

**BASIN HEAD CANTEEN CONCESSION
LICENSE AGREEMENT**

THIS AGREEMENT made this 3rd day of March, 2015

BETWEEN:

Tourism PEI, a Crown corporation pursuant to section 2 of the *Tourism PEI Act*, R.S.P.E.I. 1988, Cap. T-3.4 (hereinafter referred to as "Tourism PEI");

OF THE FIRST PART

AND:

101880 P.E.I. Inc., a corporate body, duly incorporated under the laws of Prince Edward Island, operating as Pirates Basin Cafe (hereinafter referred to as "Pirates Basin Cafe")

OF THE SECOND PART

WHEREAS Basin Head Provincial Park ("the Park") has been designated as a provincial park pursuant to subsection 6(1) of the *Recreation Development Act*, R.S.P.E.I. 1988, Cap. R-8 and Tourism PEI operates it as such on behalf of the Government of Prince Edward island;

AND WHEREAS the Canteen is located within the Park which Pirates Basin Cafe wishes to operate (the "Canteen");

AND WHEREAS Tourism PEI is agreeable to the granting of a license to operate the Canteen subject to certain terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises and the mutual covenants and agreements hereinafter set out, the parties agree as follows:

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Grant of License

1. Tourism PEI hereby grants to Pirates Basin Cafe the non-exclusive right to use and operate the Canteen.

2. The Canteen shall be comprised of a kitchen preparation and separate seating area.

Term

3. The terms of occupancy will be for a minimum three (3) operating seasons (four (4) months, approximately mid-May to mid-September), commencing May 2015 and concluding September 2017. Provided Pirates Basin Café has met and/or exceeded all conditions established, Tourism PEI may extend the term of the license.

4. Notwithstanding other provisions of this Agreement, Tourism PEI may terminate this Agreement in its entirety, or any part thereof, at any time by a notice in writing, signed by or on behalf of Tourism PEI and either delivered to Pirates Basin Cafe or mailed to Pirates Basin Cafe's last-known address. This Agreement shall be determined to have ended upon the date of delivery or mailing of such notice in which case Pirates Basin Cafe shall have no further claim against Tourism PEI.

Fees

5. For the period from mid-May to mid-September of each year ("the season"), Pirates Basin Café agrees to pay Tourism PEI the amount of \$725 (plus applicable taxes) per month. Payment will be due on September 30th each year of the agreement.

Insurance and Indemnification

6. Pirates Basin Cafes shall, without limiting its obligations or liabilities herein, and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to Tourism PEI:

(a) Fire insurance with extended coverage and water damage insurance in amounts sufficient to fully cover all improvements and all property in the premises which is not owned by the Government of Prince Edward Island or Tourism PEI

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(b) Commercial General Liability (CGL) insurance in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury and property damage, and Tourism PEI and the Government of Prince Edward Island shall be

added as Additional Insureds. Such insurance shall be as broad in wording as the industry Insurance Bureau of Canada standard CGL and shall include, but not be limited to:

- (i) Contractual Liability (including this agreement)
- (ii) Personal Injury Liability
- (iii) Cross Liability
- (iv) Products & Completed Operations Liability
- (v) Tenants Legal Liability (Broad Form), Limit: \$500,000

All of the above required insurance shall be endorsed to provide Tourism PEI with thirty (30) days advance written notice of cancellation or a material change to the policy(ies).

(c) Automotive Liability on vehicles owned, leased, operated or licensed in the name of Pirates Basin Café in an amount not less than \$1,000,000.00.

(d) All the foregoing insurance shall be primary and not require the sharing of any loss by any insurer of Tourism PEI or the Government of Prince Edward Island nor by any other form of recovery available such as the Provincial Self Insurance and Risk Management Fund.

(e) The policy(ies) required by this Agreement shall be in a form and with insurers satisfactory to Tourism PEI . A Certificate of Insurance shall be delivered to Tourism PEI on execution of this Agreement and such default of delivery or receipt by Tourism PEI shall not be construed as an acknowledgment or a concurrence that there has been compliance with the terms of this Agreement.

(f) Pirates Basin Café shall be solely liable for any and all injuries to persons and for damages to property caused by its operations carried out in connection with this Agreement and Pirates Basin Café shall indemnify and save harmless Tourism PEI, the Government of Prince Edward Island, their officers, agents, servants and employees from and against all claims, demands, losses, costs, damages, actions, suits or proceedings of every nature and kind whatsoever arising out of or resulting from the performance of work (herein called the "claims"), provided that any such claim is caused in whole or in part by any act, error or omission, including but not limited to those of negligence of Pirates Basin Café or anyone directly or indirectly employed by Pirates Basin Café or anyone for whom Pirates Basin Café may be liable.

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Notices

7. Any notice or other document required under the Agreement to be sent to, or served on any of the parties hereto may be personally delivered or sent by

Registered Mail

addressed to Pirates Basin Café Inc. at:

5833 Northside Road
North Lake, PEI
C0A 1K0

and to Tourism PEI at:

Attention: Manager of Provincial Parks
Government of Prince Edward Island
Department of Economic Development and Tourism
PO Box 2000
Charlottetown, PEI
C1A 7N8

and any document so delivered or sent by Registered Mail shall be considered to have been served and shall be sufficient notice effective from the date of such personal delivery or mailing.

Rights and Responsibilities of Pirates Basin Cafe.

8. Pirates Basin Cafe:

(a) shall have the non-exclusive right to operate the Canteen located within Basin Head Provincial Park.

(b) shall comply with all rules and regulations which Tourism PEI may at any time establish with respect to any particular area of the Park provided however that Tourism PEI shall not create rules or regulations which unreasonably restrict the normal business operations of .

