

## LICENCE TO OCCUPY

THIS AGREEMENT dated for reference (NTD: add agreement month and day), 2025

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated pursuant to the *Community Charter* and having an office at 830 Cliffe Avenue, Courtenay, British Columbia V9N 2J7

(the “**City**”)

AND:

**1491176 B.C. LTD.**, a corporation pursuant to the *Business Corporations Act* (British Columbia) and having an office at 480 10<sup>th</sup> Street, Courtenay, British Columbia V9N 1P6

(the “**Licensee**”)

AND:

**CAROLE ANNE BOLGER**, a businesswoman having a business at 975 Comox Road, Courtenay, British Columbia V9N 3P7

AND:

**BRANDON MICHAEL MUISE**, a businessman having a business at 975 Comox Road, Courtenay, British Columbia V9N 3P7

(Carole and Brandon each an “**Indemnifier**” and collectively, the “**Indemnifiers**”)

(the City, the Licensee and the Indemnifiers each a “**party**” and collectively, the “**parties**”)

WHEREAS:

- A. The Licensee operates the Heritage House Pub on a parcel of land located at 975 Comox Road, Courtenay, British Columbia V9N 3P7 and legally described as:

PID: 025-210-858 Lot 1 Section 14 and District Lots 252 and 2028 Comox District Plan VIP73036

(the “**Land**”);

- B. The Licence Area is a highway vested in the City pursuant to Section 35 (1) of the

*Community Charter*, SBC 2003, c 26;

- C. The Licensee wishes to obtain from the City, a licence to use the Licence Area for the purpose of occupying and maintaining the Licensee Improvements in connection with a parking lot (the “**Parking Lot**”) under the terms and conditions of this Agreement;
- D. Section 35 (11) of the *Community Charter* authorizes the City to permit encroachments and grant licences of occupation in respect of a highway; and
- E. The City’s Council has, by resolution, authorized the City to enter into this Agreement;

NOW THEREFORE in consideration of the Licence Area and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following terms shall have the following meanings:

- (a) “**Agreement**” means this agreement, including its recitals and schedules;
- (b) “**City**” means the Corporation of the City of Courtenay and where the context applies, includes its elected officials, employees, agents and contractors;
- (c) “**City Improvements**” means the City’s works to be constructed on the Licence Area, as approved and recommended by the City;
- (d) “**Commencement Date**” means May 1, 2025;
- (e) “**Force Majeure**” means an event that has a material effect on the performance of a party and is beyond the reasonable control of that party. Such impacts include, but are not limited to, extraordinary weather events, unknown and unusual site conditions, organized labour action (except those limited in effect to a party), quarantines, epidemics, pandemics, riots, or changes in law.
- (f) “**Land**” has the meaning set out in Recital A;
- (g) “**Licence**” has the meaning defined in section 2.1 of this Agreement;
- (h) “**Licence Area**” means that highway below the Land and labeled “ROAD” on Plan VIP73036, a reduced copy hereto attached as Schedule A;
- (i) “**Licensee**” means 1491176 B.C. LTD. and where the context applies, includes its directors, employees, agents, licensees, and all others over whom the Licensee may reasonably be expected to exercise control;

- (j) **“Licensee Improvements”** means those works to be installed by the Licensee on the Licence Area, as more particularly outlined and substantially shown in Schedule B;
- (k) **“Parking Lot”** has the meaning set out in Recital B;
- (l) **“Term”** means the period from the Commencement Date until the Termination Date as defined in section 3.1 of this Agreement; and
- (a) **“Utilities”** means the storm gravity mains, storm discharge points and hydrant coverage located under the Licence Area as set out in Schedule D.

1.2 This Agreement shall be interpreted according to the laws of the Province of British Columbia.

1.3 Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.

1.4 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and do not define, limit or enlarge the scope or meaning of this Agreement.

1.5 In the event of a conflict between a provision in the body of this Agreement and a provision in a schedule to this Agreement, the provision in the body of this Agreement shall prevail to the extent of the conflict.

1.6 The following schedules are attached to and form a part of this Agreement:

- (b) Schedule A – Licence Area;
- (c) Schedule B – Licensee Improvements;
- (d) Schedule C – Fee Schedule; and
- (e) Schedule D – Utilities.

