

THE CORPORATION OF
THE TOWNSHIP OF WHITEWATER REGION
BY-LAW # 05-10-204

A By-law to enter into an Agreement with Her Majesty, the Queen represented by the Minister of Oceans and Fisheries for the Improvement and Maintenance of Wharfs.

WHEREAS:

1. A Municipality has authority under the Municipal Act 2001 Section 9, to pass a by-law regarding the improvement and maintenance of Wharves.
2. The Council of the Corporation of the Township of Whitewater Region considers it expedient to enter into a 5 year agreement with Her Majesty, the Queen represented by the Minister of Oceans and Fisheries.

NOW THEREFORE the Council of the Corporation of the Township of Whitewater Region ENACTS as follows:

1. The Reeve and Clerk be authorized to sign the agreement between the Corporation of the Township of Whitewater Region and Her Majesty, the Queen represented by the Minister of Oceans and fisheries.
2. This By-law shall come into force on the day of passing.

PASSED and ENACTED this 5th day of October, 2005.


REEVE


CAO/CLERK



GOVERNMENT
OF CANADA

GOUVERNEMENT
DU CANADA

FISHERIES
AND OCEANS

PÊCHES
ET OcéANS



ORIGINAL

LEASE

BAIL

SMALL CRAFT HARBOURS BRANCH
AND

DIRECTION DES PORTS POUR PETITES EMBARCATIONS
ET

THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

AUTHORITY
Autorisation _____

DATE OF DOCUMENT
Document daté du _____

BEGINNING OF TERM
La période de location commence le OCTOBER 1, 2005

END OF TERM
La période de location se termine le SEPTEMBER 30, 2010

RENT PAYABLE
Loyer payable \$500.00 (FIVE HUNDRED DOLLARS) PER ANNUM OR 20% OF GROSS REVENUE

LANDS OR RIGHTS DEMISED
Cession ou transfert ALL AND SINGULAR those certain parcels or tracts of land covered by water, TOGETHER WITH the Government Wharves and Launching Ramps located thereon, more particularly described herein under headings Firstly: "La Passe" and Secondly: "Westmeath" in the former Township of Westmeath, now The Township of Whitewater Region in the County of Renfrew, Province of Ontario, being more particularly shown on the Plans hereto annexed and designated Schedules "A" and "B".

FILE No. 5883-70/L279 5883-70/W322
No de dossier _____

REMARKS / Remarques

THIS AGREEMENT made this day of Two thousand and five;

B E T W E E N -

HER MAJESTY THE QUEEN, represented herein
by the Minister of Fisheries and Oceans
(hereinafter called "the Minister"),

OF THE FIRST PART;

-and-

THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION,
Province of Ontario
(hereinafter called "the Agent"),

OF THE SECOND PART;

WITNESSETH that the Minister, in consideration of the rents, covenants, provisoes and conditions hereinafter contained, hereby leases unto the Agent:-

Description Firstly: "LA PASSE"

ALL AND SINGULAR that certain parcel or tract of land covered by water, more particularly described as Water Lot Location CL 917 in the Ottawa River, Opposite Part of Lot 4, East Front "C" in the former Township of Westmeath now the Township of Whitewater Region, County of Renfrew, Province of Ontario, comprising an area of Ninety-three one-hundredths (0.93) of an acre, more or less, TOGETHER WITH the Government Wharf and Launching Ramp located thereon, (hereinafter referred to as "the said premises"), being more particularly shown outlined in red on the Plan hereto annexed and designated Schedule "A";

Secondly: "WESTMEATH"

ALL AND SINGULAR that certain parcel or tract of land covered by water, more particularly described as Water Lot Location CL 3359 in the Ottawa River, in Front of Part of Lot 23, Concession VI, in the former Township of Westmeath, now The Township of Whitewater Region in the County of Renfrew, Province of Ontario, designated as Part 1 on Registered Plan 49R-6265 and comprising an area of nine one-hundredths (0.09) of an acre, more or less, TOGETHER WITH the Government Wharf and Launching Ramp located thereon, (hereinafter referred to as "the said premises"), being more particularly shown on the above-noted Plan hereto annexed and designated Schedule "B";

Habendum

TO HAVE AND TO HOLD the said premises unto the Agent from and after the first day of October, Two thousand and five for a term or period of five (5) years and then fully to be complete and ended.

Reddendum

YIELDING AND PAYING therefor, during the currency of this Agreement, unto the Minister, to the Receiver General of Canada, in lawful money of Canada, the following rent or sum, namely:-

- (a) FIVE HUNDRED DOLLARS (\$500.00) per annum, payable each year in advance, or
- (b) TWENTY PER CENT (20%) of all gross revenue derived by the Agent from the management and operation of the said premises, whichever is the greater amount, and the difference between the \$500.00 paid in advance and the 20% of gross revenue is payable within sixty days of the end of each agreement-year.

