

MEMORANDUM OF UNDERSTANDING  
FOR THE TRANSFER OF FIRE FIGHTING SERVICES

BETWEEN  
NIPISSING FIRST NATION  
AND  
JOCKO BEAUCAGE COMMUNITY SERVICE INC.  
("JBCSI")

August 31<sup>st</sup> , 2015

**Whereas** the Ontario Fire Marshall has advised JBCSI that it will no longer have responsibility for fire protection services provided by JBCSI and as a result JBCSI entered into discussions with Nipissing First Nation to take over the responsibility for fire protection services for the Jocko Point area;

**Whereas** Nipissing First Nation and JBCSI wishes to set out their understanding of the transition of responsibility of fire protection services from JBCSI to Nipissing First Nation and for the transfer of facilities and equipment related to these services;

### **CONSIDERATION**

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

### **PURPOSE**

1. The purpose of this Memorandum of Understanding "MOU" is to set out a framework respecting the transfer of equipment, facilities and personnel for firefighting in the community of Jocko Point in an orderly fashion.

### **CLOSING DATE**

2. The closing date for the transfer of responsibility, equipment and facilities from JBCSI to Nipissing First Nation shall be October 15th, 2015, hereinafter referred to as the "Closing Date".
3. All equipment and facility transfers, and other like responsibilities will be effective as of the Closing date.

### **LIABILITY AND INDEMNIFICATION**

4. Nipissing First Nation is not liable for anything done or omitted to be done by JBCSI or any person or entity authorized to act on behalf of JBCSI for matters related to or arising from this Agreement and which occurred before the Closing Date.
5. JBCSI is not liable for anything done or omitted to be done by Nipissing First Nation or any person or entity authorized to act on behalf of Nipissing First Nation for matters related to or arising from this Agreement and which occurred after the Closing Date.
6. JBCSI agrees to indemnify and hold harmless Nipissing First Nation from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees),

causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with this Agreement as a result of an act or omission before the Closing Date.

7. JBCSI hereby releases any interest it may have had in regards to the land use permit and agreement dated July 5, 1985.
8. JBCSI represents and warrants that:
  - a) it has the full power and authority to enter into the Agreement; and
  - b) it has taken all necessary actions to authorize the execution of the Agreement.

## **EQUIPMENT**

9. The JBCSI agrees to transfer all equipment and related licensing herein set out and as set out in the attached appendix "A" to Nipissing First Nation on the Closing date at no cost, save and except for the assignment or payment, as decided by Nipissing First Nation of one loan with the Caisse Populaire related to a 1991 Spartan Diamond pumper, VIN 4S7PT9SO5MC003678 XXX and communications system, the total amount of which shall not exceed \$57,098.11 ("Equipment"). All equipment is to remain for the use of the service area of the fire station located in Jocko Point.
10. The Parties agree that the equipment on the attached appendix "A" shall remain for the service of the Jocko Point community.
11. Nipissing First Nation shall maintain, service, inspect and repair/replace the equipment listed on appendix "A" used at the Jocko Point fire station in accordance with standards applicable to all Nipissing First Nation fire equipment.

## **FACILITIES**

12. The JBCSI agrees to transfer all interest it may have to lands agreed to under the agreement dated July 5<sup>th</sup>, 1985 between Nipissing First Nation and Jocko Point Lessee association (see attached) and any interest subsequently transferred to JBCSI known locally as 1140 Jocko Point Road, Jocko Point Subdivision Nipissing First Nation and buildings ("Facilities") thereon at no cost to Nipissing First Nation. Nipissing First Nation shall provide JBCSI with a lease related to the community centre/Emergency Relief building portion of the facilities. (Appendix "C")
13. **Adjustments:** Any metered or unmetered public or private utility charges and unmetered cost of fuel, as applicable, for the facilities shall be apportioned and allowed to the closing date to JBCSI, the day of completion itself to be apportioned to Nipissing First Nation.

14. **Electricity:** The parties acknowledge that currently the fire hall and community center/emergency relief centre have shared electricity service. The parties agree to discuss on a regular basis the apportionment of this utility and share the cost related to this utility until such time as the electrical services are separately metered. The parties agree to separate the electrical service within twelve months of the closing date of this agreement each being responsible for its share of costs related to this work.
15. **Snow Removal:** The Parties agree to share the costs of snow removal for the parking and driveways for the fire hall and community centre/Emergency Relief Centre as agreed upon from time to time.
16. **Shared Water and Septic system:** The parties agree to share the costs related to service of the water and septic system. The parties agree to share the use of bathroom facilities and shower facilities.
17. **Telephone:** The parties will take the necessary measures to transfer to Nipissing First Nation the telephone lines related to the fire services.
18. **Other Utilities:** The Parties agree that utilities that cannot be severed shall be discussed and apportioned as agreed on a case by case basis including but not limited to those listed in Appendix "B". The apportionment of all utilities shall be resolved within six months of closing of this agreement.
19. **Insurance:** All equipment and facilities and all other things being transferred shall be and remain until the closing date at the risk of JBSCI. Pending closing, JBSCI shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Nipissing First Nation may either terminate this Agreement or take the proceeds of any insurance and complete this Agreement.

#### **VOLUNTEER FIRE FIGHTERS**

19. The JBCSI agrees to communicate with its fire department volunteers the transfer of responsibility of fire protection services from JBCSI to Nipissing First Nation. It agrees to obtain their consent to disclose their names and information on file held by JBCSI to Nipissing First Nation.
20. Nipissing First Nation agrees to integrate the Jocko Point Firefighters into the amalgamated fire service with the responsibility of insuring, training, paying, maintaining the physical and mental wellbeing while in service in accordance with the standard for all Nipissing First Nation volunteer fire fighters.