## **2. LICENCE TO OCCUPY**

2.1 The City grants to the Licensee a non-exclusive licence to use and occupy Licence Area for the purpose of constructing, using and maintaining the Licensee Improvements in conjunction with the Parking Lot, on the terms and conditions contained in this Agreement (the **“Licence”**).

2.2 This Agreement does not grant the Licensee any legal or equitable interest of any kind on the Licence Area or any exclusive right to occupy the Licence Area.

2.3 This Agreement and the rights it contains do not run with the Land.

### **3. TERM AND RENEWAL**

3.1 This Agreement shall come into effect on the Commencement Date and remain in effect until the earlier of a period of five (5) years after the Commencement Date or the termination of this Agreement as provided hereinunder, whichever occurs earlier (the “Term”).

3.2 Provided the Licensee is not in breach of this Agreement at the expiry of the Term, and provided the Licensee gives the City written notice of its desire to renew this Agreement at least ninety (90) days prior to the expiration of the Term, the Licensee shall have three (3) options to renew the Term of this Agreement for three (3) further terms of five (5) years each upon the same terms and conditions as contained in this Agreement, save only for the amount of the Licence fee. If the parties do not mutually agree to the Licence fees for the renewal terms, then this Agreement shall expire and terminate at the end of the Term unless terminated earlier in accordance with the terms of this Agreement.

3.3 The annual Licence fee during the renewal terms shall be increased by the City in an amount proportional to the difference in property taxes payable for the Land between the Commencement Date of the Term and the commencement dates of the renewal terms, which calculation the City shall deliver to the Licensee. In no case shall the Licence fee for the renewal terms be less than the Licence fee paid during the initial Term.

3.4 If the Licensee continues to occupy the Licence Area after the expiry or termination of this Agreement and without the execution and delivery of a new licence, there shall be no tacit renewal or extension of this Licence or the Term hereby granted, despite any statutory provision or legal presumption to the contrary, and the Licensee shall be deemed to be occupying the Licence Area on a month to month basis, at a monthly fee payable in advance on the first day of each month equal to the Licence fee due for the last year of the Term calculated pro rata, and otherwise upon the same terms of this Agreement insofar as the same are applicable to a monthly licence.

### **4. LICENCE FEE**

4.1 The Licensee shall pay to the City the Licence fee, on or before the Commencement Date and each anniversary date thereafter until the expiration or termination of the Term, the fee as prescribed in Schedule C attached (the “Fee Schedule”). The Licence fee shall be deemed to accrue from day to day, and if for any reason it shall become necessary to calculate rent for irregular periods of less than one year or one month, as the case may be, an appropriate pro rata adjustment shall be made in order to calculate rent for such irregular period.

## **5. ACKNOWLEDGEMENT OF HIGHWAY**

5.1 The Licensee acknowledges and agrees that:

- (a) the Licence Area is part of a public highway;
- (b) there are Utilities constructed under the Licence Area as shown in Schedule D;
- (c) any rights granted by the City to the Licensee under this Agreement are not exclusive, and that the area must remain accessible to the general public for reasonable purposes;
- (d) without limiting the foregoing or section 7, the City shall be entitled to:
  - (i) improve, maintain, widen, raise, lower or otherwise alter the Licence Area;
  - (ii) inspect, install, improve, maintain or alter any structure, service or utility on, over or under any portion of the Licence Area;
  - (iii) grant rights of way, easements, covenants or any part thereof in a manner consistent with this Agreement and the Licensee and the Indemnifier shall execute any such document if requested by the City. For greater certainty, but without limiting the generality of the foregoing, a right of way, easement or covenant is not inconsistent with this Lease;
  - (iv) permit other encroachments or use of the Licence Area, other than the Parking Lot, notwithstanding the effect of such activities on the Licensee's use and enjoyment of the Licence Area or the Licensee Improvements; and
  - (v) remove from the Licence Area any or all of the City Improvements or the Licensee Improvements that the City considers appropriate or necessary to be removed for the better use of the Licence Area or any utilities located on, over or under any portion of the Parking Lot or the Licence Area.

5.2 Prior to performing any of the foregoing work, the City shall endeavour to give the Licensee seven (7) days written notice of the nature and duration of such work. Notwithstanding the foregoing, in an emergency, the City may carry out such work without notice to the Licensee. No failure to provide notice shall prevent the City from carrying out such work or entitle the Licensee to any damages or compensation.

