

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

BY-LAW NO. 09-884

Being a by-law to authorize the Mayor and Chief Administrative Officer/Clerk to execute an agreement with Ontario Northland Transportation Commission (ONTC) for a Licence for Occupation of Land for Box Cars for the purpose of displaying exhibitions from November 1, 2009 to October 31, 2011.

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.

BE TAKEN AS READ A FIRST time on this 12th day of November 2009.

READ A SECOND AND THIRD time and finally passed this 12th day of November 2009.



MAYOR



CAO/Clerk

THIS AGREEMENT made in duplicate this day of 17th December 2009

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

(hereinafter referred to as "ONTC")

OF THE FIRST PART

AND:

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

(hereinafter referred to as the "Licensee")

OF THE SECOND PART

LICENCE - OCCUPATION OF LAND - BOX CARS - ART EXHIBIT

WHEREAS ONTC sold the Temagami Station to the Licensee on 2 May 2001 but retained ownership of the land surveyed as Part 5, on Plan 36R-10947.

AND WHEREAS ONTC entered into a lease agreement with the Licensee in order to accommodate the continuing occupation of the Temagami Station on Part 5, on Plan 36R-10947.

AND WHEREAS the Licensee desires to locate beside the Temagami Station two box cars for the purposes of displaying exhibitions.

AND WHEREAS the location of the two box cars straddles the boundary line between Part 5, on Plan 36R-10947 and the remainder of ONTC's Temagami Station Grounds and rail lands and is more particularly shown on Schedule "A" attached hereto (hereinafter referred to as the "Licenced Lands").

IN CONSIDERATION OF the recitals and the provisions contained in this Agreement, the parties agree as follows:

1. LICENCE

Subject to the terms and conditions of this Licence, ONTC hereby grants a Licence to the Licensee to use the space on the Licenced Lands more particularly described in Schedule "A" annexed hereto for the purpose of locating two box cars with an access ramp to a connecting lobby.

2. TERM

The term of this Licence Agreement shall be for a period of two (2) years commencing on the 1st day of November, 2009, and terminating on the 31st day of October, 2011, subject to the provisions for termination hereinafter contained.

3. CONSIDERATION

- (a) The Licensee shall pay to ONTC a base licence fee of One Dollars (\$1.00) the receipt and adequacy of which is hereby acknowledged.
- (b) In addition, the Licensee agrees to pay to ONTC the cost of flag protection required during any future movement of the two box cars in an amount to be determined by ONTC.
- (c) The parties mutually agree that this Licence shall be a completely carefree net Licence for ONTC and that ONTC shall not, during the term of this Licence, be required to make any payments in respect of the Licenced Lands other than charges of a kind personal to ONTC (such as income taxes and mortgage payments).

Payment of any amount due under this Licence shall be made by the Licensee to "Ontario Northland Transportation Commission" by cheque mailed to ONTC at the address set forth in paragraph 11 or at such other address and to such other person as ONTC may direct the Licensee in writing.

4. OBLIGATIONS OF THE LICENSEE

- (a) The two box cars, access ramp, connecting lobby and any other structure or building shall be placed and afterwards maintained at the sole cost and expense of the Licensee.
- (b) In making any of its installations, the Licensee shall observe and carry them out according to good engineering practice in accordance with all applicable governmental laws, regulations or requirements concerning the same.
- (c) The Licensee shall submit to ONTC a copy of any licence to install or maintain any such installations as required by the appropriate governmental authorities.
- (d) The Licensee shall comply with all statutes, regulations, by-laws, codes and requirements of all governments and governmental authorities and all boards and commissions applicable thereto with respect to its use and occupation of the Licenced Lands.
- (e) The Licensee covenants to observe any rules and regulations which are in effect or may be placed in effect by ONTC with respect to the use and occupation of the Licenced Lands.
- (f) The Licensee shall pay for any and all municipal, school, business taxes and any other taxes, as well as any local improvement and water charges which may be levied upon the Licenced Lands.

