landlord immediately of any unauthorized breach of the Container;
- (c) immediately and completely repair any damage to the Container that may compromise the security thereof; and
- (d) take all other steps deemed by the Director to be necessary or advisable to ensure that the Container and its contents remain secure at all times during the Term.

- 3.3 Garbage Bins.** The Tenant may, in common with the Landlord and others designated by the Landlord from time to time, use the large garbage bins maintained by the Landlord and located outside the rear entry to the Building for the purpose of disposing of garbage relating to the operation of the Business on the Leased Premises.

- 3.4 Other Facilities.** Except as specifically provided, nothing herein gives to the Tenant any interest or right to use any other facility located on the Lands, except as the same is available to, and on the same terms as, the general public.

4. TERM

- 4.1 Initial Term.** The Landlord and the Tenant agree that, subject to the terms and conditions hereof, the initial Term of this Agreement will be three (3) years (the “**Initial Term**”), commencing on the Commencement Date and ending on the 31st day of August, 2012, provided that it is a condition precedent to the commencement of any term hereof, and this Agreement will be of no force or effect unless and until, the purchase by the Landlord of the Lands is substantially complete, as determined by the Landlord.

- 4.2 Option to Renew.** The Landlord covenants with the Tenant that if:

- (a) no later than six (6) months prior to the last day of the Initial Term, the Tenant gives to the Landlord written notice that the Tenant wishes to renew the Term; and
- (b) the Tenant has not, on two (2) or more occasions during the Initial Term, been in default of the terms of this Agreement, and is not then in material breach of any provision of this Agreement.

the Landlord will grant to the Tenant a renewal of the Term for a period of three (3) years (the "**Renewal Term**") on the same terms and conditions as set forth in this Agreement, save and except the rate of Basic Rent and this option to renew, neither of which will apply to any Renewal Term.

The basic rent payable during the Renewal Term will be equal to fair market value, as determined by increasing the Basic Rent payable for the Initial Term by the same percentage as the increase in the Consumer Price Index for Vancouver over the preceding twelve (12) month period, provided that in no case will the basic rent payable for the Renewal Term be less than the Basic Rent payable for the Initial Term. Until the basic rent for the Renewal Term has been determined as provided in this Section, the Tenant will continue to pay Rent on a monthly basis, including Basic Rent in the amount payable in the last month of the Initial Term. Upon final determination of the basic rental rate for the Renewal Term, the Tenant will pay the Landlord the difference between Rent paid and Rent owing for the Renewal Term, if any, retroactive to the commencement of the Renewal Term.

5. RENT

5.1 Basic Rent. Subject to the provisions of this Agreement, the Tenant will pay to the Landlord as rent on the Commencement Date and on the first day of each and every month of the Initial Term thereafter, the sum of:

- (a) \$3,800, per month in lawful money of Canada, in year one (1);
- (b) \$3,900, per month in year two (2); and
- (c) \$4,000 per month in year three (3)

of the Initial Term, aggregating \$45,600 and \$46,800 and \$48,000 respectively per annum (the "**Basic Rent**"), plus applicable Goods and Services Taxes. At the discretion of the Landlord, the tenant will be granted a soft opening period of six (6) weeks prior to the Commencement Date at no rental charge, to allow for the establishment of the business.

5.2 Additional Rent. In addition to Basic Rent, the Tenant will pay Additional Rent as set forth in Section 7.1. The Landlord and the Tenant hereby acknowledge and agree that, except as set forth in Sections 5.3 and 9.2, all expenses, costs, payments and outgoings incurred in respect of the Leased Premises or any improvements thereof or therein, or for any other matter or thing affecting the Leased Premises or any part thereof during the Term, will be borne solely by the Tenant and, unless expressly stipulated to the contrary herein, that Basic Rent will be net to the Landlord and free of any abatement, set-off or deduction of real property taxes, charges, rates, assessments, expenses, costs, payments or outgoings of any nature arising from or related to the Leased Premises or any improvements thereon.

5.3 Costs Included in Basic Rent. It is agreed that Basic Rent will include all common area costs and other fees and expenses relating to the maintenance and general operation of the Building and the Lands as a whole, including all charges for electricity, heat, light, power, gas, oil, water, sewer and other utilities and services provided to the Building as a whole, but excluding Telecommunications Charges and costs relating to covenants to be performed by the Tenant hereunder.

- 5.4 Interest.** When the Rent is in arrears, the amount in arrears will bear interest at a rate of 2% per annum in excess of the prime rate established by The Royal Bank of Canada from time to time as applicable to commercial loans in the Municipality of Delta, calculated monthly not in advance from the date due until paid, irrespective of whether the Landlord has demanded payment. The Landlord will have all the remedies for collection of such interest, if unpaid after demand, as in the case of Rent in arrears.

