

LICENCE AGREEMENT

This agreement (this “License”) made in duplicate the _____ day of _____, 2024.

B E T W E E N:

PORT COLBORNE MARINE AUXILIARY RESCUE

(hereinafter called the “**POCOMAR**”)

- and -

THE CORPORATION OF THE CITY OF PORT COLBORNE

(hereinafter called the “**City**”)

WHEREAS the City owns the Sugarloaf Harbour Marina Maintenance Building (“SHMMB”) located at Sugarloaf Harbour Marina, 1 Marina Road, Port Colborne, ON, L3K 6C6 in the City of Port Colborne;

AND WHEREAS the POCOMAR is a legally incorporated not-for-profit entity;

AND WHEREAS the POCOMAR and City agree that the POCOMAR shall have a license to use certain areas of the SHMMB in accordance with the terms hereof;

NOW THEREFORE this agreement witnesses that in consideration of the premises and the obligations herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the POCOMAR and City hereby agree as follows:

1. Designated Space

- a. Subject to section 8 below, the City hereby grants to the POCOMAR the right to use the areas within the SHMMB identified in Schedule B – Designated Space (DESIGNATED SPACE) for the purposes as identified in section 2 below for the fees outlined in Schedule A – Fees Structure.
- b. The DESIGNATED SPACE is accepted “as is, where is” by the POCOMAR.
- c. The City shall be entitled to reasonable access to, and use of, the DESIGNATED SPACE as reasonably required for the City’s use and operations of the balance of

the SHMMB.

2. Purpose

- a. POCOMAR in its capacity as the auxiliary marine search and rescue service in the City of Port Colborne shall:
 - i. share congruent values of the City;
 - ii. provide residents and users of the water in the City of Port Colborne with auxiliary marine search and rescue service, including boater safety education;
 - iii. be inclusive in the fostering of a welcoming, livable, and healthy community.

3. Term

- a. Subject to section 8 below, the initial term of this license shall commence on January 1, 2024 (Commencement) and shall terminate five (5) years from the commencement date on December 31, 2029 (INITIAL TERM).
- b. Upon the expiring of the INITIAL TERM, the POCOMAR and the City shall have the option to extend the INITIAL TERM of this license for three (3) additional periods of five (5) years (EXTENDED TERM). To facilitate an EXTENDED TERM:
 - i. the POCOMAR will need to provide written notice to the City at least six (6) months prior to the expiration of the INITIAL TERM; and
 - ii. if the City agrees to the EXTENDED TERM, provide written acceptance of the EXTENDED TERM request to the POCOMAR.

In the event of the exercise of the EXTENDED TERM, such extension shall be upon the same terms and conditions as this license.

- c. During the initial term or any extended term(s) the City has the right to require POCOMAR to move to an alternative DESIGNATED SPACE within 120 days notice, at the City's expense, provided the space is comparable in size and within reasonable proximity of POCOMAR's docked boats.

4. POCOMAR Covenants

- a. The POCOMAR covenants and agrees with the City that, throughout the term of the agreement the POCOMAR shall:
 - i. observe all the terms, covenants and conditions of this agreement including, without limiting the generality of the foregoing, maintaining the DESIGNATED SPACE within the terms and timelines contained in Schedule A – Designated Space hereto;
 - ii. only use the DESIGNATED SPACE for the purpose of POCOMAR and subject to section 2;
 - iii. operate to the City's values and comply with all City policies and procedures, including but not limited to the City's code of conduct and zero tolerance for smoking and illicit substances on City property which includes the DESIGNATED SPACE;
 - iv. comply with all laws, directions, rules and regulations of all governing and governmental bodies and authorities having jurisdiction, including the City;
 - v. comply with all environmental laws, directions, rules, and regulations, and agrees not to contaminate the DESIGNATED SPACE or allow any discharge of any contaminants of any nature into the DESIGNATED SPACE;
 - vi. not advertise POCOMAR sponsors on or around DESIGNATED SPACE without the express written consent of the City;
 - vii. maintain insurance compliant with section 6 below;
 - viii. communicate any significant changes in use of space or programming prior to implementation;
 - ix. make public POCOMAR annual board meeting agenda and meeting minutes on a schedule that follows scheduled annual board meetings;
 - x. provide an annual report to Council;
 - xi. provide annual, unaudited financial statements to the City within 90 days of

POCOMAR's year end. Allow the City and the City's auditors, if requested, access to financial records, including but not be limited to receipts and invoice or expense information.