## **6. LICENSEE'S COVENANTS**

6.1 The Licensee covenants and agrees with the City as follows:

- (a) to pay the Licence fee and all other amounts due to the City;

- (b) not to build, construct, install, erect, place or maintain any building, structure, fixture, chattel, thing, or object on, under or above the Licence Area, without the written consent of the City, except the Licensee shall not require the City's written consent if the Licensee Improvements do not impede the accessibility or the intended use of the Licence Area. If in the reasonable opinion of the City the Licensee Improvements have been altered, the City may require the Licensee to restore the Licensee Improvements to the same condition as it was prior to the alteration if, in the reasonable opinion of the City, such alteration has caused or is causing impediment to accessibility or alters the intended use of the Licence Area;
- (c) not to alter the City Improvements or the Licensee Improvements without the written consent of the City, except the Licensee shall not require the City's written consent if the Licensee Improvements do not impede the accessibility or the intended use of the Licence Area. If in the reasonable opinion of the City the Licensee Improvements have been altered, the City may require the Licensee to restore the Licensee Improvements to the same condition as it was prior to the alteration if, in the reasonable opinion of the City, such alteration has caused or is causing impediment to accessibility or alters the intended use of the Licence Area;
- (d) not to excavate in or alter the elevation of the Licence Area or alter or interfere with any existing municipal utilities or other utilities located in, on, over or under the Licence Area without the written consent of the City;
- (e) that any alteration, maintenance or construction on the Licence Area shall be performed by licensed and qualified professionals;
- (f) that the City Improvements are the property of the City and the Licensee Improvements are the property of the Licensee;
- (g) to only use the Licence Area for the purposes set out in section 2.1;
- (h) to use the Licence Area in compliance with any and all applicable enactments and all required approvals and permits thereunder and not to do or omit to do anything in, on or from the Licence Area in contravention thereof. The Licensee shall also comply with all applicable enactments in respect of its employees, including income tax, pension, insurance requirements and Workers' Compensation requirements;
- (i) not to use the Licence Area for storage or production of food, goods or materials;
- (j) not to build, construct, install, erect, place or maintain any building, structure, fixture, chattel, thing, or object outside the Licence Area without the written consent of the City;
- (k) to remove any City Improvements or Licensee Improvements from the Licence

Area as directed by the City or City, immediately if deemed to be hazardous, within seven (7) days of receipt of notice to remove, or within such further period as the parties may agree upon in writing;

- (l) not to do or omit to do or permit to be done or omitted anything upon or in respect of the Licence Area the doing or omission of which shall be or result in a nuisance or result in injury or damage to the Parking Lot or the Licence Area or any utilities located on, over or under any portion of the Licence Area or the Parking Lot;
- (m) to be responsible for all loss or damage to personal property of the Licensee or its members and invitees located on the Licence Area from time to time;
- (n) not to release or introduce any pollution, contamination, waste, toxic waste, or toxic substance into or onto the Licence Area, or commit or permit any nuisance or waste to be committed or exist on or from the Licence Area;
- (o) not use the Licence Area in any manner that causes a nuisance to the owners or occupiers of neighboring lands, and without limiting the foregoing, shall ensure that traffic to and from the Land, for special events or otherwise, does not cause a nuisance to those owners or occupiers;
- (p) to comply with all builder's lien legislation. If any lien is filed or the City should be subject to the payment of any claim by an unpaid worker or supplier, the Licensee shall discharge the lien or otherwise take all steps required by the City to protect the City's interests; and
- (q) to use all reasonable efforts to cause a minimum of obstruction and inconvenience during the installation, maintenance or repair of the Licensee Improvements and shall place and maintain such warning signs, reflective surfaces or visible signals at or near the site of any work in progress as required to give reasonable warning and protection to members of the public.

6.2 The Licensee covenants and agrees with the City that it shall at its own expense:

- (a) obtain all licences required by statutory authority in connection with this Agreement;
- (b) be responsible for the due and proper payment of all property taxes and other governmental taxes, fees, levies and charges which may be assessed and payable in respect of the Licensee Improvements, the Licence Area or the Licence granted under this Agreement, and the Licensee shall furnish and pay for any water, electrical, heating and other utility services required for the Licence Area;
- (c) make good all damage or disturbance which may be caused to the surface of the Parking Lot and the Licence Area in the exercise of the Licensee's rights hereunder;