#### **GENERAL**

21. **Communications.** The parties agree to meet on an annual basis to discuss issues of common

concern in regards to fire protection and fire protection dues, the facilities and community centre.

22. The parties agree to meet in February / March 2016 to discuss the impact of this agreement to the fire protection dues payment. JBCSI agrees to share costs related to the Facilities to assist with the discussion of the fire protection dues.
23. **Contract with Department of National Defense:** The parties agree to enter into a subcontract related to the delivery of fire protection assistance in regards to the Short Range Radar site located on Nipissing First Nation contract No W01350-141488/0010K1N whereby the JBCSI subcontracts the fulfillment of the required services to Nipissing First Nation in exchange for the transfer of related revenues under this contract. JBCSI hereby agrees to request the Department of Nations Defenses consent to the said sub contract.
24. **Expenses.** Each of the parties hereto shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby.
25. **Further Assurances.** The parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.
26. **Notice in Writing and Addressed** All notice shall be in writing and shall be delivered by postage-prepaid mail, personal delivery or facsimile, and shall be addressed to Nipissing First Nation and JBCSI respectively as set out below:

To Nipissing First Nation	To JBCSI:
Nipissing First Nation 36 Semo Road, R. R. 4 Sturgeon Falls, Ontario POH 2G0	Jocko Beaucage Community Service Inc. 1082 Jocko Point Road North Bay, ON P1B 8G5
Attention: Dwayne Nashkawa	Attention: Barry MacNeil
27. The provisions in sections 4, 5 and 6 (Liability and indemnification), shall continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.
28. Failure by JBCSI to carry out an obligation or to satisfy a term or condition of this agreement shall be considered an event of default which shall entitled Nipissing First Nation to terminate this agreement immediately upon giving notice to JBCSI.
29. **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario, the First Nation and the applicable federal laws of Canada.

30. Amendment. The Agreement may only be amended by a written agreement duly executed by the Parties.

### **DISPUTE RESOLUTION**

31. If a dispute arises between the Parties relating to this Agreement, the disputing Parties agree to use the following procedure prior to either party pursuing other available remedies.

- a) A meeting shall be held promptly between the disputing Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- b) If, within fifteen (15) days after such meeting, the disputing Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and to bear equally the costs of the mediation.
- c) The disputing Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of 30 days. If the disputing Parties are not successful in resolving the dispute through the mediation, then the disputing Parties agree that either party may pursue any available legal remedies.

### **SIGNATORIES**

The Parties hereto have signed the Agreement, in counterpart, on the dates indicated below.

Approved by:

\_\_\_\_\_

JBCSI President

\_\_\_\_\_

Date

\_\_\_\_\_

Nipissing First Nation Executive Director

\_\_\_\_\_

Date

## Appendix A

- 1) 1991 Spartan Diamond pumper, VIN 4S7PT9SO5MC003678 and any maintenance records;
- 2) communications system including 15 pagers;
- 3) 1997 Freightliner FL80 Tanker (1200 Gallon Poly-tank replaced in 2005);
- 4) 22 HP portable pump unit (on board the tanker);
- 5) 1500 gallon port-a-tank;
- 6) 10 inch ice auger;
- 7) Stocked First-Aid kit;
- 8) Defibrillator;
- 9) Oxygen;
- 10) 4 inch ground monitor;
- 11) Full mechanical tool box;
- 12) HP Laptop;
- 13) 12 sets bunker gear (pants, coat, balaclava, helmet, gloves and boots) ;
- 14) 18-HP port-a-pump;
- 15) 1000 gallon port-a-tank;
- 16) 4 sets of BA (draegar);
- 17) 12 - 2200 lb air tanks for above BA;
- 18) 10 - 50 ft lengths of 1 1/2 hose lines;
- 19) 8 - 59 ft lengths of 3 inch hose lines; and
- 20) Various nozzles, wrenches and caps for pumping equipment.

## **Appendix "B"**

- 1) Internet service;
- 2) Security services and system;
- 3) Grounds maintenance;
- 4) Emergency generator;



**APPENDIX "C"**

THIS INDENTURE OF LEASE made this 15th day of October 2015.

**BETWEEN:**

**Nipissing First Nation**

**(hereinafter called the "Lessor"),**

**- and -**

**Jocko Beaucage Community Service Inc.**

**(hereinafter called the "Lessee"),**

**1. PREAMBLE**

**WHEREAS** through a Memorandum of Understanding dated October 15, 2015 between Nipissing First Nation and Jocko Beaucage Community Service Inc.(hereinafter called "MOU") Nipissing First Nation agreed to take over fire protection services that were formally the responsibility of Jocko Beaucage community Service Inc.