- b. Specific to the DESIGNATED SPACE, POCOMAR covenants and agrees with the City that, throughout the term of the agreement the POCOMAR shall:
- i. Sign for and subsequently be issued five (5) keys to the SHMMB building by the City for the DESIGNATED SPACE. POCOMAR shall not duplicate or share these keys and will abide by all rules and regulations of the City with respect to building safety and security. POCOMAR shall return the keys immediately upon request by the City, failing which will result in the locks being changed and POCOMAR being charged the cost of doing so;
 - ii. maintain the DESIGNATED SPACE to reasonable housekeeping standards, including collecting all waste and recyclables and placing them in appropriate containers and location for waste and/or recycle pickup;
 - iii. ensure that all areas within the DESIGNATED SPACE, inclusive of all property of the POCOMAR found within the DESIGNATED SPACE, are properly maintained, free of refuse and clutter, and is kept aesthetically acceptable to what the City would consider to be reasonable. All work, including maintenance work will be completed in accordance with the Marina's Clean Marine Policy.;
 - iv. provide for general supplies required in the DESIGNATED SPACE, which includes but are not limited to tables, chairs, cleaning supplies and toiletries;
 - v. be responsible for the payment of utility costs, which includes but are not limited to telephone, cable, telephone, and internet. ;
 - vi. be responsible, including related costs, for the installation, maintenance and replacement of all trade fixtures and improvements within the DESIGNATED SPACE, including, but not limited to all shelves, racks, counters, signage, and specialized lighting;
 - vii. not make any repairs, alternations, replacements, decorations, or improvements (work) to the DESIGNATED SPACE without the express written consent of the City. Any approved work that is fixed to the building will immediately become the property of the City and shall not be removed

subject to section 4 (b) (x) below;

- viii. be responsible for, its employees, volunteers, participants, users, contractors, invitees, customers, and others attending the DESIGNATED SPACE, and all surrounding City facilities including related costs resulting from damage to the DESIGNATED SPACE, and surrounding City facilities,
- ix. be responsible for its employees, volunteers, participants, users, contractors, invitees, customers and others including adherence to marina rules, and Code of Conduct, understanding that failure to do so may result in removal of individuals and/or a no trespass executed against individuals in violation
- x. not use any appliances, including but not limited to refrigerators, ovens and stoves, washers, and dryers without the express written consent of the City. Any appliances will be required to have a high energy efficiency rating;
- xi. upon the termination of this agreement remove any fixtures and improvements requested for removal by the City from the DESIGNATED SPACE and if requested by the City, return the DESIGNATED SPACE to the same state as it was at the beginning of the term, subject only to reasonable wear and tear.
- xii. participate and where applicable lead or join partnership development, sponsorship activities, fundraising and grant initiatives to support the repair, replacement, and maintenance of the DESIGNATED SPACE.

5. City Covenants

- a. City covenants and agrees with POCOMAR that, throughout the term of the agreement the City shall:
 - i. observe all the terms, covenants, and conditions of this agreement;
 - ii. be under no obligation for any repair, replacement, or maintenance to the DESIGNATED SPACE;
 - iii. reserve the right to restrict access to the DESIGNATE SPACE for purposes such as required repair and maintenance or health and safety resulting from an event such as severe weather. The City appreciates such situations may impact POCOMAR operations. The City is not responsible for any resulting

financial loss that may result to POCOMAR;

b. Specific to the purpose of POCOMAR, the City covenants and agrees with POCOMAR that, throughout the term of the agreement the City shall:

- i. shall charge the seasonal and transient slips and boat ramp users a percentage fee of 2% on their slip rentals and/or boat ramp fees;
- ii. match the funds charged in section 5 (b) (i);
- iii. submit the collected fees and matching funds to POCOMAR by May 1st for all seasonal slip rentals that have confirmed by April 1st and by November 1st for all seasonal slip rentals that confirmed after April 1st;
- iv. submit the collected fees and matching funds for transient slip rentals to POCOMAR by November 1st;
- v. any payment of collected fees in sections 5 (b) (iii) and 5 (b) (iv) will be offset by any funds owing to the City.

6. Insurance

- a. POCOMAR shall, throughout the INITIAL TERM and any EXTENDED TERM, at its own expense, take out and maintain commercial general liability insurance (POLICY) satisfactory to the City and underwritten by an insurer licensed to conduct business in the Province of Ontario. The POLICY shall provide coverage for bodily injury, property damage and personal injury and shall include but not be limited to:
 - i. A limit of liability of not less than \$5,000,000 per occurrence;
 - ii. Add the City as an additional insured with respect to the operations of the POCOMAR;
 - iii. The POLICY shall contain a provision for cross liability and severability of interest in respect of the POCOMAR;
 - iv. Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96);
 - v. Tenant's legal liability;
 - vi. Products and complete operations coverage;
 - vii. Broad form property damage;

- viii. Contractual liability;
 - ix. Work performed on behalf of the POCOMAR by sub-contractors;
 - x. Hostile fire;
 - xi. The POLICY shall be provided 30 days prior notice of cancellation.
- b. POCOMAR agree to furnish the City with proof of the POLICY in a form satisfactory to the City on or before the acceptance of this agreement by the City and for subsequent POLICY updates to be provided to the City as they expire or at the request of the City to verify coverage is maintained.

7. Indemnity

- a. POCOMAR shall defend, indemnify and save harmless the City, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of POCOMAR, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this License. This indemnity shall be in addition to and not in lieu of any insurance to be provided by POCOMAR in accordance with this License and shall survive this License.
- b. POCOMAR agree to defend, indemnify, and save harmless the City from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to POCOMAR's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by POCOMAR in accordance with this License and shall survive this License.

8. Default

- a. Any of the following occurrences or acts shall constitute an event of default by the City or POCOMAR under this agreement:
 - i. failure to make any payment of any sums herein required to be paid, where such failure shall continue for fifteen (15) days after the other party shall have given the defaulting party notice specifying such failure;
 - ii. failure to perform any covenant or condition required to be performed or observed by such party hereunder, where such failure shall continue for fifteen

(15) days after delivery by the other party of notice specifying such failure and, if such default cannot be reasonably cured within such fifteen (15) day period, such longer period as may be reasonably required to cure such default; and

- iii. the bankruptcy or taking the benefit of any legislation providing protection for insolvent parties or winding up or otherwise ceasing to exist.
- b. In the event default shall occur and be continuing after any applicable curative period, the non-defaulting party, in addition to all other rights it may have, shall have the following rights:
- i. to immediately terminate this agreement and the term by giving written notice of such termination to the defaulting party. Any payments for which POCOMAR is liable under this agreement shall thereupon be apportioned and paid in full and refunded, if necessary, to the date of such termination, and POCOMAR shall immediately deliver possession of the DESIGNATED SPACE to the City and the City may re-enter and take possession thereof;
 - ii. to perform the covenant or condition required to be performed or observed by the defaulting party (the costs of doing so shall be a debt from the defaulting party to the non-defaulting party and, if the City is the defaulting party, may be set off against any future payments); and
 - iii. if the POCOMAR is the defaulting party, upon written notice to POCOMAR, the City may re-enter the DESIGNATED SPACE.

9. Assignment

- a. POCOMAR shall not assign this agreement, in whole or in part, or enter any sub-license or otherwise permit any other party to occupy the DESIGNATED SPACE or any part thereof without the written consent of the City.
- b. Subject to the foregoing, this agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

10. Notices

- a. Any demand, notice, direction, or other communication made or given hereunder (Communication) shall be in writing and shall be made or given by personal delivery, courier, facsimile transmission, or sent by registered mail, charges prepaid, addressed as follows:

To the POCOMAR:	Attention: Commander Sugarloaf Harbour Marina 1 Marina Road Port Colborne, ON
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	L3K 6C6 (905) 341-4027
To the City:	Attention: City Clerk 66 Charlotte Street Port Colborne, ON L3K 3C8 (905) 835-2900

or to such other address or facsimile number as either party may, from time to time, designate in accordance with this section.

- b. Any communication made by personal delivery or by courier shall be conclusively deemed to have been given and received on the day of actual delivery thereof or, if such day is not a business day, on the first business day thereafter. Any communication made or given by email on a business day before 5:00 p.m. (local time of the recipient) shall be conclusively deemed to have been given and received on such business day, and otherwise shall be conclusively deemed to have been given and received on the first business day following the transmittal thereof. Any communication that is mailed shall be conclusively deemed to have been given and received on the fifth business day following the date of mailing but if, at the time of mailing or within five business days thereafter, there is or occurs a labour dispute or other event that might reasonably be expected to disrupt delivery of documents by mail, any Communication shall be delivered or transmitted by any other means provided for in this section. When used in this agreement, "business day" shall mean a day other than a Saturday, Sunday, or any statutory holiday in the province in which POCOMAR is located.

11. General Provisions

- i. The City and POCOMAR shall, without charge, at any time and from time to time, within ten (10) days after request by the other party, certify by written instrument to the other party or any other person, firm or corporation specified by the other party, that this agreement is unmodified and in full force and effect (or, if there have been any modifications, that this agreement is in full force and effect as modified and stating the modifications), whether or not there are then existing any known set-offs or defences against the enforcement of any of the agreements, terms, covenants or conditions of the certifying party and, if so, specifying the nature of same and confirming the dates, if any, to which any charges hereunder have been paid.
- ii. This agreement constitutes the entire agreement of the parties with respect to the matters governed by it and supersedes all prior agreements and understandings, whether written or oral, relative to the subject matter hereof. Except as otherwise specifically set forth in this agreement, neither party makes any representation or warranty, express or implied, statutory, or otherwise, to the other. This agreement may not be amended or modified except by a written instrument executed by both parties.

- iii. The parties hereto disclaim any intention to create a partnership between them or to constitute any of them the agent of the other or to create any fiduciary relationship between them. Nothing in this agreement shall constitute the parties being construed as partners or agents of one another, nor except as may be expressly provided in this agreement, constitute any of them the agent of the other party.
- iv. If any covenant, provision, or restriction contained in this agreement is found to be void or unenforceable in whole or in part by a competent authority, it shall not affect or impair the validity of any other covenant, provision or restriction and, without limitation, each of the covenants, provisions and restrictions contained herein and hereby declared to be separate and distinct covenants, provisions and restrictions.
- v. Unless the context otherwise requires, words importing the singular in number only shall include the plural and *vice versa*, words importing the use of gender shall include the masculine, feminine and neuter genders, and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.

DRAFT

IN WITNESS WHEREOF the parties hereto have caused this license agreement to be duly executed as of the day and year first above written.

THE CORPORATION OF THE CITY OF PORT COLBRONE

William C. Steele, Mayor

Carol Scholfield, Interim City Clerk

Greg Zwiep, Manager Recreation

Marina Supervisor, Blair Holinaty

Port Colborne Marine Auxiliary Rescue

Michael Speck, Commander

Appendix A – Fee Structure

Space	Payment ¹	Payment Term	Time Period and Limitations
SHMMB ⁵	Escallating ¹	Due May 1 ²	Available for the term of license for the purpose identified in Section 2 of the License Agreement ³
Docking, storage and boat handling (haul out / launch)	Base payment equal to 30% of the grant as calculated in section 5b of this agreement for two boats up to 36 feet each. Fees for any additional boats are to be charged based on Council approved rates as set annually in the User Fee By-law	The base payment equal to 30% of the grant will be netted against the grant paid on the May 1 st payment date as set per section 5B of this agreement. Fees for any additional boats above two are to be paid per Sugarloaf Marina boater policies and procedures ⁴	Per the Sugarloaf Marina boater policies and procedures ⁴

¹ from \$780.00 as follows:

Term	Year	Cost per square foot ⁶	Square feet	Cost	Change
Initial 5 Year License Term	1	\$1.25	624	\$780	
	2	\$1.50	624	\$936	\$156
	3	\$1.75	624	\$1,092	\$156
	4	\$2.00	624	\$1,248	\$156
	5	\$2.25	624	\$1,404	\$156
Optional 5 Year Extension License Term	6	\$2.50	624	\$1,560	\$156
	7	\$2.75	624	\$1,716	\$156
	8	\$3.00	624	\$1,872	\$156
	9	\$3.25	624	\$2,028	\$156
	10	\$3.50	624	\$2,184	\$156

² each year of the license.

³ unless otherwise restricted for purposes as set out in other sections of this license agreement.

⁴ unless otherwise approved by the City.

⁵ will remain available to the City for other purposes as deemed required, at any time, other than when in use by POCOMAR.

⁶ includes the responsible and environmentally conscious use of hydro, gas and water.

Appendix B – Designated Space: Sugarloaf Harbour Marine Supply Store Building