- (d) maintain the Licence Area in a safe, clean and sanitary condition and shall undertake all grounds maintenance and ordinary repairs and maintenance to City Improvements and the Licensee Improvements, including but not limited to all snow and ice removal, to the satisfaction of the City (without any obligation on the part of the City to determine what is good and safe repair or clean and tidy condition). The City shall have no responsibility for maintaining the City Improvements, the Licensee Improvements or the Licence Area;
- (e) reimburse the City for any damage or loss which occurs to the Licence Area in connection with its use under this Agreement. The City may repair any damage or loss so that the Licence Area is in the condition in which it existed immediately before the damage or loss occurred. The expense incurred by the City in making any repair, plus an amount equal to fifteen percent (15%) on account of overhead incurred by the City, is a debt due and owing by the Licensee to the City and is payable by the Licensee within fifteen (15) days after delivery of an invoice by the City.

## **7. THE CITY'S RIGHTS**

- 7.1 Without limiting any other rights the City may have hereunder or at law, the City by its authorized agents or employees may, but shall not be obligated to, at any and all times, enter onto and upon any part of the Parking Lot for any purpose relating to the use and operation of the Licence Area or public works or utilities and for the purpose of inspecting the Licence Area or the Licensee Improvements to ascertain whether the terms and conditions of this Agreement are being observed. The City shall in undertaking such activities use reasonable efforts to cause its officers, employees, agents and contractors to minimize any disruption or damage to the Licence Area and the Licensee Improvements.
- 7.2 If the Licensee fails to keep the City Improvements, the Licensee Improvements and the Licence Area in good and safe repair to the satisfaction of the City or otherwise breaches this Agreement, the City may give notice to the Licensee requiring that repairs be done or other matters rectified within the time specified by the City and if the Licensee fails to do so to the City's satisfaction, the City may, in its sole discretion (without any obligation to do so), cause such maintenance or repairs to be made or other steps to be taken as the City deems necessary, at the Licensee's expense. The Licensee shall reimburse the City for the expense incurred by the City in making any repair, plus an amount equal to fifteen percent (15%) on account of overhead incurred by the City is a debt due and owing by the Licensee to the City and is payable by the Licensee forthwith upon demand by the City.
- 7.3 Without limiting anything herein, if in the opinion of the City the removal or relocation of all or any part of the City Improvements or the Licensee Improvements is required for the better use of the Parking Lot or the Licence Area or any utilities located on, over or under any portion of the Parking Lot or the Licence Area, the City may give the Licensee notice and the Licensee shall, at the sole expense of the Licensee and without compensation

from the City, within two (2) weeks after receipt of such notice, remove or relocate the City Improvements or the Licensee Improvements or the portion thereof, as specified in the notice. If the Licensee does not perform the work directed by the City, City may carry out the work at the Licensee's expense. The Licensee shall reimburse the City for the expense incurred by the City, plus an amount equal to fifteen percent (15%) on account of overhead incurred by the City is a debt due and owing by the Licensee to the City and is payable by the Licensee forthwith upon demand by the City.

## **8. INSURANCE**

8.1 The Licensee shall maintain the following insurance coverage with respect to the Licence Area:

- (a) a commercial general liability insurance policy or policies of not less than three million dollars (\$3,000,000) inclusive per occurrence and including the following provisions:
  - (i) coverage for personal injury and property damage, including but not limited to, all premises and operations necessary or incidental to the performance of this Agreement;
  - (ii) Blanket Contractual Liability, Products and Completed Operations, Tenants' Legal Liability, Non-Owned Automobile Liability, Owner's and Contractor's Protective Liability, Contingent Employers' Liability, Breach of Conditions clauses;
  - (iii) a waiver of subrogation clause in favour of the City;
  - (iv) the City named as an additional insured; and
  - (v) a Cross Liability Clause;
- (b) on every contract of insurance required to be maintained pursuant to the provisions of this Agreement include a provision requiring the insurer to give the City thirty (30) days prior written notice before making any material change in said insurance, or termination, or cancellation thereof;
- (c) on the first day of the Term and thereafter immediately upon demand, deliver to the City a certificate or certificates of insurance as evidence that such insurance is in force, including evidence of any insurance renewal policy or policies and certification by the insurer that the certificate or certificates of Insurance specifically conforms to all of the provisions required herein;
- (d) ensure that all insurance required to be maintained by the Licensee under this Agreement is:

