

THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 5349-21

A BY-LAW TO AUTHORIZE THE LORD MAYOR AND TOWN CLERK TO EXECUTE AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT FOR THE PURPOSES OF THE PARKS CANADA AGENCY

BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE as follows:

1. THAT the Agreement dated the 30th day of August, 2021 between The Corporation of The Town of Niagara-on-the-Lake and Her Majesty the Queen in right of Ontario, as represented by The Minister of the Environment for the Purposes of The Parks Canada Agency, be and the same is hereby approved; and
2. THAT the Lord Mayor and Clerk be authorized to affix their hands and the Corporate Seal; and
3. THAT this by-law shall come into force and take effect immediately upon the passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 30TH DAY OF AUGUST 2021

LORD MAYOR BETTY DISERO

ACTING TOWN CLERK COLLEEN HUTT

THIS LICENCE OF OCCUPATION made this _____ day of _____, 2021

BETWEEN:

HER MAJESTY THE QUEEN, in right of Canada, represented herein by the Minister of the Environment for the purposes of the Parks Canada Agency, (“Her Majesty”),

OF THE FIRST PART,

AND:

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE a body corporate, incorporated under the laws of the Province of Ontario and having its head office in the City of Niagara-on-the-Lake in the said Province, (“**Licensee**”),

OF THE SECOND PART.

WITNESS that in consideration of the fees, covenants and agreements herein reserved and contained on the part of the Licensee to be paid, observed, performed and kept, Her Majesty hereby gives permission to the Licensee to use and occupy on a non-exclusive basis for the purpose hereinafter mentioned and subject to the terms and conditions hereinafter contained, all that certain parcel or tract of land and premises situate, lying and being adjacent to Fort George National Historic Site of Canada in the Province of Ontario, and being composed of: all that certain parcel of land as on the site plan annexed hereto and forming part hereof as Schedule “A”, (“Land”); for a period of one (1) year commencing on the 1st day of April, 2021 and ending on the 31st day of March, 2022 (“Period”).

ARTICLE 1.00 DEFINITIONS

1.01 In this Licence of Occupation:

- (a) “Applicable Environmental Law” means:
 - (i) all applicable statutes and regulations, and all by-laws, declarations, policies, directives, plans, approvals, requirements, guidelines, standards and orders made pursuant thereto by any competent authority concerned with any analysis of environmental impacts, protection or remediation, health, chemical use, safety or sanitation; and
 - (ii) the applicable common law;
- (b) “*Bankruptcy and Insolvency Act*” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
- (c) “*Companies Creditors Arrangement Act*” means *Companies Creditors arrangement Act*, R.S.C. 1985, c. C-36;
- (d) “Contaminant” means any toxic, dangerous or hazardous substance or material as targeted by Applicable Environmental Law that, when released into an environment in concentrations exceeding in situ natural occurrence levels, poses or is likely to pose immediate or long-term hazard to human health or safety, the environment, or the normal conduct of business.
- (e) “Gross Revenue” means the total of the actual amount received or receivable for all merchandise sold, all rental sold and all services provided, whether for cash or credit or otherwise, on or from the Land by the Licensee or persons working on its behalf, including and without limiting the generality of the foregoing:

- (i) sales to employees and agents of the Licensee and whether wholesale or retail merchandise and all other receipts whatsoever from all business conducted on or from the Land or by persons based on the Land, including amounts received for equipment rental and all deposits not refunded to a purchaser;
- (ii) sales made by the Licensee on or from the Land or by persons working from the Land or operation on behalf of the Licensee; and all orders taken on or from the Land or on behalf of the Licensee, even if such orders are filled elsewhere or even though such orders are received by mail, telephone, fax, electronic information transfer or other similar method and are filled elsewhere than from the Land or are procured from the Land by house to house or other canvassing;
- (iii) any commissions received by the Licensee for the collection of taxes and all other commissions resulting from sales and services at the retail level;
- (iv) all receipts from coin-operated machines owned or operated by the Licensee, including vending machines and machines providing services or entertainment on the Land, and in the case of coin-operated machines neither owned nor operated by the Licensee, all commissions and licence or other fees received by the Licensee with respect to such machines, including public telephones;
- (v) any amount or credit received as settlement of a claim for compensation for lost revenue, and
- (vi) any indirect tax included in the sales price.

In the determination of Gross Revenue, each sale upon credit whether by instalment payment or otherwise will be treated as a sale for the full sale price at the time such sale is made, no matter when payment whether full or partial will be received.