**WHEREAS** the MOU included the transfer of property known as 1140 Jocko Point Road, Jocko Point Subdivision, Nipissing First Nation (hereinafter called "Commercial Land") and building thereon (hereinafter called "Building") (see Appendix "A")

**WHEREAS** in the MOU it was agreed that Nipissing First Nation will be responsible for the Fire Hall portion of the property known as 1140 Jocko Point Road, Jocko Point Subdivision, Nipissing First Nation outlined in red on Appendix "A" attached hereto and Jocko Beaucage Community Services Inc would be responsible for the community Centre / Emergency Relief Center outlined in green on Appendix "A" attached hereto and that a lease agreement would demonstrate Jocko Beaucage Community Services Inc's interest;

**2. INTERPRETATION**

(1) In this Lease,

- (a) "Commencement Date" shall mean the 16<sup>th</sup> day of October 2015.
- (b) "Common Area" means the area of the Commercial Land around the Building shown in Appendix "A" and without limiting the generality of the foregoing shall include the shared washrooms, shower, shared roof, sidewalks, parking areas, play area and landscaped areas.
- (c) "Lease Year" shall mean from the 1<sup>st</sup> day of April of one calendar year to the 31<sup>st</sup> day of March of the following calendar year.
- (d) "Premises" shall mean the portion of the Building occupied by the Lessee and outlined in green on Appendix "A" attached hereto.

- (e) "Proportionate Share" shall be the percentage computed by the Lessee's total square footage 2000 of the Premises being the numerator and the total space footage of the Building being the denominator, namely 3,500 square feet.
- (f) "Rent" shall mean all those payments required to be made in respect of the Premises from the Lessee to the Lessor and shall include Basic Rent and Additional Rent.
- (g) "Repairs and Maintenance" means all those costs incurred or expended that are reasonably and equitably attributable to the repair, maintenance and upkeep of the Common Area and the Commercial Land in a good and tenable state and operating condition.
- (h) "Term" shall mean a period of Twenty-Five (25) years commencing from 16<sup>th</sup> day of October 2015, and ending on 17<sup>th</sup> day of October 2035.
- (i) "Utilities" shall mean all those costs for services being reasonably and equitably attributable to the operation of the Common Area and Commercial Land including sewer service and water, and electricity.

### **3. GRANT OF LEASE**

The Lessee has agreed to lease from the Lessor and the Lessor has agreed to lease those Premises forming part of the Building shown outlined in green on Appendix "A" hereto comprising **2000** square feet.

Now therefore this indenture witnesses that the Lessor for and in consideration of the Rent, stipulations, covenants and obligations hereinafter expressed and contained on the part of the Lessee to be respectively paid, observed, performed and fulfilled and abided by, has agreed to enter into a Lease of those Premises, more fully described as follows:

The Community Centre and Emergency Relief Centre located at 1140 Jocko Point Road, Jocko Point Subdivision, Nipissing First Nation, comprising and measuring 2000 square feet as shown outlined in green on Appendix "A".

### **4. TERM AND POSSESSION**

- (1) The Lessee shall have possession of the Premises for a Term of Five (5) YEARS, to be computed from the 16<sup>th</sup> day October, 2015 and ending on the 16<sup>th</sup> day of October 2020.
- (2) The Lessee shall have access and possession in common with other tenants of the Building to the Common Area and shall have the right of ingress to and egress from the Commercial Land from the adjacent public thoroughfare known as Jocko Point Road.
- (3) Subject to the Lessor's rights under this Lease, and as long as the Lease is in good standing the Lessor covenants that the Lessee shall have quiet enjoyment of the Premises during the Term of this Lease without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming through the Lessor.

- (4) If vacant possession of the Premises cannot be given to the Lessee on the Commencement Date, the Lease shall remain in effect but the Lessee shall not be required to pay Rent until the date when vacant possession is available to or actually given to the Lessee; Any delay in the actual occupation by the Lessee of the Premises shall not extend the Term of the Lease.
- (5) Provided that if the Lessee takes possession on a date other than the first of the month, the Lessee shall pay on the date of occupation that fraction of the monthly Rent having as its numerator the remaining number of days in such month and having as its denominator the number of days in such month. The Lessor shall deliver and the Lessee shall accept the Premises for occupancy on the Commencement Date.
- (6) The Lessor shall be responsible for providing the following facilities as part of the Common Area;
- (a) a graveled and/or paved, leveled area for free parking as shown on Appendix "A" which shall be kept graded and in good condition throughout the year and, in particular, clear of snow and debris;

## 5. RENT

- (1) Rent shall be comprised of Basic Rent and Additional Rent
- (2) Basic Rent shall be computed at TWO DOLLARS ----- 00/100 (\$2.00) per year payable by the Lessee to the Lessor, its successors and assigns in lawful money of Canada, the first (1st) day of each and every year, commencing on the first day of the Term and continuing thereafter until the first (16<sup>th</sup>) day of October 2035;
- (3) The Lessee further covenants to pay as Additional Rent all other reasonable sums required to be paid pursuant to the provisions of this Lease.
- (4) The Lessor and the Lessee agree that it is their mutual intention that this Lease shall be a net Lease for the Lessor and to effect the said intention of the parties the Lessee promises to pay the Lessor the following expenses related to the Premises as Additional Rent;
- (a) its Proportionate Share of the reasonable costs of operating, maintaining, repairing and servicing the Common Areas, including, without limitation or duplication, the following;
- i. the actual cost of Utilities;
- ii. the actual cost of Repair and Maintenance and cleaning of the Commercial Lands, including any related wages, cleaning supplies and cleaning contracts;
- iii. The expenses of gardening and landscaping, and the expenses for maintenance, grading and snow removal of the parking lot, sidewalks and driveways;
- (b) Its Proportionate Share of all premiums incurred by the Lessor, with respect to fire and supplemental perils insurance, public liability insurance, including personal liability, contractual liability and owners protection insurance coverage, with respect to the Commercial Lands, in such amounts as the Lessor deems

necessary and any other form of insurance as the Lessor or the Lessor's mortgagees may reasonably require from time to time with respect to the Commercial Lands, in such amounts and for insurance risks against which a prudent owner would protect himself;

