

THIS AGREEMENT made on the ____ day of _____, 2024 ("the Agreement").

B E T W E E N:

THE CORPORATION OF THE TOWN OF PELHAM

("the Town")

- and -

MOUNTAINVIEW SUMMERSIDES INC.

("the Licensee")

WHEREAS the Town owns certain lands situated northeast of the intersection of Hope Lane and Summersides Boulevard in the Town of Pelham ("the Lands"); and

WHEREAS the Licensee is a corporation engaged in the development of an apartment building to be constructed on lands municipally known as 140 Summersides Boulevard ("the Project Site"); and

WHEREAS the Licensee desires to use a portion of the Lands to provide parking for its personnel working at the Project Site ("the Parking Area") and to obtain a licence from the Town for that purpose; and

WHEREAS the Town has agreed to grant a licence to the Licensee subject to the terms and conditions set out in this Agreement; and

WHEREAS the Licensee is a corporation incorporated pursuant to the laws of Ontario and has properly authorized entering into this Agreement; and

WHEREAS By-law No. [XX-2024] was passed by the Council of the Town on [DATE], authorizing the Town to enter into this Agreement;

NOW THEREFORE, IN CONSIDERATION of the covenants and agreements contained herein, the Town and the Licensee (each "a party" and collectively "the parties") agree as follows:

1. TERM

- 1.1. The Term of this Agreement shall commence on July 1, 2024 and continue until May 31, 2026 unless terminated earlier in accordance with the provisions herein.

2. GRANT OF LICENCE

- 2.1. The Town hereby grants to the Licensee and its authorized employees, agents and contractors (collectively "Personnel") a non-exclusive licence to enter onto the Parking Area as shown in Schedule "A", which is attached hereto and forms part of this Agreement, in accordance with all terms and conditions herein.
- 2.2. Nothing in this Agreement shall be construed as granting any easement, title, right or interest in the Lands to the Licensee or Personnel or to create any joint venture, partnership or agency relationship between the parties.

3. USE AND CONDITION OF THE PARKING AREA

- 3.1. The Licensee covenants and agrees that the Parking Area shall be used solely by the Licensee and Personnel to park motor vehicles used by Personnel to travel to the Project Site and for no other purpose.
- 3.2. For greater certainty, the Licensee expressly covenants and agrees that no part of the Parking Area shall be used to hold or operate construction equipment, to receive or store building materials, or to situate temporary sanitary facilities.
- 3.3. Subject to the terms and conditions of this Agreement, the Licensee accepts the Parking Area in the condition existing on the first day of the Term and the Town shall not be required to make any repairs or improvements to it during the Term.
- 3.4. Other than as expressly set out in this Agreement, the Licensee shall undertake no alterations, improvements or works within the Parking Area without the prior consent of the Town.
- 3.5. Upon termination of this Agreement by expiry or otherwise, the Licensee shall not be entitled to reimbursement by the Town for any costs incurred in relation to works, alterations or improvements undertaken by the Licensee pursuant to its obligations under this Agreement or of its own initiative.

4. LICENCE FEE

- 4.1. The Licensee shall pay a licence fee of one hundred dollars (\$100.00) per month for the licence granted under this Agreement, which shall be paid to the Town on or before the fifth (5th) day of each month during the Term.

5. IMPROVEMENTS AND RESTORATION

- 5.1. Prior to any use of the Parking Area by the Licensee or Personnel, the Licensee shall, at its expense and to the satisfaction of the Town, undertake and complete the following improvements within the Parking Area:
 - (a) clear all vegetation and topsoil from the Parking Area;
 - (b) dispose of the cleared vegetation in an appropriate and environmentally responsible manner;
 - (c) remove the cleared topsoil from the Lands and retain it for site restoration or alternate use;