The term Gross Revenue will not include:

- (i) any sums required to be collected by the Licensee pursuant to any taxing legislation applicable to sales at the retail level. In the event that the direct retail sales tax is included in the sales price, the calculation of "Gross Revenue" shall be based on the net sales amount after deducting the direct retail sales tax;
- (ii) gratuities, service charges or other similar receipts collected for payment to and paid to employees;
- (iii) the exchange of goods and merchandise between the different outlets of the Licensee, if any, where such exchange of goods and merchandise is made in good faith and solely for the convenient operation of the business of the Licensee and not for the purpose of consummating a sale which has been made on or from the Land or operation or for the purpose of depriving Her Majesty of the benefit of a sale which otherwise would be made on or from the Land;
- (iv) the amount of returns to suppliers or to manufacturers for the amount of merchandise sold when such merchandise or some part thereof is returned by the purchaser and accepted by the vendor thereof and a refund or credit is given to the purchaser;
- (v) the proceeds from any insurance policy paid to the Licensee by reason or account of or attributable to the use and occupation of the Land;

- (vi) any amount or credit received by the Licensee as settlement of a claim for loss, damages or injury, excepting any amount or credit received as compensation for lost revenue;
- (vii) any amount or credit received from the sale of chattels and fixtures after the use thereof in the conduct of the Licensee's business on the Land;
- (viii) any amount or credit received from the sale of all or any of the capital assets of the Licensee's business on the Land;
- (ix) any amount received from investors for the purpose of the capitalization of the Licensee's business, whether such investment is in the form of equity, debt or a combination thereof;
- (x) any amount or credit received from the sale of the Licensee's accounts receivable;
- (xi) any interest or similar revenue earned by the Licensee on its funds or credits deposited or otherwise loaned to any chartered bank, trust corporation or other similar institution or any dividends or other yield earned by the Licensee on any of its invested funds;
- (xii) any grant received from any foundation or similar institution or association or from any government body or agency, whether federal, provincial or municipal, and
- (xiii) complimentary tickets or passes issued to fulfil operational requirements on the Land, and complimentary rooms, meals, tickets, passes and services issued for promotional or similar purposes.

Nothing in the foregoing definition of Gross Revenue will be construed as affecting or derogating from the covenant as to limitation and restriction of permitted use hereafter set out.

- (f) "Licence" means this Licence of Occupation;
- (g) "Licensee's Fiscal Year End" means the 31st day of December in each year of the Period;
- (h) "Licensee's Structures" means the building on the Land that functions as the tourist information centre and washroom;
- (i) "Minister" means the Minister of the Environment or such Minister designated by the Governor in Council as the Minister for the purposes of the *Parks Canada Agency Act*, or any person authorized to act in that behalf;
- (j) "Parks Canada Agency" means the Parks Canada Agency, a body corporate established under section 3 of the *Parks Canada Agency Act*, S.C. 1998, c. 31;
- (k) "Site" means Fort George National Historic Site of Canada in the Province of Ontario;
- (l) "Structures" means any buildings, erections, structures, fixtures and improvements existing on or under the Land from time to time; and
- (m) "Superintendent" means the Superintendent of the Site or any person authorized to act in that behalf.

1.02 Any reference in this Licence to a statute, regulation, by-law, declaration, directive, policy, approval, requirement, standard or order means the statute, regulation, by-law, declaration, directive, policy, approval, requirement, standard or order now in force, as it may be amended, revised, consolidated or substituted from time to time.

ARTICLE 2.00 LICENCE FEE

2.01 **THE LICENSEE COVENANTS AND AGREES TO PAY** yearly and every year to Her Majesty at the office of the Superintendent, the following licence fee in the amount equal to the greater of:

Twenty-five (25) % of the annual Gross Revenue and a base fee of One Thousand (\$1,000.00) Dollars (“Base Fee”), all hereinafter called the “Licence Fee”.

Regardless of which amount is greater, the Licensee shall pay the Base Fee in full in one installment in advance of, on or before the date of execution of this licence. Within ninety (90) days following the Licensee’s Fiscal Year End, the Licensee shall pay any balance owing on the Licence Fee accompanied by financial statement from the Licensee indicating the annual Gross Revenue for the said fiscal year.

THE PARTIES COVENANT AND AGREE AS FOLLOWS:

ARTICLE 3.00 USE OF LAND

- 3.01 (a) The Licensee acknowledges and agrees that it is a condition upon which this Licence is granted that the Land shall be used only for the purpose of operating and maintaining a bus parking lot for which the Licensee shall have the right of co-use with the Her Majesty throughout the year and for operating a tourist information building in the months of April to October, with related facilities ancillary and all in accordance with applicable Site plans and guidelines;
- (b) The Licensee shall obtain all permits, licences and authorizations required under all applicable statutes and regulations;
- (c) The Licensee shall comply with, and the terms of this Licence shall be subject to all applicable statutes and regulations, and
- (d) The Licensee covenants and agrees to comply with all of the terms and conditions contained in Schedule “B” titled “Operational Requirements” annexed hereto and forming part hereof.
- 3.02 The Licensee shall not create or permit or suffer any act or thing on the Land which is a nuisance.
- 3.03 The Licensee shall not cause, permit or allow the commission of any waste on or in the Land.
- 3.04 The Licensee shall, at its own expense, collect and dispose of all garbage resulting from the use and occupation of the Land, in a manner satisfactory to the Superintendent.
- 3.05 The Licensee shall observe fire and safety precautions and shall comply fully with the instructions of the Superintendent in relation thereto.