- (c) Any G.S.T. applicable to Basic Rent or Additional Rent.
  - (d) In the event that at any time during the Term of this Lease or any renewal thereof, there shall be a tax, rate, duty or assessment imposed upon the Lessor in respect of the leasing of the Premises to the Lessee or received by the Lessor in connection therewith, regardless of form, including without limitation any "value added tax" or "transfer tax" or other like tax, rate, duty or assessment, then the Lessee shall, at the option of the Lessor, either reimburse the Lessor or pay to the taxing authority, before delinquency, all such taxes. This section shall not be interpreted so as to make the Lessee responsible for the Lessor's income tax.
  - (e) It is acknowledged that the Nipissing First Nation does not presently impose or levy any taxes against the Commercial Land or the Premises; however should the Nipissing First Nation in the future impose any levy or tax against the Commercial Lands, Premises, the use thereof or business carried on therein, the Lessee shall pay its Proportionate Share of those taxes or levies
- (5) The Lessee shall pay to the Lessor one-twelfth (1/12) of the Lessee's Proportionate Share of such Additional Rent for the current Lease Year and each successive Lease Year thereafter in monthly installments in advance.
- (6) The Lessor and Lessee shall at least once each Lease Year provide each other with a statement in writing providing such information as may be required to calculate accurately the amounts payable to the Lessor as Additional Rent;
- (a) Prior to the first such statement being delivered the payments of Additional Rent shall be based on the Lessor's estimate of expenses chargeable to the Lessee a statement of which will be provided to the Lessee;
  - (b) In the event that any such statement indicates that the amounts paid by the Lessee for Additional Rent are either more or less than the amount required:
    - i. if the Lessee has overpaid in respect of Additional Rent the adjustment may be made by way of reduction of the next ensuing installments of Basic Rent.
    - ii. If the Lessee has under paid in respect of Additional Rent the full amount shall be paid along with the next ensuing installment of Basic Rent.
  - (c) The Lessor may from time to time issue additional statements adjusting for actual Additional Rent.
- (6) If the Lessee fails to pay when due and payable an amount of Basic Rent or Additional Rent the unpaid amount will bear interest from the date payment is due or expense incurred at a rate per annum equal to the

prime commercial lending rate of the Lessor's bank plus two percent (2 %) per year, calculated and payable monthly, and it will be collectible as Rent with the next installment of Rent falling due, but nothing in this Lease suspends or delays the payment of an amount of money when it becomes due and payable, or limits any other remedy of the Lessor.

- (7) All payments to be made by the Lessee pursuant to this Lease shall be delivered to the Lessor at its offices known as the Nipissing First Nation Band Office 36 Semo Road Garden Village, ON P2B 3K2 or to such other address as the Lessor may from time to time direct. The first and last month's Rental shall be paid to the Lessor on the execution of this Lease.

## **6. USE**

- (1) During the Term of this Lease the Lessee agrees that the Premises shall not be used for any purpose other than a community centre and emergency relief centre and provided further that the Lessee shall not carry on or permit to be carried on therein any other trade or business.
- (2) The Lessee shall not do or permit to be done anything which may:
- (a) constitute a nuisance;
  - (b) cause damage to the Premises;
  - (c) cause injury or annoyance to occupants of neighbouring premises;
  - (d) make void or voidable any Insurance upon the Premises;
  - (e) constitute a breach of any by-law, statute, order or regulation of the Nipissing First Nation or any municipal, provincial or other competent authority relating to the Premises or Commercial Lands.

## **7. PARKING**

The Lessor shall at all times during the Term of this Lease provide parking spaces for motor vehicles for the Lessee. The parking spaces shall be located in the gravel parking area in accordance with Appendix "A" for the use of the Lessee and the Lessee's servants, agents, employees and invitees.

## **8. SIGNAGE**

- (1) The Lessee shall not affix or have exposed any sign, sign-board, advertisement or other indication of the occupation of the Lessee to or near any wall, door, window or other portion of the Commercial Lands without the permission of the Lessor first being obtained, in writing, permission of which shall not be unreasonably withheld and further provided that the Lessee will before the expiration of the Term cause the sign, advertisement or indication to be removed or obliterated at his own expense and in a workmanlike manner restore the Commercial Lands to its former condition. The Lessee shall indemnify the Lessor against any loss or damage caused to any person or property as a result of the placing, use or removal of any sign on the Commercial Lands.
- (2) In the event that the Lessor provides and installs signage outside the Building, the Lessee shall pay its Proportionate Share of the cost of the signage and the Lessee's name shall be placed on the said signage at the expense of the Lessee. Such expense will be Additional Rent.

