

FILE COPY

### LICENCE OF OCCUPATION

THIS AGREEMENT made as of the 31<sup>st</sup> day of May, 2018 (the "Effective Date")

BETWEEN:

**CITY OF WEST KELOWNA**

2760 Cameron Road  
West Kelowna, BC  
V1Z 2T6

(the "City")

AND: **Interlake R/V Adventures Inc.**

3301 McKellar Road  
West Kelowna, BC  
V4T 1W1

(the "Licensee")

WHEREAS:

- A. The City is the registered owner of the property in the City of West Kelowna, Province of British Columbia, more particularly known and as described as set out in Schedule "A" (the "Property");
- B. The Licensee wishes to use the portion of the Property, as shown on the sketches attached hereto and marked as Appendix A (the "Encroachment Area"), as a parking lot for commercial vehicles;
- C. The City is prepared to allow the Licensee to use the Encroachment Area in accordance with this Agreement:

NOW THEREFORE, in consideration of the covenants herein contained, the City and the Licensee agree as follows:

### GRANT OF LICENCE

- 1. Subject to section 2, the City hereby grants a license of occupation to the Licensee to use the Encroachment Area for the parking of commercial vehicles (the "Permitted Use") for the period from May 31<sup>st</sup>, 2018 to May 30<sup>th</sup>, 2021, unless earlier terminated pursuant to the terms of this Agreement.
- 2. The Licensee's right to use the Encroachment Area is subject to:
  - (a) Any existing City infrastructure or other improvements and any future City infrastructure and other improvements in or on the Encroachment Area (the "City's Enhancements"). The City will use reasonable efforts to design, construct, repair and maintain the City's Enhancements in a manner that does not obstruct, limit, or otherwise hinder the Licensee's use of the Encroachment Area for the Permitted Purpose any more than is reasonably necessary;

- (b) All rights-of-way, easements, leases, licenses of occupation and other grants made either before or after the Effective Date by the City to any other person or entity. The City will use reasonable efforts to ensure that such grants do not obstruct, limit, or otherwise hinder the Licensee's use of the Encroachment Area for the Permitted Purpose any more than is reasonably necessary;
- (c) The City's right to sell, Lease, grant an interest in, or use for its own purposes all or any portion of the Encroachment Area. The Licensee does not acquire any interest in the Encroachment Area under this Agreement. The City does not grant to the Licensee either by this Agreement, through prescription or otherwise any interest in the Encroachment Area other than the right to use the Encroachment Area pursuant to the terms of this Agreement. The parties acknowledge that the City may require the use of the Encroachment Area for any of the aforementioned purposes during the term of this Agreement. In this case, the City shall give 6 months written notice to the Licensee to vacate the Encroachment Area, and remove any vehicles and equipment from the Encroachment Area, and shall issue a refund to the Licensee for the proportionate share of the pre-paid rent for any unused portion of the term;
- (d) The City's right to use all of part of the Encroachment Area for any purposes, including without limitation, the right of the City (including its employees, agents, contractors and licensees) to maintain, service and repair the City's Enhancements and to cross and re-cross the Encroachment Area for the purpose of accessing other land owned by the City. For greater certainty, the Licensee acknowledges that the City's operations are paramount to any activities of the Licensee on the Encroachment Area that the Licensee may have to cease or change the Licensee's use of the Encroachment Area while, and if, the City undertakes any servicing and repairs of the City's Enhancements. The City will use reasonable efforts to ensure that such activities do not obstruct, limit, or otherwise hinder the Licensee's use of the Encroachment Area for the Permitted Purpose any more than is reasonably necessary, but the Licensee agrees that City will not be responsible nor liable for any damages, costs or expenses that the Licensee incurs, including without limitation, greater operating costs, damages for down time and loss of profits, resulting from the servicing and repairs.

#### **TERMINATION**

- 3. Without prejudice to any other rights or remedies, the City may terminate the license granted under this Agreement:
  - (a) By giving the Licensee 30 days written notice if the Licensee breaches any of the Licensee's obligations under this Agreement; or
  - (b) at any time in the City's absolute discretion by giving the Licensee 6 months written notice of termination. In this case, the City will reimburse the Licensee for the proportionate share of the pre-paid rent for the unused portion of the term.
- 4. Notwithstanding the termination of the license granted under the Agreement, the Licensee shall continue to be liable to the City for all payments due and obligations assumed under this Agreement, including without limitation, sections 5 and 10.

