

(Format Revised September 1993)

PROVINCE OF MANITOBA
MANITOBA SUSTAINABLE DEVELOPMENT

Lease No.

LEASE OF PARK LAND PROPERTY FOR THE OPERATION OF
 IN PROVINCIAL PARK, MADE IN DUPLICATE, DATED
 , 20 .

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
 PROVINCE OF MANITOBA, REPRESENTED BY THE
 HONOURABLE MINISTER OF SUSTAINABLE DEVELOPMENT,**

("the Crown"),

- and -

("the Lessee"),

made pursuant to The Provincial Parks Act and The Short Forms Act.

The Crown and the Lessee agree as follows:

PART 1 - TERM OF AGREEMENT AND DESCRIPTION OF PROPERTY AND PREMISES

- 1(1) Subject to the terms of this Agreement, the Crown hereby leases to the Lessee the property described in the attached Schedule "A" ("the property") for the term of _____ years, commencing on May 1, 20____, and ending on April 30, _____.
- 1(2) Unless otherwise provided herein, the property described in paragraph 1(1) is limited to the real property which is owned by the Crown, and the Lessee acknowledges that all other buildings, improvements and the assets and undertakings of any business operated by the Lessee (all of which are collectively described as the "Assets"), are governed by the terms and conditions of this Lease.

PART 2 - QUIET ENJOYMENT

- 2(1) Subject to the terms of this Agreement, the Crown covenants with the Lessee for the quiet enjoyment of the premises.

PART 3 - RENT AND SERVICE FEES

- 3(1) The Lessee shall pay once annually to the Crown:
- (a) a land rental fee determined in accordance with this Part and the Regulations under the Provincial Parks Act; and
 - (b) service fees prescribed from time to time by Regulation under the Provincial Parks Act,

within 30 days of receipt of an invoice therefor from the Crown. The Lessee acknowledges that the land rental fee as of the date of this Agreement is \$xxxx.xx and the service fee as of the date of this Agreement is \$xxxx.xx.

- 3(2) Payments of the land rental fee and the service fees shall be made in accordance with the directions contained in the invoice from the Crown.
- 3(3) The Lessee acknowledges that:
- (a) the Minister may grant to an applicant a lease of a commercial lot in a provincial park for a term not exceeding 21 years, renewable for such additional term not exceeding 21 years as may be specified in the lease; and
 - (b) the fees payable in respect of permits and leases are those set out in a regulation under The Provincial Parks Act.
- 3(4) The Crown may at its option in any year establish a new annual rent to take effect May 1st by providing notice of the change of the annual rent in writing to the Lessee on or before January 15th of that year.
- 3(5) The Crown may establish a new rental rate where there is a change in one or more of the following factors to reflect those changes:
- (a) the appraised value of the raw land as determined by the Crown; and
 - (b) the policy of the Crown as set out in an Act of the Legislature or a Regulation relating to the determination of annual rent as a percentage of the appraised value of the raw land.
- 3(6) Where the Crown establishes a new rental rate under subsection 3(5)(a) to reflect a change in the appraised value of the raw land as determined by the Crown, and the Lessee disputes the reasonableness of the determination of the appraised value, the Lessee may, by providing notice in writing to the Crown, submit the matter in dispute to arbitration under The Arbitration Act (Manitoba).
- 3(7) The Lessee shall pay to the Crown interest on any arrears of annual rent and service fees at a rate fixed from time to time by a regulation under The Provincial Parks Act.

PART 4 - OPERATION OF PREMISES

- 4(1) The Lessee shall use the premises solely for the operation of a facility consisting of
- 4(2) The Lessee may, with the approval of the Crown, construct and operate additional facilities on the premises in accordance with plans approved by the Crown and on terms and conditions set by the Crown. The Crown will not unreasonably withhold approval provided that the construction and operation of the additional facilities are consistent with the use clause being paragraph 4(1) hereof. In the event that the Crown withholds approval, the Crown will forthwith, by notice in writing, inform the Lessee of the reason(s) for withholding approval for the construction and operation of additional facilities.
- 4(3) The Lessee shall provide experienced, capable and courteous staff as necessary to ensure proper on-site operation of the premises in accordance with paragraph 4(1).
- 4(4) The Lessee agrees to furnish the premises in a manner suitable to enable the operation of the premises for the purposes set out in paragraph 4(1).

