

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 07-748

**Being a by-law to authorize the Mayor and Chief Administrative Officer/Clerk to
execute a Lease Agreement with Virginia McKenzie O/A Temagami Dream Keeper
Experience**

AND WHEREAS under Section 8. (1) (a) and (b) of the Municipal Act, 2001, S.O., 2001, c.25, as amended, the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

WHEREAS under Section 9 of the Municipal Act, 2001, S.O., 2001, c.25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other act;


NOW THEREFORE the Council of the Corporation of the Municipality of Temagami hereby enacts as follows:

1. That the Mayor and the Chief Administrative Officer are hereby authorized and directed to execute the agreement attached hereto as Schedule "A" to this bylaw.
2. This bylaw shall come into force and take effect upon final passing thereof.

THIS BY-LAW TAKEN AS READ A FIRST time on this 8th day of November, 2007.

THIS BY-LAW TAKEN AS READ A SECOND time on this 28th day of February, 2008.

THIS BY-LAW TAKEN AS READ A THIRD time and finally passed this 28th day of February, 2008.



MAYOR



CAO/Clerk

KEMP MAILLE

THIS INDENTURE made as of the 17th day of MAY, 2007,

in pursuance of THE SHORT FORMS OF LEASES ACT

BETWEEN:

The Corporation of the Municipality of Temagami

Herein called the "Landlord"

OF THE FIRST PART

AND

**Virginia MacKenzie
O/A Temagami Dream Keeper Experience**

Herein called the "Tenant"

OF THE SECOND PART

In consideration of the rents reserved and the covenants and agreements contained in this Lease on the part of the Tenant, the Landlord hereby leases to the Tenant those certain premises situate in the Municipality of Temagami, in the District of Nipissing, more particularly described as being part of

Parcel 39079 Nip. Location CL 10293, RP 36R10715 Parts 1&2

as outlined in a dark black line on the attached Schedule "A", hereinafter called the "Leased Premises" for a term commencing on the 16th day of May, 2007, being fully completed and ended on the 31st day of December, 2008.

The rent in respect of the leased premises shall be payable to the landlord, in advance as follows:

- (i) Seventy Seven Dollars and Forty One Cents (\$77.41) payable on May 16, 2007 for the period May 16, 2007 to and including May 31, 2007;
- (ii) in equal monthly installments of One Hundred Fifty dollars (\$ 150.00) each on the first (1 st) day of each month for the remaining months in the year 2007, the

first payment becoming due and payable on the first (1st) day of June 2007; and,

- (iii) in equal monthly installments of Two Hundred dollars (\$200.00) each on the first (1st) day of each and every month during the year 2008, the first payment becoming due and payable on the first (1st) day of January, 2008.

Rental payments to be made to the "Corporation of the Municipality of Temagami" or as otherwise directed by the Landlord. Goods and Services Tax under the provisions of the *Excise Tax Act of Canada*, if applicable, shall be payable in addition to and not included in the rental payments and shall be payable on the same dates as rent falls due.

1. TENANT'S COVENANTS

The Tenant hereby covenants with the Landlord as follows:

- (a) Rent: To pay the rent hereby reserved in the manner and on the days specified herein;
- (b) Taxes: To pay garbage rates, and other taxes, charges, rates, duties and assessments levied in respect of the Tenant's occupancy of the leased premises or in respect of the personal property or business of the Tenant as and when the same become due;
- (c) Alterations: Not to make any alterations or additions to the Leased Premises without prior consent of the Landlord and any such alterations or additions to be made at the expense of the Tenant. The Landlord will not unreasonably withhold its consent;
- (d) Electric and Other Charges: To pay the cost of electricity, fuel, internet services and telephone as and when they fall due;
- (e) Insurance: Not to use the Leased Premises or permit them to be used for any purpose which may render the insurance on the building void and if the rate of insurance is increased as a result of anything done upon the premises by the Tenant, the Tenant will pay to the Landlord as additional rent the amount by which the insurance premiums are so increased;
- (f) Subletting: Not to sublet the said Leased Premises or any part thereof nor to assign this Agreement without the written consent of the Landlord, which consent may be

withheld;