ARTICLE 4.00 ACCEPTANCE AND EXCEPTIONS

- 4.01 The Licensee covenants and agrees that:
- (a) it has inspected the Land or has caused it to be inspected on its behalf;
- (b) it has entered into this Licence on reliance on that inspection and not on reliance on any representation, whether oral, written or implied, by whosoever made;
- (c) it will accept the Land in the condition existing on the date of this Licence on an “as is” basis, notwithstanding the existence of any Contaminant, known or unknown, on, in or under the Land;

- (d) it has satisfied itself of everything and of every condition affecting the Land and any Structures including the environmental condition of same;
 - (e) the use of the Land shall be consistent with the environmental condition of the Land, and
 - (f) no representation, warranty or inducement has been given by Her Majesty or any of Her servants, agents and contractors and relied upon by the Licensee respecting the condition of the Land.
- 4.02 This Licence operates solely as a licence and does not transfer any exclusive possessory right or interest to the Licensee.
- 4.03 (a) Her Majesty may from time to time exclude the Licensee from use and occupation of the Land, or any portion thereof, provided Her Majesty gives the Licensee not less than five (5) days written notice in advance of a period of exclusion and provided the periods of exclusion do not exceed, in the aggregate, fifteen (15) days during the Period for the use of special events and/or activities.
- (b) For greater certainty, this Licence, including the obligation of the Licensee to pay the Licence Fee, remains in force during, and is not affected by, a period of exclusion.
- 4.04 The Licensee shall permit Her Majesty, Her servants, agents, contractors, franchisees and the public at large to pass freely at all times over the Land.
- 4.05 Where the Land or any part thereof is required by Her Majesty for the purpose of administration of the Site or for any other public purpose, Her Majesty, Her servants, agents, contractors and franchisees may enter and use the whole or any part of the Land, on the expiration of such notice as the Minister may deem expedient.
- 4.06 The Licensee shall give immediate notice to the Superintendent if evidence of archaeological resources is encountered during any activity whatsoever on the Land, and await the Superintendent's written instructions before proceeding with the activity on the Land.
- 4.07 The Licensee acknowledges and agrees that all archaeological resources in, on or under the Land are the property of Her Majesty.

ARTICLE 5.00 TAXES AND OTHER CHARGES

- 5.01 The Licensee covenants and agrees to pay, in addition to the licence fee, all applicable taxes, rates, duties, assessments, levies, fees or other impositions whatsoever charged upon the Land in relation to the Licensee's use of the Land or upon the Licensee in respect thereof.

ARTICLE 6.00 ENVIRONMENTAL PROTECTION

- 6.01 The Licensee covenants and agrees that all activities on the Land shall be conducted in compliance with Applicable Environmental Law, and in accordance with environmental practices acceptable to the Minister if there is no Applicable Environmental Law.
- 6.02 The Licensee covenants and agrees that:
- (a) any required analysis of environmental impacts relating to its physical works and activities on the Land shall be conducted in accordance with any Applicable Environmental Law; and
 - (b) it shall implement and comply with any specifications, mitigative measures and environmental protection measures as set forth in any analysis of environmental impacts referred to in Article 6.02 (a) are hereby covenants which form part of this Licence.

- 6.03 The Licensee covenants and agrees that no Contaminant shall be used, emitted, discharged, stored or disposed of except in strict compliance with Applicable Environmental Law and in accordance with environmental practices acceptable to the Minister if there is no Applicable Environmental Law. The Licensee shall implement and comply with any specifications, mitigative measures and environmental protection measures as required by the Minister regarding the use, emission, discharge, storage or disposal of any Contaminant. Such specifications, mitigative measures and environmental protection measures are hereby covenants which form part of this Licence.
- 6.04 The Licensee covenants and agrees that it shall, at its expense, provide an assessment of environmental condition at the request of the Superintendent.
- 6.05 The Licensee covenants and agrees to provide the Minister with written notice of any anticipated or actual adverse environmental impacts attributable to the use of the Land immediately upon discovery by the Licensee.
- 6.06 If at any time, the Minister considers remedial action to be necessary, the Licensee hereby agrees to undertake remedial action immediately using the appropriate technology, design or repair to the satisfaction of the Minister and pay the costs of such remedial action. Furthermore, the Licensee agrees that all such remedial action shall be undertaken in accordance with Applicable Environmental Law, and in accordance with environmental practices acceptable to the Minister if there is no Applicable Environmental Law, and in a manner so as to minimize any impact on the Land and elsewhere.
- 6.07 The Licensee covenants and agrees that if the Licensee fails to take any mitigative measures required by the Minister as set forth in Articles 6.02 and 6.03, or fails to commence and diligently complete the remedial action required in Article 6.06, the Minister may, upon written notice to the Licensee, carry out the specifications, complete the required mitigative measures or remedial action and charge the costs thereof, including reasonable costs for administration, to the Licensee, and such costs shall constitute a debt due and owing to Her Majesty and shall be payable upon demand.