Notwithstanding the foregoing, if the Tenant fails to:

- (a) pay when due any Telecommunications Charges, Goods and Services Taxes or other Taxes that the Tenant is required to pay directly to the relevant utility provider or Taxing Authority, as applicable, the Tenant will be responsible for and will pay to such utility provider or Taxing Authority interest on the amount outstanding at the percentage rate or rates established by such utility provider or Taxing Authority; or
- (b) pay promptly any Telecommunications Charges, Goods and Services Taxes or other Taxes that the Landlord is required to pay directly to a utility provider or Taxing Authority, as applicable, if the Landlord has in respect of such Telecommunications Charges, Goods and Services Taxes or Taxes delivered to the Tenant in a timely manner an invoice in respect thereof, the Tenant will be responsible for and will pay to the Landlord, on demand, interest on the amount outstanding at the percentage rate or rates established by the relevant utility provider or Taxing Authority.

6. TENANT ASSETS

- 6.1 Tenant Assets.** Subject to Section 7.3(f), the Tenant may, in its sole discretion, acquire during the Term and install in the Leased Premises such equipment, materials, furniture, decorations and other items as the Tenant deems necessary to carry on the Business (collectively, including the Container, the "**Tenant Assets**"). No original or replacement Restaurant Asset will at any time during the Term be or become a Tenant Asset. All Tenant Assets will be and remain the sole property of the Tenant at all times during the Term.

- 6.2 List of Tenant Assets.** The Tenant will at all times maintain a comprehensive list of the Tenant Assets (the "**Tenant Asset List**") and provide a copy of the same to the Landlord at least once every six (6) months during the Term and otherwise upon request by the Landlord.

7. TENANT'S COVENANTS

- 7.1 Covenants to Pay.** The Tenant covenants to pay:

- (a) to the Landlord, all Rent owing hereunder as set forth in this Agreement;
- (b) to the relevant Taxing Authority or utility provider or the Landlord, as applicable, all Taxes, Good and Services Taxes and Telecommunications Charges immediately as they become due; and
- (c) to the relevant good or service provider or to the Landlord, as applicable, all

costs relating to insurance as required hereby, and maintenance (except as set out in Section 5.3 or Section 10.1), and all charges, impositions, costs and expenses of every nature and kind relating to any or all of the Leased Premises and/or any improvement thereon (collectively, together with paragraph (b) above, "**Additional Rent**") and, if at any time for any reason during the Term the Landlord pays on behalf of the Tenant any charges, impositions, costs or expenses comprising Additional Rent, a sum equal to the amount so paid will be included in Direct Costs and paid by the Tenant to the Landlord immediately upon demand.

The certificate of an independent, third party chartered accountant appointed by the Landlord will, in the event of dispute, be conclusive and binding on the Landlord and the Tenant as to any amount payable under this Section and the cost of obtaining such certificate will be included in Direct Costs and will be borne by the Tenant if such dispute is resolved in favour of the Landlord and will be borne by the Landlord if such dispute is resolved in favour of the Tenant.

7.2 Covenants to Repair and Maintain. The Tenant covenants and agrees with the Landlord:

- (a) subject to Section 9.1, to, at its sole cost, repair, keep and maintain the Leased Premises and all fixtures, facilities, machinery, equipment, fittings and improvements therein or thereto (including without limitation all Restaurant Assets and Tenant Assets) in good working order and first class condition at all times during the Term, including periodic painting and decoration as reasonably required by the Landlord or the Director, and to make all needed maintenance, repairs and replacements with due diligence and dispatch (and, in the case of replacements, with goods similar in quality, standard, design and colour), reasonable wear and tear only excepted, and otherwise as required by the Landlord from time to time;
- (b) that, notwithstanding Section 9.1, if any part of the Restaurant Assets, the Leased Premises or any fixtures, fittings or improvements thereon or thereto get out of repair or become stopped up, unusable, damaged or destroyed through any act or omission of the Tenant or any of its servants, agents, employees, customers, officers or invitees, the expense of all necessary repairs, replacements or alterations will be borne by the Tenant and the Tenant will, at the option of the Landlord, perform or cause to be performed all such repairs, replacements and alterations;
- (c) not to cause or permit the Leased Premises or any part thereof to become unsightly or hazardous and not to do or suffer any waste or damage, disfiguration or injury to the Leased Premises or the fixtures, fittings and improvements thereto (including the Restaurant Assets and the Tenant Assets);
- (d) to at all times keep the Leased Premises in a tidy, clean and sanitary condition and to observe all rules, regulations, and directions of building inspectors and health, fire or other officers, and agencies or departments of the Landlord relating to cleanliness, sanitation, garbage, and maintenance of the Leased Premises;
- (e) not make to, or erect on the Leased Premises, any major alteration, addition, decoration, installation or improvement (including, for example, any alteration or

improvement affecting the structure or base-building systems of the Building) without in each instance submitting drawings and specifications to the Landlord and obtaining the Landlord's prior written consent (such consent to be at the absolute discretion of the Landlord) and the approval of the Landlord's mechanical, electrical and structural consultants and architects, as may be required by the Landlord from time to time, all at the sole expense of the Tenant, and the Tenant agrees that any work performed in or on the Leased Premises by contractors engaged by the Tenant will be subject to all conditions that the Landlord may impose, and the Tenant further covenants to prosecute such work to completion with reasonable diligence, provided that the Landlord may at its option require that the Landlord's contractors be engaged for any mechanical or electrical work; and

- (f) not to suffer or permit during the Term any builder's lien or other lien for work, labour, services or material ordered by the Tenant, or for the cost of which the Tenant may be in any way obligated, or any conditional sales agreement or chattel mortgage, to attach to the Lands or any improvement thereon and that whenever and so often as any such lien or claim therefore or conditional sales agreement or chattel mortgage will be registered, the Tenant will immediately discharge the same.