## 9. **ASSIGNMENT**

- (1) The Lessee shall not assign, sublet or part with the possession of the Premises or any part thereof nor allow any other person other than the Lessee, its servants and employees to occupy in any manner whatsoever the Premises whether by lease, license, or otherwise without the prior written consent of the Lessor first had and obtained which consent shall not be unreasonably withheld. In consideration of the Lessor's consent to any such assignment or subletting, the Lessee hereby agrees to pay the Lessor's expenses of granting consent and assigning the Lease, which expenses shall include reasonable legal fees, and indemnify the Lessor for any loss or damage sustained by the Lessor during the remainder of the Term of the Lease and upon notice from the Lessor will ipso facto be deemed by these presents and without novation to have re-leased the Premises from the Lessor for a term equal in duration of the Term remaining unexpired at the time of notice from the Lessor.
- 2) It is expressly understood and agreed that if the Lessee assigns, or parts with possession of the Premises or any part thereof or allows any other person other than Lessee, its servants or employees to occupy in any manner whatsoever, the Premises without the consent of the Lessor first had and obtained, or if any of the inventory, goods and chattels of the Lessee located on the Premises shall at any time during the Term be seized or taken in execution or attachment by any creditor of the Lessee, or if the Lessee shall make any assignment for the benefit of creditors, or becoming bankrupt or insolvent, or shall take the benefit of any Act that may be in force for bankrupt of insolvent debtors, the then current and the next ensuing three months' Rent shall, at the option of the Lessor immediately become forfeited and determined, and in such case, the Lessor may re-enter and take possession of the Premises as hereinbefore provided.
- (3) The Lessee hereby further covenants and agrees that:
  - (i) if it should sublet the Premises; and
  - (ii) if it should sell to such sub-lessee any equipment and in connection therewith it files a registration in respect of any security interest held by the Lessee to secure the unpaid portion of the purchase price of such equipment;

then, in such event, such security interest held by the Lessee shall, at all times, be subordinate to any distress levied upon such equipment by the Lessor pursuant to the terms of this Lease.

## 10. **REPAIR AND MAINTENANCE**

- (1) The Lessee shall keep the Premises and every part thereof in a good leasable condition and, without limiting the generality of the foregoing, the Lessee shall keep the Premises well painted, clean and in such condition as a careful and prudent owner would do.
- (2) The Lessee shall give the Lessor prompt notice of any accident or any defect in the electrical or plumbing equipment, or the climate control apparatus or any other defect in the Premises or the Commercial Lands of which it has knowledge which has or may cause damage or any injury thereto.
- (3) The Lessee covenants and Agrees to pay for its Proportionate Share of costs relating to Repairs and Maintenance for all climate control apparatus located in a Common Area. The Lessor may schedule periodic and regular maintenance of all climate control apparatus by a qualified agent the

Proportionate Share of the cost of which shall be paid by the Lessee as Additional Rent.

- (4) The Lessee shall permit the Lessor and all persons employed or utilized by the Lessor to enter upon the Premises at all reasonable times for the purpose of viewing the state thereof and for any other reasonable purpose and the Lessee shall forthwith make good any defects found upon the Premises and of which notice shall be given by or on behalf of the Lessor and for which the Lessee is liable hereunder.
- (5) The Lessee shall permit the Lessor with workmen or others to enter upon the Premises for the purpose of repairing, altering, renewing or adding to the Premises or any part thereof, or any part of the Commercial Lands of which they form part or the adjoining premises or the sewer drains or water courses of the Commercial Lands or the adjoining premises, including without restricting the generality of the foregoing, using any walls of the Premises for making any such alteration or addition, and the costs of remedying such work insofar as such work is included in the Lessee's covenants to repair contained in this Lease shall be a debt due from the Lessee to the Lessor, payable forthwith on demand and to be forthwith recoverable by action; in exercising its rights under this clause the Lessor shall not interfere with the Lessee any more than reasonably necessary.
- (7) The Lessee shall not cut, maim, injure or permit or suffer to be cut, maimed or injured in any manner whatsoever, any of the walls, floors, ceilings, or any portion of the Premises, or bring anything of such a size or weight which is likely to cause damage, without the consent in writing of the Lessor first had and obtained, such consent not to be unreasonably withheld, and if such consent is received, the Lessee shall repair any damage caused thereby, whether during or after the end of the Term hereby demised.
- (8) The Lessee covenants and agrees that it shall be responsible for the repair and the replacement of any and all glass and trimmings broken in, upon or about the doors and windows on the Premises no matter the cause.

#### **11. DAMAGE TO PREMISES**

- (1) If during the Term of the Lease, the Premises or any part thereof shall be destroyed or damaged by fire or other peril, then and so often as the same shall happen the following provisions shall have effect;
  - (a) If the damage or destruction renders the Premises partially unfit for occupancy by the Lessee, the Rent hereby reserved shall abate in part only, in that portion which the part of the Premises rendered unfit for occupancy by the Lessee bears to the whole of the Premises, or if the Premises are rendered wholly unfit for occupancy by the Lessee, the Rent payable hereunder shall be suspended in each case until the Premises has been rebuilt and/or repaired and restored;
  - (b) Notwithstanding the provisions of sub-paragraph (a) immediately preceding, if the Premises shall, in the opinion of the Lessor, be incapable of being rebuilt and/or repaired and restored with reasonable diligence within one hundred and twenty (120) days of the happening of such destruction or damage, then the Lessor may terminate this Lease by giving notice to the Lessee within thirty (30) days of the date of such destruction or damage and, in the event of

such notice being given, this Lease shall cease and become null and void from the date of such destruction and damage and the Lessee shall immediately surrender the Premises and all interest therein, to the Lessor and the Rent shall be apportioned and shall be payable by the Lessee only to the date of such destruction or damage and the Lessor may re-enter and repossess the Premises discharged of this Lease, but if within the said period of thirty (30) days, notice in writing terminating this Lease has not been given then the Lessor shall with reasonable promptitude proceed to rebuild and/or repair and restore the Premises; provided, however, that the Lessor hereby reserves any and all rights to indemnification by the Lessee which it may have as a result of any breach of covenant by the Lessee arising prior to the date of such loss or destruction.