ARTICLE 7.00 DUTY TO MAINTAIN AND RIGHT OF INSPECTION

- 7.01 The Licensee covenants and agrees that in relation to the Licensee's use of the Land:
- (a) it shall maintain or cause to be maintained the Land including any Structures thereon in a good state of maintenance and repair. If the Licensee fails to commence and diligently proceed to make such repairs or remedy such condition after receiving thirty (30) days notice in writing from the Superintendent, the Superintendent may enter the Land including any Structures thereon, make the said repairs, or remedy such condition, and charge the costs thereof to the Licensee and such costs, including reasonable costs for administration, shall constitute a debt due and owing to Her Majesty and shall be payable upon demand; and
 - (b) the Superintendent or his agents shall be entitled to enter and inspect the Land including any Structures thereon at all reasonable times for the purpose of inspecting and ascertaining the condition or state of repair thereof, or verifying that the covenants and other provisions of this Licence are being complied with.

ARTICLE 8.00 SUBMISSION OF PLANS AND SPECIFICATIONS

- 8.01 (a) The Licensee shall submit for the approval of the Superintendent, plans and specifications for any construction, additions or alterations to the Land including any Structures thereon.
- (b) The plans and specifications referred to in Article 8.01 (a) shall be in accordance with but not limited to the current development review process, Site management plans, Site community plans, by-laws, guidelines, approvals, requirements, standards, orders, directives, policies and zoning that are applicable to the Land.

- (c) Upon approval by the Superintendent of the plans and specifications referred to in Article 8.01 (a), the Licensee shall obtain all necessary permits, licences and approvals and shall within one (1) year of the date of the issuance of all necessary permits, licences and approvals or such longer period of time as the Superintendent may deem warranted, complete the construction, additions or alterations to the Land and any Structures thereon including the remedying of any deficiencies.

8.02 With respect to any construction, additions or alterations to the Land including any Structures thereon pursuant to Article 8.01, the Licensee shall, at the request of the Superintendent, obtain a performance bond and labour and material payment bond or other form of security, in a form and such amounts to be determined by the Superintendent. Such security shall remain in full force and effect for such reasonable period of time as the Superintendent may deem warranted.

ARTICLE 9.00 DESTRUCTION AND RECONSTRUCTION

9.01 If any Structures on the Land are destroyed by fire or an Act of God or other calamity, or are demolished, or by reason of any other occurrence become incapable of being satisfactorily utilised for the purpose permitted in this Licence, then subject to Article 9.02, the Licensee shall:

- (a)
 - (i) within sixty (60) days of happening of any such event, give to the Superintendent written notice whether or not it is the intention of the Licensee to rebuild, replace or reinstate any such Structures;
 - (ii) if it is the intention of the Licensee to rebuild, replace or reinstate any such Structures, submit to the Superintendent, at the request of the Superintendent, within one (1) year of the written notice in Article 9.01 (a) (i), plans and specifications therefore and obtain all necessary permits, licences and approvals in accordance with the provisions of Article 8.00;
 - (iii) with respect to any reconstruction pursuant to Article 9.01 (a) (ii), comply with Article 8.00, and
- (b) within one (1) year of the date of issuance of all necessary permits, licences and approvals to rebuild, replace or reinstate any such Structures, or such longer period of time as may be permitted by the Superintendent, complete the construction of any such Structures, including the remedying of any deficiencies.

9.02 In the event that the Licensee has not given notice under Article 9.01 (a) (i) to rebuild, replace or reinstate any such Structures destroyed, demolished or rendered uninhabitable or unusable, or has indicated there is no intention to rebuild, replace or reinstate any such Structures, the Minister may terminate this Licence. In such a case, the Licensee shall, forthwith upon demand by the Superintendent, restore the Land to a good state of maintenance and repair to the satisfaction of the Superintendent and shall remove all damaged Structures and debris from the Land. If the Licensee fails to effect clean up and restoration of the Land to the satisfaction of the Superintendent, then the Superintendent may do so at the Licensee's expense, including reasonable costs for administration, which expense shall be a debt due and owing to Her Majesty and shall be payable upon demand. The Superintendent shall permit the Licensee access to such Land to perform its obligations set forth herein.

ARTICLE 10.00 ALIENATION

10.01 The Licensee shall not, at law or otherwise, assign, transfer, sublicense or otherwise alienate this Licence or any of the rights hereunder.

10.02 The Licensee shall provide to the Superintendent, within thirty (30) days from the date of issuance, an original, duplicate original or certified true copy of any of the following documents relating to the Licensee or to the Land:

- a) evidence of change of name; and

b) evidence of amalgamation or dissolution in the case of a corporate licensee.

