

AGREEMENT

This Agreement effective this 11 th day of October, 2022 (the “**Effective Date**”)

BETWEEN:

THE CORPORATION OF THE TOWN OF SAUGEEN SHORES

(the “**Lessor**”)

AND

2706913 ONTARIO INC.

(the “**Lessee**”)

WHEREAS Lessor and Lessee entered into a Lease Agreement dated December 9, 2019, a copy of which is attached as Schedule “A”, and amended by Amending Agreement dated June 13, 2022, which is attached as Schedule “B”, collectively referred to as the “**Lease**”;

AND WHEREAS the Town by resolution on September 26, 2022 declared the leased premises lands surplus;

AND WHEREAS the Town passed By-law 11-2020 on February 10, 2020 authorizing the entering into of the Lease dated December 9, 2019;

AND WHEREAS on June 13, 2022 the Town approved through Resolution 92-2022 and confirmed by Confirmatory By-law 53-2022 the Town executing an Amending Agreement dated June 13, 2022;

AND WHEREAS the Town passed By-law 87-2022 on October 11, 2022, after declaring the leased land surplus on September 26, 2022 and providing the requisite notice, acknowledging the Lease and authorizing the Town to enter into this Agreement with the Lessee to confirm that the terms and conditions contained in the Lease remain in force and legally binding with respect to the Leased Premises Lands, as declared surplus; and to be identified by a reference plan to be deposited on title to the Town’s lands;

AND WHEREAS by this Agreement both parties wish to acknowledge the Lease and that it is legally binding and in force as between them on the same term and conditions;

NOW THEREFORE, that in consideration of the sum of \$10.00 and the terms and conditions of the Lease and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Town represents that the recitals herein are accurate.

2. The Lessee acknowledges and relies upon the representations of the Town as to the recitals herein and further acknowledges and confirms that the recitals in paragraphs 1 and 5 are accurate and forms part of this Agreement.
3. The parties acknowledge and agree that except expressly stated herein, the terms and conditions of the Lease are confirmed and continue in full force and effect as between them and remain unchanged.
4. This Agreement shall enure to the benefit of the parties hereto and their respective heirs, administrators, successors and permitted assigns, as may be applicable.
5. Each of the parties hereto shall from time to time execute and deliver all further documents and instruments and do all things and acts as the other party may reasonably require for carrying out or better evidencing the full intent and meaning of this Agreement.
6. This Agreement may be executed in counterparts, and may be delivered by facsimile transmission, electronic transmission, in portable document format (PDF) or by such similar medium, each copy of which so executed shall be deemed to be an original, and all such counterparts shall together constitute the same document. The Parties agree that electronic signatures will have the same legal effect as original (i.e., ink) signatures and that an electronic, scanned, facsimile, or duplicate copy of any signatures will be deemed an original and may be used as evidence of execution.

**THE CORPORATION OF THE TOWN OF
SAUGEEN SHORES**

Per: _____

Name: Luke Charbonneau
Title: Mayor

Per: _____

Name: Debra Roth
Title: Acting Clerk

We have the authority to bind the corporation

2706913 Ontario Inc.

Per: _____

Name: Piergiorgio Donnini
Title: Authorized Signing Officer

Per: _____

Name:
Title:

I/We have the authority to bind the corporation

Schedule “A”

LAND LEASE

THIS INDENTURE OF LEASE made as of the 9th day of December, 2019.

BETWEEN:

THE CORPORATION OF THE TOWN OF SAUGEEN SHORES

(hereinafter referred to as the “Lessor”)

OF THE FIRST PART

-and-

2706913 Ontario Inc.

(hereinafter referred to as the “Lessee”)

OF THE SECOND PART

WHEREAS unless otherwise defined, the capitalized terms used herein have the meaning ascribed thereto in Section 1.1;

AND WHEREAS the Lessor is a municipal corporation in the Province of Ontario incorporated pursuant to the *Municipal Act, 2001*;

AND WHEREAS the Lessor is the registered owner of the Project Lands and has agreed to lease the Project Lands to the Lessee for the Term;

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the parties hereto do hereby covenant and agree as follows:

ARTICLE 1 – INTERPRETATION

1.1. **Definitions.** Unless otherwise defined in this Lease, the following terms shall have the meanings set out below:

“Additional Rent” means any amount payable by the Lessee under or pursuant to this Lease in addition to Annual Basic Rent.

“Annual Basic Rent” has the meaning ascribed thereto in Section 3.1.

"Applicable Law" means all mandatory laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licences, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers of governments, Canadian, provincial and municipal, ordinary or extraordinary which now or at any time hereafter may be applicable to and enforceable against the relevant work in question or any part thereof;

"Authority" means any court or tribunal or governmental, regulatory or administrative body, board, agency, department or authority of any country, province, municipality or other political subdivision thereof having or purporting to have jurisdiction in the relevant circumstances;

"Building" means any non-temporary structure to be located on the Project Lands as set out within the Project Plans and approved by the Lessor.

"Business Day" means any day which is not a Saturday, Sunday or a day observed as a statutory or civic holiday under the laws of the Province of Ontario or the federal laws of Canada applicable therein;

"Claims" means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis, interest, demands and actions of any nature or any kind whatsoever;

"Collateral Agreements" means the additional agreements and leases entered into or to be entered into by the Lessor and/or the Lessee pursuant to this Lease or pursuant to the Project Planning and Design Arrangements to implement the construction and development of the Project including, without limitation, any development, site plan, servicing, landscaping, tunnel, sidewalk improvement, heritage or other agreements entered into with the Lessor or an Authority relating to the construction, development or operation of the Project and not prohibited by or in conflict with the terms hereof and any amendments and/or supplements to such agreements which have been approved by the Lessor;

"Commencement Date" means the date in which care, possession and control of the Project Lands is provided to the Lessee by the Lessor, which shall be determined by the Lessor giving written notice of such to the Lessee, and shall be no later than twelve (12) months from the date of this Lease unless otherwise agreed upon by the Lessor;

"Construction Contracts" means the General Construction Contract and all other contracts and agreements which provide for services or materials or both for the development and construction of the Project;

"Contaminant" means any radioactive or asbestos materials, urea formaldehyde, hydrocarbons, pollutants, deleterious, poisonous, noxious, dangerous, hazardous, corrosive or toxic substances or goods, special waste or waste of any kind, or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws and "substance" shall include, but is not limited to, any sound, vibration, heat, radiation or other form of energy;

"Development Schedule" means the schedule for the construction and development of the Project as established by the Lessee and approved by the Lessor, as may be amended or modified from time to time in accordance with this Lease and any other agreements between the Lessor and the Lessee respecting the same;

"Environmental Laws" means applicable laws, statutes, ordinance, by-laws and regulations, and orders, directives and decisions rendered by, and policies, instructions, guidelines and similar guidance of, any

Authority and the common law relating to the protection of the environment, occupational health and safety or the generation, manufacture, processing, distribution, use, treatment, storage, disposal, discharge, packaging, transport, handling, contaminant, clean-up or other remediation or corrective action of or relating to any Contaminant, in each case, as in effect from time to time throughout the Term;

"Event of Default" has the meaning ascribed thereto in Section 12.1;

"Event of Insolvency" means with respect to a Person the occurrence of any one of the following events:

(a) if such Person shall:

(i) be wound up, dissolved, or liquidated, or become subject to the provisions of the *Winding-up Act* (Canada), as amended or re-enacted from time to time, or have its existence terminated or have any resolution passed therefor, unless, in any such case it forms part of a *bona fide* corporate reorganization not forming part of any relief being sought under any present or future law relative to bankruptcy, insolvency or other relief for debtors,

(ii) make a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act* (Canada) as amended or re-enacted from time to time, or shall be declared bankrupt or insolvent by a court of competent jurisdiction, or

(iii) propose a compromise or arrangement under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation, from time to time, or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relative to bankruptcy, insolvency or other relief for debtors; or

(iv) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against any such Person seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors, and such Person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 45 Business Days (whether consecutive or not) from the day of entry thereof; or if any trustee in bankruptcy, receiver or receiver and manager, liquidator or any other officer with similar powers shall be appointed for any such Person, or of all or any substantial part of its property with the consent or acquiescence of such Person, or such appointment shall remain unvacated and unstayed for an aggregate of 45 Business Days (whether or not consecutive);

"Force Majeure" means any happening, condition or thing beyond the control of a Person which could not reasonably have been anticipated and avoided by such person which delays or prevents such person from performing any of its obligations hereunder, financial inability excepted;

"Impositions" means all:

(a) taxes, assessments or levies (including, without limitation, all park levies, municipal taxes, and all assessments for public or local improvements or benefits);

(b) rates, charges, excises, levies, imposts, licence fees, permit fees, inspection fees and other authorization fees and other charges in respect of water, sewer, garbage, electric or other utilities; and

(c) other rates and charges, excises, levies, licence fees, permit fees, inspection fees and other authorization fees and other charges;

in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of whatever nature and kind, which are from time to time levied, assessed, charged or imposed by any Taxing Authority or any government, municipal or other like body having jurisdiction upon or against the Project Lands or any part thereof, the use or occupation thereof, or upon the owner or occupant in respect thereof or upon the rents or other revenues thereof and which is or may become a lien on any part of the Project or give rise to any rights or remedies of the Taxing Authority against the Project Lands or any interest therein.

"Insurance Requirements" means:

(a) all terms of any insurance policy covering or applicable to the Project or any part thereof required to be maintained pursuant to this Lease;

(b) all requirements of the issuer of any such policy under any such policy; and

(c) all mandatory orders, rules, regulations and other such requirements of any Canadian or provincial insurance regulatory body applicable to or affecting any insurance policy covering or applicable to the Project or any part thereof or any use or condition of the Project or any part thereof;

"Lease" means this indenture of lease made as of the date set out on page one hereof as amended or modified from time to time in writing by the parties hereto, and all referenced Schedules and other documents;

"Leasehold Mortgage" means any *bona fide* mortgage, charge or other security interest granted by the Lessee of or affecting this Lease or the Project issued in compliance with the terms hereof, including in particular Section 11.3, and not affecting any other interest or property other than the Project and interests of the Lessee arising therefrom and includes any *bona fide* deed of trust and mortgage securing bonds, debentures or notes by any such mortgage, charge or other security, all as amended or supplemented from time to time in compliance with the terms hereof;

"Leasehold Mortgagee" means any mortgagee, chargee or lender under or secured by a Leasehold Mortgage and approved by the Lessor, acting reasonably, and includes any trustee for bondholders under a deed of trust and mortgage securing bonds, debentures or notes, provided that such mortgagee, chargee or lender, is in compliance with the provisions of this Lease;

"Maturity Date" means five (5) days immediately prior to the fiftieth (50th) anniversary of the Commencement Date;

"Modification Notice" has the meaning ascribed thereto in Section 4.3.2;

"Notice" means any notice or other communication which may or is required to be given pursuant to this Lease, which Notice shall be given in accordance with the provisions of Section 15.2;

"Operating Costs" means all costs, expenses, fees, rentals, disbursements and outlays of every kind, paid, payable or incurred by or on behalf of the Lessee in connection with the operation, maintenance, repair, administration and management of the Project;

"Operating Standards" has the meaning ascribed thereto in Section 8.2;

"Person" or **"person"** means any individual, partnership, corporation, joint venture, association, joint stock company, trust, unincorporated organization, university, government or an agency or potential subdivision thereof, and "corporation" shall include "company" and *vice versa*;

"Project" means, collectively, the Project Lands and the Building;

"Project Lands" means that portion of the waterfront located in the Town of Saugeen Shores, in the community known as Port Elgin, and described within a schedule to be noted as Schedule "A" to be annexed hereto and deemed as included within this Lease upon confirmation of the Project Plans with respect to the Building;

"Project Planning and Design Arrangements" means the arrangements with respect to the development of the Project agreed to prior to the date of execution hereof which are consistent with the Project Plans, as they may be amended from time to time in accordance with the terms hereof and any other agreement between the Lessor and the Lessee relating to same;

"Project Plans" means the construction plans and specifications prepared relating to the construction and development of the Project, as amended from time to time with the prior written approval of the Lessor;

"Rent" means Annual Basic Rent and Additional Rent.