One of the following two paragraph 4(5)'s will apply:

- 4(5) The Lessee shall not use or allow the use of the premises as a chief place of residence for the Lessee or any other person without permission in writing from the Crown. The Crown will not unreasonably withhold permission for the Lessee to use or allow the use of the premises as a chief place of residence for the Lessee and any other person, in order to provide for the operation of the facility in accordance with paragraph 4(1).
- 4(5) The Crown permits the Lessee to use or allow the premises to be used as a chief place of residence for the Lessee and any other person in order to provide for the operation of the facility in accordance with paragraph 4(1).
- 4(6) The Lessee agrees to obey and comply with The Provincial Parks Act and all regulations thereunder.
- 4(7) The Lessee shall operate business activities on the premises on days and hours that are reflective of both the business and operations of the Lessee, and the needs of the park visitors, and the Lessee shall post upon the premises those days and hours of operations.
- 4(8) The Lessee shall comply with all federal, provincial and municipal laws and regulations.
- 4(9) The Lessee shall obtain all licenses or permits necessary for the lawful operation of the premises.
- 4(10) The Lessee shall not allow any advertising, signing or promotional materials to be placed on the premises, except reasonable on-site and directional advertising and/or signs.

PART 5 - MAINTENANCE OF PREMISES

- 5(1) Subject to paragraphs 5(2) and 5(3), the Lessee agrees:
- (a) to keep the premises in a clean and sanitary condition free from inflammable materials;
 - (b) to comply with The Environment Act and all regulations thereunder;
 - (c) not to commit waste or damage the premises;
 - (d) to keep the premises in good repair; and
 - (e) to allow a person or persons on behalf of the Crown to enter the premises at all reasonable times to examine the state of repair.
- 5(2) If during the term of this Agreement the premises are damaged by fire, flood or act of God, so that they cannot be repaired with reasonable diligence within one hundred and eighty (180) days of the damage or such other reasonable period from the date of the damage as may be stated in a Certificate of an Architect provided by the Lessee to the Crown within thirty (30) days of the date of the damage, this Agreement shall terminate from the date of the damage and the Lessee shall immediately surrender the premises and all interest therein to the Crown and the Lessee shall pay rent until the time of the damage.

- 5(3) Subject to paragraph 5(4), if the premises are damaged by fire, flood or act of God, and can be repaired with reasonable diligence within one hundred and eighty (180) days from the date the damage occurred or such other reasonable period from the date of the damage as may be stated in a Certificate of an Architect provided by the Lessee to the Crown within thirty (30) days of the date of the damage, and if the damage is such as to render the premises unfit for operation for the purposes of this Agreement, the Lessee shall repair the premises with all reasonable speed and rent shall not accrue for sixty (60) days, but shall accrue in respect of the rent component for the land and for those service levies, as in the opinion of the Crown, relate to services used by the Lessee for the period beyond sixty (60) days and, if the Lessee does not complete the repairs to the extent that the premises are operational within one hundred and eighty (180) days from the date of the damage or the reasonable period from the date of the damage specified in the Architect's Certificate, the Crown may, at its option, terminate the lease and re-enter the premises.
- 5(4) All rent shall accrue in respect of the premises once the premises are repaired such that they are suitable for operation for the purposes of this Agreement.
- 5(5) **The Short Forms Act** does not apply to paragraphs 5(1)(d) and 5(1)(e).

PART 6 - PAYMENT OF TAXES AND UTILITIES

- 6(1) The Lessee agrees to pay taxes.
- 6(2) The Lessee agrees to pay all electric power charges and assessments in respect of the premises.
- 6(3) If the Lessee fails to pay any or all taxes or electric power charges and assessments as required by paragraphs 6(1) and 6(2), the Crown may pay them or any of them and charge those payments to the Lessee who shall reimburse the Crown forthwith and the Crown may take the same steps for the recovery of those payments as it would for the recovery of rent and arrears.
- 6(4) This Agreement creates no obligation for the Crown to survey or resurvey the premises.

PART 7 - NO ASSIGNMENT OR SUBLEASE WITHOUT CONSENT

- 7(1) The Lessee shall not assign or sublet the premises without the consent of the Crown, that consent not to be unreasonably withheld.
- 7(2) Subject to paragraph 7(3), the Crown shall not unreasonably withhold consent to the assignment of a Lease for collateral (financing and security) purposes.
- 7(3) In instances where an assignment for collateral purposes is consented to by the Crown, the Crown will maintain a record thereof, and not consent to a further assignment of the Lease by the Lessee itself (except for secondary or additional assignments for collateral purposes) to third parties without the consent of prior holders of assignments for collateral purposes.