- (i) underwritten by a responsible insurance company or companies licensed to do business in the province of British Columbia; and
    - (ii) primary and does not require the sharing of any loss by any insurer that insures the City;
  - (e) have the full responsibility to provide and maintain, at its own expense, additional insurance coverage, if any, including workers' compensation, that are necessary and advisable for its own protection or to fulfill its obligations under this Agreement; and
  - (f) deliver a certified copy of any required certificate of insurance to the City within ten (10) days after demand therefore by the City.
- 8.2 The Licensee shall neither cancel nor approve any material change to the insurance policy(s) without having first received written approval of the City.
- 8.3 If the Licensee fails to obtain and maintain the said insurance or deliver the said certificate of insurance to the City, then the City may obtain and/or maintain such insurance at the expense of the Licensee and the Licensee hereby appoints the City as the Licensee's lawful attorney to do all things necessary for that purpose.
- 8.4 Maintenance of such insurance shall not:
- (a) relieve the Licensee of liability under the indemnity provisions of this Agreement or the obligation to determine for itself what insurance it requires for its own purposes; or
  - (b) limit the insurance required by law.

## **9. INDEMNIFICATION AND RELEASE**

- 9.1 Except to the extent caused by the gross negligence or wilful misconduct of the City or those for whom it is liable, the Licensee shall indemnify, defend and save harmless the City and its elected and appointed officials, officers, employees, successor, insurers and agents from and against any and all suits, proceedings, liabilities, actions, damages, liens, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees and expenses and costs associated with remediation or contamination) and harm of any kind, howsoever caused, whether related to death, bodily injury, property loss, property damage or other loss or damage of any kind whatsoever, arising out of or in any way connected with:
- (a) the permission to use the Licence Area granted by this Agreement;
  - (b) the suitability of the Licence Area to be used as the Parking Lot;

- (c) bodily injury or death which results from fire, explosion, earthquake, flood, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Parking Lot and the Licence Area;
- (d) the use of the Licence Area by the Licensee or any of its employees, agents, clients, suppliers, patrons or invitees;
- (e) the construction, installation, maintenance, existence, use or removal of the Licensee Improvements;
- (f) any failure to pay for labour or materials relating to the use of the Licence Area or the Licensee Improvements;
- (g) any breach or default by the Licensee under this Agreement; or
- (h) any wrongful act, omission or negligence of the Licensee, its officers, employees, contractors, subcontractors, agents, customers, clients, invitees and others for whom it is responsible.

No provision of this Agreement and no act or omission or finding of negligence, whether joint or several, as against the City or its elected or appointed officials, officers, employees or agents, in favour of any third party, shall relieve the Licensee from liability to the City, whether such liability arises under this Agreement or otherwise.

9.2 The Licensee releases and forever discharges the City and its elected and appointed officials, officers, employees, successors, insurers and agents from all manner of claims of any nature whatsoever, whether or not relating to negligence, which the Licensee now has or at any future time may have, however caused, arising out of or in any way relating to the Licence granted by this Agreement, the existence or condition of the Licence Area, the construction, installation, maintenance, existence, condition, use or removal of the Licensee Improvements, the City Improvements or any portion thereof, or the exercise by the City of any of its rights under this Agreement.

9.3 The indemnity and release provisions contained in sections 9.1 and 9.2 of this Agreement shall survive the expiration or earlier termination of this Agreement.

## **10. INDEMNIFIERS' GUARANTEE**

10.1 In consideration of the City granting the Licence to the Licensee, which is controlled by the Indemnifiers, and for other good and valuable consideration, the Indemnifiers guarantee to the City that the Licensee shall make all payments required by this Agreement and the Licensee shall comply with all of its other obligations under this Agreement and that if the Licensee does not do so, the Indemnifiers shall be responsible for making any such payments to the City or carrying out the Licensee's obligations.

10.2 The City may require the Indemnifiers to fulfill any obligations of the Licensee. No

extension of time for payment or waiver by the City to the Licensee shall affect the Indemnifiers' obligations under this Lease.

- 10.3 If the Licensee's obligations survive the termination of this Agreement, the Indemnifiers' guarantee also survives the termination of this Agreement.

## **11. NO COMPENSATION**

- 11.1 The Licensee shall not be entitled to compensation for injurious affection, disturbance, business loss, loss of profit, loss of market value, or relocation costs, resulting in any way from the City's possession, maintenance or alteration of the Licence Area, or the exercise by the City or the City of any of their rights under this Agreement.

