

LICENCE AGREEMENT

THIS LICENCE AGREEMENT MADE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

BETWEEN

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

Hereinafter called the "Town" or the "Licensor"

- AND-

**BIRD INVESTMENTS INC.**

Hereinafter called the "Licensee"

WHEREAS the Licensee is the registered owner of certain lands and premises legally described in **Schedule A** attached hereto and known municipally as 188 Mill Street, in the Town of Saugeen Shores, County of Bruce, hereinafter referred to as "Inn Property";

WHEREAS the Licensee operates an Inn business on the Inn Property called "Paradise Inn";

AND WHEREAS the Town is a municipal corporation incorporated pursuant to the *Municipal Act, 2001*, and is the registered owner of Brook Lane, also known as Huron Street on identified on Plan 11, which is an original crown road allowance, and more particularly described in **Schedule A**, hereinafter referred to as "Municipal Property";

AND WHEREAS the Licensee has requested to use a portion of the Municipal Property for the purpose of a parking lot for clientele of Paradise Inn (the "Permitted Use"), the approximate size and location of the parking lot is identified on the sketch attached as **Schedule B**, and hereinafter referred to as the "Licenced Area";

AND WHEREAS the Town is prepared to grant permission for the Licensee to use that part of the Municipal Property identified in Schedule B for the purpose requested, on such terms and conditions as contained herein;

NOW THEREFORE this Agreement witnessed that in consideration of the mutual covenants and agreements hereinafter set out, the parties hereto agree to as follows:

1. The parties hereto agree that the recitals above are accurate and that the recitals and the Schedules attached hereto shall be and form part of this Agreement.

## 2. Grant of Licence

2.1 The Licensor hereby grants to the Licensee the right or privilege to enter upon and use the Licenced Area for the following:

(a) to install and maintain a gravel parking lot at the location and as per the dimensions outlined in Schedule B for the purpose of providing parking for the Paradise Inn clientele;

(b) to operate the parking lot in accordance with the Town's 2021 Sidewalk Patio and Sidewalk Cafe Encroachment Policy and all other applicable laws; and

(c) to place temporarily within the Licenced Area, subject to the Town's prior approval, signage, parking curbs, reflective markers, and any other parking measures deemed appropriate for public safety.

2.2 The Licensee agrees that all maintenance, improvements, repairs and/or demolition of the Licenced Area, or any other parts thereof, shall be conducted in accordance with the prior written approval of the Licensor and shall be at the sole expense of the Licensee.

2.3 The Licensee acknowledges that the Municipal Property is, and has been owned solely by the Licensor and the Licensee hereby relinquishes all claims, rights, title and interest in the said lands, both past, present and future, save and except for any rights that may be created by this agreement.

## 3. Term

3.1 The term of the Licence granted herein shall be for a period of ten (10) years, commencing on the date of signing of this Agreement (the "Term"), unless terminated earlier in accordance with this Agreement.

## 4. Fee

4.1 During the Term of this Licence, the Licensee shall pay to the Licensor an annual fee in accordance with the Town's Fees and Charges By-law, as amended from time to time. The annual fee for 2024 is \$10.54 per square metre. As the Licenced Area is approximately 93 square metres, the fee for 2024 shall be \$980 to be paid upon signing of this Agreement. For 2025, and each year thereafter, the annual fee shall be paid no later than January 15<sup>th</sup> and shall be in accordance with the Town's Fees and Charges By-law applicable for that year.

4.2 In addition to the payment of the fee stipulated in section 4.1, the Licensee shall pay to the Licensor upon signing of this Agreement, a one-time fee of \$ 967.28, representing the Town's legal costs and disbursements incurred to prepare this Agreement.

## 5. Signage

5.1 At the commencement of the Term, the Licensee shall erect, and maintain at all times, appropriate signage, as required by the Licensor, to inform the public that the parking lot is not being maintained by the Town and to use at their own risk.

## 6. Maintenance

6.1 The Licensee shall at all times maintain the parking lot, free and clear from debris, potholes, disrepair, snow and/or ice.

6.2 All work in connection with the operation, maintenance and repair of the parking lot to be performed by the Licensee pursuant to this Agreement shall be performed in a good and workmanlike manner and shall have regard for public safety.

6.3 The Licensee shall hire qualified, competent insured contractors to perform maintenance of the parking lot. Within 5 business days of receiving a request in writing from the Licensor, or within 5 business days of the Licensee hiring a contractor, the Licensee will provide to the Licensor the name(s), qualifications and proof of insurance for any individuals performing any maintenance or work to the Licenced Area.

