

LICENCE AGREEMENT

THIS LICENCE made as of this ___ day of _____, 2019.

B E T W E E N:

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, (the "Licensor")

OF THE FIRST PART

- and-

West Side Food Bank Inc., a body corporate under the laws of the province of New Brunswick (the "Licensee")

OF THE SECOND PART

WHEREAS the Licensor owns the premises in the City of Saint John in the County of Saint John and Province of New Brunswick bearing PID number 00361675, more particularly shown on the plan attached as Schedule "A" (the "Lands"); and

AND WHEREAS the building and playground area located on the Lands are commonly known as the Carlton Community Centre (the "Centre");

AND WHEREAS the Licensor has agreed to permit the Licensee to run a Food Bank in the basement of the Centre;

NOW THEREFORE THIS INDENTURE WITNESSETH THAT in consideration of the Licence fees, covenants and agreements hereinafter reserved and contained on the part of the Licensee to be paid, observed and performed:

ARTICLE 1 - TERM AND LICENCE FEE

1.01 Premises

The Licensor hereby grants to the Licensee an irrevocable Licence for and during the Term (as hereafter defined) to occupy a portion of the basement of the Centre shown in yellow on the sketch attached hereto as Schedule "B" and forming part hereof (the "Premises") for the purpose of operating a Food Bank. The Licensee acknowledges that it has inspected the Premises and has found same satisfactory for its purposes and its operations under this Licence.

1.02 Term

The term of this Licence shall be for a period of 5 years (the "Term") commencing as of and with effect from the 1st day of December, 2019, and expiring on the 30th day of November, 2024.

1.03 Licence Fee

The Licensee covenants to pay to the Licensor a licence fee ("the Licence Fee") of \$1.00 per year, payable on the first day of December in each and every year of the term beginning December 1, 2019.

ARTICLE 2 - USE AND OPERATION OF PREMISES

2.01 Use of Premises

The Licensee covenants and agrees that the Licence will be used for the purposes described in Section 1.01 hereof and for no other purpose. All alterations to the Centre or Premises will require prior written approval by the Licensor, which approval may be unreasonably withheld.

2.02 Applicable Laws

The Licensee covenants that it will abide by and comply with all laws, by-laws, rules, regulations and orders which in any manner relates to or affects the Lands and the Centre and the Licensee's use thereof.

2.03 Maintenance by the Licensee

The Licensee shall be responsible to provide and maintain to a proper standard the equipment necessary for the purposes described in Section 1.01, and the Licensor shall have no responsibility towards that equipment.

2.04 Non Interference

The Licensee covenants and agrees that its use of the Premises shall not interfere with any other rights already granted or as may be hereafter granted by the Licensor to others nor shall the Licensee's use interfere with Licensor's use of the Centre.

2.05 Rules and Regulations

The Licensee shall comply with any and all of the rules and regulations as shall from time to time be made by the Licensor and notice of which is given to the Licensee in writing.

2.06 Access

Except when prevented by events and/or causes beyond the reasonable control of the Licensor, the Licensee, its agents, clerks, servants, employees and other persons properly engaged by the Licensee shall be entitled access to the Premises between the hours of 8:00 am and 8:00 pm, local time, seven (7) days a week, subject to the Licensor's reasonable security and scheduling requirements.

ARTICLE 3 - INSURANCE

3.01 Licensee's Insurance

Licensee shall take out and keep in full force and effect, at its own cost, throughout the Term, and during such other time as Licensee uses the Lands, commercial general liability insurance. Such insurance shall cover but not be limited to property damage, bodily injury liability, non-owned automobile liability and owners' and contractors' protective insurance coverage with respect to Licensee's use of the Building and the Lands. The coverage thereunder shall include the activities conducted by Licensee and any other person acting within its control, or for whom Licensee is in law responsible and any person performing work on behalf of Licensee in any part of the Lands. Such policy shall have inclusive limits of at least Two Million Dollars (\$2,000,000.00) for each occurrence involving personal injury, bodily injury, death or property damage, or such higher limits as Licensor may from time to time reasonably require. The policy shall contain:

- (i) a provision stating that such policy shall be primary and shall not call into contribution any other insurance available to Licensor or Licensee; and
- (ii) an undertaking by the insurers that no material change, cancellation or termination of any policy will be made unless Licensor has received not less than thirty (30) days prior notice thereof, delivered in accordance with the provisions of this Licence.

The Licensor shall be added as an additional insured on the commercial general liability insurance policy described herein.

The Licensee shall provide a Certificate of Insurance to the Licensor at the time of the execution of this Licence evidencing the insurance coverage described herein. The Licensee shall provide said Certificate of Insurance to the Licensor yearly for the term of this Licence.

3.02 Licensee Not to Jeopardize Licensor's Insurance

Licensee shall neither do, permit or omit to be done, nor keep anything in or about the Lands or the Premises, which might result in any increase in the premiums for Licensor's insurance coverage or which might result in the actual or threatened reduction or cancellation of or material adverse change in such coverage.