## **12. ASSIGNMENT AND SUBLEASING**

- 12.1 This Agreement does not run with the Land. The Licensee shall not be entitled to transfer or assign this Agreement, in whole or in part, and shall not permit or suffer any other person to occupy the whole or any part of the Licence Area, without the prior written consent of the City which consent shall not be unreasonably withheld. If the Licensee proposes to transfer or assign this Agreement, then the Licensee shall be obligated to prepare an assignment and assumption agreement acceptable to the City to be executed by the Licensee, City, and the proposed assignee. Such assignment and assumption agreement shall not release the Licensee from the duties and obligations of this Agreement and all duties and obligations of the Licensee and assignee shall be joint and several. Despite the foregoing, the Licensee acknowledges and agrees that the assignee must be an occupier and operator of the Business.

## **13. TERMINATION AND DEFAULT**

- 13.1 Each party may terminate this Agreement by giving the other parties thirty (30) days advance notice of its intention to terminate, such notice to be given in writing on the last day of any month.
- 13.2 Upon breach by the Licensee of any term or condition of this Agreement, the City may give the Licensee thirty (30) days' notice to correct such breach to the satisfaction of the City. If such breach is not corrected within a reasonable period in the City's discretion, or if the Licensee fails to begin and diligently pursue steps to cure the breach to the reasonable satisfaction of the City within thirty (30) days after notice of the breach is given by the City, the City may terminate this Agreement by giving notice of termination to the Licensee. This Agreement, except sections 9.1 and 9.2 shall terminate immediately on written notice of termination from the City to the Licensee. The City may recover all fees, costs and damages due to the City under this Agreement by suit or otherwise.
- 13.3 The City may immediately terminate this Agreement if any of the following defaulting events arise:

- (a) the Licensee fails to perform any of its covenants under this Agreement;
- (b) the Licensee makes an assignment for the benefit of creditors;
- (c) the Licensee becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors;
- (d) any order is made for the winding up of the Licensee;
- (e) the Licensee ceases to be in good standing under the *Business Corporations Act* (British Columbia) or any other provincial or federal act governing corporate bodies or if an order is made, a resolution passed, or a petition filed, for the Licensee's liquidation or winding up; or
- (f) the Licensee is struck off the Corporate Register by the Registrar for any just reason whatsoever.

13.4 The City may give to the Licensee thirty (30) days' notice to rectify a default listed in section 13.3 after which time, if the default is not rectified to the satisfaction of the City, this Agreement shall be terminated.

13.5 No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Licensee to collect any moneys not paid when due, without exercising the option to terminate this Agreement.

#### **14. DISPUTE RESOLUTION**

14.1 In the event of any disagreement or dispute between the parties relating to the interpretation of this Agreement or concerning any matter arising under it, each of the parties shall attempt to settle the matter, disagreement, or dispute. If the parties are unable to resolve the matter within thirty (30) days, the parties agree that the matter shall be referred to a single arbitrator for determination pursuant to the provisions of the British Columbia *Arbitration Act*.

#### **15. SURRENDER OF CONTROL THE LICENCE AREA**

15.1 On the expiry, cancellation or other termination of this Agreement, the Licensee shall, without notice, peaceably surrender and yield the Licence Area to the City, and at its own expense remove the Licensee Improvements and restore and clean the Licence Area to the satisfaction of the City within thirty (30) days after the expiry, cancellation or other termination of this Agreement. If the Licence Area has not been restored and cleaned to

the satisfaction of the City by the deadline above, the City may restore and clean the Licence Area to its satisfaction at the Licensee's expense. The Licensee shall reimburse the City for the expense incurred by the City, plus an amount equal to fifteen percent (15%) on account of overhead incurred by the City is a debt due and owing by the Licensee to the City and is payable by the Licensee forthwith upon demand by the City.

**16. FORCE MAJEURE**

- 16.1 If the parties fail to meet their respective obligations under this Agreement within the time prescribed, and such failure shall be caused or materially contributed to by Force Majeure, such failure shall be deemed not to be a breach of the obligations hereunder by such party but such party shall use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible. Such party shall notify the other parties the anticipated length of time such party would continue to be affected by the Force Majeure event.

