

Food Services Vehicle Agreement/License of Premises

DRAFT REV. 4

THIS AGREEMENT ("Agreement") made this ** day of *****, *****, by and between

The Corporation of the Town of Fort Frances,
a company incorporated under the laws of the Province of Ontario,

("Licensor")

-and-

1930709 Ontario Inc.
a company incorporated under the laws of The Province of Ontario.

("Licensee"),

WHEREAS the Licensor, The Corporation of the Town of Fort Frances is the owner of the premises known as the Sorting Gap Marina ("Marina") located at 1101 Front Street, Fort Frances, ON;

AND WHEREAS The Licensee, 1930709 Ontario Inc., operates a food services vehicle, also known as a "food truck", possesses a current license to do so from the municipality and wishes to Operate it's food truck at the Marina.

WITNESSETH: That for and in consideration of the mutual promises and subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee the right and licence to install, maintain and operate, in accordance with the provisions hereinafter set forth, a food service vehicle and restaurant patio ("Food Service Vehicle"), on a portion of those premises commonly known as The Sorting Gap Marina, which premises are owned by the Licensor. Licensor and Licensee acknowledge and agree that Licensee shall have the right to exercise its rights contained herein,

1. Term

The Licensee may operate on the Licensed Premises up to October 15th of the year of the execution of this Agreement.

After October 15th the Licensor may at its sole discretion grant permission to the Licensee to operate the Food Services Vehicle. Such permission, if given will be granted in writing. Further, the Licensor shall have the authority to give such permission and to withdraw such permission based on changing conditions. The decision of whether to allow operations to occur will be made at the sole discretion of the Licensor.

2. Location

The Licence granted under this Agreement shall apply with respect only to the Marina.

3. Payments

Commencing on the date on which the Food Service Vehicle opens for business the Licensee shall pay to Licensor throughout the Initial Term as license fees ("Licence Fees") the amount of \$1.00 per year, payable in advance.

4. Use and Occupancy

Licensee shall have the right to use and occupy approximately one thousand (1000) square feet located behind the Marina building on the Southeasterly portion of the Shevlin Wood Yard ("Licensed Location") as shown outlined in red on Schedule "A". Licensee shall have the right to use the Licensed Location only for the purposes of operating a Food Service Vehicle and restaurant patio and for no other purpose. Any solicitation of customers shall be done in a professional and courteous manner. The Licensee shall not operate the Food Service Vehicle in any location other than the Licensed Location without first obtaining the written consent of the Licensor, which consent may be unreasonably withheld.

The Licensee and the Licensor acknowledge and agree that the Licensee shall have the right to exercise its rights contained herein subject to and subordinate to the provisions of a lease that will be granted by the Licensor to a third party for the operation of a Marina at or near the Licensed Location and, its employees and/or agents shall not do or fail to do anything in or at the Licensed Location which would interfere with the operation of the Marina. Licensor may, from time to time, give Licensee notice of any act or omission by Licensee, its employees or agents that is, would or could interfere with the operation of the Marina at or near the Licensed Location. Upon Licensee's receipt of notice, Licensee, its employees and/or agents shall promptly cease and refrain from doing at all future times any and everything that Licensor advises Licensee is, would or could interfere with the operation of the Marina.

Licensee shall maintain and conduct its operations in a first class and proper manner. Licensee's use of the Licensed Location shall be subject to such reasonable limitations and restrictions as Licensor may, from time to time, impose (including hours of operation during which the Food Service Vehicle and/or the Marina are open to the public); provided, however, that such restrictions and limitations shall not unreasonably interfere with or hinder Licensee's operations at the Licensed Location. Except in the case of an emergency, Licensee's personnel shall not block or unduly restrict access to the Marina.

5. Licensee's Employees

All persons employed by Licensee in or about or in connection with the operation of the Licensed location shall be Licensee's employees for all purposes. Licensee shall, at its own cost and expense, maintain worker's compensation coverage, unemployment compensation coverage and any other coverages which may be required by law or by paragraph 9 herein below with respect to Licensee's employees.

Licensee's employees and invitees shall be entitled to use toilets, "break-rooms" and other similar facilities provided by Licensor subject to any rules and regulations promulgated by Licensor.