ARTICLE 4 - DESTRUCTION AND REPAIR OF PREMISES

4.01 Damage

If the Centre is substantially damaged or destroyed, either party shall have the option to terminate this Licence on written notice to the other party.

ARTICLE 5 - LICENSOR'S COVENANTS

5.01 Licensor's Covenants

The Licensor covenants with the Licensee as follows:

- a) that the Licensee will peaceably and quietly have, hold, use, occupy, exclusively possess and enjoy the Licence without interruption or disturbance on the part of the Licensor or anyone claiming through or under the Licensor;
- b) to observe and perform all of the covenants and obligations of the Licensor under this Licence;
- c) The Licensor will cover the heat and lights costs necessary for the Licensee to run the Food Bank on the Premises during the Term;
- d) The Licensor will provide snow plowing services to Tilley Lane in accordance with the Licensor's Snow Plan;
- e) The Licensor will identify and designate parking spaces for disabled persons;
- f) The Licensor will plow the parking area designated for the Centre;
- g) The Licensor will maintain the entrance to the Centre and keep it free from snow and ice; and
- h) The Licensor will maintain the infrastructure systems, which include

heating, lights, electrical, ventilation, plumbing and sprinkler as part of its regular maintenance of the Centre.

ARTICLE 6- LICENSEE'S COVENANTS

6.01 Licensee's covenants

The Licensee covenants with the Licensor as follows:

- a) The Licensee shall provide staff, equipment and food to deliver Food Bank services to the general public on the Premises during the Term;
- b) The Licensee accepts all responsibility relating to its equipment, and covenants that said equipment is, and shall at all times be, to proper standards for the delivery of the services to the public under this Licence;
- c) The Licensee recognizes and agrees that it will share that portion of the Premises shown cross-hatched on the attached Schedule "B" with the Horizon Health Network;
- d) The Licensee shall be responsible to clean the Premises and keep them in a neat and clean condition;
- e) The Licensee shall designate a contact person and make such person available to the Licensor during the term of this Agreement;
- f) The Licensee shall pay all costs associated with the day to day operation of the Food Bank, including but not limited to custodial staff, service staff, equipment and materials required for the operation;
- g) The Licensee shall not modify the building, including interior and/or exterior elements nor install or place additional equipment (e.g. refrigeration equipment) in the Centre, without first having obtained the Licensor's written approval. This includes, but is in no way limited to, the installation of fixed furniture and/or equipment, wall hangings, painting, etc. Any modifications or alterations not approved by the City in writing will be returned to a state that is acceptable to the Licensor, at the sole expense of the Licensee;
- h) The Licensee shall be responsible for repairs and maintenance of the interior finishes of the Premises and maintain the Premises **in** good repair. Building "interior finishes" means flooring, paint, drywall, ceiling tiles/panels, window coverings, interior doors, mouldings and fixed furnishings that contribute to the interior environment of the building from a functional and aesthetic standpoint;
- i) The Licensee shall store any and all food in such a manner that does not attract rodents, insects and/or other vermin;

- j) The Licensee shall be responsible for pest control on the Premises;
- k) The Licensee shall provide parking for those members of the public attending the Food Bank;
- l) The Licensee shall permit the Licensor to inspect the Premises upon request;
- m) The Licensee shall pay public utilities (phone, internet, cable);
- n) The Licensee shall be liable for any and all damages to the building caused by the negligence of the Licensee or its representatives or agents, and the Licensee shall, at its sole expense, make good such damages to the satisfaction of the Licensor;
- o) The Licensee shall be responsible for the hiring, training and supervising of staff/volunteers hired for the operation;
- p) The Licensee shall provide a written report on any hazardous conditions, safety concerns, injury, accident or illness related to the use of the Premises immediately following the occurrence of the aforementioned incidents;
- q) The Licensee shall ensure that emergency exits remain accessible at all times, and that such exits are not obstructed in any way by such things as tables, chairs, people, etc.;
- r) The Licensee shall ensure that no unauthorized gas or propane equipment or fixtures are used inside the Premises;
- s) The Licensee shall ensure that no electric space heaters are used on the Premises;
- t) The Licensee shall ensure that the Centre remains a non-smoking facility, and prohibits smoking within 10 metres of the facility's main entrances.

ARTICLE 7 - ASSIGNMENT AND SUBLETTING

7.01 Consent of Licensor

The Licensee shall not assign or sub-let or otherwise part with possession of all or any part of the Centre or Lands without the prior written consent of the Licensor, which consent may be unreasonably withheld.

Notwithstanding the foregoing, the Licensee may assign this Licence to an affiliate or to a limited partnership affiliated with the Licensee upon written notice to the Licensor.

7.02 Assignment or Sale by Licensor

The Licensor may assign or transfer the Lands and/or this Agreement to any person or entity, in whole or in part. To the extent such person or entity assumes the Licensor's obligations under this Agreement, the Licensor will be released from those obligations assumed by such assignee or transferee.