- (c) If the Premises are capable with reasonable diligence of being rebuilt and/or repaired and restored within one hundred, twenty (120) days of the happening of such destruction or damage, then the Lessor or Lessee may rebuild and/or repair and restore the Premises, the Lessor also has the right to terminate this Lease;
- (d) If there is a dispute as to the time in which to rebuild the Premises, then the decision of the architect or engineer employed by the Lessor shall be final.

## **12. ALTERATIONS AND ADDITIONS**

- (1) If the Lessee, during the Term of this Lease or any renewal of it, desires to make any alterations, or improvements to the Premises including but not limited to partitions, lighting fixtures and interior displays and decorations, it may do so at its own expense, at any time and from time to time, if the following conditions are met:
  - (a) before undertaking any alteration, or improvement the Lessee shall submit to the Lessor a plan and specifications showing the proposed alternations, additions or improvements and the Lessee shall not proceed to make any alteration, or improvement unless the Lessor has approved the plan in advance in writing; and
  - (b) any and all alterations to the Premises made by the Lessee must comply will all applicable building code standards and by-laws applicable;
- (2) The Lessee shall be solely responsible for and pay the cost of any alterations, or improvements or installations that any governing authority, municipal, provincial, federal or First Nation, may require to be made in, on or to the Premises insofar as such alterations, improvements or installations are contained in the Lessee's covenants within this Lease.
- (3) All alterations, additions or improvements to the Premises made by or on behalf of the Lessee, other than the Lessee's trade fixtures, shall immediately become the property of the Lessor without compensation to the Lessee.
- (4) If the Lessee has complied with his obligations according to the provisions of this Lease, the Lessee may remove any trade fixtures at the end of the Term or other termination of this Lease and the Lessee covenants that he shall effect such removal of trade fixtures only if such fixtures may be removed in such a way that the Premises may be restored by the Lessee to the same condition that they were prior to the installation thereof, and



the Lessee shall make good and repair or replace as necessary any damage caused to the Premises by the removal of the Lessee's trade fixtures, provided further that the Lessor may require the Lessee to leave the Premises in the condition that they were in prior to any changes made by the Lessee thereto.

- (5) The Lessee shall make good any damage caused by the misuse, negligence, or carelessness of the climate control systems, plumbing equipment, gas piping, electrical wiring and fixtures thereof, by reason of any use being carried on in the Premises by it, its servants or any person who may be permitted by it to enter the Premises.

### **13. INSURANCE**

- (1) The Lessor shall insure the Commercial Lands including the exterior of the Building for fire and extended coverage of supplemental risks for an amount equal to not less than 90% of full replacement cost thereof, for comprehensive public liability risks in an amount not less than one million (\$1,000,000.00) DOLLARS and for boiler and pressure vessel risks as are applicable. All insurance coverage will provide for standard cross liability clauses, waivers of subrogation and provide for the availability of proceeds to repair in the event of damage to the Commercial Lands.
- (2) The Lessee shall, during the entire Term of this Lease at its sole cost and expense, take out and keep in full force and effect property damage and public liability insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability and owners' and contractors' protection insurance coverage with respect to the interior of the Premises, the contents thereof and the Lessee's use of the Common Area, said coverage to include the all operations conducted by the Lessee and any other such person on or about the Premises. Such policies shall be written on a comprehensive occurrence basis with limits of not less that one million (\$1,000,000.00) DOLLARS for bodily injury to any one or more persons, or property damage, and such higher limits as the Lessor or its mortgagees may reasonably require from time to time;
- (3) All policies maintained by the Lessee shall contain a waiver of any subrogation rights which the Lessee's insurers may have against the Lessor and against those for whom the Lessor is in law responsible, whether any such loss or damage is caused by the act, omission, or negligence of the Lessor or by those for whom the Lessor is in law responsible.
- (4) All policies shall be taken out with insurers acceptable to the Lessor and such policies shall be in form satisfactory from time to time to the Lessor. The Lessee agrees that certificates of insurance or, if required by the Lessor or its mortgagees, certified copies of each such insurance policy shall be delivered to the Lessor forthwith after the placing of the required insurance. All policies will contain an undertaking by the insurers to notify the Lessor and its mortgagees in writing not less than thirty (30) days prior to any material change, cancellation, or termination thereof.

### **14. ACTS OF DEFAULT AND LESSOR'S REMEDIES:**

- (1) An Act of Default has occurred when:

- (a) the Lessee has failed to pay Rent for a period of fifteen (15) consecutive days, regardless of whether a demand for payment has been made or not;
  - (b) The Lessee has breached his covenants or failed to perform any of his obligations under this Lease; and
    - (i) the Lessor has given notice specifying the nature of the default and the steps required to correct it; and
    - (ii) the Lessee has failed to correct the default as required by the notice;
  - (c) the Lessee has:
    - (i) become bankrupt or insolvent or made an assignment for the benefit of creditors;
    - (ii) had its property seized or attached in satisfaction of a judgment;
    - (iii) had a receiver appointed;
    - (iv) committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the Lessor's property;
    - (v) without the consent of the Lessor, made or entered into an agreement to make a sale of assets to which the *Bulk Sales Act* applies;
    - (vi) taken action if the Lessee is a corporation, with a view to winding up, dissolution or liquidation;
  - (d) any insurance policy is cancelled or not renewed by reason of the use or occupation of the Premises, or by reason of non-payment of premiums;
  - (e) the Premises;
    - (i) become vacant or remain unoccupied for a period of thirty (30) consecutive days; or
    - (ii) are used by any other person or persons, or for any other purpose than as provided for in this Lease without the written consent of the Lessor
- (2) When an Act of Default on the part of the Lessee has occurred:
- (a) the current annual Rent, including Basic and Additional Rent, together with the next three year's Rent shall become due and payable immediately; and
  - (b) the Lessor shall have the right to terminate this Lease and to re-enter into and upon the said Premises, or any part thereof and deal with them as he may choose.