10.03 A transfer or issuance of the shares of a corporate licensee which would have the result of transferring effective control of the corporate licensee, or any other change in the corporate structure of the corporate licensee which would have the same result, is deemed to be an assignment contemplated by Article 10.01; however, the Licensee must obtain the written consent of the Minister for any such share transaction and is deemed a violation of Article 10.01 unless the written consent of the Minister is first obtained.

In the case of a corporate licensee, the shares of which are publicly traded, the consent of the Minister shall be obtained forthwith upon the corporate licensee receiving written notice that a share transaction has occurred, or will occur, that has resulted, or will result, in a change of control of the corporate licensee. The corporate licensee shall provide the Minister with any additional information and documentation that the Minister may require in order to determine whether to consent to the share transaction.

ARTICLE 11.00 LIABILITY AND INDEMNITY

11.01 The Licensee shall not have any claim or demand against Her Majesty or any of Her servants, agents and all those for whom Her Majesty is responsible at law, for detriment, damage, accident or injury of any nature whatsoever or howsoever caused to the Land or to any person or property thereon, except in the case of the negligence of Her Majesty, Her servants, agents and all those for whom Her Majesty is responsible at law.

11.02 The Licensee shall at all times indemnify and save harmless Her Majesty or any of Her servants, agents and all those for whom Her Majesty is responsible at law, from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner based upon, arising out of, related to, occasioned by or attributable to:

- (a) the Licensee's use of the Land or the use of the Land by all those for whom the Licensee is responsible at law;
- (b) the existence of any Contaminant in, on or under the Land, as a result of the Licensee's use of the Land, or the use of the Land by all those for whom the Licensee is responsible at law;
- (c) the existence of any Contaminant in, on or under other lands that has migrated from the Land, as a result of the Licensee's use of the Land, or the use of the Land by all those for whom the Licensee is responsible at law;
- (d) the remediation of any Contaminant referred to in Article 11.02 (b) or (c); or
- (e) any action taken or things done or maintained by virtue thereof, or the exercise in any manner of rights or fulfilment of any obligations arising hereunder.

ARTICLE 12.00 INSURANCE

12.01 The Licensee covenants and agrees that during the Period:

- (a) it shall, at its sole expense, obtain and maintain commercial general liability insurance in such amounts and on such terms as a prudent operator should maintain. Such insurance will provide that Her Majesty is named as an additional insured and shall include coverage for bodily injury, including death, to any person, as well as the loss of or damage to any property, to the extent that liability for these things is connected with the Licensee's use of the Land. Furthermore, the Licensee shall increase the amount of such insurance and obtain such additional coverage as the Superintendent may from time to time require, based on the prevailing limits and coverage for the type of land use referred to in Article 3.01 (a);
- (b) the insurance referred to in Article 12.01 (a) shall:

- (i) be issued by an insurance company or companies satisfactory to the Superintendent and shall provide for a minimum of thirty (30) days notice in writing by such company or companies to the Licensee and to Her Majesty of cancellation or amendment of such insurance;
 - (ii) contain a waiver of any subrogation rights the Licensee's insurers may have against Her Majesty and against those for whom Her Majesty is responsible at law except in the case of negligence of Her Majesty, Her servants and agents and all those for whom Her Majesty is responsible at law; and
 - (iii) provide for cross liability, that is to say, that the insurance shall indemnify each named insured and each additional insured in the same manner as though separate policies were issued in respect of any action brought against any of the insureds by any other insured;
- (c) it shall provide to the Superintendent, on the anniversary date for each year during the Period, Certificates of Insurance or affidavits from the insurance company or companies confirming that the insurance referred to herein is in full force and effect; and
- (d) it shall not do or omit to do or allow anything to be done or omitted to be done on the Land which will in any way impair or invalidate such insurance referred to herein.

ARTICLE 13.00 REMOVAL OF IMPROVEMENTS

- 13.01 Upon expiration or termination of this Licence, the Licensee shall sever and remove all Structures from the Land. If the Licensee fails to remove all Structures within thirty (30) days of the expiration or termination of this Licence, the Superintendent may remove the Structures and charge the costs thereof, including reasonable costs for administration, to the Licensee and such costs shall constitute a debt due and owing to Her Majesty and shall be payable upon demand.
- 13.02 Subsequent to the removal of all Structures in accordance with this Article, the Licensee shall rehabilitate the Land in accordance with instructions from the Superintendent and to the satisfaction of the Superintendent. If the Licensee fails to comply with this Article then the Superintendent may rehabilitate the Land and charge the costs thereof to the Licensee and such costs, including reasonable costs for administration, shall constitute a debt due and owing to Her Majesty and shall be payable upon demand.