"Replacement Cost" means the cost of repairing, replacing or reinstating any item of property and any cost of upgrading any item of property required by any by-law, regulation, ordinance or law with new materials of like kind and quality on the same or a similar site plus the cost of demolition including demolition of undamaged structures without deduction for physical, accounting, or any other depreciation;

"Restaurant" means any business establishment in which food and/or drink are prepared (whether such preparation is completed at the location of sale or otherwise (i.e. on-site or off-site)) and/or sold for consumption (whether eat-in or take-out), as defined in any applicable then-current municipal by-law of the Town of Saugeen Shores;

"Site Plan" means the site plan (which forms part of the Project Plans), as amended from time to time, with the approval of the Lessor;

"Site Works and Servicing Agreement" means the Site Control Plan Agreement between the Lessor, as the municipality in which the Project Lands are located in, and the Lessee, as developer, as the same may be amended or modified from time to time;

"Sublease" means a sublease, licence, concession agreement or other occupancy agreement, from the Lessee, as landlord, to a tenant, licensee, concessionaire or other occupant for use of premises in the Project and its permitted successors and assigns, subtenants and sublicensees;

"Sublessee" means a tenant, licensee, concessionaire or other occupant occupying space at the Project pursuant to a Sublease;

"Substantial Completion" means that all work required to achieve "substantial performance" of the Project has been completed, giving to the term "substantial performance" the meaning ascribed thereto in the *Construction Act* (Ontario) as same may be amended, modified, or replaced from time to time;

"Substantial Completion Date" means the date upon which Substantial Completion has occurred, as evidenced by a certificate issued by the Project Architect pursuant to the *Construction Act* (Ontario) as same may be amended, modified, or replaced from time to time;

"Taxing Authority" means any duly constituted public authority whether federal, provincial, municipal, school or otherwise, legally empowered to impose, or which has by agreement the right to receive payments in lieu of Impositions;

"Term" means the period commencing on the Commencement Date and ending on that date which is the earlier of: (i) the Maturity Date; (ii) such earlier date upon which this Lease may have been terminated pursuant to or in accordance with the terms of this Lease or by operation of law, and (iii) any extension thereto agreed upon by the Lessor and Lessee;

"Total Completion" means full and total completion of the Project in compliance with the Project Plans, the Project Planning and Design Arrangements and the applicable provisions, if any, of the Collateral Agreements, including without limitation, expiry of all construction lien periods arising under the General Construction Contract and the Construction Contracts without there being any outstanding lien claims registered against title to the Project Lands as the same has been certified by the Project Architect;

"Transfer" means an assignment, sale, conveyance, disposition, sublease, pledge, hypothecation, mortgage, charge, security interest or other encumbrance of this Lease or the Project or any part thereof, or any other arrangement under which the interest of the Lessee in and to this Lease or the Project becomes security for any indebtedness or other obligation; any transaction or occurrence whereby the rights of the Lessee under this Lease or to the Project, or to any part thereof, are transferred or otherwise disposed of; any transaction or occurrence by which any right of use or occupancy of all or any part of the Project is conferred on any person other than the Lessee; any transaction or occurrence (including, without limitation, expropriation and transfer by operation of law) which changes or may change the identity of the person having lawful use or occupancy of all or any part of the Project; a parting with or sharing of possession of all or part of the Project; and a transfer or issue by sale, assignment, request, inheritance, transmission on death, mortgage, charge, security interest, consolidation, subscription, operation of law or other disposition, or by liquidation, merger or amalgamation, of all or any of the shares of or interest in the Lessee, or any agreement or arrangement, or any other act, as a result of which the Lessee becomes controlled, directly or indirectly in any manner whatever (within the meaning of the expression of "controlled" or "controlled, directly or indirectly, in any manner whatever" set forth in section 256 of the *Income Tax Act* (Canada), read without reference to subsections (3), (6), (7) thereof, and any amendments thereto or successor legislation for the time being in force and from time to time in force) by a different person or persons from the person or persons that controlled the Lessee, directly or indirectly in any manner whatever, immediately before any such transaction or occurrence;

1.2. **Currency.** All references to money herein are references to the lawful money of Canada.

1.3. **Headings.** The division of this Lease into Articles, Sections, Subsections, and Paragraphs are for convenience of reference only and are not to affect the construction or interpretation of this Lease.

1.4. **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.5. **Schedules.** The following Schedules are attached hereto and are incorporated in and are deemed to be an integral part of this Lease:

Schedule "A" – Description of Project Lands, to show the boundaries of the land to be under the care and control of the Lessee under this Lease, to be annexed hereto and deemed as included within this Lease upon confirmation of the Project Plans with respect to the Building

Schedule "B" – Additional Terms

Schedule "C" – Value Added Services; Cedar Crescent Village

Schedule "D" – Sketch of Estimated Building Footprint for Rent Purposes

ARTICLE 2 - LEASE

2.1. **Condition.** This Lease shall only become effective and binding on the Lessor and Lessee if the following condition has been satisfied:

2.1.1. The Lessee has duly signed, executed, and entered into a Site Works and Servicing Agreement with the Lessor, as the municipality in which the Project Lands are located, which shall include but not be limited to aspects of providing services to the Project Lands, construction relating to the Project, site development requirements, grading, etc. The Lessor, as the municipality, shall have final approval as to the terms and conditions of the Site Works and Servicing Agreement.

2.2. **Demise.** The Lessor hereby demises and leases the Project Lands to the Lessee for and during the Term, subject as herein provided, for the purposes of construction of the Project in accordance with the Project Plans and the operation of the Project in accordance with the terms hereof.

2.3. **Extension by Agreement of Lessor and Lessee.**

2.3.1. The Lessor and the Lessee may agree to extend the Term of this Lease for a specified period, (the "Extension Period") in which event this Lease shall continue throughout the Extension Period according to the agreed upon provisions and conditions at that time.

2.4. **End of Term: Surrender of Project.** At the end of the Term, whether by forfeiture, termination, effluxion of time or otherwise, unless the end of Term is the result of the Lessor exercising the Option to Purchase within Section 11.5 below, then possession of Project Lands shall be returned to the Lessor by the Lessee as provided in Section 4.8 below. At the end of the Term the parties will prorate, adjust, apportion, and allow between themselves all items of Rent to the intent and purpose that the Lessee shall bear the burden thereof until it shall deliver up possession of the Project Lands.

- 2.5. **Overholding.** If at the end of the Term the Lessor permits the Lessee to remain in possession of the Project Lands and accepts Rent in respect thereof, a tenancy from year to year or otherwise shall not be created by implication of law. In such event the Lessee shall be deemed to be a monthly tenant at the same rate of Rent as paid during the last year of the Term provided that the Lessee shall continue to be obligated to pay any prorated Impositions.
- 2.6. The Lessor and Lessee will make reasonable attempts to resolve any outstanding issues under this Lease at the end of the Term amicably. As long as the Lessee is not in default under any terms, covenants, and conditions herein to this Lease, if during the Term the Lessor receives a bona fide offer to the lease the Project Lands after the Term by a third-party which the Lessor intends to accept, the Lessor shall offer the Lessee a right of first refusal to enter a new lease under the same terms for the period beginning at the end of the Term. The right of first refusal provided to the Lessee within this paragraph shall become null and void at the end of the Term.

ARTICLE 3 - RENT

- 3.1. **Annual Basic Rent for Project Lands.** The Lessee shall pay throughout the Term, annual basic rent ("Annual Basic Rent") in the following amounts per annum in advance, payable in equal monthly instalments, commencing from the first day of each and every month throughout the Term:
- a) From the Commencement Date to the day immediately prior to the fifth anniversary of the Commencement Date, (the "Fifth Anniversary Date") the Annual Basic Rent payable by the Lessee to the Lessor shall be at a rate of two dollars and fifty cents (\$2.50) per square foot, estimated to be \$82,500.00 in total, calculated as:
 - i. The applicable rate of rent per square foot multiplied by the footprint of the Building to be contained within the Project Lands, estimated to be thirty thousand (30,000) square feet, as provided within Schedule "D" attached hereto and to be used for interpretation purposes in determining what is or is not included as being within the footprint of the Building;
 - ii. For the purposes of calculating the Annual Basic Rent, the footprint of the Buildings will be limited to the actual footprint and will not include common areas outside of the Building open to the public and the Building's associated patio; and
 - iii. For the purposes of calculating the Annual Basic Rent, the determination of the footprint of the Buildings shall be revised ongoing for any future additions.
 - b) From the Fifth Anniversary Date to the day immediately prior to the tenth anniversary of the Commencement Date, and for each five (5) year period thereafter until the end of the Term, the Annual Basic Rent shall be equal, on an ongoing basis, to the Annual Basic Rent payable for the Lease during the prior year multiplied by the CPI (hereinafter defined) for the month immediately prior to the Fifth Anniversary Date, or the end of the

applicable five (5) year period, as applicable, divided by the CPI (hereinafter defined) for the month immediately prior to the Commencement Date, or the start of the applicable five (5) year period.

- c) "CPI" for this Lease means the Consumer Price Index, All Items, Toronto, 2002=100, published by Statistics Canada or its successor, adjusted for any changes in base year, or, if Statistics Canada or its successor no longer publishes such index or is no longer operated by the Government of Canada, such other price index as the Lessor may substitute, acting reasonably. In the case of any substitution, the Lessor shall be entitled to make all necessary conversions for the purposes of comparison.
- d) From the Commencement Date until the day immediately prior to the fifteenth (15th) anniversary of the Commencement Date, the Lessor will accept services provided by the Lessee to the Lessor and the community of Port Elgin in lieu of payment of Annual Basic Rent as provided within Schedule "C" – Value Added Services attached hereto, and which may be revised upon further agreement of the parties. The value ascribed to any services provided to the Lessor or community in lieu of payment shall be determined as agreed upon by the parties. For the rent payable for period from the Commencement Date to the time when the Lessee begins providing services in lieu under this provision, the rent payable and paid under this Lease will be held by the Lessor to fund and pay for capital improvements to the main beach area of the Town of Port Elgin in its discretion.
- e) From the fifteenth (15th) anniversary date of the Commencement Date until the end of the Term or possession of the Project Lands is returned to Lessor by the Lessee as per Section 4.8 below, whichever date is later, at the sole option of the Lessor, it may accept services provided by the Lessee to the Lessor and the community of Port Elgin in lieu of payment of the Annual Basic Rent. The acceptance and value ascribed to any services provided to the Lessor or community in lieu of payment shall be determined by the Lessor in its sole and absolute discretion.
- f) To assist in planning for both parties, the Lessor and Lessee will meet periodically every five (5) years, or as otherwise agreed upon, to discuss the services proposed to be provided by the Lessee to the Lessor and the community of Port Elgin in lieu of payment of the Annual Basic Rent.

3.2. **Net Lease.** It is the intention of the parties that the Rent payable hereunder shall be absolutely net to the Lessor and that, except as otherwise herein expressly provided, there shall be no abatement or deferral of Rent and under no circumstances will Rent be refunded, and the Lessee shall at its expense and to the complete exoneration of the Lessor pay or cause to be paid all costs, outlays and expenses of every nature and kind whatsoever relating to or affecting the Building and the Project Lands and in connection with any business carried on therein or thereon. Save as herein otherwise specifically provided, the Lessee hereby waives and renounces any and all existing and future claims and set-offs against any Rent due hereunder and

all rights of abatement of or deduction from Rent and agrees to pay Rent regardless of any claim or set-off which may be asserted by the Lessee or on its behalf.

- 3.3. **Interest.** All Rent in arrears shall bear interest at a rate of 1.25% per month, calculated daily and compounded monthly, without demand, from the date such Rent was due until actual payment or repayment to the Lessor.

ARTICLE 4 – DEVELOPMENT OF PROJECT

- 4.1. **Development Deposit.** Forthwith upon the signing of this Lease, the Lessee shall provide to the Lessor a deposit as security of \$150,000.00, or any other amount as agreed upon by the Lessee and Lessor, to be held in trust pending the issuing of a final occupancy permit from the applicable Authority for the Building. Upon the issuance of the final occupancy permit, the deposit shall be released with no interest earned or paid on the deposit to the Lessee.
- 4.2. **Basic Development Obligations.** The Lessee hereby accepts the Project Lands “as is” and, except as foresaid, hereby covenants and agrees to commence forthwith, and to continuously and diligently proceed at its own cost and expense with the requisite construction of the Project, all in accordance with the Project Plans, the Project Planning and Design Arrangements and the Development Schedule through to Total Completion and in connection therewith shall supervise and direct all aspects of the Project including without limitation as to the generality of the foregoing:
- (a) Direct all construction activities;
 - (b) Direct and co-ordinate the performance of the project architect, the general contractor and subcontractors and the Lessee’s other consultants pursuant to the terms of this Lease;
 - (c) Arrange for the preparation of all Project Plans and all work drawings and specifications required for the Project;
 - (d) Correct or remedy or cause to be corrected or remedied, any violations of Applicable Law relating to the Project;
 - (e) Prepare and arrange for the preparation of all construction contracts and arrange for the preparation and execution of other related documentation required in accordance with the obligations of the Lessee hereunder;
 - (f) Insure that such personnel, subcontractors, consultants and work forces are retained or engaged as are necessary in order to ensure Total Completion;
 - (g) Obtain all necessary governmental approvals, consents, permits and licences required for the work in accordance with the Project Plans and Applicable Laws;

- (h) Prepare, negotiate, and execute all necessary agreements, leases, licences and other permits and arrangements as are required;
- (i) Cause all construction activities to be performed in a good and workmanlike manner, all in compliance with the Project Plans and Applicable Law;
- (j) Cause Total Completion to occur by no later than the date scheduled therefor in the Development Schedule, subject to Force Majeure;
- (k) Ensure that the Lessor receives accurate "as-built" plans and drawings for the Project within 90 days after Total Completion of the Project;
- (l) At all times during the term of any guarantees or warranties associated with any part of the Project, advise the Lessor, prior to the expiry of any such guarantees or warranties, of any evidence of faulty materials or workmanship used in connection with the Project;
- (m) Ensure that all insurance required pursuant to the terms of this Lease, Applicable Law, the Construction Contracts or as may otherwise be required by the Lessor or any Leasehold Mortgagee or Lessor Mortgagee, is obtained and maintained in force, in each case in connection with the construction and development of the Project and provide certified copies of all policies of insurance to the Lessor upon request;
- (n) Shall use best efforts to organize and coordinate construction activities so as to minimize disruption to the balance of the waterfront for the community of Port Elgin; and
- (o) Upon request, provide such evidence as to payment of development and building costs as the Lessor shall reasonably require.