- (g) Signs: Not to use the outer walls or windows of the said Leased Premises for any notice or name plate except as approved by the Landlord;
- (h) Repairs: To repair, according to notice in writing, as required pursuant to Paragraph 1(P);
- (i) Indemnity: To indemnify the Landlord against all liabilities, claims, damage or expenses arising out of any act or neglect of the Tenant or its servants, employees, agents, invitees or licensees in and about the Leased Premises, or arising out of any breach, violation or non-performance of any of the terms of this lease by them or any damage to the persons or property of the Tenant's servants, employees, agents, invitees or licensees, other than by reason of the negligence of the Landlord;
- (j) Plate Glass: To repair or replace in case of damage all plate glass which is now or may hereafter be on the Leased Premises;
- (k) Clear of Obstruction: To keep the sidewalks about the Leased Premises clear of snow and ice and of all other obstructions according to the by-laws and regulations of the municipality if operating the business in the winter;
- (l) Trade or Business: To use the Leased Premises for the purpose of the Tenant carrying on business of a Gift Shop, Interpretive Centre, Catering Service and Restaurant, Native Heritage Centre, overnight accomodation and other uses of a similar nature and not to carry on or permit to be carried on therein any other trade or business without the consent in writing of the Landlord;
- (m) General Liability and Property Damage Insurance: At the date of execution of this Lease Agreement by the Tenant, and from time to time thereafter, to provide to the Landlord a Certificate of Insurance that the Tenant has a general liability and property damage insurance policy for bodily injury or death and property damage in force which insures the Tenant in respect of injury to or death of any person or property damage in the amount of at least one million (\$ 1,000,000.00) dollars per occurrence and two million (\$2,000,000.00) in the aggregate.

- (n) Heat: To provide sufficient heating of the leased Premises to maintain a reasonable temperature therein at all times when reasonably required for use of premises;
- (o) Pest Control: to hire and maintain pest control of the Leased Premises at a level considered acceptable for similar businesses.
- (p) Maintenance: To keep the said Leased Premises and windows and fixtures and fittings therein in good repair, reasonable wear and tear, and damage by fire, lightning, tempest, flood, explosion, act of God or the Queen's enemies, riot, civil commotion, insurrection, structural defects and other causes not the fault or responsibility of the Tenant or any of its employees, only excepted: and to deliver them up in such condition on the termination of this lease. Without and in any way limiting the Tenant's obligation to maintain the leased premises as provided for in the immediately preceding sentence, the Tenant agrees to maintain the water purification system and clean the washrooms. This covenant to maintain does not extend to the foundations, floors, walls, ceilings and roof and plumbing and heating facilities, which shall be the Landlord's sole responsibility to maintain and the Tenant shall not be responsible for any repairs required thereto resulting from the ordinary use of the Leased Premises but the Tenant shall pay to the Landlord the cost of repairs thereto caused by the negligence or improper wilful act of the Tenant or its employees or agents or customers;
- (q) Septic System: To pump the septic tank out at least once per year and more frequently if requested by the Landlord and to provide proof of such to the Landlord when requested to do so.
- (r) Personal Property Insurance: At the date of execution of this Lease Agreement by the Tenant, and from time to time thereafter, to provide to the Landlord a Certificate of Insurance that the Tenant has an Insurance Policy in force for full replacement value of her personal property located in, on or about the Leased Premises for all of the usual perils a business similar to the one carried on by the Tenant from the Leased Premises would maintain.
- (s) Winterizing the Leased Premises: In the event that the Tenant chooses not to operate her business during the colder months, to winterize in a timely fashion all the buildings

located on the Leased Premises, including the drainage of all water lines and placing sufficient anti-freeze in the sinks and toilets to ensure the pipes do not freeze during the cold weather. The Tenant shall inform the Landlord when the buildings have been winterized and shall permit the Landlord to inspect them to ensure that it meets the Tenant's obligations to do so.

- (t) Temiskaming Health Unit Letter of Approval: Prior to the operation of the catering service and restaurant by the Tenant and at the commencement of each year of the operation of the catering service and restaurant, to provide the Landlord with a Letter of Approval from the Temiskaming Health Unit permitting the service of food on the Leased Premises.
- (u) W.S.LB coverage: To provide the Landlord with evidence of Workplace Safety and Insurance Board coverage for the Tenant and all her employees.
- (v) Washroom Facilities: To provide unrestricted access to the public to the washroom facilities located on the Leased Premises
- (w) Hours of Operation: In order to enhance visitor's experience to the fire tower site, to operate the business at least six (6) hours a day, seven (7) days a week from July 1st to August 31st, inclusive, each year during the term hereof;
- (x) Service of the Public: To serve members of the general public including local and summer residents, tourists, members of bus and train tours, school groups and other similar groups.