ARTICLE 14.00 CONDITION OF THE LAND UPON EXPIRATION OR TERMINATION

- 14.01 The Licensee covenants and agrees that upon expiration or termination of this Licence, the Licensee shall at its own cost:
- (a) complete an assessment of the environmental condition of the Land as required by any Applicable Environmental Law;
 - (b) remove any or all Structures from the Land;
 - (c) clean up the Land in respect to all Contaminants in accordance with Applicable Environmental Law, and in accordance with environmental practices acceptable to the Minister if there is no Applicable Environmental Law;
 - (d) clean up any Contaminant in, on or under the Land that has migrated from the Land as a result of the Licensee's use of the Land, or the use of the Land by all those for whom the Licensee is responsible at law, in accordance with Applicable Environmental Law, and in accordance with environmental practices acceptable to the Minister if there is no Applicable Environmental Law;

- (e) leave the Land free from all garbage and debris, and
- (f) restore the Land to a good state of maintenance and repair,

all to the satisfaction of the Superintendent.

14.02 If the Licensee fails to comply with the provisions of Article 14.01, the Minister may, upon written notice to the Licensee, complete the obligations of the Licensee and charge the costs thereof, including reasonable costs for administration, to the Licensee and such costs shall constitute a debt due and owing to Her Majesty and shall be payable upon demand.

ARTICLE 15.00 DEFAULT AND TERMINATION

15.01 In the event that at any time during the Period hereof:

- (a) any portion of the annual Licence Fee remains unpaid for more than thirty (30) days after becoming due, whether formally demanded or not, or
- (b) the Licensee fails to continuously, regularly, duly and punctually perform, observe or keep any of the other covenants and provisions herein contained,

the Minister may, by notice in writing, require the Licensee to remedy any such default within such period of time as the Minister deems warranted.

If in such case, the Licensee does not remedy such default within the time prescribed, it will be lawful for the Minister, in the Minister's sole discretion, without notice to the Licensee, to declare the Period ended and this Licence terminated and thereupon, these presents and everything herein contained and will absolutely cease, terminate and be void without re-entry or any other act or any suit or legal proceedings to be brought or taken, provided Her Majesty will nevertheless be entitled to recover from the Licensee the Licence Fee then accrued or accruing.

15.02 Notwithstanding anything herein contained, if the Licensee at any time during the Period hereof:

- (a) makes an assignment for the benefit of creditors pursuant to the *Bankruptcy and Insolvency Act*;
- (b) is adjudged bankrupt pursuant to the *Bankruptcy and Insolvency Act* provided that such order has remained in force for no less than thirty (30) days and has not been stayed;
- (c) files any petition or institute any proceedings under the *Bankruptcy and Insolvency Act*, *Companies Creditors Arrangement Act*, or similar legislation affecting the rights of creditors generally;
- (d) is subject to the appointment of a receiver or trustee who is not discharged within sixty (60) days from the date of such appointment;
- (e) abandons the Land, or demonstrate an intention to abandon the Land, or
- (f) attempts to sell, dispose of or remove its goods and chattels so that there would not, in the event of such sale, disposal or removal, be a sufficient distress on the Land for three (3) months' Licence Fee.

It will be lawful for the Minister, in the Minister's sole discretion, without notice to the Licensee, to declare the Period ended and this Licence terminated and thereupon, these presents and everything herein contained and will absolutely cease, terminate and be void without re-entry or any other act or any suit or legal proceedings to be brought or taken,

provided Her Majesty will nevertheless be entitled to recover from the Licensee the annual Licence Fee then accrued or accruing.

- 15.03 Termination of this Licence pursuant to any of the provisions herein shall be wholly without prejudice to the right of Her Majesty to recover arrears of the annual Licence Fee or any other right of action by Her Majesty in respect of any antecedent breach of covenant or other provision herein contained, and the rights shall survive the termination of this Licence, whether by act of the parties or by operation of law.

ARTICLE 16.00 OFFICIAL LANGUAGES

16.01 The Licensee shall endeavour:

- (a) to provide services to the public in both official languages of Canada; and
- (b) to provide signs, notices and printed materials used for the purpose of informing the public in both official languages of Canada.

16.02 At the request of the Superintendent, the Licensee shall obtain the approval of the Superintendent prior to the display or distribution of the signs, notices and printed materials referred to in Article 16.01 (b).