6. Improvements, Additions, and Signs

Licensee, at its sole cost and expense, shall construct and furnish all fixtures, equipment and furnishings (including but not limited to fenced boundaries) which it deems necessary or desirable for its operations at the Licensed Location and shall pay for all costs of modification of the existing Licensed Location or the installation of its fixtures, equipment and furnishings. Licensee shall comply with all applicable laws, orders and regulations of federal, provincial and municipal authorities and with any direction given by a public officer pursuant to law and with all regulations of any fire underwriters association having jurisdiction. Licensee shall not make any modification nor shall it attach any fixtures or equipment to the Marina utilities without Licensor's prior written approval. Licensee shall submit plans and specifications in reasonable detail (including, without limitation, electrical and mechanical systems, design, colour and proposed materials) of the proposed fixtures, equipment and furnishings to Licensor for written approval prior to doing any work. Licensee shall obtain or cause to be obtained all building permits, licenses, temporary and permanent certificates of occupancy and other governmental approvals which may be required in connection with the Licensed Location. Subject to Licensor's prior written consent, Licensee may place a sign identifying its operation in the Marina window (provided the Marina Lease and applicable law permits such sign). Exterior signs shall be subject to any restrictions imposed on Licensor and applicable law and to the prior written consent of Licensor. Any work done pursuant to this article shall be at times which are agreeable to Licensor. Licensor may require the Licensee to

temporarily cease carrying on the whole or part of the work, and the Licensee agrees to immediately cease work, provided that Licensor prescribes a time or times during which such work may be continued by the Licensee.

7. Maintenance and Repair

Licensee, at its sole cost and expense, shall take care of and maintain the Licensed Location in good order and repair. Licensor may, at its sole cost and expense, take care of and maintain or cause to be maintained, such portions of the Marina other than the Licensed Location as may affect the Licensed Location, including without limitation, plumbing, electrical equipment (except any equipment in the Licensed Location and any equipment installed by Licensee), and all other structural portions of the Marina; provided however, that the preceding shall not obligate the Licensor to undertake such maintenance on behalf of the Licensee. Licensor and its contractors shall be granted access during normal business hours to enter the Licensed Location for the purpose of servicing, maintaining and otherwise performing service in connection with the Marina; provided, however, that they shall in no event disrupt Licensor's business.

The Licensee shall at its own cost and expense at all times during the currency of this Agreement, keep the Licensed Location in a neat, safe and tidy condition, removing or causing to be removed therefrom all papers, refuse, litter, waste or rubbish arising out of the operations of the Licensee all to the satisfaction of the Licensor at its sole and absolute discretion. The Licensee shall be solely responsible for waste removal on the Licensed Location.

8. Services, Utilities, Accessibility, and Public Toilets

Licensee shall be solely responsible for providing all utilities and services required at the Licensed Location at its sole and absolute expense, including but not limited to electrical and water services. At no time during the course of the term or any renewal thereof shall the Licensee be permitted to use Marina utilities.

Licensee shall be solely responsible for compliance with the provisions of the *Accessibility for Ontarians with Disabilities Act, 2001, S.O. 2001, c. 32* as may be amended as well as its accompanying regulations (together the "Accessibility Act"); shall be responsible at its sole cost and expense for rendering the Licensed Location in compliance therewith; and, Licensee shall indemnify and hold harmless Licensor, its employees and agents from any and all claims, causes of action, damages, expenses and liability, including reasonable legal fees, sustained or incurred by any persons which are based upon or arise out of a violation of the *Accessibility Act* at the Licensed Location.

9. Insurance

Licensee shall also keep in force during the term of this Agreement:

(a) Commercial General Liability Insurance

Commercial General Liability insurance satisfactory to the Licensor and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- i. A limit of liability of not less than \$5,000,000.00/occurrence with an aggregate of not less than \$5,000,000.00;
- ii. The Town of Fort Frances shall be listed as an additional insured with respect to the operations of the Named Insured;
- iii. The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured;
- iv. Non-owned automobile coverage with a limit not less than \$2,000,000.00 and shall include contractual non-owned coverage (SEF 96);
- v. Products and completed operations coverage;
- vi. Broad Form Property Damage;

- vii. Contractual Liability;
- viii. The policy shall provide 30 days prior notice of cancellation; and,
- ix. Host Liquor Liability

(b) Automobile Insurance

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario having an inclusive limit of not less than \$2,000,000.00 per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Licensee.