PART 8 - INSURANCE AND INDEMNITIES

- 8(1) The Lessee shall use due care in the operation of the premises to ensure that no person is injured, no property is damaged or lost and no rights are infringed.
- 8(2) The Lessee shall be solely responsible for:
- (a) any injury to persons (including death), damage or loss to property or infringement of rights caused by, or related to the operation of the premises or the performance of this Agreement or the breach of any term or condition of this Agreement by the Lessee or any agent or employee of the Lessee, and
 - (b) any omission or wrongful or negligent act of the Lessee, or of any agent or employee of the Lessee;

and shall save harmless and indemnify the Crown, its officers, employees and agents from and against all claims, liabilities and demands with respect to clauses (a) and (b). This paragraph shall survive the termination or expiration of this Agreement.

- 8(3) The Lessee shall provide, maintain and pay for comprehensive general liability insurance protecting the Lessee and its employees against claims by third parties for any injury to persons (including death), damage or loss to property which may arise directly or indirectly out of the occupation of the premises or the performance of this Agreement by the Lessee. That insurance shall be placed with an insurance company or companies and be in such form as may be acceptable to the Crown and shall be for an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00), inclusive of any one occurrence and shall name the Crown as an additional named insured with respect to the operations of the Lessee under this Agreement. The policy of insurance shall include a standard form of Cross Liability Clause and extend to cover the Lessee's public liability and property interest. Evidence of insurance in the form of a Certificate of Insurance shall be provided to the Crown by the Lessee within thirty (30) days of the execution of this Agreement. Evidence of renewal of insurance in the form of a Certificate of Renewal of Insurance shall be provided to the Crown by the Lessee at least thirty (30) days prior to the expiry of an insurance policy. The Lessee agrees not to vary the insurance policy in any manner which may adversely affect the Crown's interest therein.
- 8(4) In the event that the Lessee fails to maintain the insurance policy referred to in paragraph 8(3), the Crown may require the Lessee to remedy that default forthwith and if the Lessee fails to do so within thirty (30) days of receipt of that notice, the Crown may forthwith by notice in writing terminate this Agreement and re-enter the premises.
- 8(5) In addition to the rights of the Crown under paragraph 8(4), in the event that the Lessee fails to maintain the insurance policy referred to in paragraph 8(3), the Crown may, at its option, obtain the required insurance policy and may add the cost of the insurance policy plus an administration cost equal to twenty (20) percent of the cost of the insurance policy as additional rent. If the Lessee fails to pay that additional rent within thirty (30) days of receipt of a notice in writing from the Crown that the additional rent is due and payable, the Crown may forthwith, by notice in writing, terminate this Agreement and re-enter the premises. The Crown may maintain that insurance policy until such time as the Lessee provides evidence in the form of a Certificate of Insurance that it has obtained the insurance policy required by paragraph 8(3).