- (g) The Licensee shall be responsible for the payment of all public utilities, operating costs and expenses of repair, maintenance and upkeep relating to the Licenced Lands. The Licensee shall, at its own expense, insure that all services for public utilities are in compliance with all applicable provincial legislation and regulations.
- (h) The Licensee shall indemnify and save harmless ONTC from any claim or demand against the Licenced Lands for construction liens related to work done by or on behalf of the Licensee. All registrations or claims for lien shall be discharged by the Licensee within ten (10) days notice from ONTC.
- (i) The Licensee shall make full and complete compensation for any damage caused to ONTC's physical property by the Licensee's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible or for damage attributable to the equipment owned or operated by the Licensee, its officers, employees, servants, agents, contractors or those for whom it is at law responsible.
- (j) The Licensee shall make full and complete compensation for any bodily injury or death to any person caused by the Licensee's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible or for bodily injury or death attributable to the equipment owned or operated by the Licensee, its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible.
- (k) The Licensee shall waive against ONTC, its officers, employees, agents or contractors any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement or for any injury to or death of any person or for any loss of or damage to any property or equipment belonging to the Licensee or its employees, servants, agents, invitees, licensees, contractors or visitors and for any loss or damage of the Licensee with respect to its use of the property, unless caused by the negligent act or omission of ONTC, its officers, employees, agents, contractors or those for whom it is at law responsible.
- (l) The Licensee agrees to indemnify ONTC and save it harmless from and against any and all actions, suits, claims, damage, costs, liability and expenses (including the effect of any applicable environmental legislation) which may arise by reason of the exercise of the rights and privileges granted herein by the Licensee or the users or as a result of any breach of the terms of this Agreement by the Licensee or by any act or omission of the Licensee or those for whom the Licensee is at law responsible, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such claim, unless such claim or damage is caused by the negligent act or omission of ONTC, its servants, employees, officers, agents, contractors or those for whom it is at law responsible.

5. INSURANCE

- (a) General Liability Insurance - The Licensee, at its expense, will procure and maintain throughout the term of this Licence or any renewal thereof, Commercial General Liability Insurance in form and content satisfactory to and with insurance companies acceptable to ONTC, protecting both ONTC and the Licensee against liability for bodily injury and death and for damage to or destruction of property by reason of any occurrence or accident in, or on or about the Licenced Lands licenced by the Licensee, including tenant's legal liability, with liability coverage in an amount of not less than two million dollars (\$2,000,000.00), and such higher limits as the ONTC may reasonably require from time to time. It is understood and agreed that the employees of the Licensee shall not be considered employees of ONTC.

The insurance provided herein shall apply to ONTC and the Licensee (the Insureds) in the same manner and to the same extent as if a separate policy had been issued to each and shall contain a cross liability clause. ONTC shall be added as an additional insured to the commercial general liability insurance policy.

The Licensee agrees that the insurance provided herein does in no way limit the Licensee's liability pursuant to the indemnity provisions of this Licence.

- (b) Insurance on Property - The Licensee shall at its expense procure and maintain "all risks" insurance on a replacement cost basis in respect of all insurable goods, merchandise and other property in respect of which the Licensee has an insurable interest which may and anytime be on or in the Licenced Lands. The Licensee releases ONTC from all claims for any loss resulting from the Licensee's neglect or failure to so insure.
- (c) Subrogation - The Licensee shall have no claim against ONTC or ONTC's insurance for any damage the Licensee may suffer, and the Licensee shall require the insurers under the insurance in subsections (a) and (b) to waive any right of subrogation by the insurers against ONTC.
- (d) Evidence of Insurance - Upon the request of ONTC, the Licensee shall provide to ONTC evidence of such insurance having been obtained and maintained in the form of a certificate of insurance and such insurance shall not be subject to cancellation except after at least thirty (30) days' prior written notice to ONTC.
- (e) Notification - ONTC shall not be responsible for notifying the insurers of any occurrence or accident in or around the Licenced Lands licenced by the Licensee.
- (f) Insurance During Assignment - Notwithstanding the provisions of the assignment clause herein, the Licensee shall ensure that any Assignee of the Licenced Lands shall obtain and maintain in full force and effect, during the term of such assignment, the insurance referred to in this clause. The Licensee shall obtain from such Assignee, and shall file with ONTC, a certificate that such insurance has been obtained and is being maintained.