(c) shall not install any fixed structure or equipment on the Park property without the prior written approval of Tourism PEI.

(d) shall procure, at his own expense, all permits or licenses necessary for the operation of the Canteen, if required.

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(e) shall ensure that all equipment, including fire suppressant equipment, that is

used on Park property is CSA or ULC approved.

(f) shall provide all necessary janitorial and cleaning supplies, equipment and labour to perform day to day maintenance including the following:

(i) on a regular basis throughout the daily hours of operation, clean the Canteen seating area as well as the immediate area outside the building where customers are eating, and

(ii) conduct minor repairs such as replacing light bulbs and unplugging clogged sinks.

(g) shall be responsible for day to day expenses associated with operation; including but not limited to long distance telephone calling, propane expenses, garbage removal, etc.

(h) shall post in prominent locations at the Canteen a list which clearly indicates to customers the prices to be charged for the food and beverages being offered by .

(i) shall not offer any food for sale by use of automatic vending machines.

(j) shall, ensure the canteen is operated, at a minimum, between 11:00am and 7:00pm daily from July 1st until Labour Day each operating season.

(k) shall ensure that all lost items that are found and turned in to the Canteen are promptly delivered to the Park office.

(l) shall not use any public address system, "barker", "spielers", "hawker", "crier", or any other noisemakers to advertise or attract attention to the Canteen or the services provided.

(m) shall at all times keep the Canteen in a clean, neat and sanitary condition and shall observe all laws of the Province of Prince Edward Island respecting public health, safety, fire prevention and sanitation.

(n) shall sort all garbage in accordance with the provincial Waste Watch Program and shall assume all associated costs.

(o) shall offer complete, courteous and efficient services, such goods and services to be of such quality and provide value to the client which will be consistent with the general pricing and presentation of the Park.

(p) in general, shall deal with the public and operate the Canteen in a professional manner so as to foster the good reputation of the Park, Tourism PEI and the Government of Prince Edward Island.

(q) shall not cause any damage to the Canteen or to the Park property and, if any damage should occur or repairs be required, shall be solely responsible for all costs associated therewith.

(r) shall, at the expiration or termination of this Agreement, remove his equipment from the Canteen and shall be responsible for all costs associated with reinstatement of the Canteen to its condition prior to this Agreement.

Staff

9. Pirates Basin Cafe shall at all times maintain a sufficiently qualified and trained staff of efficient and courteous personnel as is necessary to operate the Canteen in a good and businesslike fashion.

10. Pirates Basin Cafe and its staff shall be employees of Pirates Basin Café and not of Tourism PEI nor the Government of Prince Edward Island. Nothing within this Agreement shall result in the appointment or employment of Pirates Basin Café or its staff by Tourism PEI or the Government of Prince Edward Island, and the *Civil Service Act*, R.S.P.E.I. 1988, Cap. C-8 shall not apply.

11. Any conduct of any employee of Pirates Basin Cafe which is deemed by Tourism PEI to be unprofessional or abusive towards customers or otherwise detrimental to the business interests of Pirates Basin Café or Tourism PEI shall be reported to Pirates Basin Café with sufficient particulars to enable Pirates Basin Café to address such behaviour and prevent further occurrences by the employee involved.

Rights and Responsibilities of Tourism PEI

12. Tourism PEI:

(a) shall be responsible for all major maintenance issues relating to the exterior of the Canteen.

(b) shall provide heat, electrical power and hot and cold water to the Canteen.

(c) shall, in the event that services provided by Tourism PEI are interrupted or discontinued for any reason, use reasonable diligence to provide such services, but shall not in any way be liable to Pirates Basin Café for their interruption or for damage resulting therefrom.

(d) may authorize any of their officers or agents to exercise the powers conferred upon them by this Agreement.

(e) shall have the right at any time to enter and inspect any location designated in connection with the operation of the Canteen.

Property

13. This Agreement is not intended to and shall not be construed as to vest in Pirates Basin Café any title or property rights in the real estate, fixtures, or personal property belonging to Tourism PEI or the Government of Prince Edward Island now or which may hereafter be designated in connection with the Canteen.

General Provisions

14. Notwithstanding anything else contained in this Agreement, the rights granted to Pirates Basin Café in this Agreement to use the Canteen constitute a license only and shall not under any circumstances constitute a partnership or employment relationship, or a lease or a joint venture among the parties. Pirates Basin Café shall not be an agent of Tourism PEI or the Government of Prince Edward Island for any purpose whatsoever and shall have no authority to bind the Tourism PEI or the Government of Prince Edward Island in any circumstances.

15. This Agreement shall not be assigned or subcontracted in whole or in part by Pirates Basin Café without the prior written consent of Tourism PEI.

16. This Agreement shall be binding upon and enure to the benefit of the parties and, subject to the above assignment and subcontracting clause, their executors, administrators, successors and assigns.

17. Any information provided on this contract may be subject to release under the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F

15.01.

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18. This Agreement shall be interpreted and applied in accordance with the laws and in the courts of the Province of Prince Edward Island.
19. This Agreement constitutes and expresses the entire agreement of the parties and any amendment or addition thereto shall be in writing and signed by the respective parties.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year above written.

SIGNED, SEALED AND DELIVERED Tourism PEI, a Crown corporation in the presence of pursuant to section 2 of the *Tourism PEI Act* R.S.P.E.I. 1988, Cap. T-3.4

Witness

SIGNED, SEALED AND DELIVERED 101880 P.E.I. Inc.
in the presence of o/a Pirates Basin Cafe

Witness