**17. NOTICE**

- 17.1 Any notice or instrument required to be given or made under this Agreement shall be in writing and either delivered in person, faxed or sent by registered mail to the parties at the addresses set out below, or at such other address as each party may designate by notice in writing to the parties:

**The Corporation of the City of Courtenay**

830 Cliffe Avenue,  
Courtenay, British Columbia V9N 2J7  
Attention: Real Estate Technician  
Email: info@courtenay.ca

**1491176 B.C. LTD.**

975 Comox Road,  
Courtenay, British Columbia V9N 3P7  
Attention: Restaurant Manager or Owner  
Email: heritagehousepub975@gmail.com

**Carole Anne Bolger,**

975 Comox Road,  
Courtenay, British Columbia V9N 3P7  
Email: heritagehousepub975@gmail.com

**Brandon Michael Muise,**

975 Comox Road,  
Courtenay, British Columbia V9N 3P7  
Email: heritagehousepub975@gmail.com

The address for notice may be changed by the parties from time-to-time by providing written notice of such change as herein contained.

- 17.2 If any question arises as to when notice was given, it shall be deemed to have been received by the intended recipient on the earlier of the day it was received, or on the fifth day after it was mailed, faxed or otherwise given to the intended recipient.

**18. GENERAL**

- 18.1 This Agreement shall not create a lease, agency, partnership, joint venture, or any other form of legal association, and the parties shall not represent themselves as an agent, partner, or joint venture of the other parties or otherwise incur any obligation or liability on behalf of the other parties.
- 18.2 The parties' rights and obligations which, by their nature, extend beyond the termination of this Agreement, shall survive any termination of this Agreement.
- 18.3 This Agreement shall enure to the benefit of and be binding upon the parties and their respective successor and permitted assigns.
- 18.4 Time is of the essence of this Agreement.
- 18.5 This Agreement does not affect or limit the discretion, rights, duties, or powers of the parties under any statute, bylaw, or other enactment.
- 18.6 The whole agreement between the parties is set forth in this Agreement and no representations, warranties, or conditions, express or implied, have been made other than those expressed.
- 18.7 This Agreement may be amended or affected only by an instrument duly executed by the parties.
- 18.8 A waiver of any breach of this Agreement is binding only if given in an instrument executed by the party giving the waiver and only if the waiver is an express waiver of the breach in question. A waiver of a breach of this Agreement operates to waive only the breach in respect of which it has expressly been given.
- 18.9 The parties must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 18.10 If any part of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, that part must be severed and the decision that it is invalid, illegal, or unenforceable must not affect the validity of the remainder of this Agreement.
- 18.11 Every reference to a party is deemed to include their, successors, assigns, servants, employees, agents, contractors, officers, licensees, and invitees of such party wherever

the context so requires or allows.

- 18.12 Nothing contained or implied in this Agreement shall fetter in any way the discretion of the City or the Council of the City. Further, nothing contained or implied in this Agreement shall derogate from the obligation of the Licensee under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act* (British Columbia), as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, bylaws, orders and regulations.
- 18.13 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

*[Signature page to follow]*

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the reference date above.

**CORPORATION OF THE CITY** )  
**OF COURTENAY,** )  
by its authorized signatories: )

\_\_\_\_\_) )  
Name: )

\_\_\_\_\_) )  
Name: )

**1491176 B.C. LTD.,** )  
by its authorized signatory: )

\_\_\_\_\_) )  
Name: )

**CAROLE ANNE BOLGER:** )  
\_\_\_\_\_) )

**BRANDON MICHAEL MUISE:** )  
\_\_\_\_\_) )

# SCHEDULE A LICENCE AREA

REFERENCE PLAN OF BLOCK A, D.L. 252 AND  
D.L. 2028, NANAIMO DISTRICT AND LOT A,  
PLAN VIP69082, SECTION 14, COMOX DISTRICT.

B.C.G.S. 92F.066

Pursuant to Section 100 (1) b of the Land Title Act.

SCALE 1:250  
0 5 10 15 20 25 metres

**LEGEND**  
Bearings are astronomic and are derived from Plan VIP56287.

- standard capped post found.
  - standard iron post found.
  - △ traverse hub placed.
- All distances are in metres and decimals thereof unless otherwise indicated.

**Registered Owner:**  
C N C Restaurant Ltd.  
Inc. No. 573,068

*Carol*  
Authorized Signatory *Carol*

*David C. Bazett*  
Witness to the execution of  
Carol's signature

**Southern**  
Occupation

201-467 CUMBERLAND RD.  
Address  
COMOX B.C.