## 7. Indemnification

7.1 Save and except to the extent caused by the negligence of the Licensor, its servants, agents, employees and contractors, the Licensee shall indemnify and save harmless the Licensor against all actions, suits, claims, damages, costs and liabilities arising out of or as a result of:

(a) any breach, violation, or non-performance by the licensee of any terms, covenants and obligations contained in this Agreement;

(b) any damage to the Licenced Area or the Municipal Property on or over which the gravel parking lot is located, occasioned by the installation, operation or maintenance of the gravel parking lot or by the installation, repair or removal of any features of the gravel parking lot thereon by the Licensee, its servants, agents, employees or contractors;

(c) any injury to or death of, or any damage to property of any person as a result of the installation, operation or maintenance of a gravel parking lot on Municipal property or by the installation, repair or removal of any feature of the gravel parking lot thereon within the Municipal property by the Licensee, its servants, agents, employees or contractors, and

(d) any and all claims for damages and from all liability, loss and expenses arising from or caused by any alleged libellous advertisement related to the Licenced Area.

## 8. Insurance

8.1 The Licensee shall, at its own expense, take out and maintain during the Term of this Licence an insurance policy in such form as used by insurance companies authorized to issue insurance policies in the Province of Ontario, covering all of its undertakings and in particular, public liability and property damage insurance, in an amount not less than \$2,000,000.00.

8.2 The insurance policy referred to in clause 8.1 shall include the Licensor as an additional insured.

8.3 Upon execution of this Agreement, and on each annual anniversary thereof, or at any time upon reasonable request by the Licensor, the Licensee shall provide the Licensor with satisfactory evidence that such insurance as outlined in clause 8.1 is in force.

## 9. Termination by the Licensor

9.1 In addition to other rights it may have, the Licensor shall have the right to terminate this Licence under the following circumstances ("Events of Default"):

(a) if the Licensee is in default of any of its responsibilities, covenants and obligations contained in this Licence;

(b) if the Licensee breaches any provisions in the Sidewalk Café and Sidewalk Patio Encroachment Policy or any Town By-laws or policies;

(c) if the Licensee becomes insolvent or commits any act of insolvency or makes any assignment for creditors;

(d) if the Licensee ceases to operate the Paradise Inn on the Inn property; or

(e) on the advice or instructions of the Licensor's insurer,

provided that any declaration as to any determination made under this clause shall be made in writing and delivered by the Licensor to the Licensee in accordance with the Notice provisions in this Agreement. If circumstances giving rise to the Event of Default has not been corrected within 10 days of the date that notice is given to the Licensee of the default, this Licence shall be deemed to be at an end on the 11th day following the giving of such notice.

9.2 Notwithstanding anything to the contrary, the Licensor shall have the right to terminate this Licence prior to the end of Term if the Licensor requires use of the Municipal Property or has a capital project in this area. In such circumstance, the Licensor shall give the Licensee six (6) months' advance written notice of its intention to terminate this Licence on the date stipulated in the notice.

9.3 The Licensee acknowledges that the Licensor derives its authority to contract with respect to the Licenced Area pursuant to the provisions of the *Municipal Act, 2001*, S.O.

2001, c. 25, and related Town by-laws, as amended from time to time (the "Legislation"). If at any time during the Term, the authority of the Licensor is terminated pursuant to amendments in the legislation either with respect to the Licensor's entire operations, or only with respect to the use of certain municipal properties, then this Licence shall be terminated as of the same date in whole or with respect to those properties so affected by the legislation, and the fee and any additional amounts owed pursuant to this Licence shall be adjusted between the Licensee and the Licensor at the date of such termination on a per diem basis and the Licensor shall not be responsible for any damage or loss which may be incurred by the Licensee by reason of such termination.

9.4 In the event of termination of this Licence at the end of the Term, or on an earlier date for any reason, the Licensee agrees that it shall, forthwith upon termination, remove any structures or items then existing on the Licenced Area at its own cost and return the Municipal Property to the condition that existed prior to the Licensee's use of the Licenced Area.

9.5 In the event that the Licensee fails to comply with all of the terms and conditions of this Agreement, the Licensor may at its sole discretion immediately terminate this agreement and either immediately remove any structures or items placed on in the Licenced Area by the Licensee or at a specified time in the event the Licensee fails to complete the same. In either event the costs of removal shall be paid solely by the Licensee. If the Licensor is required to remove or repair any structure or item, the costs shall be a lien upon the Licensee's land and shall be treated and recovered in a like manner as municipal taxes.

9.6 This Licence may be terminated by the Licensee upon the total removal of the parking lot subject to the approval of the Licensor. No removal activity shall be commenced by the Licensee with out first providing written notice to the Licensor of the intent to remove the parking lot and all requirements of the Licensor relating to the safe removal of the parking lot and any ancillary items must be complied with.