4.3. Lessor's Approval.

- 4.3.1. The Lessee shall not have any right to possession of the Project Lands and the commencement of construction in any manner therein or thereon under this Lease until the Project Planning and Design Arrangements, Project Plans and the Development Schedule have been submitted to and approved by the Lessor, in the Lessor's absolute discretion.
- 4.3.2. The Lessee and the Lessor shall maintain a continuing liaison with one another at all times during construction and development and in that regard, the Lessee shall give the Lessor written notice (a "Modification Notice") of any material amendments, modifications or supplements to the Project Plans and the Development Schedule; or any work of a material nature to be performed other than substantially in accordance with the foregoing.
- 4.3.3. Within 10 Business Days of receipt of a Modification Notice, the Lessor may deliver a notice of objection to any material change or modification set out in the Modification

Notice and failing any such objection within the time limit therefor, the approval of the Lessor shall be deemed to have been granted in respect of the Modification Notice in question. The Project Plans shall be amended by any change order resulting from a Modification Notice for which actual or deemed approval of the Lessor has been given in accordance with this Article 4. If the Lessor shall have delivered a Notice of objection to the matter contemplated in the Modification Notice, such matter shall not be implemented. If there is a dispute as to whether any change is material and therefore must be approved by the Lessor, the matter shall be submitted within ten (10) days to an independent duly qualified architect selected by the Lessee from a list of three such architects chosen by the Lessor, whose determination shall be final and shall be rendered within thirty (30) days of being submitted to them. The costs associated to be borne by the Lessee.

4.3.4. The Lessor in exercising its approval rights hereunder, shall have regard to:

- (a) The overall quality and character of the Project;
- (b) The integration of the Project with the waterfront for the community of Port Elgin as a whole;
- (c) The impact of the Project on parking and other vehicular and pedestrian traffic matters;
- (d) The suitability of the Project for its Permitted Use;
- (e) Potential violations of any project agreement or of any arrangements in existence pertaining to the waterfront for the community of Port Elgin; and
- (f) The requirements of any other Authorities having jurisdiction over the Project.

4.4. **Emergencies.** Notwithstanding Section 4.3 above, if, in an emergency, any work or action is urgently required at times when the approval of the Lessor as required herein cannot be immediately obtained, the Lessee is hereby authorized and instructed to proceed with such steps as in its discretion are deemed urgently necessary for the protection and preservation of the Project or to protect any party hereto from exposure to a penalty, liability or expense and immediately thereafter the Lessee shall notify the Lessor of all such steps so taken.

4.5. **Lessor's Access to Site.** The Lessor, its representatives, and consultants shall have access to the Project at all times during construction and shall have the right to attend regular site meetings, in each case, among other things, for the purpose of monitoring construction and confirming that such construction is proceeding with substantially in accordance with the Project Plans.

4.6. **Lessor's Access to Material and Reports.**

4.6.1. The Lessor and its representatives and consultants, shall have access, upon reasonable prior notice at all reasonable times, to all of the material, reports (including inspection and testing reports), studies, models, and other documentation relating to the Project Plans.

- 4.6.2. The Lessee shall provide to the Lessor periodic reports, with the interval of time between such reports as required by the Lessor in its absolute discretion, as to construction progress with reference to the Project Plans and containing such information and detail as requested by the Lessor, acting reasonably.
- 4.7. **Non-Liability.** Neither the Lessor, nor any employee, representatives or consultant of the Lessor shall, by reason of the review of any of the Project Plans or by reason of any inspection of the construction site incur any liability for any defect in the Project Plans or the Project or any damages arising therefrom and no such review or inspection by such persons, nor any actual or deemed approval of the Lessor relating thereto, shall relieve any other Person from liability for any damages arising from the Project Plans or the construction of the Project.
- 4.8. **Title to Project.** Unless as otherwise provided under this Lease and Section 11.5 below, at the termination of the Term, the right of property in the Building shall remain with the Lessee. The Lessee shall undertake and be solely responsible for returning possession to the Lessor of the Project Lands in the condition that is not materially different from that in which Lessor provided such to the Lessee, including but not limited the removal of any structures, within a reasonable time period proposed by the Lessee and agreed upon by the Lessor following the end of the Term, but the period to complete this by the Lessee shall not be greater than two (2) years following the termination of the Term.
- 4.9. **Permits and Authorizations.** The Lessee shall, as a condition of the Lessor agreeing to join in or consent to, where necessary, any applications for permits, licenses or other authorizations required by Authorities in connection with any work undertaken by the Lessee on the Project Lands where such work is in accordance with the terms hereof, provide to the Lessor an agreement, satisfactory to the Lessor, whereby the Lessee agrees to indemnify and hold harmless the Lessor from any and all liability, expense or cost incurred as a result of or in connection with the Lessor entering into, joining with the Lessee in or consenting to any such application, development, site plan or other agreement.
- 4.10. **Lessor as Municipality.** Nothing in this Lease derogates from, interferes with, or fetters the exercise by the Lessor of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the Lessor in its role as a municipality, and the Lessor shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including but not limited to, its planning rights and responsibilities, municipal site plan control agreements separate and apart from that provided within this Lease and the application of the *Building Code Act* (Ontario), its Regulations, or successor legislation, other than as expressly set out in this Lease. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the Lessor's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the Lessor's officers, employees, agents, representatives or elected and appointed officials.
- 4.11. **Discharge Liens.**

- 4.11.1. Throughout the Term the Lessee shall, at its own cost and expense, cause any and all construction liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged to or for the Lessee or any Person on its behalf, which may be registered against or otherwise affect the Project, to be paid, satisfied, released, cancelled and vacated forthwith after registration of any such lien; provided, however, that in the event of a *bona fide* dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed and such costs as the court may direct and registering all such documents as may be necessary to discharge and cancel such lien or, if reasonably required by the Lessor, delivering to the Lessor, collateral in an amount sufficient to discharge such lien in full together with any interest thereon. Upon discharge of such lien, such collateral shall be returned to the Lessee.
- 4.11.2. Nothing in this Section shall prejudice the rights of the Lessee with respect to the giving of Leasehold Mortgages nor require the Lessee prior to the last year of the Term to discharge any security interest retained or acquired by a third party against or in respect of any goods, chattels or trade fixtures.
- 4.11.3. Nothing contained in this Lease shall constitute any consent or request by the Lessor, expressed or implied, for the performance of any labour or services or the furnishing of any materials or other property in respect of the Project Lands or any part thereof, or as giving the Lessee any right, power or authority to contract for or permit the performance of any labour or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Lessor in respect thereof. Notice is hereby given that the Lessor shall not be liable for any labour or services performed or any materials or other property furnished in respect of the Project Lands or any part thereof and that no construction or other lien for any such labour, services, materials or other property shall attach to or affect the interest of the Lessor.
- 4.12. **Standards.** All development or redevelopment of the Project, including all demolition, shall be carried out by the Lessee in a diligent and efficient manner, in keeping with the standards of the industry for projects comparable to the Project and in that regard, shall exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent Person who is experienced in performing like services and functions for projects of similar size, quality and use to those of the Project.
- 4.13. **Redevelopment.** The Lessee shall not be entitled to redevelop the Project as constituted at Total Completion without approval by the Lessor, which approval may be arbitrarily withheld in its absolute discretion.

ARTICLE 5 – IMPOSITIONS

- 5.1. **Payment by Lessee.** Except as otherwise provided in this Section, the Lessee shall pay or cause to be paid all Impositions. Impositions and every instalment thereof shall be paid promptly when due and before any penalty or interest is incurred in respect thereof. The Lessee shall also pay

any penalty and interest imposed in connection with any payment or non-payment of any Impositions. At the request of the Lessor, the Lessee shall from time to time deliver to the Lessor copies of all receipted invoices for all such Impositions.

- 5.2. **Lessor May Pay.** If and as often as the Lessee shall neglect or omit to pay Impositions, the Lessor may, but shall not be obliged to, pay the same. If the Lessor so pays Impositions, it may thereupon charge the same to the Lessee together with interest on the amount thereof at the rate of penalty and/or interest charged by the Taxing Authority from time to time upon arrears of Impositions at the time such Impositions become due and payable. The Lessee shall pay the same to the Lessor forthwith upon demand given by Notice from the Lessor stating the amount thereof paid by it and the date of payment and the Lessee agrees that any and all of such amounts so paid by the Lessor shall be recoverable as Additional Rent.

ARTICLE 6 – USE, SIGNAGE AND PARKING

- 6.1. **Permitted Use.** The Lessee shall only be permitted to use the Project for commercial business directed to generate and support local tourism and the general community, as agreed to in writing by the Lessor, including but not limited to one or more Restaurants, banquet hall, and other recreational activities, or as otherwise agreed to between the Parties and shall be subject to the prohibitions, exceptions, and restrictions contained in this Lease and provided that such use shall be in compliance with Applicable Law.

- 6.2. **Signage.**

6.2.1. The Lessee shall have full control over all signage, advertising and display facilities located within the Building and not visible from outside the Building, provided that such signage, advertising and display facilities comply with Applicable Law.

6.2.2. The Lessee shall be permitted to locate external signage and any internal signage visible from the exterior of the Building provided that: (i) the approval of the Lessor, in the Lessor's absolute discretion, shall have been obtained prior to the installation of such signage; and (ii) such signage complies with Applicable Laws, including, without limitation, the then-current municipal sign by-law. The parties acknowledge that the municipal sign by-law is subject to change from time-to-time.

- 6.3. **Lessee's Parking Rights.** The Lessee shall be permitted to the reasonable use of the adjoining public parking lot to the Project Lands for use in its business activities related to the Project, but shall not have assigned or exclusive use of any or part of said public parking lot.

ARTICLE 7 - INSURANCE

- 7.1. **Lessee's Covenants Respecting Insurance.** The Lessee covenants and agrees with the Lessor that:

(a) **To Insure,** during the Term the Lessee shall, with the Lessor noted as a loss payee:

- (i) **Property Insurance:** insure or cause to be insured the Project and to be kept insured in an amount not less than the full Replacement Cost from time to time, of the Project as is completed against loss or damage by fire, explosion, impact by aircraft or vehicles, lightning, riot, vandalism or malicious acts, smoke, leakage from fire protection equipment, windstorm or hail, earthquake or collapse, flood and other perils.
- (ii) **Boiler and Machinery:** in the event that and so long as boilers, machinery, pressure vessels, air-conditioning equipment and miscellaneous equipment are installed and maintained in or upon the Project, insure and maintain or cause to be insured and maintained boiler, machinery, pressure vessel, air-conditioning equipment and miscellaneous equipment insurance which shall include, without limitation, loss or damage of whatsoever kind or nature by reason of explosion or collapse by vacuum or cracking, burning, or bulging of any steam or hot water boilers, pipes and accessories with combined limits representing 100% of the replacement cost of the insured objects or such other amount as the Lessor shall from time to time reasonably require, having regard to the nature of the boilers, machinery, pressure vessels, air-conditioning equipment and miscellaneous equipment utilized by the Lessee;
- (iii) **Public Liability:** insure and maintain or cause to be insured and maintained comprehensive public liability insurance on an occurrence basis against claims for personal injury, death or property damage suffered by others arising out of all operations upon the Project, indemnifying and protecting the Lessor and the Lessee, insuring to an amount initially of not less than \$5,000,000.00 per occurrence (with or without a retained limit) or such lesser or greater amount as the Lessor may reasonably require from time to time to protect the Lessor and the Lessee against such loss or damage and, in any event to the same extent as may from time to time be usual and prudent with companies operating or owning similar properties in equivalent locations subject to such coverage for such amounts being reasonably available in the market for companies operating or owning such similar properties without regard to their individual loss experience and, including without limitation, provisions for cross-liability and severability of interests. Policy limits shall be reviewed by the Lessor and Lessee in accordance with the foregoing requirements periodically at the request of either the Lessor or Lessee, provided such matter may be submitted to arbitration pursuant to Section 13.1; and
- (iv) **Other Insurance:** insure and maintain or cause to be insured and maintained:
 - a. during construction (including demolition) or any re-construction of the Project and substantial replacement or substantial repair of any part thereof, builders' all risk insurance with respect to the Project and any on-site or off-site work, materials and equipment related thereto protecting the Lessor, the Lessee and all

contractors and sub-contractors, in an amount not less than the full Replacement Cost of the Project in the case of on-site, and with customary limits in the case of off-site together with provisions for delayed opening, which policy shall make provision for partial occupancy;

- b. during construction or any re-construction of the Project and substantial replacement or substantial repair of any part thereof and for such period thereafter as shall be customary for properties of similar scope and size as the Project (having regard to other insurance in force), wrap-up liability insurance with respect to the Project and any off-site work, materials and equipment related thereto protecting the Lessor, the Lessee and all contractors and sub-contractors, in an amount not less than \$5,000,000.00 per occurrence; and
 - c. such other insurance with respect to the Project, in such amounts, with respect to such risks and such exclusions as may be customarily effected and maintained by prudent owners or operators of properties in Canada of similar scope and size as the Project, or as the Lessor may reasonably request be effected and maintained including, without limitation, as may be required pursuant to any of the Collateral Agreements;
- (b) **Deductible Amount:** the Lessee may at its option effect the insurance required to be maintained pursuant to the foregoing under a policy or policies in the amounts required less a reasonable deductible amount, the loss with respect to which would be required to be borne by the Lessee, provided that such deductible amount does not exceed 1% of the full amount insured under any such policy or policies;
- (c) **Non-Cancellation:** each of the policies for such insurance will contain an agreement by the insurer to the effect that it will not cancel or materially alter such policy or permit it to lapse, including any act, neglect or omission, except after 30 days' prior written notice by registered mail to the Lessor, and that as against the Lessor the insurer will not exercise any right to treat such policy as void or voidable as a result of any statement or failure of the Lessee or any other person in any application for such policy or to deny recovery as a result of any breach of any policy terms;
- (d) **Premiums:** the Lessee shall duly and punctually pay all premiums and other sums of money payable for maintaining any such insurance as aforesaid and in any event will not permit the payments under such policy or policies to be in arrears;
- (e) **Proceeds:** the Lessee shall cause any and all policies of insurance provided for in Subsection 7.1(a) to be written in the joint names of the Lessor, the Lessee and any Leasehold Mortgage as may require to be so named, as additional insureds;
- (f) **Evidence:** the Lessee shall produce to the Lessor at the commencement of this Lease and the beginning of each policy year evidence of payment of all premiums and other sums of

money payable for maintaining such insurance, and shall deposit promptly with the Lessor every policy of and renewal certificate for such insurance or a certified copy thereof.

