

THIS AGREEMENT made this ____ day of September, 2019.

BETWEEN:

THE CITY OF SAINT JOHN, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick (hereinafter called the "**City**")

- and -

New Brunswick Youth Orchestra Inc., a body corporate having its office in Saint John, New Brunswick (hereinafter called the "**Event Organizer**")

WHEREAS the City is the owner of lands identified by PID No. 55235113 (hereinafter the "**Site**"), shown hatched on the plan attached hereto and forming a part hereof as Schedule "A"; and

WHEREAS the Event Organizer of the event known as Making Waves (the "**Event**") has requested the City to make the Site available as the location for the Event; and

WHEREAS the City is pleased to support the Event as a contributing component of a vibrant and welcoming community;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of these presents and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City and the Event Organizer agree as follows:

1. The City hereby grants to the Event Organizer by its servants, agents, employees, contractors and invitees, together with machinery, equipment and facilities reasonably necessary, an exclusive licence (the "**Licence**") to enter upon, use and exit from the Site for the purposes of gathering and organizing guests for a cruise ship event.
2. Subject to the Event Organizer's first having satisfied the requirements of paragraph 3(e) and (g) hereof, this Agreement shall commence at 12:01 a.m. (local time) on October 27, 2019 and expire at 11:59 p.m. (local time) on October 29, 2019.

Event Organizer's Covenants

3. a. Event Organizer shall promptly repair at its sole cost any damage caused to the Site during the term of this Agreement, unless such damage is

caused by the negligence of the City, its officers, employees, agents or contractors.

- b. No mechanics' lien or related notice of action shall be registered against title to the Site as a result of any activity being undertaken by or on behalf of the Event Organizer or by those in law for whom the Event Organizer is responsible; and if so registered, shall upon the Event Organizer's becoming aware of same, be forthwith vacated, discharged and released from title at the sole cost and expense of the Event Organizer.
- c. Upon expiration of this Agreement, the Event Organizer shall return the Site to the City in as good a condition as existed at the time of the commencement of this Agreement and, without limiting the generality of the foregoing, shall remove any and all chattels situate upon the Site and leave the Site in a good and tidy state to the City's satisfaction.

Security

- d. The Event Organizer shall provide at its sole cost security services sufficient to assure at all times the safety of Event attendees and the general public invited to the Site, and to secure the Site from unauthorized use and occupation.

Insurance

- e. (i) The Event Organizer shall at its sole cost obtain and maintain in full force and effect an insurance policy, including public liability insurance coverage in an amount of not less than \$2,000,000.00 inclusive per occurrence for bodily injury and property damage, which policy shall name the City as an additional insured and contain a cross liability clause.
- (ii) The Event Organizer shall deliver to the City not later than 4:00 p.m. on October 24, 2019 a Certificate of Insurance evidencing the coverage identified in paragraph (i).

Indemnification

- f. The Event Organizer hereby agrees to indemnify and hold harmless the City and its officers, employees and agents (the "Indemnified Parties") from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings (collectively, a "Claim") by whomsoever made, sustained, incurred, brought or prosecuted in any way arising out of or in connection with:

- (i) Any breach, violation or non-performance of the terms, covenants or obligations on the part of the Event Organizer set out in this Agreement; or
- (ii) The Event Organizer's use of the Site pursuant to this Agreement.

Scope of Use

- g. The Event Organizer shall use the Site solely for the purposes of the Event as described herein, together with any other activity reasonably or necessarily incidental thereto.

Applicable Laws

- h. The Event Organizer agrees that all activity occurring upon the Site during the term of this Agreement shall comply with all federal, provincial and municipal laws, statutes, regulations, orders, ordinances, by-laws, rules, plans, policies and decrees (the "**Applicable Laws**"). Without limiting the generality of the foregoing, the Event Organizer at its sole cost and expense shall obtain and maintain any and all permits that are required by Applicable Laws at any time with respect to any such activity; and provide copies of any such permits to the City upon request.

Breach

4. The City may, in the event of breach or non-compliance by the Event Organizer with any provision hereof, terminate this Agreement upon twenty-four (24) hours' written notice being given to the Event Organizer.