Inter-pretation

IN THIS agreement;

- (i) "Minister" means the Minister of Fisheries and Oceans and any person he has delegated to act on his behalf.
- (ii) "Regional Director" means the Regional Director of Small Craft Harbours Branch of the Department of Fisheries and Oceans and any person he has delegated to act on his behalf.

It is agreed by and between the said parties hereto that these Presents are made and executed upon and subject to the covenants, provisoes, conditions and reservations hereinafter set forth and contained, namely:

- Purpose 1. a) The Agent shall use and occupy the said premises and carry out the management and operation of the said premises in accordance with the Fishing and Recreational Harbours Act and the Fishing and Recreational Harbours Regulations as amended from time to time, or any other applicable act or regulations enacted or made during the currency of this Agreement.
- b) Nothing in Clause No. 1a) hereof, shall relieve the Minister from discharging any of his duties under the said Fishing and Recreational Harbours Act and the said Fishing and Recreational Harbours Regulations.
- c) That the Minister shall supply to the Agent, one copy of the said Act and Regulations, as amended from time to time.
- To Pay Rent 2. That the Agent will pay all annual rental fees herein reserved at the time and in the manner in these Presents set forth, without any abatement or deduction whatever.
- Taxes 3. That the Agent will pay or cause to be paid all rates, taxes and assessments, of whatsoever description, that may at any time during the existence of these Presents be imposed, or become due and payable upon, or in respect of the said premises.
- Compliance with Law 4. The Agent shall in all respects abide by and comply with all rules, regulations and by-laws of municipalities and other governing bodies, in any manner affecting the said premises.
- Public Use 5. Subject to Clause No. 19 hereof, the Agent shall not interfere with the public use of the said premises during the currency of this Agreement; it being expressly understood and agreed, however, that the Agent may refuse the use of the said premises to any vessel on which tolls and dues are outstanding and the Agent may take all lawful action through Small Debts Court or otherwise to obtain payment of outstanding or overdue accounts.
- Access 6. a) That the Minister, his servants or agents shall, at all times and for the purpose of inspecting the said premises, have full and free access to any and every part of the said premises.
- b) The Minister shall, upon reasonable notice to the Agent, except in the case of an emergency, have full and free access to the said premises for the purposes of repairing and maintaining the said premises.
- Assignment 7. That the Agent shall not make any assignment of these Presents, nor any transfer or sub-lease of any of the premises, rights or privileges demised or leased hereunder, without obtaining the prior consent in writing of the Minister to such assignment, transfer or sub-lease. The Agent shall pay to the Minister a reasonable charge for the preparation of any consent thereto expressed in writing, and shall be responsible for any costs incurred by the Minister in addressing the request for consent, provided that such costs are reasonable.

Repair and Maintenance

8. That the Agent shall not, during the currency of this Agreement, do, suffer or permit to be done any act or thing which may impair, damage or injure the said premises beyond the damage occasioned by reasonable use, and shall inspect, maintain, and effect minor repairs of the said premises which may at any time become damaged, whether due to the negligence of the Agent or otherwise. Nothing in this provision shall obligate the Agent to be responsible to effect repairs of a major or structural kind, but, in the event that such repairs are needed, it shall be the responsibility of the Agent to provide notice to the Minister of the need for major or structural repairs, and to take whatever steps are appropriate to deal with continued use of the premises while such repairs are pending. When such repairs are warranted, the parties hereto shall consider, and together decide how and when to effect such repairs.

Care of Property

9. That the Agent shall, at its own cost and expense, at all times during the currency of this Agreement, keep the said premises in a neat and tidy condition, removing or causing to be removed therefrom all papers, refuse, litter, waste or rubbish arising out of the operations of the Agent under this Agreement, all to the satisfaction of the Regional Director.

Improvements

10. That any improvements made to the said premises by the Agent at any time during the term of this Agreement, to make the said premises suitable for the purposes referred to in Clause No. 1 hereof, shall be at the risk, cost and expense of the Agent and to the satisfaction of the Regional Director.

Construction of Buildings or Structures

11. That the Agent shall not construct or erect any buildings or other structures on the said premises without obtaining the approval of the Regional Director, of plans showing the design and nature of construction of such buildings or structures and their proposed locations.

Annoyance Nuisance and Disturbance

12. That the Agent shall not, at any time during the currency of this Agreement do, cause or permit to be done, any act or thing in or upon the said premises which shall, or may be, or might become, an annoyance, nuisance or disturbance to the occupiers of any lands or premises adjoining or in the vicinity of the said premises.