- (g) **Lessor's Right to Insure:** the Lessee shall advise the Lessor of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Lessee fails to effect and to keep such insurance in force, and if the Lessee does not rectify such situation within 48 hours after the Lessor gives Notice to the Lessee requesting it to do so, the Lessor shall have the right, without assuming any obligation in connection therewith, to effect such insurance at the cost of the Lessee and all outlays by the Lessor shall be immediately payable by the Lessee to the Lessor as Rent, without prejudice to any other rights and recourses of the Lessor hereunder. No such insurance taken out by the Lessor shall relieve the Lessee of its obligations to insure hereunder and the Lessor shall not be liable for any loss or damage suffered by the Lessee in connection therewith;
- (h) **Repair and Replacement:** the proceeds of all policies of insurance provided for in Paragraph 7.1(a) shall be applied to the repair, replacement, rebuilding and/or restoration of the property damaged or destroyed. Any repairs, replacements, rebuilding or restoration shall be carried out by the Lessee in accordance with the provisions of Article 8 and Article 9; and
- (i) **Waiver and Release:** the policies of insurance covering real and personal property maintained pursuant to Subsection 7.1(a) shall, to the extent available, provide for the waiver or release of all rights of subrogation against the Lessor. The Lessee hereby releases the Lessor and its successors and assigns from any and all liability caused by any of the perils against which the Lessee shall have insured or against which under the terms of this Lease the Lessee is obligated to insure under the policies of insurance covering real and personal property maintained pursuant to Subsection 7.1(a), and whether or not such loss or claim may have arisen out of the negligence of the Lessor and the Lessee hereby covenants to indemnify and save harmless the Lessor accordingly against and from all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to such loss or claim.

- 7.2. **Worker's Compensation.** At all times during the Term, the Lessee, at its expense, shall procure and carry or cause to be procured or carried and paid for full worker's compensation coverage in respect of all workmen, employees, servants and others engaged by or for the Lessee, in or upon any work, non-payment of which would create a lien on the Project.

ARTICLE 8 – ONGOING OPERATIONS

- 8.1. **Operation, Maintenance, and Repair.** Except to the extent provided to the contrary herein, this Lease shall be completely net and carefree to the Lessor and the Lessor shall not be obligated to furnish any services or facilities or to pay Operating Costs or to make repairs or alterations in or to or replacements of any of the Project. The Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Project, including the payment of all Operating Costs. During the Term, the Lessee, at its own cost and expense, shall operate, repair and maintain the Project in good order

and condition or shall cause the Project to be operated, repaired and maintained in good order and condition in the same manner and to the same standards and extent as would a prudent owner of a similar building, being the condition of "as new" and the determination of such standard within the absolute discretion of the Lessor. All Operating Costs shall be paid promptly when due and payable and all repairs and maintenance, when commenced, shall be carried out diligently. Such obligation to repair and maintain shall not be construed as limiting the right of the Lessee, pursuant to this Article 8, to make replacements, alterations or substitutions to the Project in lieu of repairing it. The Lessee will permit the Lessor, or its agents, at all reasonable times during the Term, to enter and view the state of repair of the Project.

8.2. **Operating Standards.** The Lessee shall operate and manage the Project and in furtherance of its obligation to do so, the Lessee shall:

- (a) Keep the Lessor advised regarding all significant decisions undertaken by the Lessee in the operation of the Project;
- (b) Do or cause to be done all such things which are necessary so as to ensure compliance by the Lessor and the Lessee and the tenants, subtenants and licensees with all of the terms and conditions of all Applicable Law, Insurance Requirements and all leases with tenants of premises in the Project;
- (c) Keep the Building heated and cooled to reasonable temperatures, according to the season, and cause the heating, ventilating and air-conditioning equipment to be operated, maintained and kept in repair in conformity with the Lessee's obligations hereunder;
- (d) Arrange for and supervise adequate security for physical protection and, when necessary, arrange for the control of vehicular and pedestrian access and egress, all as approved by the Lessor; and
- (e) Perform and, where desirable, contract for all things necessary for the proper and efficient management, operation and maintenance of the Project and performance of every other reasonable act whatsoever in or about the Project to carry out the intent of this Lease;

(the foregoing herein referred to as the "Operating Standards").

8.3. **Adherence to Operating Standards.** In its operation of the Project the Lessee shall be prudent, responsible and responsive to suggestions of the Lessor. If the Lessor is of the opinion that the Lessee is not adhering to the Operating Standards in any respect, the Lessor may give notice thereof to the Lessee and a reasonable opportunity to adhere to the Operating Standards. If the Lessee disputes the Lessor's allegations that the Lessee has failed to adhere to the Operating Standards, either the Lessee or the Lessor may submit the alleged failure to arbitration in accordance with Section 13.1. If such arbitration shall determine that the Lessee has not adhered to the Operating Standards in such respect, the Lessee shall comply with the decision of the arbitrators, failing which the Lessor, in addition to any of its other rights and remedies hereunder, may take the necessary steps to remedy such failure at the cost of the Lessee and to

recover such cost as Rent. If the Lessee continues to fail to adhere to the Operating Standards in respect of the alleged failure and the Lessee does not dispute the Lessor's allegations that the Lessee has failed to adhere to the Operating Standards, in addition to any of its other rights and remedies hereunder, the Lessor may take the necessary steps to remedy such failure at the cost of the Lessee and to recover such cost as Rent.

- 8.4. **Alterations.** The Lessee may make or permit to be made such replacements, alterations or substitutions to any portion of the Project in lieu of repairing the same provided that the approval of the Lessor shall be first obtained in respect of the Project Plans and provided that such replacements, alterations or substitutions shall not materially change the scale or character of the Project or impair or weaken the structure, structural integrity or mechanical or electrical systems of the Project or necessitate the closing of the Project for a period in excess of ninety days. All alterations or other work undertaken by or for the Lessee shall be done in compliance with the terms of this Lease and once begun shall be carried out diligently to completion and be performed in all respects in accordance with Applicable Law and Insurance Requirements. Replacements, alterations and substitutions under this section shall be deemed not to be redevelopment for the purposes of the purposes of this Lease.
- 8.5. **Collateral Agreements.** The Lessee shall perform and observe all the covenants and obligations on its part to be performed and observed under the Collateral Agreements and the Lessee shall not do any act or omit or suffer anything by reason whereof a breach or default would result under such Collateral Agreements.
- 8.6. **Applicable Law and Insurance Requirements.** The Lessee at its expense shall promptly comply with all Applicable Law and Insurance Requirements. No later than ten (10) Business Days after receipt thereof, the Lessee shall deliver to the Lessor a true copy of any notice of default, notice of violation, writ, summons or other communication served upon or received by the Lessee indicating non-compliance by the Lessee with Applicable Law or Insurance Requirements.
- 8.7. **Annual Audit and Meeting.** At least once a year during the Term, the Lessor and Lessee shall meet to review and ensure the Lessee's adherence to its obligations provided within this Lease, including but not limited to:
- (a) The services being provided by the Lessee in lieu of rent payable under Article 3 and as set out within Schedule "C";
 - (b) The operation, maintenance, and repair of the Project, including the condition of "like new" as set out in Section 8.1 above; and
 - (c) The usage of signs by the Lessee under Section 6.2 above.

ARTICLE 9 – DAMAGE OR DESTRUCTION

- 9.1. **Repair and Replacement by Lessee.** In the event of damage to or destruction of the Project or any part thereof, subject to Section 8.4, the Lessee shall either replace the portion of the Project destroyed with a new structure or repair or reconstruct such portion of the Project. Any such replacement, repair or reconstruction of the Project or any part thereof, shall be commenced diligently after such damage or destruction and in any event within 30 days thereafter or such longer period, not to exceed 90 days after such damage or destruction, as is reasonably necessary having regard to the circumstances at such time and shall be made or done in compliance with the provisions of Section 8.4 and shall be substantially to the scale and character of the structures damaged but after allowing the changes necessitated by then current technology and construction practices and if approved by the Lessor, which approval may be unreasonably and arbitrarily withheld, those changes which would make the Project suitable for alternate uses. Replacement, repair or reconstruction under this Section shall be deemed not to be redevelopment for the purposes of Section 4.13.

ARTICLE 10 – INDEMNITIES

- 10.1. **By Lessee.** The Lessee shall indemnify and save harmless the Lessor from any and all Claims whatsoever arising during the Term out of:

- (a) Any breach, violation, or non-performance of any covenant, condition or agreement set forth in this Lease to be fulfilled, kept, observed or performed by the Lessee;
- (b) Any injury to person or persons, including death resulting at any time therefrom, occasioned by the use and/or occupation of the Project; and
- (c) Any damage to or loss of property occasioned by the use and/or occupation of the Project,

Except to the extent that such claims are due to the negligence or wrongful acts or omissions of the Lessor or Persons for whom it is in law responsible.

- 10.2. **Duration.** The obligations to indemnify contained in Sections 10.1 shall survive any termination of this Lease, anything in this Lease to the contrary notwithstanding. Nothing in Sections 10.1 and 10.2 shall create or extend any right for the benefit of any third party.

ARTICLE 11 - TRANSFERS

- 11.1. **Assignment.** The following provisions shall govern the rights and restrictions in respect of a Transfer by the Lessee:

- (a) Other than in respect of a Transfer pursuant to Section 11.2 and 11.3, the Lessee shall not undertake or permit a Transfer without in each instance:
 - (i) Providing the Lessor with a right of first refusal to purchase the Lessee's leasehold interests of the Project Lands, including but limited to the Building and amenities

located thereon upon written notice of the Lessee's intention to transfer such interest via a bona fide offer to purchase from an arm's length third party. Such notice shall include a copy of the bona fide offer stating the terms and conditions under which the Lessee intends the transfer to occur. Upon receiving such notice from the Lessee, the Lessor shall have thirty (30) days to provide the Lessee with a written notice to purchase the interest and shall thereafter be bound by the same terms and conditions set forth in the offer from the arm's length third party. If such written notice is not provided by the Lessor within thirty (30) days of receiving notice from the Lessee, the Lessee shall be allowed to sell its leasehold interest in the Project Lands, subject to the following:

- a. Obtaining the approval of the Lessor, which shall not be unreasonably withheld, provided that, despite any provision of this Lease or any statutory provision or other law to the contrary, the Lessor may withhold its approval in its absolute and unfettered discretion and shall not be required to act reasonably in consenting to a Transfer if:
 - i. The Lessee is then in default under any of the terms, covenants and conditions herein on its part to be observed and performed, for which a Notice has been given to the Lessee; or
 - ii. If the Transfer is to take place at any time prior to the Substantial Completion Date.

It shall not be considered unreasonable for the Lessor to refuse to give its consent if, after considering (in addition to any statutory or common law tests in respect of the withholding of consent) all or any of the following criteria, if, in the Lessor's opinion, the proposed transferee does not have a good reputation or a history of successful business operation, if the proposed transferee does not have a good credit rating and a substantial net worth, including so as to be able to finance the transferee's acquisition of its interest and its operations in the Project without a material risk of defaulting under this Lease, and if the Lessor has not received such information, material, books or records from the Lessee or the proposed transferee sufficient to enable the Lessor, acting reasonably, to make a determination with due dispatch concerning any of the matters set out above.

- (b) In no event shall any Transfer to which the Lessor may have consented constitute a release or otherwise relieve the Lessee from any of its obligations under this Lease for the Term. No consent to a Transfer shall be valid unless within ten (10) Business Days after the completion thereof, the Lessee shall deliver to the Lessor a duplicate original of the applicable Transfer documentation duly executed by the Lessee, an instrument in form satisfactory to the Lessor but in accordance with the provisions of this Lease, duly executed by the transferee, wherein such transferee shall assume the Lessee's obligations pursuant to this Lease, payment of all reasonable legal fees and other expenses incurred by the Lessor in connection with the

Transfer and any and all necessary approvals, notices and/or further agreements required pursuant to any of the Collateral Agreements shall have been obtained, given and/or executed, as the case may be, in respect of the Transfer.