(c) Property Insurance

Property Insurance for any property being brought onto municipal property owned by the Licensee.

(d) Primary Coverage Insurance

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

Licensor shall be named as a named additional insured in any policy of insurance required to be carried hereunder and shall receive thirty (30) days' notice of cancellation of any such insurance policy. Licensee shall furnish Licensor with a copy of the insurance policy or certificate evidencing such coverage upon request and/or within ten (10) days prior to the Rent Commencement Date.

Licensee shall, at its own cost and expense, comply with all regulations or orders of any insurance company of companies relating to its operation.

10. Indemnification

Licensee shall indemnify and hold harmless Licensor, its employees and agents from any and all claims, causes of action, damages, expenses and liability, including reasonable legal fees, sustained or incurred by any persons which are based upon or arise out of illness or injury, including death of any person or property damage to any property, and which arise from or in any manner grow out of any act or omission of Licensee, its agents, partners, independent contractors, or employees. Licensee shall immediately respond and assume the investigation, defense and expense of all claims and causes of action arising out of or in connection with such occurrences. Licensor may, at its sole cost and expense, join in such defense with counsel of its choice.

The Licensee hereby waives all rights of recovery against Licensor, its agents, customers and employees for damage or destruction to its goods, fixtures and equipment arising out of fire, water damage or other casualty whether or not caused by the acts or negligence of Licensor, its agents, customers and employees excepting only the gross negligence thereof.

11. Default

If Licensee fails to pay the Licence Fees, or any other charge provided for hereunder when the same is due, and the same shall not be paid after ten (10) days, or if Licensee breaches any other covenant of this Agreement and fails to remedy same within twenty (20) days after written notice of such breach, or as to matters which cannot be remedied in twenty (20) days fails to commence efforts to remedy such default within such twenty (20) day period and thereafter diligently to prosecute such efforts, Licensor may, in addition to any other rights it may have under this Agreement, declare this Agreement terminated and Licensee shall thereupon promptly vacate the Licensed Location, delivering same to Licensor in the condition set forth in paragraph 13 below, and if Licensee fails to do so, it shall be liable to Licensor for Licensor's cost of doing same. Anything in this Agreement to the contrary, notwithstanding if Licensee shall become insolvent, bankrupt or make an assignment for the benefit of creditors, or if Licensee or its interest hereunder shall be levied upon or sold under execution of other legal process, Licensor may immediately terminate this Agreement without notice and all Licence Fees in arrears, together with the next three (3) month's Licence Fees shall immediately become due and payable. In addition to all other rights and remedies available to Licensor pursuant

to this paragraph and all other sums due or payable to Licensor hereunder, if this Agreement shall be terminated as provided herein due to the default(s) of Licensee, then Licensor shall be entitled to receive and Licensee shall be obligated to pay to Licensor promptly upon the termination of this Agreement, as liquidated damages and not as a fine or penalty, an amount equal to all sums due or that were to become due and payable to Licensor pursuant to paragraph 3 above through and including the regularly scheduled expiration date of this Agreement discounted to present value at a discount rate of six (6%) percent per annum.

12. Termination

Either Licensor or Licensee may terminate this Agreement upon thirty (15) days written notice to the other.

13. Possession Upon Termination

Upon any termination of this Agreement, whether at the end of the Term or otherwise, Licensee shall remove all its leasehold improvements and trade fixtures, make good any damage caused by such removal, and surrender peaceful possession of the Licensed Location in as good condition as it received the same.

14. Damage to Premises

If, by fire or other casualty, the Licensed Location is destroyed or damaged to the extent that Licensee is deprived of occupancy or use of the same, Licensor agrees to notify Licensee as to whether it or the Licensor has decided to repair the damage or destruction resulting from any casualty as soon as possible. If Licensor elects to repair such damage or destruction, Licensor shall proceed with due diligence to restore the Marina. If the Marina is repaired, Licensee shall proceed with due diligence to restore the Licensed Location to substantially the same condition as existed before such damage or destruction, and the sums payable hereunder with regard to such Licensed Location shall be abated until Licensor's restoration and/or restoration by the Licensor is completed. If Licensor notifies Licensee that Licensor has decided not to repair such damage or destruction, this Agreement shall be terminated. Nothing herein contained shall obligate Licensor to undertake any repair and/or restoration obligations.

15. Assignment

This Agreement may not be assigned or sublicensed without the written permission of Licensor which permission may be arbitrarily or unreasonably withheld. In any event, Licensee shall at all times remain liable hereunder. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective permitted successors and assigns.

16. Remodelling of Marina

Licensee recognizes that Licensor may, from time to time, wish to remodel or rearrange the Marina and the surrounding lands, or to conduct environmental testing at (hereinafter collectively referred to as "Remodel") the Marina and the surrounding lands. In the event that the Remodel affects the Licensed Location, Licensor agrees to discuss with Licensee the Remodel to determine if the Food Service Vehicle can be moved to another location mutually satisfactory to Licensee and Licensor within the Marina. If Licensee or Licensor does not agree on the new location within thirty (30) days of Licensor's proposal, this Agreement shall terminate effective on the date which is two (2) weeks prior to Licensor's scheduled date for commencement of the Remodel.

17. Security

Licensee acknowledges that (a) Licensor is not an insurer of the Licensed Location; (b) Licensor does not undertake to provide any security for the Licensed Location; and (c) that it shall be Licensee's obligation to provide security for Licensee's facilities.

18. Entire Agreement

The Parties hereto agree that this Agreement sets forth all the promises, agreements and understandings between them with respect to the right and license to install, operate and maintain the Food Service Vehicle. There are no promises, agreements or understandings, either oral or written, between them regarding such matters other than as is set forth herein. It is further agreed that any amendment or modification to this Agreement shall not be binding unless such amendment or modification is reduced to writing and signed by both parties.

19. Captions

The captions of the several sections of this Agreement are not part of the text hereof and shall be ignored in construing this Agreement. They are intended only as aids in locating various provisions hereof.

20. Severability

Each provision contained in this Agreement shall be independent and severable from all other provisions contained herein, and the invalidity of any such provisions shall in no way affect the enforceability of the other provisions.

21. Governing Law

This Agreement shall be governed and controlled by the laws of the Province of Ontario.

22. Binding Effect

This Agreement shall be binding upon and shall enure to the benefit of Licensor and Licensee, their successors and permitted assignees.

23. Notices

All notices and communications hereunder shall be in writing and signed by a duly authorized representative of the party making the same. All notices shall be deemed effective when delivered personally or when deposited in Canada by registered mail, return receipt requested, postage prepaid, addressed as follows:

- (a) If to Licensor, then in duplicate to: The Corporation of the Town of Fort Frances
320 Portage Avenue, Fort Frances, ON P9A 3P9
- (b) If to Licensee, then to: Stacey Cridland
1930709 Ontario Inc.
232 Scott Street, Fort Frances, ON P9A 1G7

The names and addresses for the purpose of this paragraph may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change of address is actually received, the most recent name and address applicable under this Agreement may be used for all purposes hereunder.

24. Force Majeure

The performance of a party (except for payment of monies) shall be excused during the period and to the extent that such performance is rendered impossible, impractical or unduly burdensome due to acts of God, strikes, lockouts, or labour difficulty, unavailability of parts through normal supply sources, failure of any utility to supply its services for reasons beyond a party's control, explosion, sabotage, accident, riot or civil commotion, act of war, fire or other casualty, or any other cause beyond the reasonable control of the party whose performance is to be excused.

[Signatures to Follow]

IN WITNESS WHEREOF the parties hereto have caused duplicate counterparts of this Agreement to be duly executed and delivered on or as of the date first set forth at the beginning of this Agreement.

1930709 Ontario Inc.

per _____

Name:

Title:

per _____

Name:

Title:

We have the authority to bind the corporation

The Corporation of the Town of Fort Frances

per _____

Name: J. Caul,

Title: Mayor

per _____

Name: E. Slomke,

Title: Town Clerk

We have authority to bind the Municipality