Title

13. That it is hereby declared, and this Agreement is accepted by the Agent, upon the express condition that the Agent shall have no recourse against the Minister, should the Minister's title to the said premises be found to be defective, or should these Presents prove ineffectual by reason of any defect in such title.

Claims and Damages

14. That the Agent shall not have any claim or demand against the Minister for loss, damage or injury of any nature whatsoever, or howsoever caused to the said premises or to any person or property, at any time brought, placed, made or being on the said premises unless such damage or injury is due to the negligence of any officer, servant, agent, contractor or sub-contractor of Her Majesty the Queen in right of Canada while acting within the scope of his duties.

Indemnification

15. That the Agent shall at all times indemnify and save harmless Her Majesty the Queen in respect of any action, claim, cause of action, suit, debt, loss, damages, cost, expense or demand whatsoever, at law or in equity, arising by way of any breach by the Agent, its employees, servants, agents, sub-lessees or persons for whom it is by law responsible, of any provisions of this Agreement or arising by way of the Agent and Her Majesty's ownership, occupation and control of the premises, except claims for damage resulting from the negligence of any officer, servant, agent, contractor or sub-contractor of Her Majesty the Queen while acting within the scope of his/her duties.

Termination 16. That this Agreement may be terminated at any time:

- (a) By the Agent upon sixty days' notice in writing, such notice to be signed by the Agent and delivered to or mailed addressed to the Regional Director, Small Craft Harbours Branch, Department of Fisheries and Oceans, P.O. Box 85120, 3027 Harvester Road, Burlington, Ontario, L7R 4K3, or
- (b) By the Minister upon sixty days' notice in writing, signed by the Minister, and either delivered to the Agent or any officer of the Agent, or mailed addressed to the last known place of business or office of the Agent

and thereupon, after the expiration of such period of notification, these Presents shall be determined and ended, and the Agent shall thereupon, and also in the event of the determination of this Agreement in any other manner, except re-entry under Clause No. 17 hereof, forthwith remove from the said premises all things at any time brought or placed thereon by the Agent and shall also to the satisfaction of the Regional Director repair all and every damage and injury occasioned to the said premises by reason of such removal or in the performance thereof, but the Agent shall not, by reason of any action taken or things performed or required under this clause, be entitled to any compensation whatever, provided that, unless required by the Minister no goods, chattels, materials, effects or things shall be removed from the said premises until all rent due or to become due under this Agreement is fully paid.

Default 17. That, notwithstanding anything in this Agreement contained, if the rent above reserved or any part thereof, shall be in arrears or unpaid, whether or not the same shall have been in any manner demanded, or in case default, breach or non-observance be made or suffered by the Agent at any time or times, in, or in respect of any of the covenants, provisoes, conditions, and reservations herein contained, which on the part of the Agent ought to be observed and performed, then, and in every such case, provided such nonpayment of rent, default, breach or non-observance is not cured within thirty (30) days from the date of notice thereof in writing from the Minister to the Agent, the Minister may terminate this Agreement by giving to the Agent a notice in writing signed by the Minister, and either delivered to the Agent or any officer of the Agent, mailed addressed to the last known place of business or office of the Agent, and thereupon after the delivery or mailing of such written notification, this Agreement shall be determined and ended, and in that event, it shall be lawful for the Minister, his servants or agents, to re-enter and thereafter to have, possess and enjoy the said premises and all improvements thereon.

And no acceptance of rent subsequent to any breach or default, other than non-payment of rent, nor any condoning, excusing or overlooking by the Minister on previous occasions of breaches or defaults similar to that for which re-entry is made shall be taken to operate as a waiver of this condition nor in any way defeat or affect the rights of the Minister hereunder.

The Agent shall pay in addition to any other provisions hereof the reasonable fees and disbursements of counsel to the Minister in connection with the enforcement of this Agreement, or in the event of default hereunder.

Hold over 18. Provided always and that it is hereby agreed by and between the parties hereto that if the said Agent shall hold over after the expiration of the term hereby granted, and the Minister shall accept rent, the new tenancy thereby created shall be a tenancy at will and not a tenancy from year to year, and the Agent shall pay as rent during the time of such occupancy a rental to be determined at the discretion of the Minister, and shall be subject to the covenants and conditions herein contained so far as the same are applicable to tenancy at will.

Tolls, Dues
& Charges

19. That the Agent shall, during the currency of this Agreement, charge tolls or dues established under the authority of the Fishing and Recreational Harbours Act by regulations approved from time to time by the Governor in Council respecting the said premises. The Agent may collect additional reasonable charges for services such as electrical power outlets, water outlets, watchman services, etc., provided at the Agent's expense for the benefit and use of the boating public using the said premises.