## LICENSEE OBLIGATIONS

5. The Licensee shall pay the following rent to the City:

- (i) Pay \$7,500 (plus any applicable taxes including GST) payable upon the execution of this Agreement for the 3 year term of this agreement;
  - (ii) The Licensee shall have the option to extend the License for an addition 3 year term upon giving the City 3 month's written notice, and a payment of an additional \$7,500 (plus any applicable taxes including GST).
- (c) Not use the Encroachment Area nor allow the Encroachment Area to be used for any purpose other than the Permitted Use;
- (d) Not assign or transfer this Agreement, including without limitation, the Licensee's rights to the Encroachment Area without the prior written consent of the City. The City, however, may assign this Agreement to a third party, including any purchaser of the Encroachment Area;
- (e) With the written consent of the City, be entitled to construct and install on the Encroachment Area such temporary improvements as the Licensee considers necessary or desirable to enable the Licensee to use the Encroachment Area for the Permitted Use provided that:
  - (i) No improvements shall be constructed or installed on the Encroachment Area unless the Licensee has first delivered plans and specifications to the City for the City's approval;
  - (ii) Before the Licensee initiates any work for any temporary improvements near the location of any the City's Enhancements, the Licensee shall obtain from the City information about the location of such City's Enhancements to ensure that they are not damaged nor affected during the progress of the work;
  - (iii) All work associated with the temporary improvements shall be done in a good and workmanlike manner by qualified and experienced contractors, professionals or tradespeople;
  - (iv) Any such construction or installation by the Licensee shall be at the Licensee's risk and it shall be the responsibility of the Licensee to verify in advance the condition of the Encroachment Area for such works, including without limitation the geotechnical condition of the Encroachment Area and their suitability for the intended improvements. Any consent provided by the City shall not constitute a representation or warranty by the City that the condition of the Encroachment Area is suitable for the proposed works;
- (f) Have permission for the continued existence of the temporary improvements constructed prior to the Effective Date of this Agreement;
- (g) Keep at all times and at the Licensee's expense the Encroachment Area and any improvements constructed on the Encroachment Area (whether or not such improvements were constructed by the Licensee, but excluding the City's

Enhancements) in good repair;

- (h) Not, at any time commit or suffer to be committed any waste upon the Encroachment Area;
- (i) Ensure that in using the Encroachment Area for the Permitted Use, no act whatsoever shall be done or omitted to be done in or upon the Encroachment Area which may result in nuisance, damage or disturbance to the occupiers or owners of any premises adjoining the Encroachment Area or to the holders of any easement, right of way or other encumbrance charging the whole or part of the Encroachment Area, including without limitation, the City's Enhancements;
- (j) Comply with any law, statute, by-law, regulation or lawful requirements of any governmental authority or any public utility lawfully acting under statutory authority and all demands and written notices in pursuance thereof whether given to the Licensee or the City and in any manner or degree affecting the exercise or fulfillment of any right or obligation arising under or as a result of this Agreement or the use or occupancy of the Encroachment Area by the Licensee. If a party receives any such demand or written notices, then that party shall forthwith deliver a copy thereof to the other party;
- (k) Obtain and maintain, during the term of this Agreement:
  - (i) the requisite approvals and certificates to permit the Licensee to use the Encroachment Area for the Permitted Use; and,
  - (ii) insurance coverage such as a reasonable and prudent owner/operator would obtain, having regard to the obligations assumed by the Licensee under this Agreement and the activities conducted by the Licensee, the Licensee's employees, workers, contractors, agents and invitees on the Encroachment Area;
- (l) Use all reasonable efforts to minimize the adverse environmental impact of the improvements and the Permitted Use on the Encroachment Area; and
- (m) By no later than 180 days after the expiry or the sooner termination of this Agreement, have removed, at the Licensee's expense, all improvements constructed after the Effective Date and, if requested by the City at its sole discretion, shall restore the Encroachment Area to their original state unless the City has elected to keep any of the improvements by written notice to Licensee prior to the expiry or the sooner termination of this Agreement, in which case the City may re-enter and take possession of those specified improvements.

6. If any party hereto is comprised of more than one person, all covenants and obligation of those persons shall be joint and several.

#### **RIGHTS OF THE CITY**

7. The City or its duly authorized employees, agents or contractors may:
- (a) enter upon the Encroachment Area for the purpose of examining the condition and state of repair of the Encroachment Area and the improvements, and if at any time

as a result of its inspection, the City gives to the Licensee notice of defect or want of repair, the Licensee shall cause the same to be repaired immediately at the expense of the Licensee. The City may only give such notice if the requested repairs are reasonably necessary and not of purely cosmetic nature; and

- (b) without prejudice to the City's other rights and remedies, re-enter the Encroachment Area and repair or maintain the same at the expense of the Licensee if the Licensee shall at any time default in the performance or observance of any of the covenants in this Agreement for or relating to the repair or maintenance of the Encroachment Area or the Licensee's improvements, and in the City's opinion such default affects the safe or lawful use or operation of the Encroachment Area or the improvements or the City's use of the Owner Enhancements or neighbouring lands.

#### **INDEPENDENT CONTRACTOR**

- 8. The Licensee enters into this Agreement as an independent contractor and in no sense is the Licensee or any of the Licensee's employees, invitees or agents to be considered an agent of or under the control of the City. No inspection undertaken by the City, granting of a consent by the City, delivery of plans, specifications or other information to the City, nor the Licensee's compliance with any orders or directions given by the City shall relieve the Licensee from complying with, or derogate from the Licensee's obligations to comply with the Licensee's obligations under this Agreement. Without limiting the foregoing, the City is under no obligation to inspect, repair or maintain the Encroachment Area or any improvements approved by the City, or to insure any improvements made or installed by or on behalf of the Licensee.