ARTICLE 8 - DEFAULT PROVISIONS

8.01 Default in Payment of Licence Fee

Should the Licensee make default in the payment of the Licence Fee or any part thereof under this Licence and such default continues for 30 days after receipt by the Licensee of written notice thereof by the Licensor, or should the Licensee be in default of fulfilling any of the other covenants in this Licence and such default continues for a period of thirty (30) days after receipt by the Licensee of written notice thereof by the Licensor, except in the case of default which is to be cured with all due diligence would require a longer period, then after such longer period, or if the Licensee fails to proceed promptly after the service of such notice and with all due diligence to cure the same, then in any such event the Licensor shall have the right to terminate this Licence.

8.02 Insolvency, Etc.

In case Licensee shall become insolvent or bankrupt or make an assignment for the benefit of its creditors, or shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, or in case the Lands and the Building or any part thereof becomes or is used by any other person or persons, or for any other purpose than permitted by this Licence without the written consent of Licensor, or if a writ of execution shall issue against the goods and chattels of Licensee and remain unsatisfied for five (5) days, this Licence shall, at the option of Licensor, cease and be void and the Term expire, anything hereinbefore to the contrary notwithstanding, and Licensee shall remove all its staff, equipment and food therein, but Licensee shall remain liable to Licensor for any and all loss occasioned by reason of such termination before expiry of the Term.

ARTICLE 9-GENERAL

9.01 Headings

The Section and/or paragraph headings in this Licence are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Licence or any provision hereof.

9.02 Successors and Assigns

This Licence and everything contained herein shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, and all words in the neuter or masculine shall include the masculine and neuter respectively and also the feminine and all words in the singular shall include the plural, and vice versa, when the context so requires.

9.03 Entire Agreement

This Licence sets forth all the covenants, promises, agreements, conditions and understandings between the Licensor and the Licensee concerning the Licence and there are no covenants, promises, agreements, conditions or representations, either oral or written between them other than as are herein and in the said Schedules set forth. No subsequent alteration, amendment, change or addition to this Licence shall be binding upon the Licensor or the Licensee unless reduced to writing and signed by them.

9.04 No Partnership

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 or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Licence fee nor any other provisions contained herein, nor any acts of the parties herein shall be deemed to create any relationship between the parties other than the relationship of Licensor and Licensee.

9.05 Force Majeure

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Licence, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided however that nothing herein shall be deemed to extend any specific date set out in this Licence. This Section shall not operate when the delay or restriction is due to the lack of or unavailability of funds.

9.06 Governing Law

This Licence is to be governed by and construed and interpreted in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.

9.07 Partial Invalidity

If any term, covenant or condition of this Licence or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Licence and/or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Licence shall be separately valid or enforceable to the fullest extent permitted by law.

9.08 Time to be of the Essence

Time shall be of the essence of this Licence.

9.09 Waiver

Failure by either party *hereto* to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of a Licence Fee hereunder by the Licensor shall not be deemed to be a waiver of any preceding breach by the Licensee, as the case may be, of any term, covenant or condition of this Licence, other than the failure of the Licensee to pay the particular Licensee Fee so accepted, regardless of the Licensor's or Licensee's knowledge of such preceding breach at the time of acceptance or payment, as the case may be, of such Licence Fee. No covenant, term or condition of this Licence shall be deemed to have been waived by the Licensor or the Licensee unless such waiver be in writing by the waiving party.

9.10 Notice

Any notice or consent including any invoice, statement or request or other communication (a "Notice") herein required or permitted to be given by either party to the other shall be in writing and shall be delivered by hand or sent by registered mail (except during a postal disruption or threatened postal disruption) or by telecopier to the applicable address (and telecopier number, if applicable) set forth below:

- a) in the case of the Licensor, to: The Common Clerk, 15 Market Square, 8th Floor, City Hall, Saint John, NB, E2L 4L1;
- b) in the case of the Licensee, to: 120 Market Place, Saint John, NB, E2M 1B5.

Any notice delivered by hand shall be deemed to have been validly and effectively given on the day of such delivery if delivered before 4:00 p.m. on a business day or on the next business day if delivered on a non-business day or after 4:00 p.m. on the previous business day. Any Notice sent by registered mail (except during a postal disruption or threatened postal disruption) shall be deemed to have been validly and

effectively given on the third business day following the date of mailing. Any Notice sent by telecopier shall be deemed to have been validly and effectively given on the day it was sent if sent before 4:00 p.m. on a business day or on the next business day if sent on a non-business day or after 4:00 p.m. on the previous business day.

Either party may from time to time by Notice to the other party change its address for service hereunder.

9.11 No Interest

Licensee hereby acknowledges and agrees that this Licence and Licensor's permission granted hereby to use the Lands creates no property or leasehold rights by Licensee to the Lands or the Centre, but this Licence permits Licensee to use the Lands and Centre on the terms and conditions herein contained for the Term.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the day and year first hereinabove appearing.

The City of Saint John

per: _____
Mayor

and: _____
Common Clerk

Common Council Resolution:

_____, 2019

West Side Food Bank Inc.

per: _____

and: _____

SCHEDULE 'A'





CARLETON COMMUNITY CENTRE

Richard & Co.
ARCHITECTURE INC.