ARTICLE 17.00 FINANCIAL RECORDS

- 17.01 (a) The Licensee shall, in each year of the Licence, maintain cash registers containing a cumulative total, sealed or locked, to the satisfaction of the Superintendent, and keep or cause to be kept in accordance with generally accepted principles of accounting, records of Gross Revenue and of the expenses of the business operations conducted on the Land and based on such records, the Licensee shall submit to the Superintendent, within ninety (90) days of the close of the Licensee's Fiscal Year End, the financial statements based on such records, including a balance sheet, an income statement and a statement of Gross Revenue, all to the satisfaction of the Superintendent.
- (b) The Licensee shall, in each year of the Licence, provide the financial statements referred to in Article 17.01 (a) prepared by an accountant qualified and authorized to practice in the said Province or Territory of, and at the request of the Superintendent, the financial statements prepared by the accountant shall be accompanied by an audit report.
- (c) If the financial statements referred to in Article 17.01 (a) and the report referred to in Article 17.01 (b) are not submitted within ninety (90) days of the close of the Licensee's Fiscal Year End, the Superintendent reserves the right to engage auditors to prepare such financial statements and audit report at the Licensee's costs, and such cost, including reasonable costs for administration, shall constitute a debt due and owing to Her Majesty and shall be payable upon demand.
- (d) The Superintendent shall have the right to prescribe or approve revenue gathering and cash control procedures and related equipment and the Superintendent shall also have the right to investigate any irregularities in such procedures and use of related equipment.
- (e) The records required to be kept by the Licensee pursuant to Article 17.01 (a) may be inspected or audited or both, at any time during normal business hours by any accredited representative or representatives of the Minister upon reasonable notice being given.
- (f) At any time after its termination, Her Majesty may disclose the annual total of the Gross Revenue reported by the Licensee in each year of this Licence for the purpose of public tender information.

ARTICLE 18.00 DISPUTE

18.01 Any question or dispute that arises between the parties hereto over any of the covenants, terms, obligations, or provisions of this Licence or the interpretation thereof, shall be referred to the Federal Court of Canada.

ARTICLE 19.00 MISCELLANEOUS

19.01 Any notice, request or other communication required by or affecting this Licence may be served upon the parties hereto by sending it by mail, electronic mail, personal service, or any other technology-based system (provided the technology-based system yields a hard copy), postage or charges prepaid addressed to:

in the case of Her Majesty

Minister of the Environment
c/o the Superintendent of Southwestern Ontario
Parks Canada Agency
26 Queen Street, Box 787
Niagara-in-the-lake, Ontario
L0S 1J0

and

in the case of the Licensee

The Corporation of the Town of Niagara-on-the-Lake
c/o the Corporate Administrative Officer
1593 Four Mile Creek Road, Box 100
Virgil, Ontario
L0S 1T0

or by personally serving it upon the party referred to therein.

Any notice addressed by mail to Her Majesty or to the Licensee pursuant to this Article is deemed to have been effectively given on the seventh (7th) business day following the date of mailing. Such addresses may be changed from time to time by either party giving notice as provided herein. In the event of any disruption of postal service, notices will be personally served upon the parties hereto,

19.02 A waiver, condonation, forgiveness or forbearance by either party hereto of the strict performance by the other of any covenant or provision of this Licence shall be in writing and shall not of itself constitute a waiver of any subsequent breach of that covenant or provision or any other covenant or provision thereof. The failure of Her Majesty to require the fulfilment of any obligation of the Licensee, or to exercise any rights herein contained shall not constitute a waiver or acquiescence or surrender of those obligations or rights.

19.03 If for any reason any covenant or provision contained in this Licence, or the application thereof to any party, is to any extent held or rendered invalid, unenforceable or illegal, then such covenant or provision shall be deemed to be independent of the remainder of this Licence and to be severable and divisible from this Licence. The invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of this Licence or any part thereof. The intention of Her Majesty and the Licensee is that this Licence would have been executed without reference to any portion which may, for any reason and extent, be declared or held invalid, unenforceable or illegal. In the event that any covenant or condition is so determined, the Minister may, in the Minister's sole discretion, replace the covenant or condition with a new covenant or condition which would reflect the intention of the parties in the original covenant or condition.

19.04 The parties hereto specifically covenant and agree that no partnership, joint venture or any agency relationship is created or intended to be created between Her Majesty and the Licensee pursuant to this Licence. The only relationship is that of licensor and licensee.

- 19.05 The Licensee hereby confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of Her Majesty for or with the view to obtaining this Licence, any bribe, gift or other inducement and that it has not, nor has any person on its behalf, employed any person to solicit or secure this Licence upon any agreement for a commission, percentage, brokerage or contingent fee.
- 19.06 Whenever the provisions of this Licence, unless the text expressly states otherwise, requires an approval of or consent to any action, request, document or plan by a party or require any party to be satisfied as to any of the foregoing, a party shall not arbitrarily or unreasonably withhold, delay or exercise such approval or consent. It shall be considered reasonable that in addition to anything set forth in this Licence, Her Majesty, the Minister and the Superintendent may consider applicable statutes and regulations thereunder, government policies and management plans as well as anything that may be necessary for the preservation, control or management of the Site or for the safety of the public. Furthermore, nothing herein shall limit any discretion of Her Majesty, the Minister or the Superintendent which discretion is set forth under any applicable statutes and regulations thereunder. In addition, the Licensee acknowledges and agrees that it shall be considered reasonable for Her Majesty, the Minister and the Superintendent to take the time for appropriate internal consultation as well as consultation with third parties as may be necessary for the granting of such approval or consent.
- 19.07 Time is of the essence of this Licence and all of the provisions hereof.
- 19.08 No implied terms or obligations of any kind on behalf of Her Majesty shall arise from anything in this Licence or any improvements effected by the Licensee, and the express covenants and agreements herein contained and made by Her Majesty are the only covenants and agreements upon which any rights against Her Majesty are to be funded.
- 19.09 No exercise of any specific right or remedy of Her Majesty shall prejudice or preclude Her Majesty from exercising any other right or remedy provided by this Licence or allowed at law or in equity. No right or remedy provided to Her Majesty by this Licence or at law or in equity shall be exclusive or dependent upon any other such right or remedy, and Her Majesty may, from time to time, exercise any one or more such rights or remedies independently or in combination.
- 19.10 The captions and headings throughout this Licence are inserted for convenience of reference only and are not intended to describe, define or limit the scope, extent or intent of this Licence, or any provision thereof.
- 19.11 Every provision herein contained shall enure to the benefit of and be binding upon Her Majesty, Her heirs, successors and assignors and the Licensee, its heirs, executors, administrators and permitted successors and permitted assignors. Where there is more than one Licensee, all covenants and other provisions herein contained shall be construed as being joint and several, and when the context so requires or permits, the singular number shall be read as if the plural were expressed, and the masculine gender as if the feminine or neuter, as the case may be, were expressed.