#### **CONTROL**

- 9. The Licensee shall, during the term of this license, be the party in control of the Encroachment Area, including without limitation the condition of the Encroachment Area for safe use for the Permitted Use hereunder, the activities conducted on the Encroachment Area and the persons allowed by the Licensee to enter on them. The Licensee confirms and agrees that the City shall not be liable for any personal injury, including death, or property damage arising from the use of the Encroachment Area by the Licensee or those for whom it is responsible at law.

#### **INDEMNITY**

- 10. The Licensee shall indemnify and save harmless the City, its directors, officers, employees and agents from all losses, damages, actions, suits, claims, demands, costs, expenses, fees (including actual legal costs and disbursements expended) and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the City is or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss arising directly or indirectly based upon, arising out of or connected with the use of the Encroachment Area by the Licensee or by its employees, contractors, workers, licensees, invitees, or agents or for any action taken or things done or maintained in connection with this Agreement, the intent being that the City shall be at no expense, or loss, to which it would not have been put but for this Agreement. The foregoing obligations of the Licensee under this section 10 survive the termination of this Agreement.

## NOTICE

11. Wherever any notice is required to be given to either party under the terms of this Agreement, the notice shall be in writing and shall be deemed to be sufficiently given if forward by registered mail addressed as follows:

If to the City: City of West Kelowna  
2760 Cameron Rd  
West Kelowna, BC  
V1Z 2T6

If to the Licensee: Interlake R/V Adventures Inc.  
3301 McKellar Road  
West Kelowna, BC  
V4T 1W1

## ENTIRE AGREEMENT

12. This Agreement is the complete and exclusive agreement between the parties in respect of the Licensee's use of the Encroachment Area. It supersedes all other correspondence and agreements whether oral or written and any prescriptive rights the Licensee may have or may acquire by operation of law.

The parties intending to be legally bound have caused this Agreement to be executed on the Effective Date first above written.

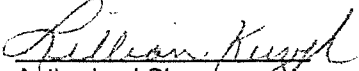
## CITY OF WEST KELOWNA

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

**Interlake R/V Adventures Inc.**

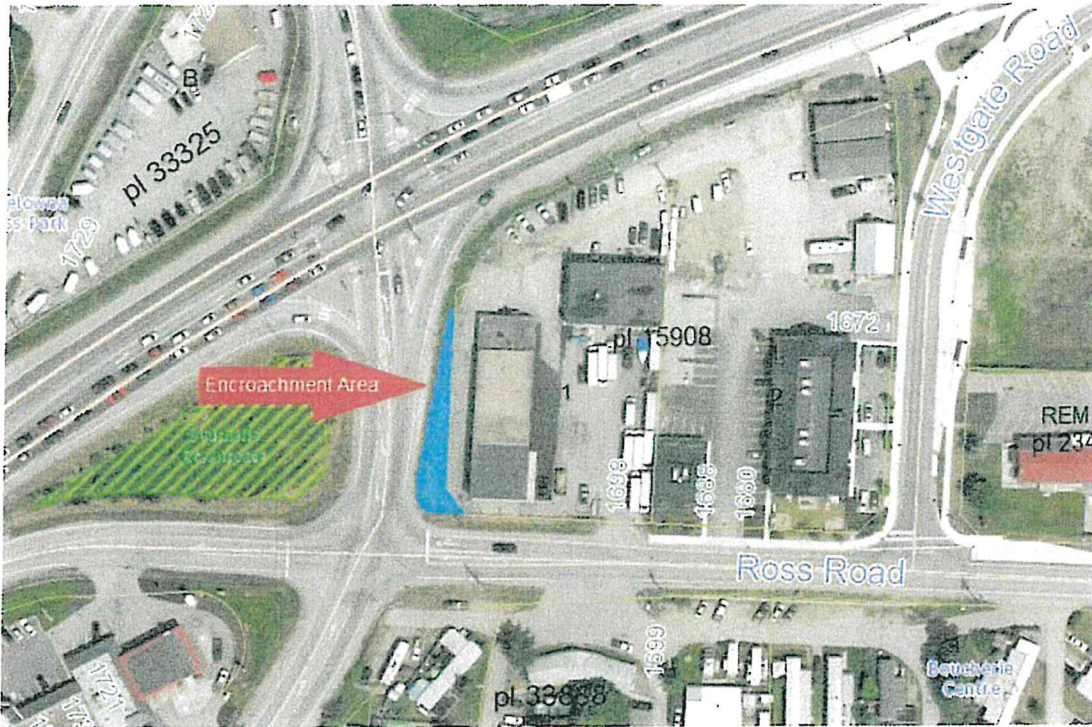
  
Authorized Signatory

May 31/18  
Date



**Schedule "A"**

**The Property**



Encroachment Area for License of Occupation is the highlighted road area adjacent to:

Lot 1, DL 507, ODYD, Plan KAP15908, Except Plan H17081