2. LANDLORD'S COVENANTS

The Landlord covenants with the Tenant:

- (a) Taxes: To pay, subject to the provisions of Paragraph 1b hereof, all taxes and rates, municipal, parliamentary or otherwise, levied against the Leased Premises or the Landlord on account thereof;
- (b) Structural Repairs: To maintain and repair all windows, doors, plumbing and electrical fixtures and to make repairs to walls, floors and ceilings of the Leased Premises which may be necessary.

- (c) Quiet Enjoyment: For quiet enjoyment;
- (d) Potability Testing: To test the drinking water for potability as required pursuant to provincial legislation and regulations.

3. PROVISOS

Provided always and it is hereby agreed as follows:

- (a) Tenant's Fixtures: Subject to the other provisions of this lease, the Tenant may remove its fixtures;
- (b) Damage and Destruction:

- (i) Provided that if during the term herein or any renewal thereof the Leased Premises shall be destroyed or damaged by fire or the elements then the following provisions shall apply:

- (a) If the Leased Premises shall be so badly injured as to be unfit for occupancy, and as to be incapable of being repaired with reasonable diligence within one hundred and twenty days of the happening of such injury, then the term hereby granted shall cease and be at an end to all intents and purposes from the date of such damage or destruction, and the Tenant shall immediately surrender the same, and yield up possession of the Leased Premises to the Landlord, and the rent from the time of such surrender shall be apportioned;
 - (b) If the demised premises shall be capable, with reasonable diligence, of being repaired and rendered fit for occupancy within one hundred and twenty days from the happening of such injury as aforesaid, but if the damage is such as to render the Leased Premises wholly unfit for occupancy, then the rent hereby reserved shall not run or accrue after such injury, or while the process of repair is going on, and the Landlord shall repair the same with all reasonable speed, and the rent shall recommence immediately after such repairs shall be completed.
 - (c) If the Leased Premises shall be repaired within one hundred and twenty days as aforesaid, and if the damage is such that the said

Leased Premises are capable of being partially used, then until such damage shall have been repaired, the rent shall abate in the proportion that the part of the Leased Premises rendered unfit for occupancy bears to the whole of the Leased Premises.

- (c) Landlord's Liability: The Landlord shall not be liable nor responsible in any way for any loss of or damage or injury to any property belonging to the Tenant or to employees of the Tenant or to any other person while such property is on the Leased Premises unless such loss, damage or injury shall be caused by the negligence of the Landlord or of its employees, servants or agents;
- (d) Re-Entry: If the rent reserved or any part thereof shall not be paid on the day appointed for payment, whether lawfully demanded or not, or in the case of breach or non-observance or non-performance of any of the covenants or agreements herein contained or referred to on the part of the Tenant to be observed and performed, the Landlord shall be entitled thereafter to enter into and upon the Leased Premises or any part thereof in the name of the whole the same to have again, repossess and enjoy as of its former state, anything herein contained to the contrary notwithstanding;
- (e) Vacancy: In case without the written consent of the Landlord the Leased Premises shall remain vacant or not used for a period of twenty-one (21) days or be used by any other person than the Tenant or for any other purpose than that for which they were let or in case the term or any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of Creditors or become bankrupt or insolvent or take the benefit of any act now or hereafter in force for bankrupt or insolvent debtors, this lease shall at the option of the Landlord cease and determine and the terms shall immediately become forfeited and void and the then current month's rent and the ensuing three months' rent shall immediately become due and payable and the landlord may re-enter and take possession of the Leased Premises as though the Tenant or other occupant of the Leased Premises was holding over after the expiration of the term without any right whatever;
- (f) Overholding: If the Tenant shall continue to occupy the Leased Premises after the expiration of this lease, with or without the consent of the Landlord, without any further

written agreement, the Tenant shall be a monthly Tenant at the monthly rental herein mentioned and on the terms and conditions herein set out except as to length of tenancy;