Accounting
Records

20. That during the currency of this Agreement, the Agent shall cause to be kept records of its operations hereunder, such records to be kept according to accepted principles of accounting, and the Agent shall supply to the Regional Director a certified statement for each accounting period during the currency of the Agreement.

Audit
Inspection

21. That the books of the Agent concerning the operation and management of the said premises, shall be open for audit and inspection at all times during business hours, by the accredited officers of the Minister.

Pollution

22. That the Agent shall not place or deposit, or cause or permit to be placed or deposited, any fill, sand, gravel, detritus, waste, debris or other materials, articles or things on the said premises which may form a deposit thereon or therein without the prior consent, in writing, of the Regional Director.

Environ-
mental
Protection

23. (i) The Agent agrees to abide by and comply with all federal environmental legislation, including the relevant provisions of the Canadian Environmental Protection Act, affecting the said premises, as well as with the regulations and guidelines made and established under it, and all applicable Provincial, Territorial and municipal environmental legislation, regulations, rules or guidelines affecting the said premises.

(ii) The Agent shall not process, use, deposit or store on the said premises or in its subsoil any toxic substance, as defined in the Canadian Environmental Protection Act, nor any other substance that constitutes or may constitute a danger to the environment or to human life or health.

(iii) The Agent agrees to clean up, at its expense, to then current federal and provincial standards, any part or all of the said premises contaminated during the term of this Lease or any renewal of it immediately upon becoming aware of the contamination.

Service
Reservation

24. That this Agreement is granted strictly subject to the right of the Minister and Lessees and Licensees of the Minister to maintain and operate services installed on the said premises at the date of this Agreement, and to the right of the Minister to grant leases or licences, as the case may be, at any time during the currency of this Agreement, covering the right and privilege or permission to install, lay, maintain and use services on, over or across the said premises and the agent shall not, at any time during the currency hereof, do anything or cause or permit anything to be done which will in any way interfere with the rights and privileges or permissions thereby granted, provided however, that such leases or licences will be granted subject to this Agreement and provided that the Lessees or Licensees thereunder shall not commence to exercise the rights and privileges or permissions thereby granted unless and until the consent in writing is first obtained from the Agent, and which consent shall not be unreasonably withheld.

Concession

25. That no applications for permission to establish concessions of any kind shall be granted without the prior approval in writing of the Regional Director.

- Use by Agent 26. That in the event that any portions of the said premises are used for the purposes of the Agent, the Agent shall establish a market rental for such use and the Reddendum Clause shall be applied to such rental.
- Fire Prevention 27. That the Agent shall take all necessary precautions against fire occurring in or on the said premises.
- Navigable Waters' Protection Act 28. That the Agent shall fulfill in all respects the requirements of Part I of the Navigable Waters' Protection Act, Chapter N-19 of the Revised Statutes of Canada 1970.
- Members of Parliament 29. No Member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.
- Discrimination 30. That the Agent and any Sub-lessees shall not discriminate against any person by reason of race, colour or creed, in any manner whatsoever, pertaining to the operation and use of the said premises.
- Sale or Transfer 31. (i) Notwithstanding any other provision of this Agreement, in the event that the Minister disposes of its interest in the leased premises, or any part thereof, by way of sale, transfer or other conveyance, including a transfer of administration and control to Her Majesty the Queen in right of the Province of Ontario, the Minister shall be entitled at their sole option to assign this Agreement, or such portion thereof, to the transferee, or to terminate this Agreement, and the Agreement shall upon notice thereof be terminated forthwith.
- (ii) In the event of notice of termination being given by the Minister to the Agent, the Agent agrees that it shall forthwith vacate the said premises, and remove any chattels from the said premises in accordance with the provisions of this Agreement. The Agent further agrees and acknowledges that it shall have no cause of action against the Crown arising out of early termination of the Agreement, and hereby releases the Minister from any liability or otherwise that may be said to flow from the aforesaid early termination of this Agreement.
- Financial Administration Act 32. If the Agent defaults in the payment of any amount due under this Lease the Agent shall be responsible for and pay interest on such defaulted payment (to the extent permitted by the Financial Administration Act R.S.C. 1985 Chapter F-11 and the Interest and Administration Charges Regulations SOR/96-188 (the Regulations) or any amendments thereto) up to the date payment is received by or on behalf of Her Majesty. For greater certainty and until such time as the Regulations are amended, in the case of default in respect of any monetary amounts due, interest on the amount in default shall be calculated and compounded monthly at the average bank rate plus three per cent and accrue from the due date of the payment, until paid. Furthermore, in the event that any instrument is tendered in payment or settlement of any amount due to Her Majesty hereunder which for any reason is dishonoured, the Agent shall be responsible and pay an administrative charge of \$15.00 to Her Majesty, or any amount prescribed therefor by the Regulations will be applicable and in addition to the outstanding amounts due.