**Mortgages:**  
La Cremaillere Restaurant Ltd.  
Inc. No. 173,428

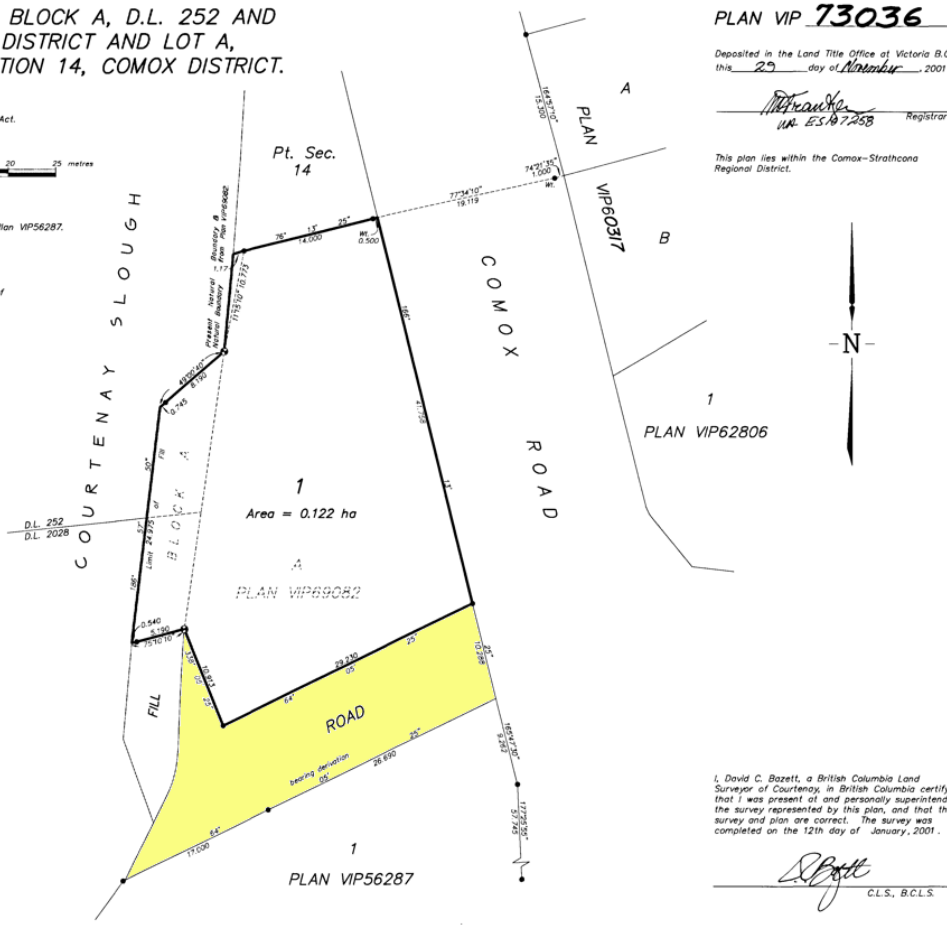
*Michael Hubert*  
Authorized Signatory

*Michael Hubert*  
Authorized Signatory

Witness as to both signatures

**Occupation:**  
2118 - 10th Street, Comox  
Comox B.C. V9K 2P5

Address



**PLAN VIP 73036**  
Deposited in the Land Title Office at Victoria B.C.  
this 25 day of November, 2001.

*Michael*  
W. 55,197,258 Registrar

This plan lies within the Comox-Strathcona Regional District.

I, David C. Bazett, a British Columbia Land Surveyor of Courtenay, in British Columbia certify that I was present at and personally superintended the survey represented by this plan, and that the survey and plan are correct. The survey was completed on the 12th day of January, 2001.

*D. Bazett*  
CLS, B.C.L.S.

**SCHEDULE B**  
**LICENSEE WORKS**

Licensee improvements are limited to vegetation management and line painting for parking spots.

**SCHEDULE C**  
**FEE SCHEDULE**

<b>Year 1</b>	<b>2025-2026</b>	<b>\$1,045.34</b>
<b>Year 2</b>	<b>2026-2027</b>	<b>\$1,066.25</b>
<b>Year 3</b>	<b>2027-2028</b>	<b>\$1,087.57</b>
<b>Year 4</b>	<b>2028-2029</b>	<b>\$1,109.32</b>
<b>Year 5</b>	<b>2029-2030</b>	<b>\$1,131.51</b>

SCHEDULE D  
UTILITIES

