

THIS AGREEMENT MADE THIS <DAY> DAY OF <MONTH>, <YEAR>

BETWEEN:

THE CORPORATION OF THE CITY OF NORTH BAY
(hereinafter referred to as the "**LICENSOR**")

OF THE FIRST PART

- and -

<COMPANY NAME>

(hereinafter referred to as the "**LICENSEE**")

OF THE SECOND PART

RECITALS:

1. **PURSUANT** to Subsection 391.(1)(c) of the *Municipal Act*, S.O. 2001, a municipality's fee or charge with respect to an encroachment on any highway forms a charge upon the land used in connection therewith;
2. **WHEREAS** the Licensee is the registered owner of the lands and premises described in Schedule "A" attached hereto (hereinafter the "Licensee's Property");
3. **AND WHEREAS** the Licensor is the owner of the sidewalks, laneways, roadways and road allowances and lands adjoining the said Licensee's Property (hereinafter the "City Property");
4. **AND WHEREAS** the Licensee wishes to use a portion of the City Property which abuts the Licensee's Property (hereinafter the "Lands") for the purpose of a sidewalk café with or without a temporary sidewalk (collectively hereinafter the "Purpose") as shown on the Sketch attached hereto as Schedule "B" (the "Sketch");
5. **AND WHEREAS** the Licensor is agreeable to the Licensee's use of and access to and from the Lands for the Purpose herein described subject to the terms and conditions hereinafter contained;
6. **AND WHEREAS** the Mayor and the City Clerk are hereby authorized to execute this Agreement pursuant to the provisions of By-Law 202-225 and by Council Resolution 2016-93(a) and (b) which was passed by the Council of The City of North Bay (herein the "Council") at its Regular Meeting held Monday, March 7, 2016;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION OF THE PREMISES AND THE COVENANTS HEREINAFTER SET FORTH AND SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

Article 1 - Annual Use

- 1.1 The Licensor grants to the Licensee the non-exclusive use of the Lands for the Purpose commencing not earlier than the Friday of the Victoria Day long weekend in May (hereinafter the "Commencement Date")

and ending not later than the Tuesday immediately following the Thanksgiving weekend in October (hereinafter the "Completion Date") annually, for each year of the Term of this Agreement, unless terminated in accordance with the terms of this Agreement.

Article 2 - Term

2.1 This Agreement shall be for a term of twenty-one (21) years less one (1) day (hereinafter the "Term").

Article 3 - As Is Condition

3.1 The Licensee hereby accepts the Lands in their condition as of the date of this Agreement and undertakes to construct and maintain thereon, all at the expense of the Licensee, all improvements required for the Purposes as depicted in Schedule "B" hereto and as may be otherwise approved by the Licensors in writing and shall not call upon the Licensors to do or pay for any work or supply any equipment to make the Lands more suitable for the Purpose.

Article 4 - Parking Space Location and Rental Fee

4.1 In addition to any other third party license or permit that the Licensee is required to obtain and maintain at its own cost, the Licensee shall pay the Licensors the parking space rental fee as set out in Schedule "C", if applicable. This parking space rental fee may be adjusted by City from time to time as part of the review of the User Fee By-law and the Licensee shall agree to pay any annual increase as approved by Council. The parties agree that the number of parking spaces described in Schedule "C" shall be the number of parking spaces to be occupied by the Licensee.

Article 5 – Representations, Warranties and Covenants

5.1 The Licensee represents warrants and covenants with the Licensors:

- i. that if it is a body corporate that is duly incorporated under the laws of the Province of Ontario and has the requisite corporate power and capacity to enter into this Agreement;
- ii. to pay the parking space rental fee as set out in Schedule "C", if applicable;
- iii. to pay taxes (including local improvements) and all rates, license fees and other charges imposed on or with respect to the Lands as same become due;
- iv. to use the Lands only for the Purpose and for no other purpose;
- v. in order to accommodate the Purpose the Licensee shall be permitted to make certain improvements at the expense of the Licensee as more particularly detailed in Schedule "B". The Licensee shall provide the City annually within 10 Business Days of the annual Commencement Date written confirmation by the Licensee's Consultant that the improvements have been constructed to the specification detailed on Schedule "B" to the satisfaction of the Licensee's Consultant.