- (c) provided further that upon such re-entry by Lessor under the terms of this paragraph or any other provision or provisions of this Lease, the Lessor may, in addition to any other remedies to which the Lessor may be entitled hereunder at law or in equity, at its option, at any time and from time to time, re-let the Premises or any part or parts thereof for the account of the Lessee or otherwise, and receive and collect the Rent therefor, applying the same first to the payment of such expenses as the Lessor may have incurred in recovering possession of the Premises, and for putting the same into good order or condition or preparing or altering the same for re-rental, and all other expenses, commissions and charges paid, assumed or incurred by the Lessor in or about re-letting the Premises, and then to the fulfillment of the covenants of the Lessee hereunder. Any such re-letting herein provided for may be for the remainder of the Term as originally granted or for a longer or shorter period.
  - (d) It is further agreed by and between the parties hereto that whensoever the Lessor shall be entitled to re-enter and retake possession of the Premises it may use such force as it deems necessary for the purpose of gaining admittance to such Premises without being liable for any action in respect thereof or for any loss or damage occasioned thereby and the Lessee hereby expressly releases the Lessor from all actions, proceedings, claims and demands whatsoever for or on account of or in respect of any such forcible entry or any loss or damage sustained by the Lessee in connection therewith.
- (3) If because an Act of Default has occurred, the Lessor exercises his right to terminate this Lease and re-enter the Premises prior to the end of the Term, the Lessee shall nevertheless be liable for the payment of Rent and all other amounts payable by the Lessee in accordance with the provisions of this Lease until the Premises has been re-let or otherwise dealt with in such manner that the cessation of payments by the Lessee will not result in loss to the Lessor:
- (a) and the Lessee agrees to be liable to the Lessor, until the end of the Term of this Lease for payment of any difference between the amount of the Rent hereby agreed to be paid for the Term hereby granted and the Rent that any new Lessee pays to the Lessor.
- (4) The Lessee covenants that notwithstanding any present or future Act of the Legislature of the Province of Ontario, or an Act of the Parliament of Canada or notwithstanding any present or future Act of the Council of the Nipissing First Nation, the personal property of the Lessee during the term of this Lease shall not be exempt from levy by distress for Rent in arrears:
- (a) and the Lessee acknowledges that it is upon the express understanding that there should be no such exemption that this Lease is entered into, and by executing this Lease:
    - (i) the Lessee waives the benefit of any such statute, by-law, order or legislative provisions which might otherwise be available to the Lessee in the absence of this agreement; and
    - (ii) the Lessee agrees that the Lessor may plead this covenant as an estoppel against the Lessee if an action is brought to

test the Lessor's right to levy distress against the Lessee's property.

- (5) If, when an Act of Default has occurred, the Lessor chooses not to terminate this Lease and re-enter the Premises, the Lessor shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Lessee and to charge the costs and expenses of such rectification to the Lessee and to recover such costs and expenses as Rent.
- (6) If, when an Act of Default has occurred, the Lessor chooses to waive his right to exercise the remedies available to him under this Lease or at law the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the Lessor to prevent his exercising his remedies with respect to a subsequent Act of Default
- (7) No covenant, term or condition of this Lease shall be deemed to have been waived by the Lessor unless the waiver is in writing and signed by the Lessor.

**15. TERMINATION UPON NOTICE AND AT END OF TERM**

Notwithstanding any provision of law or any judicial decision to the contrary, no notice shall be required from either party to terminate this Lease at the end of the Term herein specified. Anything herein contained or implied to the contrary notwithstanding, in the event that the Lessee, its assignee or sub-lessee after the expiration of the said Term or any renewal thereof remains in possession of the Premises without the execution and delivery of a new lease and the Lessor accepts Rent, the Lessee shall be deemed to be occupying the Premises as a tenant from month to month at a monthly rental as prescribed herein or as agreed to in any renewal term, payable in advance on the first day of each month subject to all the covenants, agreements, conditions, provisions and obligations of this Lease insofar as the same are applicable to a month to month tenancy. A tenancy from year to year shall not be created by implication of law.

**16. RENEWAL AND EXTENSION AT END OF TERM**

The Lessee shall, upon six (6) months advance written notice prior to the expiration of the Term and if not in default hereunder, have the right to extend the Term hereof for five (5) years, upon the same terms and conditions, except for the provision respecting Basic Rent which shall be negotiated as between the parties prior to the expiration of the Term.

It being provided further that in the event of a failure of the parties to mutually agree upon the Basic Rent for the renewal period by the end of the Term, the extension of the Term is cancelled and revoked.

**17. INDEMNITY**

The Lessee shall indemnify and save harmless the Lessor or any other Lessee of the Building of and from any loss or damage and all fines, suits, claims, demands and actions of any kind and nature to which the Lessor or any other Lessee of the Building shall or may become liable or suffer by reason of any breach, violation or nonperformance of the Lessee of any covenant, term or provision hereby or by reason of any injury occasioned to or suffered by any person or persons or any property by reason of any

wrongful act, neglect or default on the part of the Lessee or any of its employees, agents or invitees.