7.3 Environmental Covenants. The Tenant covenants and agrees with the Landlord:

- (a) to use and permit the use of the Leased Premises only in strict compliance with all applicable Environmental Laws;
- (b) not to, and not to permit any person to bring, store, manufacture, dispose, treat, generate, use, transport, remediate or release Contaminants on or from the Leased Premises without the prior written consent of the Landlord;
- (c) to promptly remove all Contaminants from the Leased Premises in a manner that conforms to applicable Environmental Laws; and
- (d) to promptly notify the Landlord in writing of any release of a Contaminant or any other occurrence or condition at the Leased Premises or any adjacent property that could contaminate the Lands or the Building or subject the Landlord or the Tenant to any fines, penalties, orders, investigations or proceedings under Environmental Laws;

The Tenant hereby authorizes the Landlord to make enquiries from time to time of any governmental authority with respect to the compliance by the Tenant with Environmental Laws, and the Tenant agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the attainment of such information.

7.4 General Covenants. The Tenant covenants and agrees with the Landlord:

- (a) to, at all times during the Term, operate the Business in substantially the same manner as it was operated and provided prior to the Commencement Date and, in the case of the Business, within the operating hours of the other facilities contained in the Building;

- (b) to comply at its own expense with all provisions of applicable law including, without limitation, federal and provincial legislative enactments, building by-laws and all other governmental or municipal regulations pertaining to the operation of the Business and the use and occupation by the Tenant of the Leased Premises, the condition of all leasehold improvements, furniture and equipment installed in the Leased Premises, including the Restaurant Assets, the Tenant Assets, and the making of any repairs, replacements, alterations, additions, or improvements of or to the Leased Premises;
- (c) to apply for and obtain those licenses, permits, approvals and authorizations that are required by any municipal, provincial or federal bylaw, statute or regulation to carry on the Business from the Leased Premises, including all necessary Delta business licenses, liquor licenses and food service permits, or to make any replacements, alterations, additions, changes, substitutions, or improvements to the Leased Premises proposed by the Tenant and approved by the Landlord in accordance with this Agreement;
- (d) to abide by and conform to all reasonable rules and regulations adopted or prescribed by the Landlord and communicated in writing to the Tenant from time to time during the Term of this Agreement relating to the operation and management of the Building and the use and occupation of the Leased Premises by the Tenant;
- (e) not to install or use any equipment in the Leased Premises that will exceed or overload the capacity of any utility facility therein;
- (f) to notify the Landlord immediately if the Tenant becomes aware of any fire or accident in the Leased Premises or any damage to or malfunctioning of any heating, electrical, plumbing, mechanical or ventilating system of the Building or any damage to the foundation, structure, roof, exterior walls or supporting walls of the Building;
- (g) to, at its own expense, procure and carry at all times during the Term full workers' compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any work related to the Business or the Leased Premises;
- (h) not to employ more employees in the Leased Premises than are from time to time authorized or permitted by the relevant governmental acts, statutes, regulations and other authorities having regard to washroom, lunchroom and other facilities presently available in or to the Leased Premises and having regard also to any other relevant working conditions;
- (i) to immediately notify the Landlord of any dispute involving third parties which may arise in connection with obtaining and maintaining the workers' compensation coverage required under this Agreement if such dispute results in the requisite coverage not being in place, and the Tenant will take all reasonable steps to ensure resolution of the dispute forthwith. The Tenant will ensure that no amount of the said workers' compensation coverage is left unpaid so as to create a lien on the Leased Premises or any part thereof; and

- (j) if required by the Landlord, to register this Agreement forthwith at the Landlord's expense, in the New Westminster Land Title Office.

7.5 Covenants regarding Food and Service. In addition to the foregoing, the Tenant covenants and agrees with the Landlord to provide quality food products and excellent customer service in the operation of the Business. To assist in measuring customer satisfaction, the Landlord will document and make known to the Tenant, all complaints received by it and pertaining to the operation of the Business, both written and verbal (each, a "**Customer Complaint**"). Should the Landlord receive five *bona fide* written Customer Complaints regarding the Business per month in two consecutive months of the Term, and the circumstances giving rise to such Customer Complaints are not rectified by the Tenant to the satisfaction of the Landlord within a reasonable period of time, the Tenant will be deemed to be in breach of this Agreement and the Landlord may, in its sole discretion, terminate the Agreement in accordance with the provisions set forth in Section 13.