The Licensor may, in its sole and absolute discretion, waive the requirement of certification by the Consultant where the Licensee only proposes to install tables, chairs, umbrellas and/or fencing.

“Consultant” shall mean the Licensee’s Registered Designer, Professional Engineer or Architect all of whom must be registered in the Province of Ontario.

- vi. to not to erect any buildings or structures other than as set out on Schedule “B” on the Lands without the prior written permission from the Licensor;
- vii. not to bring onto the Lands or any part of the City Property any machinery, equipment or any other thing that might in the opinion of the Licensor, by reason of its weight, size or use, damage the Lands or the City Property and if the Lands or City Property are so damaged the Licensee shall pay to the Licensor the cost of restoring the Lands and City Property;
- viii. no tables, chairs, temporary entrance shelters, canopies, umbrellas, parasols, decorative planters or other thing shall be placed so as to interfere with access by wheelchairs;
- ix. the Licensee shall erect and maintain a fence or other vertical barrier, as shown on Schedule “B” attached hereto, to delineate the perimeter of the Lands. The top rail of a fence shall be painted a reflective yellow and the remainder of the fence shall be a contrasting colour for the benefit of people with visual impairments;
- x. to maintain the appearance of the Lands and the Licensee’s trade fixtures, including but not limited to tables, chairs, temporary entrance shelters, canopies, umbrellas, parasols, decorative planters and other things thereon in a neat, clean and well-kept manner;
- xi. to ensure that no refuse, litter, garbage or loose or objectionable material accumulates in or about the Lands;
- xii. on the Completion Date or on the termination of this Agreement, the Licensee shall peaceably surrender and yield up the Lands to the Licensor and shall, annually or on the termination of this Agreement, remove its trade fixtures, equipment, installations, improvements and restore the Lands to substantially the same condition as they were at the Commencement Date, at its own cost, to the reasonable satisfaction of the Licensor; and
- xiii. to comply with all laws, statutes, regulations, by-laws, rules, declarations, ordinances, directions, directives, orders, requirements of all federal, provincial, municipal and all quasi-governmental authorities, departments, commissions and boards having jurisdiction and to hold the Licensor harmless from the consequences of its failure to do so. Without limiting the generality of the foregoing, the Licensee shall not commit or suffer, cause or permit to be committed any kind of nuisance or offensive act or misconduct in, on or about the Lands or

commit or suffer, cause or permit to be committed any injury or annoyance to any occupants of neighboring premises.

Further, without limiting the generality of the foregoing, the Licensee shall meet, at its own expense, all requirements stipulated by the Alcohol and Gaming Commission of Ontario, if applicable.

Article 6 – Indemnification, Insurance and WSIB

- 6.1 (a) The Licensee shall at all times indemnify and save harmless the Licensor and its Mayor, Councillors, officers, employees, servants, officials or agents from or against any and all claims, demands, losses, costs, charges, expenses, actions and other proceedings (including those in connection with workplace safety and insurance compensation or any similar or successor arrangement) made, brought against, suffered by or imposed on the Licensor and its Mayor, Councillors, officers, employees, servants, officials or agents or the Licensor's Property in respect of any failure by the Licensee to fulfill any of its obligations under this Agreement or for any reason whatsoever or in respect of any loss, damage, or injury (including injury resulting in death):
- i. to any person or property directly or indirectly arising out of, resulting from or sustained by reason of the occupation or use of the Lands, or any operation in connection therewith or any fixtures or chattels thereon, or
 - ii. to any person while on adjoining lands of the Licensor in the course of that person's entry onto or exit from the Lands.
- (b) The Licensor shall not be liable, directly or indirectly, for any personal injuries that may be suffered or sustained by any person who may be on the Lands or for any loss of or damage or injury to property belonging to the Licensee or any other person, unless such injury, loss or damage is due to the Licensor's negligence or default or the negligence or default of those for whom the Licensor is in law responsible or the negligence of the Licensor or the negligence or default of those for whom the Licensor is in law responsible.
- (c) The Licensee shall full indemnify and save harmless the Licensor from and against all construction liens and related costs and other claims in connection with all work performed by or for the Licensee on the Lands, and the Licensee shall promptly cause to be discharged all claims against any interest of the Licensor in the Lands.
- 6.2 The Licensee shall obtain, provide and maintain public liability (personal injury and property damage insurance) in the minimum amount of FIVE MILLION DOLLARS (\$5,000,000.00) with respect to its use of the Lands for each year of the Term of this Agreement naming "The Corporation of the City of North Bay" as an additional insured. If the Licensee is serving alcohol on the Lands such insurance shall include liquor liability coverage. Without limiting the generality of the foregoing, such liability insurance shall contain provisions for cross liability, severability of interests and that the policy will not be changed or amended in any way or cancelled until thirty (30) days after written