(g) Landlord's Installations, Construction, Maintenance and Repairs: Prior to July 1st, 2007 the Landlord shall:

- (i) install a water purification system in order to render the well water safe for drinking;
- (ii) complete the septic system that was started in the summer in 2006;
- (iii) repair/replace basement door to ensure rodents cannot enter the building;
- (iv) install a railing down both sides of the stairs to the basement;
- (v) fix the hole in the ground outside the basement door;

On or before July 1st, 2008, the Landlord agrees to put sealant on the roof to stop the leaking and install a wheelchair ramp for access to the building located on the Leased Premises;

(h) Early Termination: Either party hereto may determine this lease on giving to the other party sixty (60) days prior written notice of the party's intention to do so and thereupon rent and any other payment for which the Tenant is liable under this Lease shall be apportioned and paid to the date of such determination and the Tenant shall immediately deliver possession of the Leased Premises to the Landlord.

4. OPTION TO RENEW

The Tenant may renew this lease for one a further term of eight (8) years commencing immediately upon the expiration of this lease, such further period to be on the terms and conditions set out herein except for this offer to renew and except for the rent which shall be negotiated between the Tenant and Landlord, by notice of intention to renew given to the Landlord personally or by registered mail addressed to the Landlord at

7 Lakeshore Drive,
P.O Box 220,
Temagami, On.
POH 2H0

ninety (90) days before the expiration of this lease.

5. FIRST RIGHT OF REFUSAL

In the event that during the term of this Lease the Landlord receives a *bona fide* offer to purchase or otherwise acquire the Leased Premises, which offer the Landlord would accept were it not for the provisions of this paragraph, before accepting such an offer, the Landlord shall give notice in writing to the Tenant (a "notice of offer") stating the terms, conditions and price of such offer. The Tenant shall then have the right, option and privilege, to be exercised by notice in writing given to the Landlord within ten (10) days of receipt of the notice of offer, to purchase all but not less than all of Landlord's interest in the Leased Premises offered for sale at the same purchase price and on the same terms and conditions set out in the notice of offer. In the event that the Tenant does not elect to purchase the Landlord's interest in the Leased Premises, so offered for sale, the Landlord shall, for a period of thirty (30) days after the expiration of the said period of ten (10) days, be at liberty to accept such *bona fide* offer or otherwise to sell, assign, transfer, or dispose of the Landlord's interest in the Leased Premises to any other person or persons at a price and on terms and subject to conditions not more favourable to the purchaser than the price, terms and conditions set out in the original *bona fide* offer. If an agreement to sell the said interest in the Leased premises is not entered into within the said period of thirty (30) days the provisions of this paragraph shall apply again, and so on from time to time.

5. IMPROVEMENTS TO THE LEASED PREMISES BY THE TENANT:

Provided that the Tenant has obtained the Landlord's permission pursuant to paragraph 1 (c) make alterations or additions to the Leased Premises, if the alterations or additions are of permanent nature and will add value to the Leased Premises, which shall be determined in the sole discretion of the Landlord, the Tenant shall be eligible for a rebate in rent equal to seventy five percent (75%) of the cost of such alterations or additions applied to the ensuing year's rent payable by the Tenant to the Landlord. For the purpose of obtaining this rebate the Tenant shall submit all invoices for materials and labour to the Landlord and shall be responsible for obtaining all of the necessary permits, licences and consents required from any Federal, Provincial, Municipal or other regulatory body required prior to making such alterations and additions.

6. EFFECT OF LEASE

This lease and everything herein contained shall extend to and bind and may be taken advantage of by the heirs, executors, administrators, successors and assigns as the case may be of each of the parties hereto.

7. NOTICES: Any notice in writing which either party may desire to give to the other with regard to any matter or thing in this lease contained may be validly and effectually given by mailing the same by prepaid registered post addressed as follows:

7 Lakeshore Drive,
P.O Box 220,
Temagami, ON
POH 2H0

Virginia MacKenzie
Temagami Dream Keeper Experience
Bear Island, ON
POH ICO

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

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M. S.

Ike Laba, Mayor

Blk

Brian Koski, Clerk


Witness

Virginia McKenzie
Virginia MatKenzie