PART 9 - TERMINATION AND EXTENSION

- 9(1) Provided that there has been no default by the Lessee, the Agreement may be renewed at the option of the Lessee for one additional term of _____ years upon the same terms and conditions, save and except for rent which shall be determined by the Crown in accordance with then current laws, regulations or policies respecting rental rates for rental property of this type. The Lessee shall provide notice in writing to the Crown of its request to renew the Agreement in accordance with this Part at least six (6) months prior to the expiration of the Agreement.
- 9(2) At the end of the lease renewal period this Agreement will expire.
- 9(3) The Crown or the Lessee may terminate this Agreement on April 30th of any year of this Agreement by giving notice in writing to the other party at least one (1) year prior to the date of termination.
- 9(4) In the event that the Crown terminates this Agreement in accordance with paragraph 9(3), the Crown agrees to pay to the Lessee due compensation for the Lessee's estate or interest, including the property referred to in clause 1(1) of the Lease and the assets referred to in clause 1(2) of the Lease, taking into account the unexpended portion of the Lease including the Lease renewal period, and the provisions of The Expropriation Act of Manitoba relating to the determination of due compensation and costs shall apply. Due compensation shall be determined based on the date of notice of termination and will be reduced by any amounts owing to the Crown from the Lessee arising pursuant to this Agreement.
- 9(5) In addition to its rights under paragraph 9(3), and without restricting any other remedies available, and subject to the provisions of paragraph 9(6) hereof, the Crown may, at its sole option, immediately terminate this Agreement in writing if the Lessee has failed to comply with any term or condition of this Agreement including the payment of rent and has not remedied that failure to comply within ninety (90) days of receipt of notice in writing from the Crown.
- 9(6) The Crown agrees not to terminate this agreement in accordance with paragraph 9(5) in instances where collateral assignments are recorded, without providing notice in writing to the holder of such collateral assignments (the "Security Holder"). The Crown acknowledges that the Security Holder:
- (a) has the authority to cure defaults of the Lessee, within a reasonable time frame of not less than 90 days as stipulated in the notice, so as to avoid termination of the Lease;
 - (b) shall not be obligated to go into possession, nor to operate the Lessee's business, but the Crown may at its option and its own expense unless otherwise agreed, in cooperation with the Security Holder, manage or operate the Lessee's business on terms to be agreed between the Crown and the Security Holder; and
 - (c) has the authority to assign the Lessee's interest in the Lease to a third party purchaser, subject to the consent of the Crown being required, but which shall not be unreasonably withheld; provided that as a condition of any such assignment, such subsequent assignee shall be obligated to execute such documentation as the Crown considers reasonable to bind the assignee directly to the Crown on the terms and conditions as contained in the original Lease, and all defaults of the Lease shall be cured and brought to good standing.

9(7) In the event that the Crown terminates this Agreement in accordance with paragraphs 5(2), 5(3), 8(4), 8(5) or 9(5), or the Lessee terminates this Agreement, or the lease expires either at the end of the lease term or at the end of the lease renewal period, the Lessee shall within six (6) months of the termination date either:

- (a) remove all or any part of the structures, improvements and appurtenances (the Assets) added to the property by or on behalf of the Lessee; or
- (b) dispose of the Assets added to the property by or on behalf of the Lessee in a manner satisfactory to the Crown;

and at the end of six (6) months, the Lessee shall be deemed to have fully completed such removal, and any Assets left on the property as at such date shall vest in the Crown, and the Lessee shall be deemed to have released and quit-claimed any interest therein to and in favour of the Crown.

9(8) Other than in accordance with this Agreement or with conditions in writing provided by the Crown, the Lessee shall not remain in possession of the property following the expiration or termination of this Agreement.

PART 10 - ENTIRE AGREEMENT

10(1) This document and the attached Schedules contain the entire agreement between the parties. There are no undertakings, representations or promises, express or implied, other than those contained in this Agreement.

10(2) No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.

PART 11 - APPLICABLE LAW

11(1) This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba.

11(2) In the event of any dispute, the parties shall resolve same by reference to The Arbitration Act, and each party hereto shall appoint its own representative.

PART 12 - NOTICES

- 12(1) Any notice or other communication to the Crown under this Agreement shall be in writing and shall be delivered or sent by registered mail, postage prepaid to: Parks and Protected Spaces Branch, Manitoba Sustainable Development, Box 51, 200 Saulteaux Crescent, Winnipeg, Manitoba R3J 3W3.
- 12(2) Any notice or other communication to the Lessee under this Agreement shall be in writing and shall be delivered personally to the Lessee or an officer or employee of the Lessee or sent by registered mail, postage prepaid, to:
- 12(3) Any notice or communication sent by registered mail shall be deemed to have been received on the third (3rd) business day following the date of mailing. If mail service is disrupted by labour controversy, notice shall be delivered personally.
- 12(4) Either party may provide notice of change of address to the other in writing and thereafter all notice shall be provided to the new address.

This Agreement has been executed by the Minister of Sustainable Development on behalf of the Province of Manitoba and by the Lessee by its duly authorized representative on the dates noted below.

SIGNED IN THE PRESENCE OF: FOR THE GOVERNMENT OF MANITOBA

Witness

Minister of Sustainable Development

DATE

FOR THE LESSEE

Witness

Per

DATE

SCHEDULE "A"**LEGAL DESCRIPTION OF PROPERTY**

All that certain parcel or tract of land lying, situate and being in the Province of Manitoba and more particularly described as being