- 11.2. **Sublease.** The Lessee shall not sublease any or part of the Project without the consent of the Lessor, provided that the Lessor's approval shall not be unreasonably withheld if:

- (a) The use by the Sublessee complies with the requirements of Article 6;
- (b) Each such Sublease shall contain the undertaking by the Sublessee (expressed to be in favour of the Lessor as well as the Lessee) that the Sublessee, at the request of the Lessor, will, in the event of termination of this Lease, attorn to the Lessor as its tenant, licensee, concessionaire or occupant;
- (c) No Sublease shall have a term extending beyond the Term;
- (d) Any and all approvals, notices and/or further agreements required pursuant to any of the Collateral Agreements shall have been obtained, given and/or executed, as the case may be, in respect of the Sublease.

The Lessor shall be provided, on request, with copies of the executed Sublease. The Lessee shall ensure that all Subleases are on a fully net basis.

- 11.3. **Leasehold Mortgage.** The Lessee shall not mortgage or charge or grant a security interest of any nature whatsoever in this Lease or the Project (or any part thereof), or permit this Lease or the Project to be subject to a mortgage, charge or security interest of any nature whatsoever, other than a Leasehold Mortgage. No Leasehold Mortgage shall be permitted or valid unless and until:

- (a) The Leasehold Mortgagee is approved by the Lessor which approval shall not be unreasonably withheld; and
- (b) Any and all necessary approvals, notices and/or further agreements required pursuant to any of the Collateral Agreements and the provisions of this Section 11.3 of this Lease shall have been obtained, given and/or executed, as the case may be, in respect of the Leasehold Mortgage.

- 11.4. **Subordination and Attornment.** This Lease and the rights of the Lessee hereunder shall be subject and subordinate to all Lessor Mortgages (as defined below) and to all renewals, modifications, consolidations, replacements and extensions thereof. Whenever requested by the Lessor or a Lessor Mortgagee (as defined below), the Lessee shall, within five Business Days after such request, enter into an agreement (a "non-disturbance agreement") with the Lessor Mortgagee whereby the Lessee postpones or subordinates this Lease to the interest of such Mortgagee and agrees that whenever requested by such Lessor Mortgagee it shall attorn to and

become the Lessee of such Lessor Mortgagee, or any purchaser of the Project upon realization, in the event of the exercise by the Lessor Mortgagee of any of its mortgage remedies, for the then unexpired residue of the Term upon all the terms and conditions of this Lease, provided that the Lessee's occupancy of the Project shall not be disturbed except pursuant to this Lease, provided that in no event shall the Lessor Mortgagee or any such purchaser have any liability in respect of any obligations or covenants of the Lessor relating to the period prior to the time the Lessor Mortgagee or such purchaser becomes an owner or mortgagee in possession. For purposes of this Section, "Lessor Mortgage" means any mortgage, charge or other security interest granted by the Lessor of or affecting this Lease or the Project and including any deed of trust and mortgage securing bonds, debentures or notes by any such mortgage, charge or other security, all as amended or supplemented from time to time. "Lessor Mortgagee" means any mortgagee, chargee, lender under or secured by a Lessor Mortgage and includes any trustee for bondholders under a deed of trust and mortgage securing bonds, debentures or notes.

11.5. **Option to Purchase.** In consideration of the mutual covenants and agreements herein contained, the Lessee grants to the Lessor the sole and exclusive option, irrevocable within the Term of this Lease, for the Lessor to purchase the Lessee's equity interest in the Project under this Lease, including the remaining Term of the Lease. For greater certainty, the Lessee's equity interest in the Project shall consist of:

- (a) The building and site improvements owned by the Lessee and erected on the property;
- (b) Any fixtures and equipment owned by the Lessee and situated on the leased property which are not otherwise already included in the value of the buildings and site improvements;
- (c) The commercial goodwill, if any, associated with any business interests on the property which are owned by the Lessee;
- (d) The restaurant business tentatively known as "the Whitefish Grille" including the assets, equipment and goodwill of the business, if not already included under Section 11.5(a), (b), and (c) above and operating within the Project Lands at the time the option to purchase under this section is exercised

Collectively, the four asset categories listed above shall be referred to herein as the "Project Assets". The objective for valuing the Project Assets as provided in Section 11.5.1 below is to place the Lessee in a similar financial position as would have existed if the Option to Purchase within this section had not been exercised and an independent, arm's length third party was offering to purchase the Project Assets. In doing so, the Chartered Business Valuator should take into consideration, but not exclusively, the following factors: 1) the remaining term of the Lease when the option is exercised; 2) the present value of expected net income, business or otherwise, to be received by the Lessee from the Project Assets for the remaining term of the Lease when option is exercised; 3) that at the end of the Term, ownership and title to the Building, fixtures, and equipment under Section 4.8 of this Lease

was to remain with the Lessee; and 4) whether the replacement value of some, part, or all of the Project Assets should be considered in determining their value.

11.5.1. Purchase Price. The Purchase Price for the Project Assets, subject to the adjustments provided for Paragraph 11.5.2 below, shall be:

- (a) As may be agreed upon by the Lessee and Lessor; and
- (b) If the Lessee and the Lessor cannot agree on the Purchase Price within thirty (30) days of the delivery of written notice of the Option to Purchase being exercised as set out in Paragraph 11.5.3 below, the value of the Project Assets shall be determined by a Chartered Business Valuator ("CBV") experienced in the valuation of assets and business such as the Project Assets, whose selection is mutually agreed upon by the Lessor and the Lessee. The CBV shall be permitted to retain the services of an Accredited Appraiser Canadian Institute ("AACI") or such other specialists as required to assist in the valuation of the Project Assets, with the cost of such valuation to be borne by the Lessor; and
- (c) If the Lessee and the Lessor cannot agree on such CBV within sixty (60) days of the delivery of written notice of the Option to Purchase being exercised as set out in Paragraph 11.5.3 below, then the simple average or mean of the valuation of the Project Assets, with one valuation provided by each of the Lessee and the Lessor from a CBV experienced in such valuations, with the Lessee and Lessor being responsible for their own costs of providing their own valuations, and such valuations to be provided to each other within one hundred and twenty (120) days of the delivery of written notice as set out in Paragraph 11.5.3; and
- (d) If the difference between the two valuations provided for in part (c) above is more than twenty (20%) percent, calculated as the difference in each valuation divided by the value as per the Lessor's valuation, then as determined by arbitration provided for in Paragraph 13.1 below, and the Purchase Price for the Project Assets shall be so determined by the appointed arbitrator based on his or her review of the valuation reports prepared on behalf of the Lessee and the Lessor

The cost of arbitration, if required, shall be borne equally by the Lessee and the Lessor, provided that each of the Lessee and the Lessor shall be responsible for the cost of their own respective CBVs, appraisers, consultants and counsel for such arbitration.

11.5.2. Adjustments. All adjustments respecting the Project Assets, for prepaid rent, security deposits, property taxes, utilities, fuel, licences, insurance as customarily adjusted at closing between a vendor and a purchaser in the purchase of a real estate interest, and normal working capital assets and liabilities as customarily adjusted at closing between a vendor and a purchaser in the purchase and sale of a business, will be added or deducted as applicable from the Purchase Price of the Project Assets.

11.5.3. Exercising of Option. The Lessor may exercise the Option to Purchase by delivering written notice to the Lessee as provided by Paragraph 15.2 below. The Lessor may not exercise the Option to Purchase before the day immediately prior to the twentieth (20th) anniversary date, meaning the period of twenty (20) years less one day, from the Commencement Date. Upon delivery, there shall be a binding agreement of purchase and sale for the Project Assets within the Option to Purchase which shall be completed by the closing date, ("Closing Date") being one (1) year from the Lessor delivering written notice to the Lessee of the exercising of the Option to Purchase or as other agreed upon by the Lessee and the Lessor.

11.5.4. Covenants of the Lessee as Vendor. The Lessee covenants and agrees that it shall, from and after the date the Lessor's option is exercised, or promptly thereafter, to the Closing Date:

- (i) Not enter into any agreement, contract, or lease relating to the Project Assets; and
- (ii) Take or cause to be taken all proper steps and actions and corporate proceedings to enable the Lessee to vest a good and marketable title to Project Assets within the Option to Purchase free and clear of all liens, encumbrances, defects in title, equities or claims of every nature and kind and to enable the Lessee to carry out the sale of the Project Assets within this Option to Purchase.

11.5.5. Representations and Warranties of Lessee as Vendor. The Lessee represents and warrants to the Lessor that from and after the date the Lessor's option is exercised, or promptly thereafter, to the Closing Date:

- (i) The Lessee is and shall be a corporation duly incorporated and validly existing under the laws of the Province of Ontario, duly qualified to carry on business in the Province of Ontario;
- (ii) The Lessee is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (iii) The Lessee has no indebtedness or obligation to any person which at that time or in the future constitute a lien, charge or encumbrance on the Project Assets within the Option to Purchase.
- (iv) The Lessee shall provide good and marketable title to the Project Assets within the Option to Purchase upon the Closing Date, free and clear of all security interests, liens, claims, mortgages, charges, encumbrances and legal notations.
- (v) There are no other agreements, options, or other rights pursuant to which the Lessee is, or may become, obligated to sell the Project Assets within the Option to Purchase.

- (vi) There are no outstanding arrears for taxes of any nature or any other expense, charge, or fee in respect of the Project Assets within the Option to Purchase other than those that will be paid, or adjusted for, on or before the Closing Date;
- (vii) There is no litigation or proceeding outstanding or, to the Lessee's knowledge, threatened with respect to the Project Assets within the Option to Purchase;
- (viii) The Project does not, as a result of the Lessee's use or occupation of the Project contain any contaminant, pollutant, dangerous, noxious or toxic substance, hazardous waste, explosive or radioactive material, polychlorinated biphenyls or any other substance or material that may be detrimental to the environment, including the air, soil, subsoil or surface or ground water at the Project except in compliance with all applicable statutes, laws, by laws, regulations relating to Hazardous Substances and the protection of the environment.
- (ix) The Project is in compliance with all laws, including without limitation environmental laws, and the Lessee has not received any written notice of any violation of, or any order or direction that has not been complied with, with respect to any environmental law.

11.5.6. Survival of Lessee's Representations and Warranties as of the Closing Date. The representations and warranties of the Lessee set forth in this Lease, or any document delivered in connection thereto, shall survive the closing of the purchase of the Project Assets within the Option to Purchase.

11.5.7. Representation and Warranties of the Lessor as Purchaser. The Lessor represents and warrants to the Lessee that from and after the date the Lessor's option is exercised, or promptly thereafter, to the Closing Date:

- (i) The Lessor has full power, authority and capacity to purchase the Project Assets within the Option to Purchase and carry out the transaction contemplated herein; and
- (ii) There is no action or proceeding outstanding or, to the Lessor's knowledge, threatened against the Lessor before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the Lessor, might materially affect the Lessor ability to perform the Lessor's obligations hereunder.

11.5.8. Survival of Lessor's Representations and Warranties as of the Closing Date. The representations and warranties of the Lessor set forth in this Lease, or any document delivered in connection thereto, shall survive the closing of the purchase of the Project Assets within the Option to Purchase.

11.5.9. **Risk.** The Project Assets within the Option to Purchase shall be at the risk of the Lessee until the completion of the purchase and sale transaction herein contemplated.

11.5.10. **Possession.** Subject to the completion of the transaction, the Lessor shall be entitled to possession of the Project Assets within the Option to Purchase as of the Closing Date.

11.5.11. **Harmonized Sales Tax ("HST").** If the sale of the Project Assets within the Option to Purchase is subject to HST, then such tax shall be in addition to the purchase price.

11.5.12. **Further Assurances and Closing.** The Lessor and Lessee will each deliver to the other such further documents and assurances and do such further acts as may be reasonably required to complete the transaction contemplated herein. The closing of the transaction, including but not limited to preparation of closing documents, delivery of closing documents and payment of closing funds, shall be in material accordance with that provided within the standard Ontario Real Estate Association Agreement of Purchase and Sale for commercial property, or any successor organization, and if such provisions are applicable, as of the date of the Lessor exercises the Option to Purchase.

ARTICLE 12 – DEFAULT AND REMEDIES

12.1. **Events of Default; Termination.** In any of the following events (each an "Event of Default"):

- (a) If Rent or any part thereof shall not be paid on any day when such payment is due, the Lessor may, at any time thereafter, give Notice of such failure to the Lessee and if the failure is not remedied by the Lessee within five (5) Business Days after the giving of such Notice; or
- (b) If the Lessee shall fail or neglect to perform or comply with any of the terms, covenants or conditions contained in this Lease (other than the covenants to pay Rent) on the part of the Lessee to be performed or observed, the Lessor may, at any time thereafter, give Notice of such failure or neglect to the Lessee and the Lessee:
 - (i) If the matter complained of in such Notice is capable of being remedied by the payment of money, has not corrected the matter complained of within a period of five (5) Business Days after the giving of such Notice; or
 - (ii) If the matter complained of in such Notice is not capable of being remedied by the payment of money has not corrected the matter complained of within a period of twenty (20) Business Days after the giving of such Notice, or if a period of more than such twenty (20) Business Days is reasonably required to remedy, with reasonable diligence, the matters complained of in such Notice, has not forthwith commenced to remedy the same and diligently prosecute the remedying of the same to completion;
- (c) If an Event of Insolvency shall have occurred with respect to the Lessee; or
- (d) A breach of an obligation by the Lessee which has resulted in cancellation of insurance coverage where the Lessee has not prior to or concurrent with such cancellation replaced such coverage with comparable coverage or breach of an obligation where there has been a notice of cancellation of insurance coverage which has not been cured and where the Lessee has not, within the period of time set out in such notice (or within ten (10) Business Days where no

period is set out therein) replaced such coverage with comparable coverage or which is otherwise a breach of the obligations respecting insurance; or

(e) Abandonment of the Project by the Lessee; or

(f) If the Substantial Completion Date shall not have been attained by the second anniversary of the Commencement Date,

then the Lessor, at its option, may terminate this Lease by Notice to the Lessee, in which event such termination shall be effective immediately upon the delivery of such Notice and may enter upon the Project with or without process of law and take possession thereof.