8. SIGNAGE

The Tenant may erect signs on the Leased Premises as necessary for the proper conduct of the Business, provided in all cases that the signs comply with the Sign Bylaw of The Corporation of Delta and are approved in advance by the Landlord, acting reasonably.

9. LANDLORD'S COVENANTS

9.1 Landlord's Covenant to Repair. The Landlord will not be obliged to furnish any services or facilities or to make repairs or alterations in or to the Leased Premises or any portion thereof, the Tenant hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Leased Premises, the Restaurant Assets and the Tenant Assets, provided that the Landlord will, at its own cost and expense, make or cause to be made to the Leased Premises and the Restaurant Assets all necessary, major repairs and replacements, including without limitation all repairs to the Building of a structural or capital nature (for example, all requisite repairs to and replacements of the roof and roof membrane of, and to correct inherent structural defects in, the Building) and all requisite major repairs to, and any necessary replacement of, the HVAC system of the Building.

9.2 Peaceable Possession and Enjoyment. The Landlord covenants with the Tenant that, provided the Tenant pays all Rent hereby reserved, and observes and performs the covenants and agreements herein contained and on the part of the Tenant to be observed and performed, the Tenant will and may peaceably possess and enjoy the Leased Premises for the Term hereby granted without interruption or disturbance from the Landlord, or any persons lawfully claiming by, through or under the Landlord, provided however that nothing in this Section will limit the rights of access reserved by the Landlord hereunder.

10. LANDLORD ACCESS TO LEASED PREMISES

10.1 Access to Leased Premises. If the Tenant fails to perform or cause to be performed each and every covenant, agreement and obligation of the Tenant hereunder, the Landlord and its agents, employees and contractors, with material and equipment, will have the right (but will not be obligated) at any and all times to enter on or in the Leased

Premises for the purpose of making repairs or alterations to the Leased Premises or the Restaurant Assets or any part thereof, preserving any of the same from injury or damage, or otherwise performing any or all such covenants, agreements and obligations of the Tenant, and no such entry or work will constitute an eviction of the Tenant in whole or in part and the Rent reserved will not abate while such work is being carried out. All reasonable payments, expenses, costs and levies incurred or paid by the Landlord pursuant to this Section will be included in Direct Costs payable to the Landlord immediately upon demand.

The Tenant will at all reasonable times permit the Landlord and its officers, employees and agents to enter the Leased Premises for the purpose of examining the state of repair of the Leased Premises.

10.2 Landlord May Show Leased Premises. The Landlord and its agents will have the right at all reasonable times to enter the Leased Premises to show them to prospective purchasers, tenants or mortgagees and, during the six months prior to the expiration of the Term, may place on the Leased Premises the usual notices to let or sell, which notices the Tenant will permit to remain thereon without molestation.

10.3 Landlord May Enter Forcibly. If the Tenant is not personally present to open and permit entry to the Leased Premises at any time (upon at least 48 hours prior written notice or without such notice in the event of an emergency) when for any reason an entry therein is reasonably necessary, the Landlord or its agents, employees or contractors may enter the Leased Premises by a master key or forcibly without rendering the Landlord or such agents, employees or contractors liable therefore and without in any manner affecting the obligations or covenants of the Tenant herein, and the Tenant will not be entitled to compensation for any inconvenience, nuisance or discomfort or for any damage or injury to property or persons in the Leased Premises occasioned by any such entry or by any work done in connection with such entry.

11. INSURANCE

11.1 Insurance. The Tenant covenants to effect, maintain and keep in force with one or more companies duly authorized to carry on business within Canada and approved by the Landlord, at all times during the Term and at its sole expense, insurance in respect of its use and occupation of the Leased Premises and all contents of the Leased Premises, including without limitation Tenant Assets and other fittings, machinery, goods, equipment and improvements of the Tenant, for insurable risks against which and in amounts for which a prudent owner would protect itself or as the Landlord may from time to time reasonably require, including, without limitation, the following:

- (a) comprehensive general liability insurance against all claims for personal injury, death, or property damage or loss arising out of the use and occupation by the Tenant or the Leased Premises or the service of liquor therein, and covering the contractual obligations of the Tenant hereunder, with minimum limits of liability of \$5 million per occurrence and replacement value for property damage, or in such greater amounts as may be required by the Landlord from time to time, acting reasonably;
- (b) non-owned automobile liability insurance with minimum coverage of \$2 million per occurrence;

- (c) tenant's legal liability insurance with minimum coverage of \$1 million;
- (d) replacement value contents insurance for all Tenant Assets; and
- (e) such other insurances as the Landlord may from time to time deem necessary or advisable.

Any and all policies of insurance referred to in this Section will:

- (a) be written in the name of the Tenant and the Landlord included as the additional insured under the policy;
- (b) contain a cross liability clause and a waiver of subrogation clause in favour of the Landlord;
- (c) contain a clause to the effect that any release from liability entered into by the Tenant prior to any loss will not affect the right of the Landlord to recover;
- (d) contain a provision or bear an endorsement that the insurer will not cancel such policy without first giving the Landlord at least 30 days' notice in writing of its intention to cancel; and
- (e) The insurers have received a copy of this Lease and are fully aware of the contractual obligations of the Tenant.