6. OPERATIONAL REQUIREMENTS

- (a) The Licensee covenants to not at any time use the Licenced Lands in any way considered objectionable to ONTC.
- (b) The Licensee shall not construct, renovate or replace any building or structure on the Licenced Lands without first obtaining permission in writing from ONTC and obtaining a licence as required by the appropriate government authorities.
- (c) Any installation, maintenance or changes to the Licensee's proposed occupation must first meet with the requirements and approval of ONTC.
- (d) The Licensee agrees that before any work is performed in connection with the placement or movement of the box cars on the Licenced Lands, the Licensee shall give to ONTC at least 48 hours prior notice thereof in writing and ONTC shall be entitled to appoint an inspector to see that the work is performed in such a manner as shall in all respects comply with this Agreement.
- (e) The Licensee agrees that no work shall at any time be done on the Licenced Lands in such a manner as to obstruct, delay in any way or interfere with ONTC's operations.
- (f) The Licensee shall maintain and repair the Licenced Lands at its own expense and keep them in a clean and sanitary condition and in accordance with all applicable laws.
- (g) The Licensee shall not at any time register notice of a copy of this Licence on title to the property of which the Licenced Lands form part without the consent of the ONTC.
- (h) The Licensee covenants that no substances of an explosive, dangerous or inflammable nature or character, including but without restricting the generality of the foregoing, dangerous or prohibited substances within the scope of any applicable environmental legislation, including orders of any other lawful authority having jurisdiction, shall be stored in or upon the Licenced Lands without the written consent of ONTC and due compliance with all legislation, regulations, orders or other lawful requirements of any authority having jurisdiction.

7. USE

The Licenced Lands shall only be used for the purpose of locating two box cars with an access ramp to a connecting lobby in order to display any art or historical exhibits.

8. TERMINATION

- (a) If the Licensee shall be in default or breach in respect of any condition or provision of this Agreement, ONTC may terminate this Agreement forthwith.
- (b) Either party hereto may terminate this Agreement at any time after the effective date hereof by giving to the other party not less than thirty (30) days notice in writing.

- (c) At the expiration of the term or upon the earlier termination of this Agreement, the Licensee shall within sixty (60) days remove off the Licenced Lands of ONTC said box cars and all other materials and things which the Licensee shall have placed thereon, leaving the property in as good condition in all respects as it was before the placement of the said box cars. If the Licensee shall not remove the said box cars, materials and things as aforesaid, the same shall belong to ONTC without any right to the Licensee to have compensation therefore, or ONTC may if it sees fit remove or cause to remove said box cars, materials and things at the expense of the Licensee who shall pay to ONTC forthwith the cost of such removal. The Licensee shall have no claim against ONTC for injury, if any, done to the building by any such removal.

9. ASSIGNMENT

The rights contained in this Agreement may not be transferred, assigned, sublicensed or disposed of in any manner whatsoever without ONTC's prior written consent.

10. RELATIONSHIP

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein, nor any of the acts of the parties shall create any relationship between the parties other than that of ONTC and Licensee as described in this Agreement.

11. NOTICE

Any notice required by this Licence Agreement shall be in writing and shall be deemed to have been sufficiently given when personally delivered, telefaxed or sent by prepaid registered post addressed to ONTC to:

Vice President Rail
555 Oak Street East
North Bay, ON P1B8L3

And addressed to the Licensee to:

P.O. Box 220
Temagami, ON POH 2H0

Any notice made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, or if made or given by telefax, on the first business day following the transmittal thereof, or, if sent by prepaid registered post, on the third business day following the day of mailing thereof except in the case of the interruption or anticipated interruption in the mail service in which case such notice shall be given by personal delivery or telefax.

12. OVERHOLDING LICENCE

If at the expiration of the term or other termination hereof the Licensee shall remain in possession of the Licenced Lands with or without the consent of ONTC and without any further written agreement the Licensee shall become a Licensee from month to month and no other licence shall be created by implication of law or otherwise and the licence fee reserved hereunder shall be paid on the first day of each month during such overholding and such month to month licence shall otherwise be subject to all other terms of this licence as are applicable thereto.