Warranty

5. The City makes no warranty or representation that the Site is suitable for the Event Organizer's purposes and that the Event Organizer acknowledges and agrees that it has satisfied itself in all respects in that regard.

Relationship

6. The City and the Event Organizer acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing herein should be construed to constitute the parties as employer/employee, partners, joint venturers, or otherwise as participants in a joint or common undertaking. The Event Organizer agrees to indemnify and save harmless the City from a determination by any third party to the contrary. Neither the City nor the Event Organizer nor their respective employees, agents or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

Site "As-Is"

7. The Event Organizer accepts the Site on an as-is basis at the time of commencement of this Agreement.

Registration

8. The Event Organizer agrees that it shall not register this Agreement or any notice or reference in respect of this Agreement against the title to the Site.

Governing Law

9. This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable and shall be treated in all respects as a contract.

Severability

10. Any provision of this Agreement which is prohibited or unenforceable shall to the extent of such prohibition or unenforceability be severed from the balance of this Agreement all without effecting the remaining provisions.

11. This Agreement and everything contained herein shall enure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assigns.

Notices

12. Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by pre-paid courier service or mail, or (iii) sent by fax or other similar means of electronic communication, and each case, to the applicable address set out below:

- a. In the case of the City, to:

The Common Clerk
The City of Saint John
8th Floor, City Hall
15 Market Square
P.O. Box 1971
Saint John, NB E2L 4L1
Fax: 506-674-4214

- b. In the case of the Event Organizer, to:

Mr. Ken MacLeod
c/o New Brunswick Youth Orchestra
P.O. Box/C.P. 1617
Moncton, NB
E1C 9X4

Assignment

13. The Event Organizer agrees that it shall not assign this Agreement, in full or in part, or sub-licence or otherwise transfer or assign any of its rights hereunder without the prior written consent of the City, which consent may not be unreasonably or arbitrarily withheld.

Entire Agreement

14. These presents constitute the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise), except as specifically set out in this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

SIGNED, SEALED AND DELIVERED

THE CITY OF SAINT JOHN

Per: _____
Mayor

Per: _____
Common Clerk

Resolution Date:
, 2019

New Brunswick Youth Orchestra

Per: _____

PROVINCE OF NEW BRUNSWICK

COUNTY OF SAINT JOHN

I, Jonathan Taylor, of the Town of Quispamsis, in the County of Kings and Province of New Brunswick, MAKE OATH AND SAY:

1. THAT I am the Common Clerk of The City of Saint John and have custody of the Common Seal hereof.
2. THAT the seal to the foregoing instrument affixed is the Common Seal of The City of Saint John and that it was so affixed by Order of the Common Council of the said City.
3. THAT the signature "Don Darling" to the said instrument is the signature of W. Donald Darling, Mayor of the said City, and the signature "Jonathan Taylor" thereto is my own signature.
4. THAT we are the proper officers to sign the foregoing instrument on behalf of The City of Saint John.

SWORN TO BEFORE ME)
 at the City of Saint John, in the)
 County of Saint John and)
 Province of New Brunswick)
 this ____ day of _____, 2019)

 Jonathan Taylor

 Commissioner of Oaths)
 Being a Solicitor)
)

PROVINCE OF NEW BRUNSWICK
COUNTY OF SAINT JOHN

I, Ken MacLeod, Deponent, of _____, in the County of _____ and Province of New Brunswick, MAKE OATH AND SAY:

1. That I am the _____ of **New Brunswick Youth Orchestra** (the "**Corporation**"), the Licensee named in the foregoing instrument and am duly authorized to make this affidavit;
2. THAT the Corporation does not have a corporate seal;
3. THAT the name "Ken MacLeod" subscribed to in the within instrument is the signature of me, the said _____, and was thereto subscribed by order of the Board of Directors of the Corporation to and for the uses and purposes therein expressed and contained;
4. THAT the _____ is the duly authorized officer of the Corporation to execute the within instrument.

SWORN TO before me at _____)
 _____, in the County of _____)
 _____ and Province of _____)
 New Brunswick, this _____ day of _____)
 _____, 2019)
 _____)
 _____)
 _____)
 _____)
 Commissioner of Oaths)
 Being a Solicitor)
 _____)

Ken MacLeod



Making Waves Event: Portion of former Coast Guard Site