- 12.2. **Right to Cure Default.** Without limiting any other remedies the Lessor may have arising out of this Lease or at law in respect of any default in the performance of the Lessee's obligations under this Lease, the Lessor shall have the right, in the case of any default and without any re-entry or termination of this Lease, to enter upon the Project and cure or attempt to cure such default (but this shall not obligate the Lessor to cure or attempt to cure any such default or, after having commenced to cure or attempt to cure such default, prevent the Lessor from ceasing to do so) and the Lessee shall promptly reimburse to the Lessor any expense incurred by the Lessor in so doing and the same shall be recoverable as Additional Rent.
- 12.3. **Other Sums Recoverable as Rent.** All amounts which may from time to time become due from the Lessee to the Lessor under any provision of this Lease (including without limitation amounts due to reimburse the Lessor for the expense of remedying any default by the Lessee or exercising its rights hereunder if an Event of Default shall have occurred) shall, if unpaid, be recoverable (together with interest thereon as provided in Section 3.3) as Rent, and the Lessor shall have all remedies in respect of their non-payment as in the case of a non-payment of Rent.
- 12.4. **Relet Premises.** In addition to any other remedy available to the Lessor, if an Event of Default shall have occurred and be continuing, meaning that it remains outstanding despite notice of such being served and the period of time to cure the default as provided in this Lease has lapsed, the Lessor shall have the right to enter the Project as agent of the Lessee and to relet the Project for whatever length, and on such terms as the Lessor in its discretion may determine and to receive the rent therefore and as agent of the Lessee to take possession of any property of the Lessee on the Project, to store such property at the expense and risk of the Lessee or to sell or otherwise dispose of such property in such manner as the Lessor sees fit without notice to the Lessee; to make alterations to the Project to facilitate their reletting; and to apply the proceeds of any such sale or reletting, first, to the payment of any expenses incurred by the Lessor with respect to any such reletting or sale, second, to the payment of any indebtedness of the Lessee to the Lessor other than Rent and, third, to the payment of Rent in arrears, with the residue to be held by the Lessor and applied to payment of future Rent as it becomes due and payable; provided that the Lessee shall remain liable for any deficiency to the Lessor.
- 12.5. **Remedies of Lessor Generally.** If an Event of Default shall have occurred and be continuing, the Lessor, whether or not the Term shall have been terminated pursuant to the provisions

hereof, may after Notice to the Lessee enter upon and repossess the Project or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove the Lessee and all other persons and any and all property therefrom. The Lessor shall not be under any liability to the Lessee for or by reason of any such entry, repossession or removal. The Lessor shall in addition to the right of re-entry have all other rights and remedies, including damages and injunction, at law or in equity arising upon any default by the Lessee under this Lease. Such remedies are not exclusive or alternative, but the Lessor may from time to time have recourse to all or any of such remedies

- 12.6. **Examination and Inspection.** The Lessor may enter upon the Project at all reasonable times during usual business hours for the purpose of inspecting the Project for the purpose of ascertaining whether all of the obligations of the Lessee under this Lease with respect to the Project are being performed. The Lessor shall not have any duty to make any such inspection nor shall the Lessor incur any liability or obligation to the Lessee for not making any such inspection.

ARTICLE 13 - DETERMINATIONS

- 13.1. **Arbitration.** The Lessor and Lessee will at first instance make reasonable efforts to resolve any disputes under this Lease amicably through negotiation. If any arbitration is expressly permitted or expressly required under this Lease, arbitration proceedings shall be commenced by the party desiring arbitration (herein called the "Initiating Party") and the following principles shall apply to such arbitration:
- (a) Upon Notice from the Initiating Party to the other party (herein called the "Responding Party"), the parties shall meet and attempt to appoint a single arbitrator within ten (10) Business Days. If the parties are unable to agree on a single arbitrator then, upon Notice given by either party and within five (5) Business Days of such Notice, each party shall name an arbitrator and the two arbitrators so named shall promptly thereafter choose a third. If either party shall fail to name an arbitrator within five (5) Business Days from such Notice, then the second arbitrator shall be appointed by a judge of the Superior Court pursuant to the *Arbitrations Act* (Ontario) (as amended or replaced from time to time) upon application of the other party. If the two arbitrators shall fail within five (5) Business Days from their appointment to agree upon and appoint the third arbitrator then, upon application of either party, such third arbitrator shall be appointed by a judge of the Superior Court pursuant to the *Arbitrations Act* (Ontario) (as amended or replaced from time to time). The provisions of the *Arbitrations Act* (Ontario) (as amended or replaced from time to time) shall apply to any such court application pursuant to this Subsection 13.1(a);
 - (b) The arbitrator or arbitrators selected to act hereunder shall be qualified by education and training to pass upon the particular question in dispute. In the absence of objection by Notice by either party to the other given by no later than ten (10) Business Days after Notice of the appointment of each arbitrator has been given, such arbitrator shall be deemed for all purposes to be so qualified;

- (c) The single arbitrator or the arbitrators so chosen shall proceed immediately to hear and determine the question or questions in dispute. The decision and reasons therefor of the single arbitrator, or if more than one arbitrator, then of the arbitrators, or a majority of them, shall be made within twenty (20) Business Days after the appointment of the single arbitrator, if that is the case, or the appointment of the third arbitrator, subject to any reasonable delay due to unforeseen circumstances. Notwithstanding the foregoing, in the event that the single arbitrator fails to make a decision within twenty (20) Business Days after his appointment or if the arbitrators, or a majority of them, fail to make a decision within twenty (20) Business Days after the appointment of the third arbitrator, then either party may elect to have a new single arbitrator or arbitrators chosen in like manner as if none had previously been selected;
- (d) The decision and reasons therefor of the single arbitrator, or the decision and reasons therefor of the arbitrators, or a majority of them, shall be drawn up in writing and signed by the single arbitrator or by the arbitrators, or a majority of them, and shall be final and binding upon the parties hereto as to any question or questions so submitted to arbitration and the parties shall be bound by such decision and perform the terms and conditions thereof;
- (e) The compensation and expenses of the single arbitrator or the arbitrators (unless otherwise determined by the arbitrators at the request of either of the parties hereto) shall be shared in equally by the parties hereto; and
- (f) Neither party hereto shall be deemed to be in default of any matter being arbitrated until five (5) Business Days after the decision of the arbitrator or arbitrators is delivered to both parties hereto.

ARTICLE 14 – ENVIRONMENTAL MATTERS

- 14.1. **No Assurances.** The Lessor provides no representations, warranties, or any assurances to the Lessee as to the ability or inability of the Lessee to develop and subsequently operate the Project, or any activities ancillary to the development and operating of the Project, being affected by environmental factors, including but not limited to potential rising water levels and flooding.
- 14.2. **Lessee's Representations and Warranties.** The Lessee represents and warrants to the Lessor and acknowledges that the Lessor is relying on such representations and warranties in entering into this Lease, that as of the date of this Lease except as disclosed to the Lessor in writing, the Lessee is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order, or any other order or proceeding under any Environmental Laws.
- 14.3. **Compliance with Environmental Laws.**
 - 14.3.1. Notwithstanding any other covenants, agreements or obligations of the Lessee contained in this Lease, the Lessee shall observe and comply with and ensure that any Sublessee observes and complies with all Environmental Laws.

14.3.2. The Lessee shall promptly provide and shall ensure that any Sublessee promptly provides to the Lessor a copy of any assessment, audit, report or test results relating to the environmental condition of the Project (or any part thereof) conducted by or for the Lessee or any Sublessee at any time before, during, or after the Term.

14.3.3. The Lessee shall, at the Lessor's reasonable request from time to time, provide the Lessor with a certificate of a senior officer of the Lessee and any Sublessee certifying that the Lessee or the Sublessee, as the case may be, is in compliance with all Environmental Laws and that no adverse Environmental occurrences have taken place at the Project (or any part thereof), other than as disclosed in writing to the Lessor.

14.4. **Access by Lessor.** Without limiting the Lessor's other rights hereunder and without relieving the Lessee of any of its obligations under this Lease, the Lessee shall, and shall ensure that any Sublessee shall, at such reasonable times as the Lessor requires, permit the Lessor and its designated representatives to enter and inspect the Project (or any part thereof) and the operations conducted at the Project (or any part thereof), to conduct environmental tests and environmental assessments and to take such steps as the Lessor deems necessary for the safety and preservation of the Project (or any part thereof).

14.5. **Removal of Contaminants.**

14.5.1. The Lessee shall:

(a) On the expiry or earlier termination of this Lease;

(b) At any time if required by any Authority pursuant to Environmental Laws; or

(c) If requested by the Lessor where in the Lessor's reasonable opinion the Project (or any part thereof) are contaminated at a level which exceeds a level permitted under Environmental Laws notwithstanding no governmental authority has required any remedial action be taken;

promptly, at its own cost and in accordance with Environmental Laws, remediate or cause to be remediated by removal to a level acceptable under Environmental Laws any contamination of the Project (or any part thereof) or any adjacent property resulting from Contaminants in either case brought onto, used at, or Released from the Project (or any part thereof) by the Lessee or any Sublessee or any person for whom the Lessee or Sublessee is in law responsible.

14.5.2. For greater certainty, the foregoing obligations of the Lessee shall include the treatment of water, including surface and groundwater, and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation under Environmental Laws. Any soil so removed shall be promptly replaced by

soil free of Contaminants at concentrations above the standard described in the preceding sentence.

14.5.3. The Lessee shall provide or cause to be provided to the Lessor full information with respect to any remedial work performed pursuant to this Article 14 and shall comply with the Lessor's reasonable requirements with respect to such work.

14.5.4. The Lessee agrees that if the Lessor reasonably determines that the Lessor, its property, its reputation or the Project (or any part thereof) is placed in any jeopardy by the requirement for any such remedial work, the Lessor may, but shall be under no obligation to, undertake such work or any part thereof at the cost of the Lessee.

14.6. **Ownership of Contaminants.** Notwithstanding any rule of law to the contrary, any Contaminants or improvements or goods containing Contaminants brought onto, used at or Released from the Project (or any part thereof) by the Lessee, any Sublessee, or any Person for whom either of them is in law responsible, shall be and remain the sole and exclusive property of such party and shall not become the property of the Lessor, notwithstanding the degree of their affixation to the Project and notwithstanding the expiry or earlier termination of this Lease. This clause supersedes any other provision of this Lease to the contrary.

14.7. **Survival of Lessee's Obligations.** The obligations of the Lessee under this Article 14 including the Lessee's obligation to remove and remediate Contaminants, and its covenant of confidentiality shall survive the expiry or early termination of this Lease. If, after the expiry or early termination of this Lease, the performance of those obligations by the Lessee requires access to the Project (or any part thereof), the Lessee shall have such access and entry at such times and upon such terms and conditions as the Lessor may, from time to time, specify. The obligations of the Lessee under this Article 14 are in addition to, and shall not limit, the obligations of the Lessee contained in other provisions of this Lease.

ARTICLE 15 - GENERAL

15.1. **Release of Information.** The Lessee acknowledges that the Lessor, being a municipality, is required from time to time to release and communicate information as to its activities to the public. The Lessee hereby consents to the public disclosure of such information regarding this Lease and the associated development as required in the absolute opinion of the Lessor. The Lessor and the Lessee shall make best efforts to coordinate and consult with each other prior to the making of any press releases concerning this Lease and the associated development.

15.2. **Notices.** Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Lease shall be in writing and shall be sufficiently given or made if served personally upon an officer of the party for whom it is intended, or couriered, or mailed by prepaid registered mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender, and in the case of:

(a) To the Lessor, addressed to it at:

Town of Saugeen Shores
600 Tomlinson Drive
P.O. Box 820
Port Elgin, ON N0H 2C0
Attention: Clerk
Fax: (519) 396-8288
Email:

(b) To the Lessee, addressed to it at:

P.O. Box 449
603 Goderich Street
Port Elgin, ON N0H 2C9

Attention:
Fax: 519-832-2037
Email:

or to such other address or in care of such other officers as a party may from time to time advise to the other parties by notice in writing. The date of receipt of any such notice, demand, request, consent, agreement or approval if served personally, by telecopy or email, shall be deemed to be the date of delivery thereof, or if mailed as aforesaid, five (5) business days from mailing.