The Tenant will furnish the Landlord with certificates of insurance in respect of all such policies prior to the Commencement Date and from time to time as required to ensure that the Landlord has full, current copies of all insurance applicable to the Leased Premises, the Restaurant Assets and the Tenant Assets at all times during the Term. The Tenant will provide written evidence of the continuation of such policies not less than ten (10) days prior to their expected expiry dates. The cost or premium for each and every such policy will be paid by the Tenant in a timely manner and evidence of such payment will be provided to the Landlord upon request. The Tenant agrees that if the Tenant fails to take out or keep in force such insurance the Landlord will have the right, but will not be obligated, to do so, and to pay the premiums therefore, and in such event the amount paid as premiums will be included as Direct Costs and paid to the Landlord immediately on demand.

11.2 Covenants in Respect of Insurance. The Tenant covenants not to do or omit or permit to be done or omitted upon the Leased Premises or otherwise pursuant to this Agreement anything whereby any policy of insurance effected by the Tenant or the Landlord pursuant to this Agreement may be invalidated, or the coverage thereunder reduced, and will immediately upon notice remedy the condition giving rise to the invalidation or threatened invalidation or reduction in coverage and in default the Landlord may at its option either cancel this Agreement or enter the Leased Premises and remedy the condition, and the costs occasioned thereby will be included in Direct Costs and paid to the Landlord immediately on demand.

12. DAMAGE OR DESTRUCTION

Subject to this Section, if the Leased Premises are materially damaged or destroyed by fire or other casualty, the Landlord may, at its sole option, either:

- (a) repair such damage with reasonable diligence, provided that the cost of all repairs and replacements of Tenant Assets and of all alterations, additions, decorations and improvements made to the Leased Premises by the Tenant will be borne by the Tenant; or
- (b) terminate this Agreement by giving the Tenant thirty (30) days notice, whereupon the Tenant will vacate the Leased Premises and surrender them to the Landlord in accordance with the provisions of this Agreement.

In either case, if the Leased Premises or any part thereof is untenable or unusable during the period of repair or notice, as the case may be, the Tenant's liability for Rent will abate in respect of the whole or any relevant portion of the Leased Premises as of the day following the fire or other casualty, for so long as such portion or whole remains substantially untenable or unusable.

13. DEFAULT OF TENANT

13.1 Events of Default and Right of Repossession by Landlord. Notwithstanding any other provision of this Agreement, if and whenever:

- (a) the Rent hereby reserved or any part thereof is not paid by the Tenant on the day appointed, whether lawfully demanded by the Landlord or not; or
- (b) the Tenant breaches or fails to keep, observe or perform any of its covenants, agreements, provisos and conditions hereunder,

the Landlord may in every such case re-enter into and upon the Leased Premises or any part thereof in the name of the whole to have again, repossess and enjoy as of its former estate, provided however that the Landlord will not at any time have the right to re-enter and forfeit this Agreement by reason of the Tenant's default under paragraph (a) or (b) above, unless and until the Landlord has given to the Tenant at least ten (10) days' written notice of its intention to do so (or, in the case of (b) above, such longer period as may be reasonable in the circumstances, provided the Tenant has commenced to remedy such default and is diligently pursuing completion of the same), which notice will set forth the default complained of and the Tenant will have the right during such ten (10) days to cure any such default.

13.2 Unauthorized Use; Bankruptcy/Winding-Up. In case, without the written consent of the Landlord, the Leased Premises or any part thereof will be used by any person other than the Tenant or for any other purpose than that for which the same were leased or in case the Term or any of the goods and chattels of the Tenant is at any time seized in execution or attachment by a creditor of the Tenant or if the Tenant will make any assignment for the benefit of creditors or any bulk sale or become bankrupt or insolvent or take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors, or, if any order will be made for the winding-up of the Tenant, or other termination of the corporate existence of the Tenant, then in any such case this Agreement will at the option of the Landlord cease and terminate and the Term will immediately become forfeited and void and the Landlord may re-enter and take possession of the Leased Premises as though the Tenant or other occupant or occupants of the Leased Premises was or were holding over after the expiration of the Term without any right whatever and the provisions of Section 14 will not apply.