13. SUCCESSORS

Subject to paragraph 9, this Licence Agreement and the covenants, provisions and obligations herein contained shall enure to the benefit of and be binding upon the Licensee, its successors and assigns.

IN WITNESS WHEREOF the said parties hereto have signed these presents and affixed their respective seals under the hands of their respective officers duly authorized in that behalf.

SIGNED, SEALED and DELIVERED

in the presence of:

**ONTARIO NORTHLAND
TRANSPORTATION COMMISSION**

per _____

President

Secretary

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

per _____

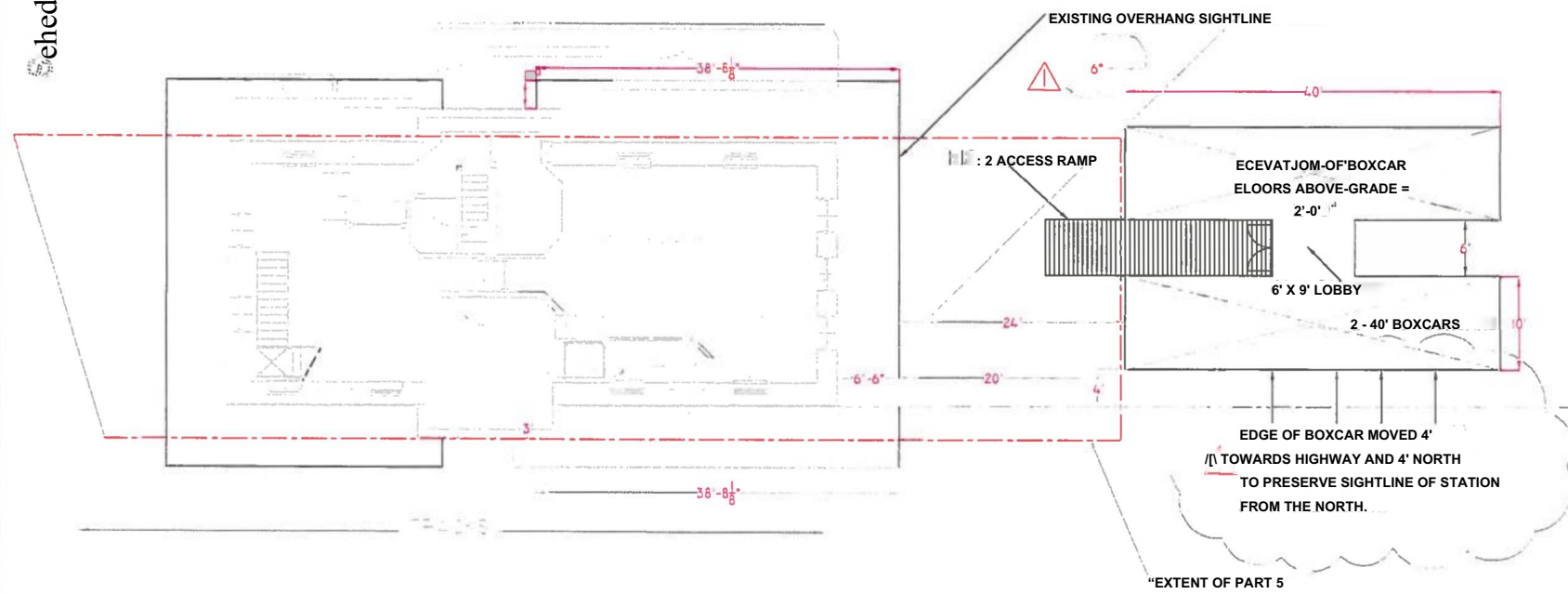
Name: *CAO*

Title:

Name: *Mayor*

Title:

Schedules "A"



27/03/07	REVISIONS	▲
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THEATRE CONSULTING GROUP LIMITED

PROJECT
TEMAGAMI STATION

TITLE
BOXCAR LOCATION

SCALE	DATE
NTS	MARCH 2007
DRAWN	CHECKED
JOB NO.	MAW NS HO
	SK-01