- 15.3. **Severability.** If any provision of this Lease or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provisions in any other jurisdiction or its applications to other parties or circumstances.
- 15.4. **Further Assurances.** The Lessor and the Lessee and each of them shall and will at all times and from time to time hereafter and upon every reasonable written request so to do, make, do, execute, deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be required for more effectually implementing and carrying out the true intent and meaning of this Lease.
- 15.5. **Remedies Cumulative.** The remedies of a party under this Lease are cumulative and the exercise by such party of any right or remedy for the default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which such party may be lawfully entitled for such default or breach. Any waiver by such party of the strict observance, performance or compliance by another party hereto of or with any term, covenant, condition or agreement herein contained, or any indulgence granted by a party hereto to another party hereto

shall not be deemed to be a waiver of any subsequent default or breach by such other party, not entitle such other party to any similar indulgence.

- 15.6. **Successors.** This Lease is binding on, and enures to the benefit of, the parties and their respective successors.
- 15.7. **Relationship of Parties.** The provisions contained in this Lease shall not be deemed to create any relationship other than that of lessor and lessee as to the Project Lands.
- 15.8. **Time of Essence.** Time is of the essence for this Lease.
- 15.9. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties. There are no oral representations or warranties among the parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both parties.
- 15.10. **Independent Legal Advice.** Each of the parties acknowledges that it has read and understands the terms and conditions of this Lease and acknowledges and agrees that it has had the opportunity to seek, and was not prevented or discouraged by any other party from seeking, any independent legal advice which it considered necessary before the execution and delivery of this Lease and that, if it did not avail itself of that opportunity before signing this Lease, it did so voluntarily without any undue pressure. A failure by a party to obtain independent legal advice shall not be used by it as a defence to the enforcement of its obligations under this Lease.
- 15.11. **Counterparts.** This Lease may be executed and delivered by counterparts with the same effect as if the parties hereto have signed and delivered the same document. All counterparts shall be construed together and shall constitute one and the same agreement. Any delivery of an executed copy of this Lease by way of telecopy, facsimile or email transmission shall constitute delivery hereof.

[SECTION INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF the parties hereto have executed this Indenture of Lease under their respective corporate seals, as of the date first written above.

THE CORPORATION OF THE TOWN OF
SAUGEEN SHORES

By


Name: Luke Charbonneau
Title: Mayor

By


Name: Linda White
Title: Clerk

We have the authority to bind the Corporation of
the Town of Saugeen Shores.

2706913 Ontario Inc.

By


Name: Pier Donnini
Title: President & Chief Executive Officer

I have the authority to bind the Corporation.

SCHEDULE "A"

DESCRIPTION OF PROJECT LANDS – to show the boundaries of the land to be under the care and control of the Lessee under this Lease, to be annexed hereto and deemed as included within this Lease upon confirmation of the Project Plans with respect to the Building

SCHEDULE "B" – ADDITIONAL TERMS

This Schedule is attached and forms part of the Lease, dated December 9th, 2019, between:

LESSOR: Town of Saugeen Shores, and

LESSEE: 2706913 Ontario Inc.

For the Lease of the Project Lands, as further described in Schedule A of the Indenture to Lease, between the parties.

SERVICES IN LIEU OF RENT AND IMPOSITIONS IMPOSED BY LESSOR

1. Upon further written agreement of the Lessor and Lessee, the Lessor may in its absolute discretion accept services provided by the Lessee for the Lessor's and the community's benefit in lieu of the payment of Rent and Impositions under this Lease.

OPERATION OF THE PROJECT

2. The Lessee shall operate the Project as per the Permitted Use as defined in Section 6.1 of the Indenture of Lease according to the following terms and conditions:
 - (a) Services to the community as per the Permitted Use shall be provided on a year-round, and specifically not a seasonally, basis, save for services in which seasonal operation is of a core and integral nature, and approved by the Lessor; and
 - (b) The operating hours for the Project and the Building associated therein shall be limited to:
 - (i) The hours of 6:00 a.m. to 11:00 p.m. (Eastern Time) for any Restaurant located on the Project Lands;
 - (ii) For any banquet hall located on the Project Lands:
 - a. For the months from September to June, inclusive, the hours of 6:00 a.m. to 1 a.m. (Eastern Time); and
 - b. For the months of July and August, the hours of 6:00 a.m. to 11 p.m. (Eastern Time), however, up to twice per week, or additionally with respect to any special event permit, the operating hours may be from 6:00 a.m. to 1 a.m. (Eastern Time)
 - (c) The sale and service of alcohol within the operating hours set out above in subparagraphs (a) and (b) shall be subject to any required approvals from the applicable Authority.

NON-COMPETITION

3. As long as the Lessee is not in default under any terms, covenants, and conditions herein to this Lease, the Lessor will not, without prior written consent of the Lessee, for the period of the Term of the Lease, for property that is south of Elgin Street, north of Izzard Street, and directly adjacent to

Harbour Street, lease land or buildings owned by it, or sublease, to any person, persons, firm association, syndicate, company or corporation engaged in or concerned with or interested in the operation of a Restaurant or banquet hall. However, the restrictions set out above shall not prohibit operation of any existing Restaurants and banquet halls, and their successors, and any ongoing or reoccurring charity events as of the date of this Lease within the area described above, including but not limited to the Harbourlite Restaurant and the Beachside Café.

The Lessee will make reasonable efforts to cooperate with any future charitable and non-profit events proposed for the geographical area provided for within this section.

SITE SERVICING

4. In addition the rights and responsibilities as provided for in the Project Plans, Site Plan, and Site Works and Servicing Agreement, and in no way limiting what is set out therein:
 - (1) The drafting and preparing of the site servicing design for the Project Lands, and all costs associated in preparing such, shall be the responsibility of the Lessor;
 - (2) The servicing of the Project Lands, including but not limited to water, hydro, sanitary, and any other utilities, and the costs associated with obtaining such, shall be the responsibility of the Lessee; and
 - (3) The clearing of the Project Lands to prepare and allow for construction shall be the responsibility of the Lessor, but shall be limited to removing of any existing structures and providing a rough gradient, the sufficiency of which shall be in the sole discretion of the Lessor, for the Project Lands without any importing of soil or fill from outside of the Project Lands

TRAIN PATH AND MAINTENANCE

5. The Lessee shall have the dedicated right, save for the reasonable use and access by the Lessor, to use the path located on the adjoining property to the Project Lands owned by the Lessor as described in the Site Plan, during the Term of this Lease. Upon occupation being given by the Lessor, the Lessee shall furnish the path with gravel to ensure that the existing train tracks are materially at the same elevation as the adjoining surface of the ground. The Lessee shall be responsible for the reasonable maintenance and upkeep of the path, including but not limited to ensuring that such is properly insured in a similar fashion as required under the Lease, the standard of which shall be determined by the Lessor in its absolute discretion.

OUTDOOR PATIO

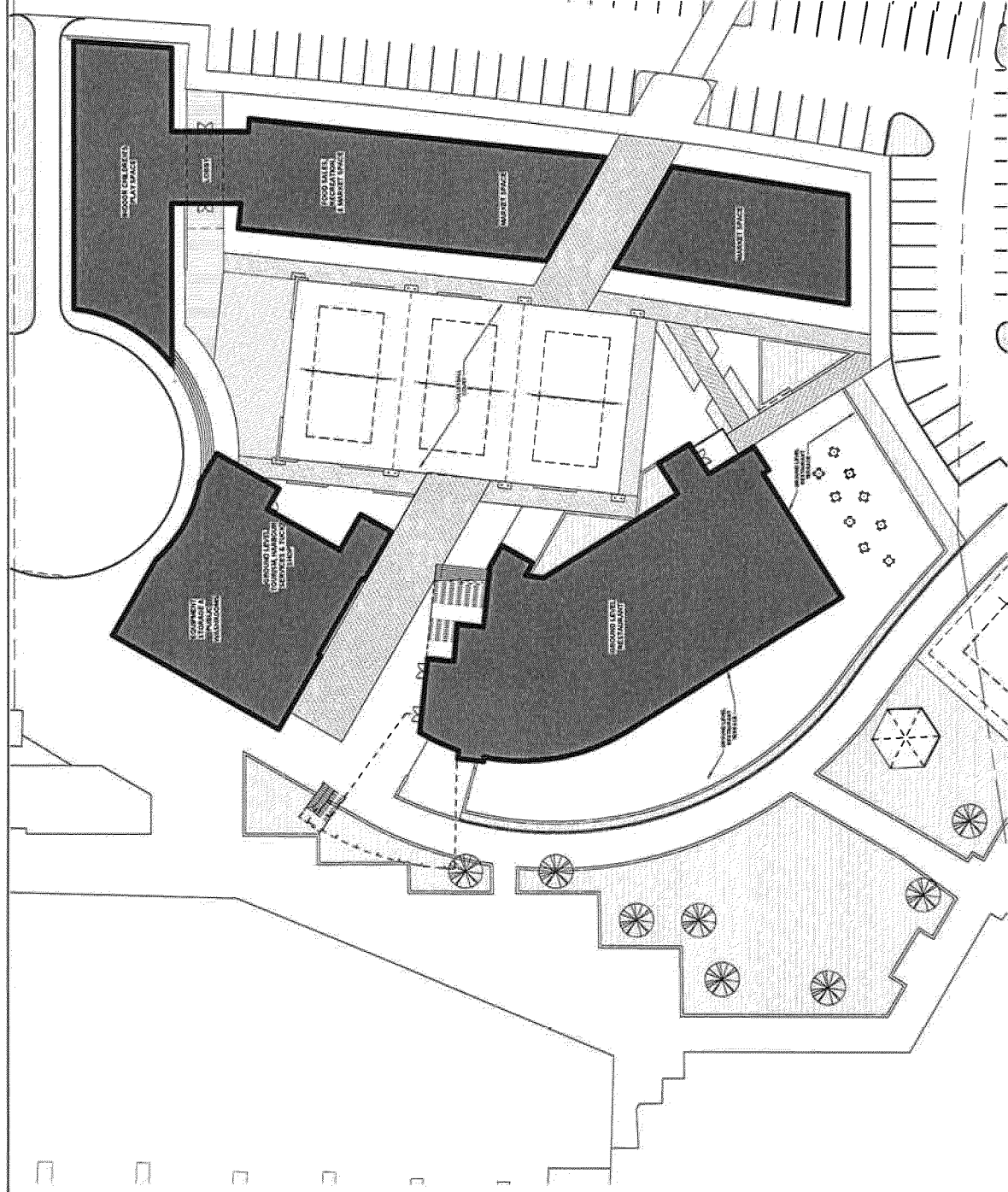
6. Conditional on the Lessee not being in default under any terms, covenants, and conditions herein this Lease, and subject to the approval of the Lessor as to the Site Plan and any other approvals from a required Authority, the Lessor will allow reasonable outside seating in relation to the services provided on the Project Lands.

Schedule C

	Value Added Services: Cedar Crescent Village
1	On site Additional Accessible Public Washrooms. Open to public 12-15 hours per day, year-round. Staffed, cleaned and maintained as well as all associated costs (i.e. utilities etc.)
2	Tourism Office and Staffing – Office location for municipal or county tourism initiatives. Yearly access to space plus staffing
3	Banquet/Meeting space – 50 nights per year of free hall use. Offered to all local Not for Profits for use within non prime hours. i.e. Monday to Wednesday nights or daytimes.
4	Weekly Music/Concert Series: 16 days of music, summer season. Expansion and assumption of Sunday music series (details to be negotiated with staff) Driving arts commitment in our community and bringing people to the waterfront.
5	Free Public Skating and Winter Event Programming – 500 hours of free skating time. Curling, Ice Sculptures, Snowman making events all possible as event programming undertaken by us.
6	Amusement Electric Train – In the off season make train available for events (Santa Claus parade, Pumpkinfest etc.) Not for Profits for fundraisers, parades etc. Up to 500 hours per year.
7	Weekly summer Wednesday Marketplace – Covered Market rain or shine. Offering up to 4000 square feet of covered Market Space to non profits. Very possible extension of season due to covered design as discussed.
8	Volleyball Courts – 250 hours of free court use. 3 courts offered for Community. Typical rental rates run at \$15 per hour per court.
9	Kids Programs, Soft Play and Game Room: 50 nights of free uses donated to children in our community identified as in need. As well, program payment assistance for children who are economically challenged to help them participate in summer programs.
10	Tourism Marketing Campaigns – Social Media. Large extensive campaigns targeting Southwestern Ontario, bordering US states and 3 hours catchment area marketing Saugeen Shores as a destination. Coordinate with Town Tourism Staff to create programs to make community a year-round destination. We are targeting 72,000 identified as potential in Economic Impact study as annual visitors. Sunset tours, boating packages, accommodator packages, sports and activity packages, arts and entertainment events.
11	Wi-Fi friendly access for Cedar Crescent Village. No charge access.