- 13.3 Right of Re-Entry.** The Tenant covenants and agrees that on the Landlord's becoming entitled to re-enter upon the Leased Premises under any of the provisions of this Agreement, the Landlord, in addition to all other rights, will have the right to enter the Leased Premises as the agent of the Tenant either by force or otherwise, without being liable to any action in respect thereof, or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the Landlord for all actions, proceedings, claims or demands whatsoever for or on account of or in respect of any forcible entry or any loss or damage sustained by the Tenant in connection therewith. Upon re-entry pursuant to this Section, the Landlord may relet the Leased Premises as the agent of the Tenant and receive rent therefore, and, to the extent that Rent is owing to the Landlord hereunder, may take possession of any Tenant Assets or other property of the Tenant on the Leased Premises as the agent of the Tenant and sell the same at public or private sale without notice and may apply the proceeds of such sale and any rent derived from reletting the Leased Premises on account of the Rent owing under this Agreement, and the Tenant will be liable to the Landlord for the deficiency, if any. The Tenant hereby waives and renounces the benefit of any present or future statute taking away or limiting the Landlord's rights pursuant to this Section and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term will be exempt from levy by distress for Rent in arrears.
- 13.4 Right to Terminate.** If and whenever the Landlord becomes entitled to re-enter upon the Leased Premises under any provision of this Agreement except Section 13.2, the Landlord, in addition to all other rights and remedies, will have the right to terminate this Agreement by giving to the Tenant or by leaving upon the Leased Premises notice in writing of such termination. Thereupon, this Agreement and the Term will terminate, and the Tenant will immediately deliver up possession of the Leased Premises to the Landlord in accordance with the provisions hereof.
- 13.5 Rent and Costs Payable on Re-Entry or Termination.** If the Landlord re-enters the Leased Premises or if this Agreement is terminated by reason of any event set out in Section 13.1 or Section 13.2 above:
- (a) the provisions of this Agreement that relate to the consequences of termination, and the provisions of this Agreement as they apply with respect to acts, events, and omissions which occurred prior to the termination, will all survive such termination;
 - (b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Agreement, Rent for the current month and the next ensuing three months will immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
 - (c) the Tenant or person then controlling the affairs of the Tenant will pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Leased Premises in good order, and the expenses of repairing the Leased Premises and preparing them for re-letting.

- 13.6 Sale of Tenant Property.** The Tenant will not sell, dispose of, or remove any of the Tenant Assets or other goods or chattels of the Tenant from or out of the Leased Premises during the Term without the prior consent of the Landlord, except in the normal course of the Business or unless the Tenant is substituting new goods or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes.

14. SURRENDER OF LEASED PREMISES

At the end or sooner determination of the Term, the Tenant will surrender and yield up to the Landlord the Leased Premises and the Restaurant Assets in good repair and in a neat and clean condition, free and clear of all waste material, debris and rubbish, all to the reasonable satisfaction of the Landlord, reasonable wear and tear excepted. At the same time the Tenant will surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Building, the Leased Premises or any part thereof and will inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Leased Premises.

All alterations, additions, decorations and improvements made by the Tenant to the Leased Premises are the property of the Landlord and will not be removed therefrom except:

- (a) the Tenant may, if not in default, remove the Tenant Assets listed on the Tenant Asset List upon the expiration or earlier termination of the Term;
- (b) the Tenant will, at the end or sooner determination of the Term, remove such of the Tenant Assets as the Landlord may require;
- (c) in the case of every such removal, the Tenant will repair any damage to the Leased Premises caused by the installation or removal of any such Tenant Asset, and the cost of all such removals and repairs will be borne by the Tenant; and
- (d) as otherwise permitted herein or by the Landlord in writing in advance.

15. OVERHOLDING

If the Tenant continues to occupy the Leased Premises after the expiration of this Agreement without any further written agreement, the Tenant will be a monthly tenant on the terms and conditions herein set out except as to length of tenancy and except that the Basic Rent will be fair market rent as agreed by the parties hereto or, failing such agreement, an amount per month equal to 120 per cent of the monthly installments paid on account of Basic Rent during the final year of the Initial Term or the Renewal Term, whichever has more recently expired.

16. INDEMNITY

The Tenant will indemnify and save harmless the Landlord and each of its elected officials, directors, servants, agents and employees (collectively, the "**Landlord Group**") from and against any and all actions, claims, costs, liabilities, expenses, damages, demands, payments, suits, recoveries, judgments, losses and fines, including without

limitation legal fees, of every nature and description brought or recovered against, or incurred or suffered by, the Landlord Group or any of them (collectively, the "**Losses**"), arising out of the conduct of the Business, or any occurrence on the Leased Premises during the Term, or the use or occupancy of the Leased Premises and/or the Restaurant Assets and/or any other facilities on the Lands by the Tenant or any of its agents, employees, licensees, subcontractors or persons invited onto the Leased Premises by the Tenant, its employees, servants, volunteers or agents (collectively, the "**Tenant Group**"), and occasioned wholly or in part by any inadequacy of insurance maintained by the Tenant hereunder or any act or omission or any breach or violation of any of the Tenant's obligations under this Agreement by any member of the Tenant Group, provided, however, that the Tenant will not be required to indemnify or save harmless the Landlord Group or any of them if, but only to the extent that, any such Losses are the direct result of the negligence of any member of the Landlord Group.

The provisions of this Section 16 will survive any expiration or termination of this Agreement.

