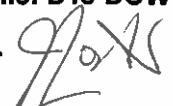




TO: Mayor J. Lehman and Members of Council **File: D18-DOW**

FROM: J. Foster, BAA, MCIP, RPP, City Centre Revitalization Coordinator 

NOTED: R. Forward, MBA, M.Sc., P. Eng. 
General Manager of Infrastructure, Development & Culture

C. Ladd, Chief Administrative Officer 

RE: Tropical North - Letter License Agreement for Paddle Board Rentals on the Waterfront

DATE: April 30, 2012

A request was received from Jeff Borgmeyer, owner of Tropical North located at 42 Dunlop Street East in the City Centre to lease waterfront lands from the City for the summer season for the purpose of locating a trailer to allow for paddle board rentals to the public. The land to be leased is proposed just to the east of the most easterly municipal parking lot at the foot of Mulcaster Street, just east of Heritage Park. See attached aerial photo depicting the proposed location in Appendix "A", last page of the Letter License Agreement.

In 2011, Mr. Borgmeyer entered into a Letter License Agreement similar to the one attached in Appendix A. Staff considered the lease of the land in 2011 as a pilot project in efforts of expanding the downtown business to the waterfront introducing a private leisure activity opportunity. The 2011 pilot project only ran for a short duration, July and August, which was targeted at pedestrian traffic along the waterfront. Mr. Borgmeyer identified that the trailer allowed for convenient loading and unloading of the paddle boards in close proximity to the lake, however, given that paddle boards were a new trend, and most pedestrian traffic occurred at Centennial Beach, the venture was not as popular in the first season pilot.

The City is undertaking a Barrie Waterfront and Marina Strategic Plan to be completed in late 2012. The strategy will explore, but is not limited to, private leisure and recreation opportunities that would be compatible with waterfront activity, a process by which to evaluate business interests, preferred locations, and whether lease rates should be charged. Therefore, a formal process of evaluation will not be finalized until the 2013 season. In an effort to allow the continuation of the paddle board rentals, convenient and close to the waterfront, staff are proposing to extend the pilot to Tropical North in the same location for the 2012 season.

Another interest was expressed to the Leisure Transit and Facilities Department to run a City registered paddle board course through the City's recreation program. Although a registered course was not implemented by the City for the 2012 season, Mr. Borgmeyer has agreed to discuss with this individual the opportunity to run a similar training course through his Tropical North business.

The Letter License Agreement does not require the City to enter into a formal legal agreement, but rather that Tropical North would assume all liability for the activity, staff and public undertaking the use, to maintain the site in good working order and to restore the location after its use.

The use of the City lands by Tropical North is for a short seasonal duration, is considered to be an extension of the 2011 pilot, allows for the extension of the downtown business to the waterfront, provides the public with an opportunity to experience paddle boards and promotes resident and visitor interest activity to the waterfront and downtown.

Attachment: Letter License Agreement – Tropical North

APPENDIX "A"
Letter License Agreement

LETTER LICENSE AGREEMENT

To: THE CORPORATION OF THE CITY OF BARRIE ("Barrie")
From: 2272075 ONTARIO INC. cob as Tropical North (the "Licensee")
Address: 42 Dunlop St. E., Barrie, ON L4M 1A3
(ph): 705-725-8833 / (fax): 705-725-8844
Date: May 10, 2012

WHEREAS:

- A. Barrie is the owner of lands described as the northwest corner of Kempenfelt Bay, located at the foot of Mulcaster St. and to the east of a City parking lot and Heritage Park (the "Licensed Lands") and shown on the drawing attached as Schedule B;
- B. The Licensee is the owner of a business called Tropical North, which, amongst other things, provides paddle board rentals and lessons to members of the public;
- C. Barrie has agreed to conduct a pilot project to permit the Licensee to maintain a storage trailer on, and have access to Kempenfelt Bay across, the Licensed Lands in order to facilitate its paddle board business;

NOW THEREFORE THIS AGREEMENT provides that in consideration of the terms and conditions of this agreement (the "Agreement"), and the sum of One (\$1.00) Dollar now paid by each party to the other and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto, for themselves and their successors covenant and agree to and with each other as follows.

1. LICENSE

- 1.1 The Licensee and its employees, suppliers, invitees, patrons and guests will: (a) maintain a storage trailer on the Licensed Lands; (b) provide paddle board rentals and training to its patrons on the Licensed Lands; and (c) use the Licensed Lands to access Kempenfelt Bay (the "Use").
- 1.2 The Licensee shall use the Licensed Lands only for the Use set out in Article 1.1 above, and the Licensee covenants and agrees to assume full responsibility for the safety of the Use of the said Licensed Lands, including any and all risks involved, all at the sole expense of the Licensee.