## 10. Licensee's Covenants

The Licensee covenants as follows:

10.1 To pay any fees and any other amounts payable pursuant to this Agreement in a timely manner and in accordance with the provisions of this Agreement.

10.2 That it is a corporation incorporated pursuant to the Province of Ontario and is in good standing.

10.3 That it has authority to enter into this licence agreement and to assume the obligations of the Licensee imposed by this Agreement.

10.4 That it shall at all times during the Term perform all obligations required pursuant to this Agreement in a lawful and good workmanlike manner.

10.5 That it will, at its own expense, promptly observe, perform, execute and comply with all applicable laws, rules, requirements, orders, directions, ordinance and regulations of every Federal, Provincial, or Municipal authority or agency and any instruction from the Licensor concerning the lands, permitted encroachments or other improvements constructed therein or thereon.

10.6 To maintain the Licenced Area in a good state of repair at all times.

10.7 At the termination of the Licence, to peacefully surrender the Licenced Area to the Licensor in good and substantial condition.

10.8 To employ qualified, competent individuals to perform any services and/or work required by this Agreement.

10.9 To fulfill all of its obligations as set out in this Agreement.

## 11. Notice

11.1 Any notice required or permitted to be given or any tender or delivery of documents required to be given under this Agreement shall be in writing, signed by the party and personally delivered or transmitted by facsimile transmission or by electronic or email transmission as follows:

To the Licensee at the following:

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

Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_

To the Licensor at the following address:

Town of Saugeen Shores

Attention: Director, Development Services

600 Tomlinson Drive, P.O. Box 820 Port Elgin, ON NOH 2C0

Email: \_\_\_\_\_

11.2 Any notice or document so given shall be deemed to have been received on the date of personal delivery or electronic or email transmission or on the next business day if transmitted by facsimile transmission. Any party may from time to time by notice in writing to the other party given, as provided above, change the name of the individual listed above or its address for the purposes of this clause.

## 12. Miscellaneous Provisions

12.1 It is agreed by, and is the intention of, the parties that this agreement is a Licence and not a Lease, and as a result, it does not create an interest or any estate to the

Licensee in the Municipal Property. The rights conveyed herein are intended to be non-exclusive.

12.2 Words importing the singular number shall include the plural and vice versa. Words importing the neuter gender shall include the masculine and feminine genders, and words importing persons shall include firms and corporations, and vice versa.

12.3 The construction, interpretation and performance of this Licence and all transactions hereunder shall be governed by the laws of the province of Ontario.

12.4 This Licence agreement shall not be registered in the Bruce County Land Registry Office (LRO#3) against title to the Municipal Property or the Inn property.

12.5 This Licence may not be assigned by the Licensee without the prior written consent of the Licensor, which consent shall not be unreasonably withheld or delayed provided that the assignee shall first enter into a written agreement with the Licensor confirming it is bound by the terms of this agreement and any such assignment shall only be available if the Licensee is not in default under this Agreement.

12.6 The parties agree that this Licence constitutes the entire agreement between the parties with respect to the subject-matter hereof, and that this agreement supersedes all proposals, oral or written, all previous negotiations and all other communications between the parties with respect to the subject-matter hereof.

12.7 No condoning or delay by the Licensor in respect of any default, breach or non-observance by the Licensee of any covenant in this Agreement operates as a waiver of the Licensor's rights under this Agreement.

12.8 If any clause or parts thereof in this Agreement are determined to be unenforceable, they shall be considered separate and severable from the Agreement and the remaining provisions of the Agreement shall remain in full force and effect.

12.9 Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement.

12.10 This Agreement may be executed in counterparts, no one copy of which need to be executed by both the Licensor and Licensee. A valid and binding contract shall arise if and when counterpart execution pages are executed and delivered by both the Licensor and Licensee.

*The Remainder of this Page is Intentionally Left Blank*

SIGNED, SEALED AND DELIVERED this \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2024.

**BIRD INVESTMENTS INC. (Licensee)**

Per \_\_\_\_\_

Name

Position

I have authority to bind the Corporation

**THE CORPORATION OF THE TOWN  
OF SAUGEEN SHORES (Licensor)**

Per \_\_\_\_\_

Luke Charbonneau

Mayor

Per \_\_\_\_\_

Dawn Mittelholtz

Clerk

I/WE have authority to bind the  
Corporation



## **SCHEDULE A**

### Inn Property

PT LT 52 BLK 57 PL 11 PT 1, 3R3692; S/T INTEREST IN R243143; SAUGEEN SHORES; being all of PIN 33269-0081(LT)

### Municipal Property

HURON ST PL 11 BTN MILL ST & GREEN ST; SAUGEEN SHORES; being all of PIN 33270-0164(LT)

# SCHEDULE B

## Licensed Area