notice of such change or cancellation shall have been given to the Licensor. The Licensor agrees to provide a certificate of insurance in a form satisfactory to the City Solicitor evidencing same prior to the execution of this Agreement and annually prior to the Commencement Date of each year of the Term and as such insurance is renewed.

- 6.3 The Licensee shall provide the Licensor with a copy of a valid and current certificate issued by the Workplace Safety and Insurance Board upon execution of this Agreement and annually thereafter on or before the Commencement Date and as further requested from time to time by the Licensor.

Article 7 - Default

- 7.1 If the Licensee is in default in performing any of its obligations under this Agreement, the Licensor shall give written notice to the Licensee of such default and give the Licensee 5 Business Days to remedy such default, failing which the Licensor may immediately terminate this Agreement without liability. The Licensee shall then immediately remove its chattels, trade fixtures, equipment, installations and improvements, if any, from the Lands and shall restore the Lands to the condition in which they were at the Commencement Date. If the Licensee neglects, refuses or fails so to do within the time specified in the notice, then the Licensor may remove all of the Licensee's trade fixtures, equipment, installations and improvements from the Lands, and restore the Lands to the same condition as they were at the Commencement Date and may charge the costs of so doing to the Licensee. The amount of such costs, as certified by the Licensor's Managing Director of Community Services, or his or her designate, shall be final and binding. The Licensor may recover such costs from the Licensee in any court of competent jurisdiction. Without limiting the Licensor to any remedy available to it at law the Licensee acknowledges and agrees that the Licensor may add such costs to the tax rolls for the Licensee's Property and collect such costs in a like manner as taxes.

Article 8 – Services

- 8.1 The Licensee acknowledges the existence of municipal and/or utility services above, below and within the Lands and acknowledges that the Licensor and/or the utility responsible for such service (hereinafter the "Utility") may need to undertake installation, replacement, repairs or maintenance on such service(s), in or above the Lands. The Licensee agrees that the Licensor and/or the Utility shall have the right to enter onto the Lands and to carry out such installation, replacement, repairs or maintenance. Prior to entering onto the Lands for such purposes, the Licensor and/or Utility shall give five (5) Business Day's written notice of the intention to do so, except in the case of emergency, in which case no notice shall be required. Upon receiving the Notice the Licensee shall peaceably surrender and yield up the Lands to the Licensor or Utility and shall remove its trade fixtures, equipment, installations and improvements at its own cost by the date given in the Notice. In the event of an emergency the Licensor or Utility may remove the Licensee's trade fixtures, equipment, installations and improvements without liability. On completion of the installation, replacement, repairs or maintenance, the Licensee shall proceed to restore its trade fixtures, equipment, installations and improvements to the condition they were in prior to the commencement of such installation, replacement, repairs or maintenance, at the Licensee's

own expense. Under no circumstances shall the Licensor and/or the Utility be required to so restore the trade fixtures, equipment, installations and improvements or to compensate the Licensee for the cost of so doing or for any lost profit or damages or loss of any kind.

Article 9 – Termination

9.1 The Licensee acknowledges and agrees that the Licensor shall have the right to terminate this Agreement, license and permissions granted herein at any time, for any reason whatsoever, without cause and without liability, upon giving the Licensee five (5) Business Day's written notice of termination. The Licensor shall immediately remove all of its trade fixtures, equipment, installations and improvements and make good and repair or replace as necessary, to the Licensor's satisfaction, any damage caused to the Lands by the removal of the Licensor's trade fixtures, equipment, installations and improvements, all at the Licensee's own cost. If the Licensee neglects, refuses or fails so to do within the time specified in the Notice, then the Licensor may remove all of the Licensee's trade fixtures, equipment, installations and improvements from the Lands, and restore the Lands to the same condition as they were at the Commencement Date and may charge the costs of so doing to the Licensee. The amount of such costs, as certified by the Licensor's Managing Director of Community Services, or his or her designate, shall be final and binding; and the Licensor may recover such costs from the Licensee in any court of competent jurisdiction. Without limiting the Licensor to any remedy available to it at law the Licensee acknowledges and agrees that the Licensor may add such costs to the tax rolls for the Licensee's Property and collect such costs in a like manner as taxes.