[remainder of page left intentionally blank]

19.12 This Licence constitute the entire agreement between the Licensee and Her Majesty with respect to the subject matter of this Licence. There are no collateral warranties or agreements.

IN WITNESS WHEREOF, the parties have executed this Licence.

Parks Canada Agency, on behalf of
Her Majesty the Queen in right of Canada

Witness

Superintendent
Southwestern Ontario Field Unit
Parks Canada Agency

The Corporation of the Town of Niagara-on-
the-Lake

Witness

Signature

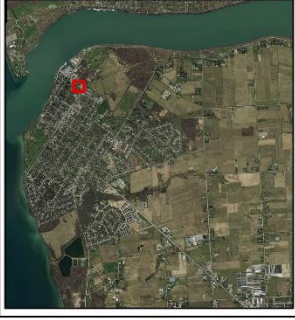
Betty Disero
Lord Mayor, Town of Niagara-on-the-Lake
I have authority to bind the Licensee

Witness

Signature

Marnie Cluckie
CAO, Town of Niagara-on-the-Lake
I have authority to bind the Licensee

SCHEDULE "A" SITE PLAN



Fort George Bus Parking

Legend

- Lands Subject to Licence of Occupancy
- Bus Parking
- Parcels

Notes:



SCHEDULE "A" - SITE PLAN
FOR LICENCE OF OCCUPANCY
Town of Niagara-on-the-Lake Tour Bus Parking Lot
Parks Canada Lands
at the Fort George National Historic Site

**SCHEDULE “B”
OPERATIONAL REQUIREMENTS**

The Licensee shall comply with the following at no cost to Her Majesty:

1. The Licensee will provide all labour, materials, supplies and equipment for graffiti removal from all signs. Graffiti must be removed within 48 hours of notification.
2. The Licensee will ensure no advertising (other than parking signs) are erected on the Land without prior written consent of the Superintendent.
3. The Licensee will:
 - (a) ensure that the Land is staffed during all hours that a tour bus parking fee is in effect;
 - (b) issue violation notices for vehicles not in compliance with the posted rates and time limits; and
 - (c) ensure all vehicles are in compliance with the posted rates and restrictions.
4. The Licensee will ensure that all employees carry employee identification at all times and will be easily identified to the visiting public by wearing a uniform or logo.
5. The Licensee will post the lot’s infraction policy for the parking lot in a location easily visible to all customers.
6. The Licensee will provide the Superintendent with a monthly report due on the 15th day of each month reporting relevant financial and statistical data.
7. The Licensee will be responsible for repairing damage to asphalt, guardrails, fencing, curbs, gates and any other improvements caused as a result of managing, operating, and maintaining the parking lot. Joint inspections by the Licensee and Parks Canada will be conducted of the guardrails, curbs, asphalt, fences etc. prior to the commencement of the Period, and again upon expiry of the Period.
8. The Licensee will provide all labour, materials, supplies, equipment and services to maintain safe access to the parking lot, including snow and ice removal from all surfaces, gravelling and salting.
9. The Licensee will provide all labour, materials, supplies and equipment to collect, remove and dispose of garbage from the lot, including garbage and recycling bins and bags. All waste must be disposed of according to applicable bylaws.
10. Parks Canada will be responsible for cleaning up the garbage after its use of the lot and be responsible for any damages that may occur during this time. Joint inspections by the Licensee and Parks Canada of the guardrails, curbs, asphalt, fences etc. will be conducted prior to and after the end of each of these periods.
11. The Licensee will ensure Parks Canada publications and printed materials are available to the visiting public and users of the parking lot.

LICENCE OF OCCUPATION

BETWEEN

HER MAJESTY THE QUEEN
in right of Canada

AND

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE