

J.S.C.A. FOOD AND BEVERAGE OPERATOR AGREEMENT

THIS AGREEMENT dated for reference the 28th day of January 2003 is made

BETWEEN

(**"JERICHO FOODS INC. "**) a corporation registered in the Province of British Columbia with its registered office at _____.

("The Contractor")

AND

JERICHO SAILING CENTRE ASSOCIATION, a society incorporated pursuant to the laws of British Columbia with its registered offices at 1300 Discovery Street, Vancouver British Columbia.

("J.S.C.A")

THE PARTIES TO THIS AGREEMENT AGREE:

The Contractor shall operate a food and beverage outlet commonly known as the Sailor's Lounge and Galley at the J.S.C.A. for J.S.C.A. members, guests and the public for the term of this Agreement, as an integral part of the J.S.C.A.'s on water and social activities, subject to the following terms and conditions:

1. TERMS

- 1.1 The term of this Agreement (the "Term") commences on March 1st, 2003. Subject to termination in accordance with the terms of this Agreement, this Agreement expires on February 28, 2008.
- 1.2 The Contractor agrees to pay J.S.C.A. a rent equal to 9.3% of the gross amount on all food and beverage sales (including vending sales but not including applicable taxes). If annual gross sales exceed \$630,000 during the Term, this rate shall be decreased to 7% on sales in excess of \$630,000.. Days where the gross sales are less than \$500 (excluding taxes) will be rent free. Rent payments shall be calculated on a monthly basis and shall be submitted to the J.S.C.A. office no later than the tenth day of the following month.
- 1.3 The Contractor agrees to establish all price and rate schedules and menus for all food and beverages available at the Sailor's Lounge and Galley subject to written approval of the J.S.C.A. General Manager. This approval may not be unreasonably withheld. The J.S.C.A. General Manager shall review contractor performance annually to ensure compliance with contract conditions.
- 1.3.1 The Contractor shall make available a 10% discount available to J.S.C.A. members only. A valid J.S.C.A. Jericho member card must be presented prior to purchase. The discount shall

apply to all prepared foods and beverages, draft beer, cider and other additional items at the discretion of the Contractor. The member discount is valid for personal use only and is non-transferrable.

- 1.4 The Contractor will operate the Sailor's Lounge and Galley to conform strictly with all applicable rules of the British Columbia Liquor Control Branch, the Health Department, the Vancouver Parks Board, and any other public authorities with jurisdiction and all applicable laws, regulations, by-laws and other ordinances and amendments thereto.
- 1.5 The Contractor will provide all staff required in the operation of the Sailor's Lounge and Galley. All such staff will be employees of The Contractor and The Contractor will be entirely responsible for salaries and benefits payable to the employees as well as statutory deductions and filings.
- 1.6 The Contractor shall operate according to the J.S.C.A. Food and Beverage Operating Procedures as outlined in Schedule "D" hereto.
- 1.7 The Contractor shall provide, at its expense, all inventories, supplies and working capital for use in the operation of the Sailor's Lounge and Galley. The Contractor shall provide Capital investment for each year of the term as outlined in Schedule "A". The Contractor shall consult with the Association to determine the items for Capital expenditure under the terms of this agreement. All Capital items shall conform to the Generally Accepted Accounting Principles definitions of Capital expenditures. Copies of receipts for Capital items included within the schedule must be submitted to the J.S.C.A. General Manager for approval.
- 1.8 The Contractor shall maintain all accounts and bookkeeping in accordance with generally accepted accounting principles (G.A.A.P.) and as required by any and all applicable government authorities. The Contractor shall deliver a detailed accounting of the Sailor's Lounge and Galley operation to J.S.C.A.'s General Manager monthly. The Contractor shall submit to J.S.C.A. for each year of the term of this agreement professionally prepared Annual Financial Statements within 180 days following the contractor financial year end. The Contractor shall make available its accounting records at anytime for examination by the J.S.C.A. Treasurer or the J.S.C.A. General Manager. Such requests must be made in writing, and may not be of an unreasonable nature. Complete financial records are confidential. Any person reviewing statements of Jericho Foods Inc. must sign a confidentiality agreement. This must be forwarded to Jericho Foods Inc. for approval prior to viewing these statements. Copies of financial records may not be made or distributed.
- 1.9 The Contractor shall maintain the Sailor's Lounge and Galley and all other areas of JSCA used by The Contractor, together with all equipment, machinery, furniture and improvements contained therein, in good repair and in a clean state and orderly manner at all times. JSCA will maintain and keep in good repair and a clean state the following: both the patio railing glass and the patio deck shall be professionally cleaned each April; Patio light fixtures shall be inspected and the bulbs changed regularly; hardwood floors

maintained; lightbulbs in the classrooms and lounge; the exhaust canopy including the rooftop fan and fire suppression system contained within.

- 1.10 The Contractor shall replace any and all kitchen equipment, restaurant and bar equipment, machinery, furniture and improvements which is damaged, goes missing, or is otherwise unusable (excluding normal wear on machinery and furniture).
- 1.11 The Contractor performance under this Agreement shall at all times be in compliance with and give effect to the prime purpose of J.S.C.A.'s Sailor's Lounge and Galley which is to serve J.S.C.A. members and their registered guests.
- 1.12 The Contractor shall ensure that the level and quality of service, that is provided during the days and hours that the Sailor's Lounge and Galley is open, is acceptable to JSCA acting reasonably. The minimum hours of operation shall be as in Schedule "B" hereto. The level and quality of service including, without limitation, staffing and menus, will be established and maintained by The Contractor subject to written approval of J.S.C.A.'s General Manager.
- 1.13 The Contractor shall ensure that all signs and advertising displayed by, or on behalf of The Contractor are approved by J.S.C.A. General Manager, which approval may be arbitrarily withheld. Prior approval may be withdrawn at the request of the Vancouver Park Board.
- 1.14 The Contractor shall provide all daily cash register receipts to the General Manager of J.S.C.A. on a daily basis. The receipts shall detail gross food and liquor sales for both catering and normal operation. Monthly sales summaries detailing the same shall be submitted with the monthly rent payments.
- 1.15 The Contractor shall ensure that all patrons of the Sailor's Lounge are members or registered guests as defined by the B.C. Liquor Control Branch.
- 1.16 J.S.C.A. will permit The Contractor to use for purpose of this Agreement all such equipment, furniture and fixtures as are located and owned by J.S.C.A. in the Sailor's Lounge and Galley on the date of this Agreement as outlined in Schedule "C" hereto.
- 1.17 While this Agreement remains in effect, J.S.C.A. grants sole and exclusive right to The Contractor to provide the day to day food and beverage services contemplated by this Agreement within the J.S.C.A. compound and building with the exception of:
 - i) J.S.C.A. affiliated groups, who have the right to provide food and beverages, including catered events, to their own members and their guests, and,
 - ii) outside caterers for special events such as film productions, and,
 - iii) J.S.C.A. members and guests who have the right to provide food and non-alcoholic beverages for their own consumption anywhere in the J.S.C.A. compound and building.

- 1.18 Jericho Sailing Centre Association will contribute 50% of a contracted cleaning service for up to a maximum contribution of \$4,000.00 per contract year. JSCA will also pay 25% of the cost of cardboard and multimaterial recycling up to a cost of \$1,000.00 per annum.
- 1.19 Subject to The Contractor performing in accordance with this Agreement, J.S.C.A. agrees not to interfere with The Contractor's supervision, direction and control of the management of the - Galley, nor to instruct any personnel employed by The Contractor. The Contractor shall have exclusive possession and rights of entry for the kitchen and bar area enclosed by grate provided that in an emergency the J.S.C.A. General Manager or designated staff shall have the right to enter without liability. JSCA recognizes that the patio, lounge and Galley are the areas used for business purposes by Jericho Foods Inc. JSCA members may be allowed to bring food and non-alcoholic beverages prepared at home for consumption on the patio if space permits. JSCA acknowledges that these areas may not be used for functions other than those catered by Jericho Foods, with the exception of meetings of JSCA affiliated groups. JSCA acknowledges that alcohol not purchased from Jericho Foods Inc. may not be carried or consumed in the above areas. JSCA acknowledges that furniture, fixtures and equipment purchased by Jericho Foods Inc. are expressly for the use of serving customers of the food and beverage facility. Food or drink purchased from another commercial operator is expressly prohibited.. "Galley" staff may, at their discretion, ask people to consume food from home at the picnic area, or in the lounge, if seats become unavailable for customers.
 - 1.19.1 JSCA will design, implement and enforce guidelines for holders of special event permits at JSCA. JSCA will ensure that the business of Jericho Foods Inc. is not impeded in any way during these events and that customers of the 'Galley' receive unfettered access during special events.
 - 1.19.2 JSCA will use their best efforts to ensure that access to the "Galley" is maintained during opening hours of the "Galley". Access from the beach and the parking lot must be kept open during opening hours.
 - 1.19.3 JSCA will not book any business in the Lounge or Patio areas without written permission from Jericho Foods Inc. Any location fees that are generated by rental to film crews, of these areas, will be shared equally with Jericho Foods Inc.
 - 1.19.4 Jericho Foods will be responsible for all licenses and permits necessary for operation of all areas used by Jericho Foods Inc. All permits must be current and copies provided to JSCA. Any change in the licensing must be done in consultation with JSCA.
- 1.20 The Contractor shall participate in an advisory capacity to the J.S.C.A. Planning Committee which is responsible for preparing the J.S.C.A. 5 Year Plan.
- 1.21 The Contractor shall provide by March 31, 2003, a five year business and marketing plan for it's food and beverage service. The Contractor must include within this plan annual gross sales targets as outlined in schedule "E".

2 **TERMINATION PROVISIONS**

2.1 In the event of a Major Default under this Agreement, this Agreement may be immediately terminated by J.S.C.A. without notice. Major Default includes, but is not necessarily limited to, the following:

- a) failure by The Contractor or its employees or servants to immediately record all sales through the cash register and/or The Contractor accounting books;
- b) failure by The Contractor to pay accounts promptly with respect to wages or taxes or any supplier of goods or services who could file a lien against JSCA property or who threatens or commences proceedings in respect of any such account against JSCA or JSCA property.
- c) failure by The Contractor to pay the monthly rent percentage payment as provided in clause 1.2 above;
- d) breach of clause 1.4 above or clause 3.4 below;
- e) failure to comply with minimum or maximum hours.

2.2 In the event of termination of this Agreement by J.S.C.A., J.S.C.A. will purchase from The Contractor, at cost, all normal and usable supplies and inventory as well as equipment and leasehold improvements for use in the Sailor's Lounge and Galley. Any monies owed to JSCA as a result of this termination may be deducted from this amount. The Contractor will leave the Sailor's Lounge and Galley in a clean and tidy condition acceptable to JSCA acting reasonably.

3. **GENERAL PROVISIONS**

3.1.1 Upon execution of this Agreement, The Contractor shall deposit with J.S.C.A. the sum of \$3,000 as security principle for The Contractor performance under this Agreement (the "Deposit"). J.S.C.A. shall deposit the Deposit in an interest bearing account. Accrued interest shall remain in the account for the duration of the Term and shall form additional security.

3.1.2 Provided The Contractor is not in default in any of the terms of this Agreement, upon expiration of the Term, The Contractor shall be entitled to the return of the Deposit and any interest thereon, less any amount attributable to damages.

3.1.3 The Deposit and any interest thereon shall be paid to J.S.C.A. in the event of any Major Default or upon termination of this Agreement by The Contractor prior to the expiration of the Term.

- 3.1.4 The Deposit is intended to be applied to JSCA costs incurred and not as a penalty and does not preclude action on further damages.
- 3.1.5 Should this agreement not be renewed upon expiration of the term, the JSCA will pay to Jericho Foods an amount equal to any retained earnings accrued in Jericho Foods Inc. and compensation for purchase of the accrued goodwill of the business as determined by a Chartered Business Valuator. Additionally, the JSCA will be required to purchase, at market value, the leasehold improvements, fixtures and equipment used by Jericho Foods Inc. to operate the Galley.
- 3.2 The Contractor shall be solely responsible for the security of all its equipment and possessions located at J.S.C.A.
- 3.3 The Contractor agrees that it shall not incur any debts in the name of J.S.C.A. nor shall The Contractor in any way use, or imply any authority to use J.S.C.A.'s credit. The Contractor further acknowledges that neither its principals, employees nor servants have any authority or power to commit J.S.C.A. to any contract, obligation or action whatsoever.
- 3.4 The Contractor shall take out and maintain a minimum of \$3 million of liability insurance for any loss or damage to property or J.S.C.A., bodily injury or death arising out of The Contractor's operation at J.S.C.A. This insurance policy shall provide that J.S.C.A. and Vancouver Board of Parks and Recreation as named insured and shall include such other terms and conditions as required by J.S.C.A.'s insurer acting reasonably. The Contractor shall not commit any acts or omissions which may invalidate the policy.
- 3.5 The Contractor shall indemnify and save harmless J.S.C.A., its employees, directors, officers and agents from and against any and all claims arising out of any loss, damage, injury or death due to The Contractor operation at J.S.C.A. including any liabilities to employees of The Contractor.
- 3.6 Any dispute which may arise between The Contractor and J.S.C.A. concerning any aspect of this Agreement, which cannot be resolved by mutual negotiation, may be referred by either party to independent arbitration (pursuant to applicable arbitration provisions in the laws of the Province of British Columbia) for a final and binding decision.
- 3.7 This Agreement shall not be assignable in whole or in part without the written consent of the J.S.C.A. Board of Directors which consent may not be unreasonably withheld.
- 3.8 Paragraph headings are inserted as a matter of convenience only.
- 3.9 Time is of the essence.
- 3.10 The obligations and liabilities of The Contractor as set out in this agreement are the joint and several obligations and liabilities of Jericho Foods Inc. Any name change requires the approval of the J.S.C.A. Board of Directors which may not be unreasonably withheld..

- 3.11 The Contractor shall indemnify and hold harmless J.S.C.A. from and against claims, losses, demands, costs, damages, actions, suits or proceedings arising out of or attributable to The Contractor's performance or failure to perform this Agreement.
- 3.12 The Contractor agrees to co-operate with J.S.C.A.'s efforts to be an environmentally friendly centre. The Contractor shall use its best efforts to use environmentally friendly products and supplies. Where possible The Contractor will recycle materials produced by the Food & Beverage operation.

4. RELOCATION

- 4.1 It is hereby understood and agreed between the parties that in the event all or part of the building, of which the premises forms part, is redesigned and/or redeveloped under an approved J.S.C.A. 5 Year Plan, then J.S.C.A. has the right to relocate the Contractor premises by giving six (6) months written notice to the Contractor of the intention to relocate their operation between October 31st and March 31st. In the event this clause is invoked, the Contractor shall move its operations to the new premises on or before the expiration of the said notice period and deliver vacant possession of it's existing facilities, or portion thereof, and J.S.C.A. shall pay reasonable moving and relocation expenses incurred by the Contractor as a result.

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

The Corporate Seal of the
JERICO SAILING CENTRE ASSOCIATION
was affixed in the presence of

Signature
J.S.C.A. President

Signature
J.S.C.A. Vice-President

Signature
Jericho Foods Inc.

Schedule A Capital Plan

1. Kitchen & Bar

- Removal of wall between salad area and bar.
- Installation and relocation of new electrical panels
- Construction of new wall where existing bar is. Construction of a new bar against north wall
- Removal of ice machine. Purchase of new smaller ice machine, which will be installed at ice cream bar.
- Installation of a new service door at the south end of the current bar.
- Removal of remaining linoleum behind bar and installation of quarry tile.
- Installation of additional refrigeration, workspace and an electric convection oven.

Estimated cost \$70,000.00

Completion date February 2003, pending permit approval and contract status

2. Increase the size of the window openings in the Galley and 'Burrard Room'

This is pending the results of a new engineering study to assess the possibility of water ingress and relocation of the radiators and baseboard heaters, as well as the permit process and contractual status. Proposed work includes:

- Structural reinforcement of these openings
- Installation of new sliding doors and/or windows.
- Relocation of replacement of radiators in the 'Galley' and baseboards in the 'Burrard Room'

Estimated cost \$60,000.00

Completion date: March 2003 – October 2003, pending permit approval, and contract status.

3. Upgrade lighting, wall surfaces and floor surfaces, as well as construction of a portable bar for the 'Burrard Room'

- install new lighting,
- Install a wood floor from reclaimed fir, new paint and window treatments.
- Construct and install a new portable bar and refrigeration for the 'Burrard Room'

Estimated cost \$30,000.00

Completion date October 2003.

Terms:

All improvements are subject to all necessary approval and permits.

Completion dates and budgets are tentative and subject to above approval and availability of contractors and equipment.

The above schedule is subject to completion of scope of work, not total expenditure.

SCHEDULE "B"

Minimum hours of operation

OFF PEAK SEASONS

- 1) March 31 - **Victoria Day / Labour Day** - Oct 31
Weekends: Noon - 1700hrs

PEAK SEASONS

- 2) **Victoria Day - Labour Day**

Weekends and Holidays: 0900 - 2000hrs

Weekdays: 1000 - 2000hrs

Maximum hours of operation under J.S.C.A.'s liquor licence is 2200 hrs.

Should the J.S.C.A. require that the Sailor's Lounge and Galley be open **between October 31st and March 31st** J.S.C.A. agrees to offer to The Contractor first, in priority to any other catering or food service operator, the opportunity to provide its services during such hours, on the same terms and conditions as contained in this Agreement.

In the event of poor weather conditions and attendance the minimum hours of operation for a day may be reduced with the agreement of the J.S.C.A. General Manager or authorized designate.

SCHEDULE "C"

J.S.C.A. Equipment, Furniture & Fixtures

In Sailor's Lounge & Galley.

- 1 - Toshiba 30" Stereo/colour MonitorTV
- 1 - Toshiba Stereo VHS VCR

- 1 - Stainless worktable
- 1 - Ice Machine
- 1 - Convection Oven

SCHEDULE "E"

FOOD and BEVERAGE SERVICE ANNUAL GROSS SALES TARGETS

Year:	Total:	J.S.C.A. Rent:
2003	\$530,000	\$ \$49,290
2004	\$550,000	\$ \$51,150
2005	\$590,000	\$ \$54,870
2006	\$610,000	\$ \$56,730
2007	\$630,000	\$ \$58,590