## **18. SUBORDINATION AND POSTPONEMENT**

- (1) This Lease and all the rights of the Lessee under this Lease are subject and subordinate to any and all charges against the land, buildings or improvements, of which the Premises form part and are subject and subordinate to any and all charges against the personal property of the Lessor, including all moveable intangible property, whether the charge is in the nature of a mortgage, trust deed, lien or any other form of charge arising from the financing or re-financing, including extensions or renewals, of the Lessor's interest in the real and personal property.
- (2) Upon the request of the Lessor the Lessee will execute any form required to subordinate this Lease and the Lessee's rights to any such charge, and will, if required, attorn to the holder of the charge.
- (3) No subordination by the Lessee shall have the effect of permitting the holder of the charge to disturb the occupation and possession of the premises by the Lessee as long as the Lessee performs his obligations under this Lease.

## **19. RULES AND REGULATIONS**

- (1) The Lessee agrees on behalf of itself and all persons entering the Premises with the Lessee's authority or permission to abide by such reasonable rules and regulations as the Lessor may make from time to time. The Lessor shall provide notice to the Lessee of any such changes to any rules and regulations.

## **20. NOTICE**

- (1) A notice if required to be given shall be sufficiently given if personally delivered or if mailed by prepaid registered mail addressed as follows:

To the Lessor at:                      Nipissing First Nation  
     36 Semo Road.  
     Garden Village, Ontario  
     P2B 3K2                      Attention: Dwayne Nashkawa  
     Executive Director

to the Lessee at:                      Jocko Beaucage Community Service Inc.  
     1082 Jocko Point Road  
     R. R. 4, North Bay, ON P1B 8G5  
     Attention: Barry McNeil President

- (2) Any notice given by one party to the other in accordance with the provisions of this Lease shall be deemed conclusively to have been received on the date delivered if the notice is served personally or if notice is given by registered mail as of fifth business day after having been deposited in any post office maintained by the Government of Canada. It is understood and agreed that in the event of a postal strike or threatened postal strike all notices required to be given shall be personally delivered.

## **21. GENERAL**

- (1) The Lessee may not store or bring onto the Premises material, substances or articles of an inflammable or dangerous nature without the consent of the Lessor. If the Lessee wishes to do something which will not render any insurance void or voidable, but which may be insured against upon paying an additional premium, then the Lessee may do so but only if it pays all additional insurance costs, not only of the Lessor but of any other tenant who may be affected thereby. It is agreed that if any insurance policy upon the Premises shall be cancelled by the insurer by reason of the use and occupation of the Premises or any part thereof by the Lessee, or by reason of anything done or permitted to be done in or upon the Premises by the Lessee or by any assignee or sublessee of the Lessee or anyone permitted by the Lessee to be upon the Premises, the Lessor may, at its option, terminate this Lease.
- (2) The Lessee shall not keep or display any merchandise on or otherwise obstruct the walkways, driveway or other areas adjacent to the Building.
- (3) The Lessor shall not, except in the event of negligence on the Lessor's part, be liable or responsible, in any way for personal or consequential injury of any nature whatsoever that may be suffered or sustained by the Lessee or any employee, agent or invitee of the Lessee, or any person who may be on the Premises, or for any loss or damage or injury to any property belonging to the Lessee, or to its employees, or to any other person while the property is on the Premises, and in particular without limiting the generality of the foregoing, the Lessor shall not be liable for any damage or damages of any nature whatsoever to any person or property caused by the failure or by reason of breakdown or other cause to supply adequate drainage, or by reason of the interruption of any public utility or service, or in the event smoke, steam, electricity, water, rain or snow which may leak into, issue or flow into any part of the Commercial Lands from the water, steam, sprinkler or other drainage pipes or plumbing works or from any other place or quarter; the Lessor shall use all reasonable diligence to remedy such condition, failure or interruption of service when not directly or indirectly attributable to the Lessee, after notice of same, when it is within its power and obligation to do so, and the Lessee shall not be entitled to any abatement of Rent in any such condition, failure or interruption of service.
- (5) The Lessee agrees that it will examine and know the condition of the Premises prior to occupation and possession and will acknowledge to the Lessor such condition upon taking possession. No representations as to the condition or repair thereof have been made by the Lessor or its agents prior to or at the execution of this Lease, that are not herein expressed or endorsed thereon.
- (6) Without restricting any provisions of this Lease, the Lessee shall at all times heat the Premises at its own cost sufficiently to prevent any damage thereto and agrees to comply with all First Nation authorities in respect thereto.
- (7) The term "Lessor" also when applicable includes the agents of the said Lessor, and the terms "Lessor" and "Lessee" shall include all Lessors and Lessees if more than one, in which case the covenants shall be construed to be as both joint and several and further that when the context so requires, the singular number shall be read as if the plural were expressed and the masculine or neutral gender as if the masculine, feminine or

neutral were expressed and the first person as if the third person were expressed.

- (8) Time shall be of the essence herein.
- (9) The preambles to this Lease shall and do form an integral part of this Lease.
- (10) The provisions of this Lease shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, successors, administrators, executors and lawful assigns.

**IN WITNESS OF THE FOREGOING COVENANTS the Lessor and Lessee have executed this document.**

Witness:

Jocko Beaucage Community Service  
Inc.  
Per:

\_\_\_\_\_

)

\_\_\_\_\_ I have the authority to bind the corporation

)

Nipissing First Nation  
Per:

)

)

\_\_\_\_\_

)

\_\_\_\_\_ I have the authority to bind the First Nation

)