17. GENERAL

- 17.1 Remedies Cumulative.** The Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Agreement or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or the general law.
- 17.2 Powers of Landlord.** Notwithstanding any other provision hereof, this Agreement does not in any way affect or limit the discretion, rights, duties or powers of the Landlord under any statute, bylaw or other enactment.
- 17.3 Non-Waiver.** No condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any covenant, provision or condition herein contained will operate as a waiver of the Landlord's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, and no waiver will be inferred from or implied by anything done (including the acceptance of Rent) or omitted by the Landlord save only express waiver in writing.
- 17.4 Assignment by Tenant.** The Tenant may not assign this Agreement or sublet the Leased Premises or any part thereof without the prior written consent of the Landlord (such consent to be at the absolute discretion of the Landlord).

Notwithstanding any such assignment or sublet, the Tenant will remain bound to the Landlord for the fulfilment of all the terms, covenants, conditions, and agreements herein contained. Any consent by the Landlord to any assignment or subletting will not constitute a waiver of the requirement for consent by the Landlord to any subsequent assignment or subletting by either the Tenant or any assignee or sub lessee.

- 17.5 Estoppel Certificate.** At any time and from time to time upon not less than ten (10) days prior notice, the Tenant will execute and deliver to the Landlord or such other person or corporation that the Landlord directs, a written statement certifying that this

Agreement is in full force and effect and unmodified (or if modified, specifying the modifications), the amount of the annual rental being paid hereunder, whether or not any prepayments have been made hereunder, and if so details thereof, the dates to which other levies or charges hereunder have been paid, and whether or not there is any existing default on the part of the Landlord of which the Tenant has notice.

17.6 Notice and Payments. All notices, payments and other documents to be given or delivered pursuant to this Agreement will be in writing and addressed to the relevant party at its address as set out on the first page hereof or to such other address within the Province of British Columbia as such party may direct from time to time in writing, and such notices shall be delivered:

- (a) if to the Tenant, to the attention of Mr. Muni Rattan; and
- (b) if to the Landlord, to the attention of the Director of Parks, Recreation and Culture.

Any notice or other document to be given or delivered pursuant to this Agreement will be sufficiently given or delivered if delivered to the relevant party at such address. Any notice or other document will be deemed to have been given and received, if delivered, when delivered, and if mailed, on the third business day following the mailing thereof in any government post office in the Province of British Columbia, provided that if mailed, and after the time of mailing there is any slowdown, strike or labour dispute that might affect the delivery of such notice then such notice will be effective only if actually delivered.

17.7 No Partnership. Nothing herein will be construed to constitute either party as the agent, joint venturer or partner of the other or give either party any authority or power to bind the other in any way.

17.8 Successors. All rights and liabilities herein given to, or imposed upon, the parties will extend to and bind their respective heirs, legal representatives, successors and approved assigns, as applicable.

17.9 Severability. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable, or illegal, that term, covenant or condition:

- (a) will be deemed to be independent of the remainder of this Agreement and severable and divisible herefrom;
- (b) will not affect, impair or invalidate the remainder of the Agreement or any part hereof; and
- (c) will continue to be applicable to and enforceable to the fullest extent permitted by law against any person or circumstance other than those as to which it has been held or rendered invalid, unenforceable or illegal.

17.10 Further Assurances. Each of the parties will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants, agreements and provisions of this Agreement.

17.11 Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the Landlord and the Tenant in respect of the subject matter hereof and will not be modified except by subsequent agreement in writing of equal formality executed by both parties. This Agreement may be executed in several counterparts, each of which, when so executed will constitute but one and the same document.

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

THE CORPORATION OF DELTA

Per: _____
Lois E. Jackson, Mayor

Per: _____
Claudia Jesson, A/ Municipal Clerk

SIGNED, SEALED AND DELIVERED by)
MUNI RATTAN in the presence of:)

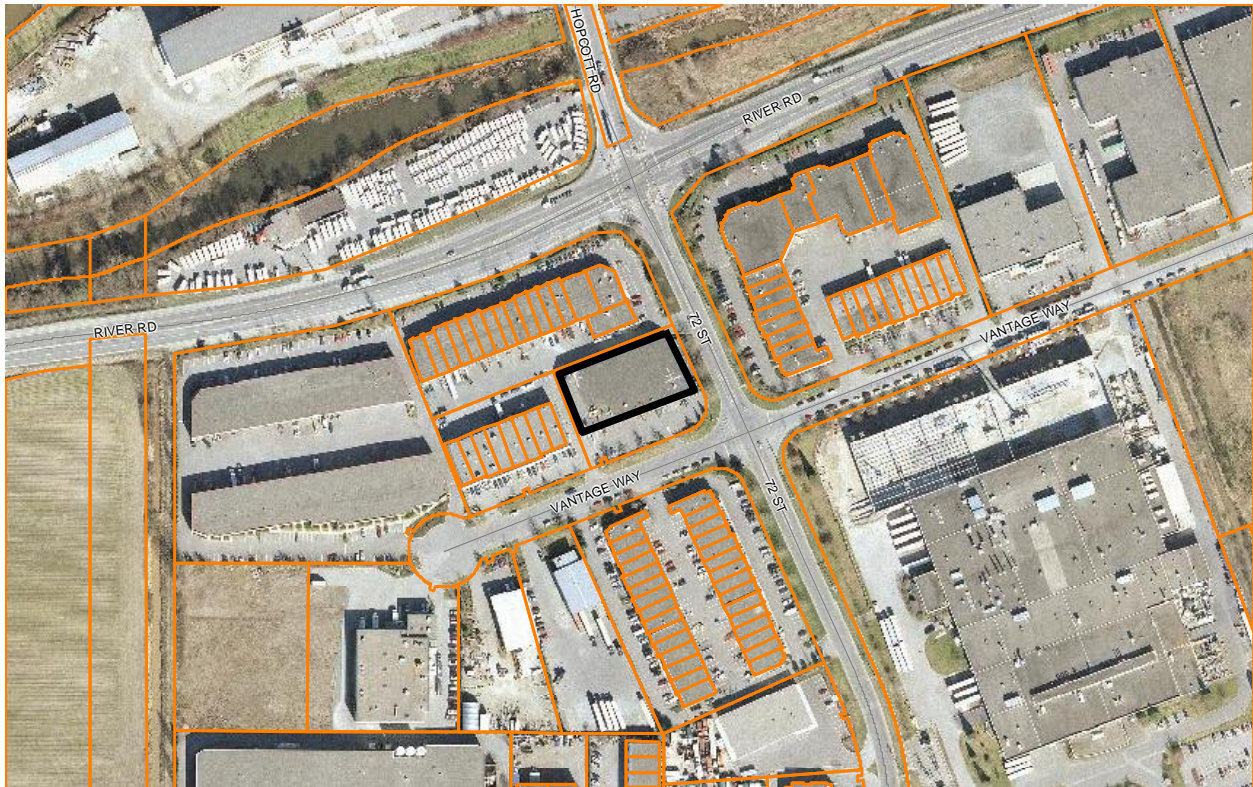
_____))
Witness)

_____))
Address)

_____))
Occupation)

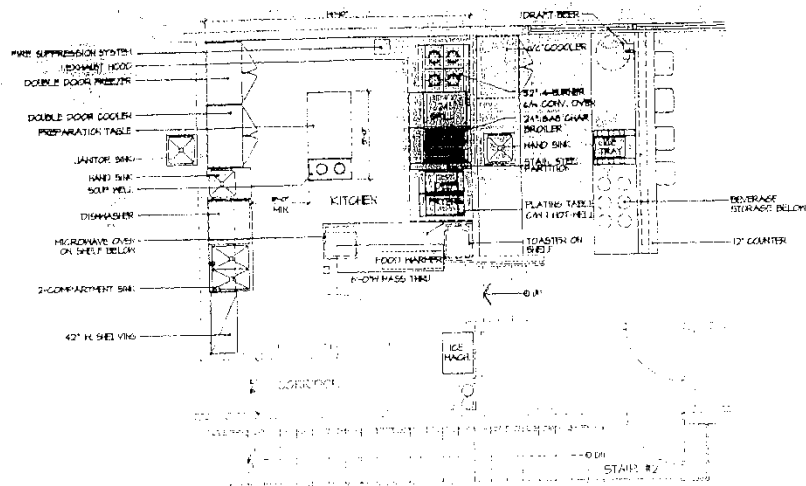
MUNI RATTAN

SCHEDULE A
THE BUILDING

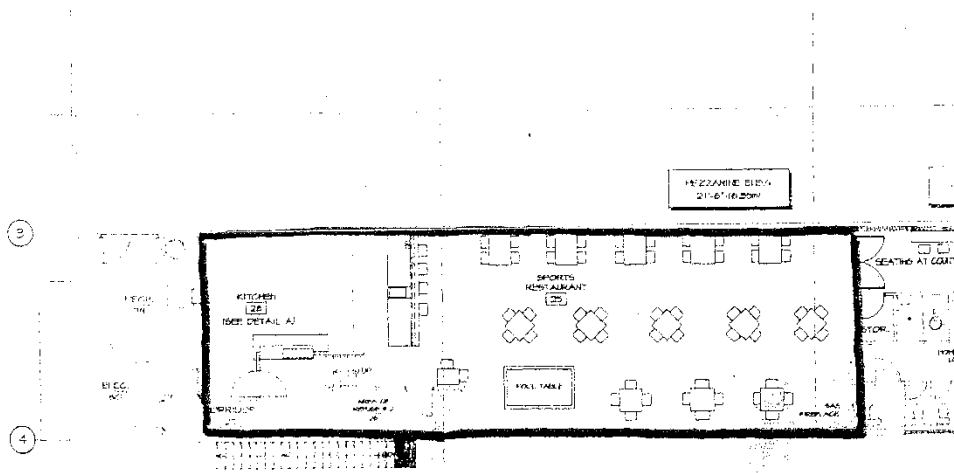


SCHEDULE B

LEASED PREMISES



(A) KITCHEN / BAR PROPOBAL DETAIL
SCALE 1/4" = 1'-0" JUN 1996



(C) MEZZANINE PLAN
SCALE 1/8" = 1'-0" JUN 1996