SCHEDULE "D"

SKETCH OF ESTIMATED BUILDING FOOTPRINT FOR RENT PURPOSES



G.M. DIEMERT ARCHITECT INC.
SUITE 201, 957 FOURTH AVE EAST
OWEN SOUND, ONTARIO M4K 2H9
(519) 376-1975

CEDAR CRESCENT VILLAGE BUILDING FOOTPRINT

Schedule "B"

AMENDING AGREEMENT

This Amending Agreement effective this 13th day of June, 2022 (the "Effective Date")

BETWEEN:

THE CORPORATION OF THE TOWN OF SAUGEEN SHORES

(the "Lessor")

AND

2706913 ONTARIO INC.

(the "Lessee")

WHEREAS Lessor and Lessee entered into a Land Lease effective December 9, 2019, a copy of which is attached as Schedule "A" (the "Lease"),

AND WHEREAS The Parties wish the terms of the said Lease as herein provided;

NOW THEREFORE this amending agreement witnesseth that in consideration for the sum of \$1.00 and the terms and conditions of the Lease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Capitalized Terms

1. Unless defined in this amending agreement all capitalized terms shall have the meaning set out in the Lease.

Amendments to Lease

2. Section 1.1 of the Lease is amended such that "Project Lands" is deleted and replaced with the following:

Project Lands means parts of PINS 33269-0100 and 33269-0097, in the community known as Port Elgin, and described as the area outlined in blue on Schedule "A" to this Agreement.

3. Section 1.5 of the Lease shall be amended to read:

"Schedule "D" – Building Footprint for Rent Purposes"


Initials Initials

- 2 -

4. Schedule "A" to the Lease is deleted and replaced with Schedule "A" to this Agreement
5. The document entitled "Schedule "B" – Additional Terms" which is attached as "Schedule B" and forms part of the Lease shall be replaced with a new document entitled "Schedule B – Additional Terms" in the form attached hereto and marked as **Schedule "B"**.
6. The document entitled "Schedule C – Value Added Service: Cedar Crescent Village" which is attached and forms part of the Lease shall be replaced with a new document entitled "Schedule C" in the form attached hereto and marked as **Schedule "C"**.
7. The document entitled "Schedule "D" – Sketch of Estimated Building Footprint for Rent Purposes" shall be replaced with a new document entitled "Schedule D" in the form attached hereto and marked as **Schedule "D"**.
8. The Lessee shall be entitled to cause a reference plan to be completed by an Ontario Land Surveyor describing the Leased Premises as a Part or Parts thereon (the "**Reference Plan**") which Reference Plan and to cause such Reference Plan to be deposited in the relevant land registry office.

General

9. Except as amended by this Amending Agreement, the terms and conditions of the Lease are confirmed and continue in full force and effect and remain unchanged.
10. In the event of any conflict or inconsistency between the Lease and this Amending Agreement, the terms of this Amending Agreement shall govern.
11. This Amending Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, administrators, successors and permitted assigns, as may be applicable.
12. Each of the parties hereto shall from time to time execute and deliver all further documents and instruments and do all things and acts as the other party may reasonably require for carrying out or better evidencing the full intent and meaning of this Amending Agreement.
13. This Amending Agreement may be executed in counterpart and may be delivered by facsimile transmission, electronic transmission, in portable document format (PDF) or by such similar medium, each copy of which so executed shall be deemed to be an original, and all such counterparts shall together constitute the same document.

[Signature page follows]


Initials Initials

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IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**THE CORPORATION OF THE TOWN OF
SAUGEEN SHORES**

Per: _____

Name: Cube Charbonneau

Title: Mayor

Per: _____

Name: Linda White

Title: Clerk

I/We have the authority to bind the corporation

2706913 Ontario Inc.

Per: _____

Name: Piergiorgio Donnini

Title: Authorized Signing Officer

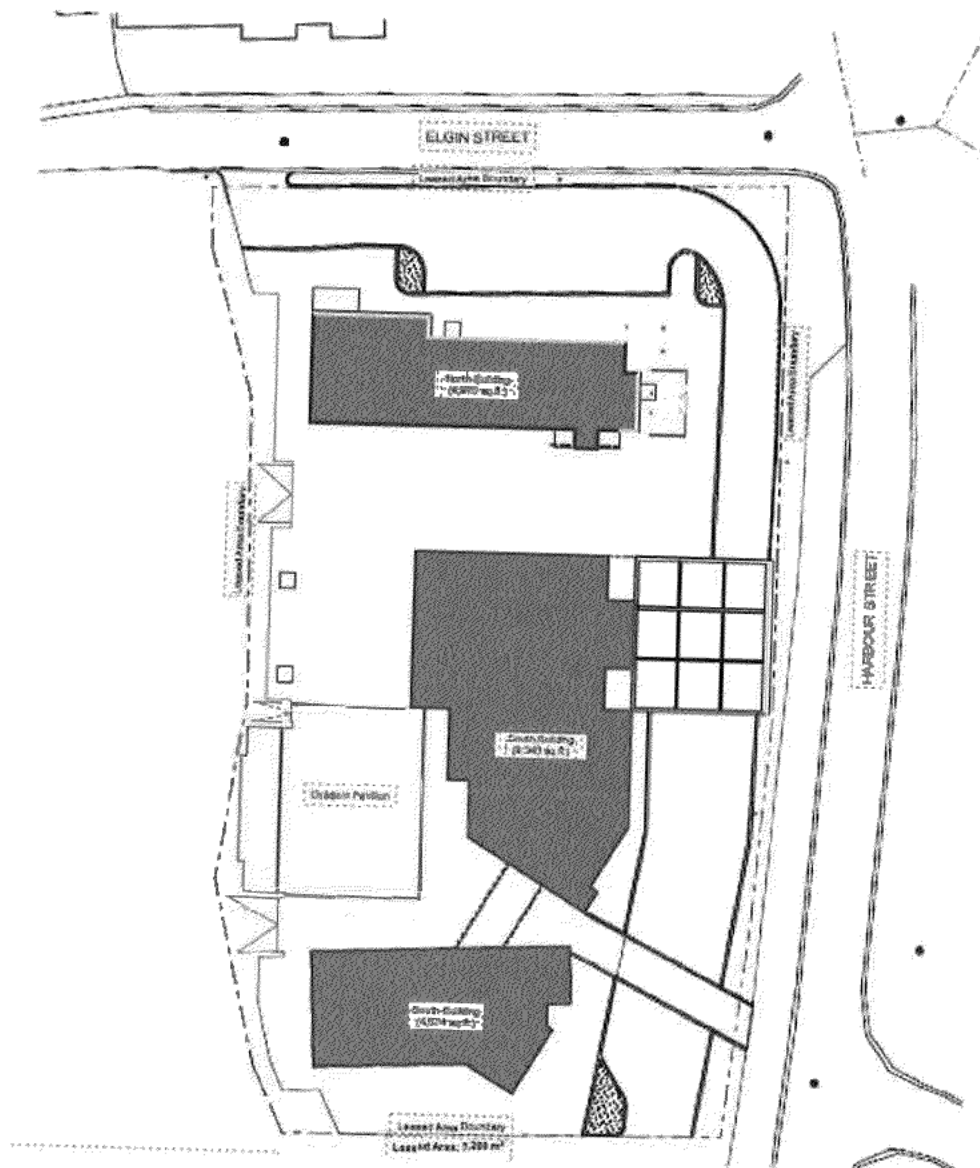
Per: _____

Name:

Title:

I/We have the authority to bind the corporation

SCHEDULE "A" **DESCRIPTION OF LANDS**



Printed: 1/15/15

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SCHEDULE "B"

ADDITIONAL TERMS

This Schedule is attached and forms part of the Lease, dated December 9th, 2019, between:

LESSOR: Town of Saugeen Shores, and

LESSEE: 2706913 Ontario Inc.

For the Lease of the Project Lands, as further described in Schedule A of the Indenture to Lease, between the parties.

SERVICES IN LIEU OF RENT AND IMPOSITIONS IMPOSED BY LESSOR

1. Upon further written agreement of the Lessor and Lessee, the Lessor may in its absolute discretion accept services provided by the Lessee for the Lessor's and the community's benefit in lieu of the payment of Rent and Impositions under this Lease.

OPERATION OF THE PROJECT

2. The Lessee shall operate the Project as per the Permitted Use as defined in Section 6.1 of the Indenture of Lease according to the following terms and conditions:

(a) Services to the community as per the Permitted Use shall be provided on a year-round, and specifically not a seasonal, basis, save for services in which seasonal operation is of a core and integral nature, and approved by the Lessor;

(b) The sale and service of alcohol set out above in subparagraph (a) shall be subject to any required approvals from the applicable Authority; and

(c) Businesses located on the Project Lands may operate within the following hours:

- (i) no establishment may open before 6am;
- (ii) the rules of the Alcohol and Gaming Commission of Ontario with respect to closure shall apply to establishments subject to such rules, where applicable;
- (iii) for all other establishments, closure must occur before midnight (eastern time),

NON-COMPETITION

3. As long as the Lessee is not in default under any terms, covenants, and conditions herein to this Lease, the Lessor will not, without prior written consent of the Lessee, for the period of the


Initials Initials

Term of the Lease, for property that is south of Elgin Street, north of Izzard Street, and directly adjacent to

Harbour Street, lease land or buildings owned by it, or sublease, to any person, persons, firm association, syndicate, company or corporation engaged in or concerned with or interested in the operation of a Restaurant ~~or banquet hall~~. However, the restrictions set out above shall not prohibit operation of any existing Restaurants ~~and banquet halls~~, and their successors, and any ongoing or reoccurring charity events as of the date of this Lease within the area described above, including but not limited to the Harbourlite Restaurant and the Beachside Café.

The Lessee will make reasonable efforts to cooperate with any future charitable and non-profit events proposed for the geographical area provided for within this section.

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OUTDOOR PATIO

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SCHEDULE C

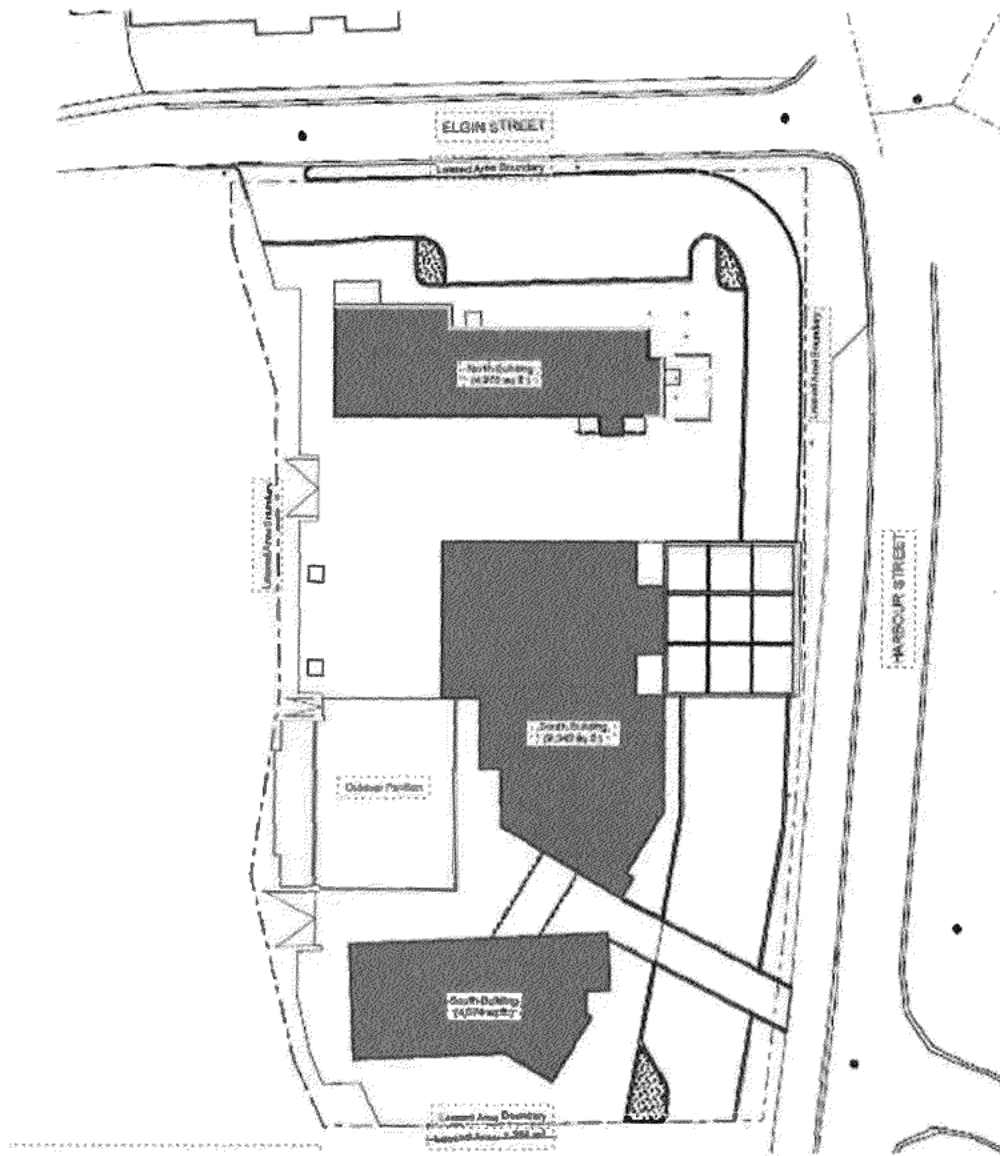
Value Added Services: Cedar Crescent Village

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- 3** Free Public Skating and Winter Event Programming – 500 hours of free skating time. Curling, Ice Sculptures, Snowman making events all possible as event programing undertaken by us, provided a skating rink is constructed.
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- 7** Wi-Fi friendly access for Cedar Crescent Village. No charge access.

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SCHEDULE "D"

BUILDING FOOTPRINT FOR RENT PURPOSES



Initials