Article 10 - Access

10.1 The Licensee acknowledges and agrees that the license granted by this Agreement does not permit the use of the Lands in any manner which would have the effect of blocking or impairing the entrance to or exit from any third party lands, premises and buildings which abut the Licensee's Property, the Lands or City Property.

Article 11 – Transfer of Land or Business

11.1 In the event of the Licensee transfers or sells the Licensee's Property or business operated on the Licensee's Property or any portion thereof to any person, partnership, corporation or any legal entity, the Licensee shall forthwith notify in writing the Licensor of such sale or transfer and this Agreement shall be immediately terminated.

Article 12 - Notice

12.1 Where in this Agreement any notice is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by ordinary or registered mail, or by facsimile transmission or email addressed to either party for whom it is intended at the addresses listed on Schedule "D", and any notice shall be deemed to have been given:

- (a) If delivered personally, on the date of such delivery;
- (b) If by ordinary mail, on the fifth (5th) Business Day following the date of mailing;

- (c) If by registered mail, on the date the postal receipt is acknowledged by the other party;
- (d) If by facsimile transmission or email when transmitted (if received before 4:30 pm local time at the recipient's office or failing which on the next Business Day);
- (e) The Licensee or the Licensor may change its address for the purpose of notice under this Agreement by giving notice of such change to the other in accordance with this provision.

Article 13 - Registration

13.1 This Agreement may be registered against the title to the Licensee's Property and the cost of registration of the same shall be paid by the Licensee.

Article 14 - No Assignment

14.1 The Licensee shall not assign this Agreement or any part of this Agreement nor shall the Licensee sublet the Lands.

Article 15 - Binding Agreement

15.1 This Agreement and everything contained herein shall enure to the benefit of the parties and be binding upon the parties hereto and their executors, administrators and permitted assigns.

Article 16 - Amendments

16.1 This Agreement may only be amended by a written agreement duly executed by the parties.

Article 17 - Waiver of Breaches

17.1 No condoning, excusing, overlooking or delay in acting upon any default of the Licensee at any time shall act as a waiver of the Licensor's rights under this agreement except as an express waiver in writing.

Article 18 - Interpretation - Business Day

18.1 For the purposes of this Agreement, "Business Day" shall mean a day other than a Saturday, Sunday or a statutory, civic or public service holiday observed in the Province of Ontario.

Article 19 - No Partnership

19.1 The Licensee acknowledges that it is nothing in this Agreement shall be construed as creating any agency, employment relationship, partnership, principal-agent or other form of joint venture between the parties.

Article 20 – Schedules

20.1 The schedules annexed hereto and are incorporated by reference and are deemed to be part hereof:

- Schedule "A" – Licensee's Property
- Schedule "B" – Sketch
- Schedule "C" – Parking Space Use Location and Rental Fee
- Schedule "D" – Addresses for Notice

The Corporation of the City of North Bay

Allan McDonald, Mayor

Karen McIsaac, City Clerk

We have the authority to bind the corporation.

<COMPANY NAME>

<COMPANY NAME>

Per: **<INDIVIDUAL NAME>**

I have the authority to bind the corporation.

Schedule "A" – Licensee's Property

<LEGAL DESCRIPTION>

STANDARD AGM'T (same Property Owner & Business Owner)

Schedule "B" - Sketch

<SKTECH>

STANDARD AGM'T (same Property Owner & Business Owner)

Schedule "C" – Parking Space Use and Applicable Fee

Location of Parking Spaces

Parking Space Rental Fee

STANDARD AGM'T (same Property Owner & Business Owner)

Schedule "D" – Addresses for Notice

Under this Agreement Notice shall be provided in writing and delivered to:

To the Licensor at:

200 McIntyre Street East,
P.O. Box 360,
North Bay, ON P1B 8H8
Attention: Karen McIsaac, City Clerk

To the Licensee at:

<MAILING ADDRESS OF OWNER>

STANDARD AGM'T (same Property Owner & Business Owner)