2. TERMINATION

- 2.1 This License Agreement shall commence on the date first noted above and shall continue in effect until September 30, 2012.
- 2.2 The Licensee acknowledges and agrees that either party shall have the right to terminate this Agreement at any time without cause, upon thirty (30) days' prior written notice to the other party.
- 2.3 The Licensee agrees to abide by the terms of this Letter including the Rules set out in Schedule A and all other by-laws, rules and policies established by Barrie. If the Licensee, or its employees, patrons, guests, or invitees breaches or contravenes any of the terms of this Letter including the Rules set out in Schedule A, Barrie by-laws or other

rules or policies created by Barrie, Licensee acknowledges that Barrie may, in its absolute discretion, terminate this licence immediately, and the Licensee will remove the storage trailer from the Licensed Lands within forty eight (48) hours of written notice from Barrie without being entitled to any compensation whatsoever for such removal. If the Licensee fails to do so, Barrie may complete such work and the reasonable costs of doing so shall be paid by the Licensee.

3 LICENSEE'S INSURANCE

- 3.1 The Licensee shall provide and maintain a General Liability Policy which shall include occupier's liability insurance provision for the entire duration of this Letter for the Licensed Lands, in an amount not less than Two Million (\$2,000,000.00) Dollars per occurrence. The Licensee's General Liability Policy will cover and respond to all incidents whereby the Licensee or its tenants, employees, patrons, or invitees, are found to be negligent or responsible. The Licensee agrees to provide Barrie a Certificate of Insurance concurrent with the signing of this Agreement. All such policies shall be in the name of the Licensee, with Barrie added as an additional insured and shall contain a waiver of subrogation in favor of Barrie. The Licensee hereby undertakes to notify Barrie, in writing, not less than thirty (30) days prior to any material change, cancellation, failure to renew or termination of such policies.

4 ADDITIONAL LICENSEE'S COVENANTS

- 4.1 The Licensee hereby covenants and agrees as follows:
- a) To ensure that the Licensed Lands are only used for the Use;
 - b) To indemnify and hold harmless Barrie, its employees, directors, officers and agents from any and all liabilities, damages, costs (including legal and other professional fees), loss, penalty, interest, claims, suits, orders, and actions directly or indirectly arising out of the Licensed Lands, including their use by the Licensee and all those permitted on the Licensed Lands to use the Licensed Lands by the Licensee, including the public, save and except those caused by or arising from the negligence of Barrie or those for whom Barrie is at law responsible; and
 - c) To promptly comply with the Rules attached as Schedule A and all applicable statutes, laws, by-laws, regulations, ordinances and orders of Barrie, the Province of Ontario, the Government of Canada and all municipal authorities from time to time or at any time in force during the term hereof, and the Licensee hereby indemnifies and holds harmless Barrie, its employees, directors, officers and agents from any and all liabilities, damages, costs, claims, suits, orders, and actions arising or resulting from noncompliance with same.

The indemnities provided herein shall survive expiration or termination of this Letter.

5 GENERAL PROVISIONS

- 5.1 The Licensee acknowledges that this Letter constitutes only a license to permit the Use, and that this Letter is not a lease thereof and does not create or grant any title, property right or any other interest to the Licensee in the Licensed Lands.
- 5.2 Time shall be of the essences of this Agreement and every part thereof. This Agreement shall be constructed in accordance with and governed by the laws of the Province of Ontario.

5.3 The following schedule shall form part of this Letter:

Schedule "A" - The Rules
Schedule "B" - The Licensed Lands

5.4 The Licensee acknowledges that it is licensing the Licensed Lands on an "as is, where is" basis and, as between Barrie and the Licensee, the Licensee shall be responsible for all risks associated with the use of the Licensed Lands by the Licensee, its employees, servants, agents, guests and invitees or any other person. The Licensee shall be responsible for ensuring that the Licensed Lands are suitable for the occupation thereof by the Licensee, its employees, servants, agents, guests or invitees, including the public permitted thereon by the Licensee.

By signing this Letter the Licensee acknowledges having read the conditions appearing herein and having accepted the conditions in full.

2272075 ONTARIO INC.

PER: _____
Name:
Title:
I have the authority to bind the corporation.

SCHEDULE "A"

THE RULES

- The Licensee is responsible for ensuring that all of its employees, patrons, guests and invitees wear Personal Flotation Devices while using the Licensee's equipment.
- The Licensee is responsible for the safety of its employees, patrons, guests and invitees including but not limited to ensuring it has rescue capabilities to recover its employees, patrons, guests and invitees in an emergency situation.
- Neither the Licensee nor the Licensee's employees, invitees, guests or patrons shall interfere with pedestrian traffic on the adjacent sidewalks.
- The storage trailer must be maintained by Licensee, kept in an attractive state of repair and locked when not in use. Barrie will not be responsible for any damage or theft to the storage trailer or any other property of the Licensee or its employees, patrons, guests and invitees, howsoever caused.
- The Licensed Lands must be kept in good condition throughout the term of the Letter and restored to its original condition on termination or expiry of the Letter. If the Licensee fails to do so, Barrie may complete such work and the reasonable costs of doing so shall be paid by the Licensee.

SCHEDULE "B"
THE LICENSED LANDS



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