- (d) install a layer of gravel of sufficient depth and quality to be suitable for use of the Parking Area in accordance with this Agreement;
 - (e) surround the Parking Area with a ground-level border to clearly delineate its boundaries and prevent gravel from migrating onto the adjacent Lands and/or roads;
 - (f) provide one (1) access point to the Parking Area for all ingress and egress of motor vehicles; and
 - (g) erect any signage necessary to ensure that use of the Parking Area by the Licensee and Personnel complies with this Agreement.
- 5.2. The Licensee shall be solely responsible for all necessary maintenance and repair of the improvements in subsection 5.1 and any other alterations, improvements or works undertaken by the Licensee in accordance with subsection 3.4.
- 5.3. Upon termination of this Agreement by expiry or otherwise, the Licensee shall, at its expense and to the satisfaction of the Town, remove all installations from the Parking Area, including but not limited to gravel, borders and signage, and shall repair any damage to the Parking Area or the adjacent Lands and/or roads caused by such removal. Unless otherwise agreed in writing to by the parties at the time of termination, the Licensee shall further reinstate the Parking Area with topsoil and seed at its sole expense and to the satisfaction of the Town.
- 5.4. Notwithstanding subsection 5.3 of this Agreement, should the Town determine that it wishes to continue the use of the Parking Area for parking purposes, the Licensee shall not be required to remove the gravel and border or reinstate the Parking Area with topsoil and seed.

6. INSURANCE AND INDEMNITY

- 6.1. During the Term, the Licensee shall obtain and maintain in full force and effect one or more policies of commercial general liability insurance with aggregate limits of not less than five million dollars (\$5,000,000) per occurrence. The policy or policies shall include coverage for bodily injury, death and property damage and shall contain cross-liability and severability of interest clauses.
- 6.2. The Licensee's policy or policies of commercial general liability insurance shall name the Town as an additional insured with respect to this Agreement and shall contain an undertaking by the insurer(s) to give thirty (30) days written notice to the Town of any material change to the coverages and/or the expiry or cancellation of the said policy or policies.
- 6.3. The Licensee shall provide the Town with proof of insurance upon request.
- 6.4. Any failure by the Licensee to obtain or provide proof of insurance as required by this Agreement constitutes a default by the Licensee that entitles the Town to terminate this Agreement immediately and without further notice or liability.

- 6.5. The Licensee and the Town shall each indemnify and save harmless the other and its officers, employees, volunteers and agents from and against all losses, claims, actions, demands and liabilities for personal injury or property damage arising as a direct or indirect result of this Agreement, where such claims are caused wholly or in part by the negligence of the Licensee or the Town, as the case may be, or by anyone for whom it is in law responsible.

7. DEFAULT AND TERMINATION

- 7.1. Failure to comply with any of the terms and conditions of this Agreement shall be just cause for its termination. If either of the Licensee or the Town defaults in the performance of any of its obligations under this Agreement, the non-defaulting party shall give written notice of the default and shall provide thirty (30) days to remedy it, failing which the non-defaulting party may terminate this Agreement immediately by written notice.
- 7.2. The Town and the Licensee shall have the option to terminate this Agreement at any time upon giving thirty (30) days' written notice to the other party.
- 7.3. This Agreement may be amended or terminated at any time during the Term by mutual agreement of the parties. Any such agreement shall be made in writing, signed by the parties and appended to this Agreement.

8. DISPUTE RESOLUTION

- 8.1. If a dispute arises as to the interpretation or execution of this Agreement, the party that disputes the other party's position or conduct shall immediately provide written notice of the dispute to the other party.
- 8.2. Where a notice of dispute is received in accordance with subsection 8.1, the parties shall attempt to resolve the dispute through negotiation for a period of thirty (30) days from the date on which the notice is delivered. The parties may extend the negotiation period if they agree that a reasonable extension is likely to resolve the dispute.
- 8.3. If a dispute cannot be resolved by the parties through negotiation, it shall be arbitrated in accordance with the *Arbitration Act, 1991*, S.O. 1991, c. 17. The decision of the arbitrator shall be final and binding on the parties.
- 8.4. The Licensee and the Town shall each bear their own costs associated with the determination of disputes arising under this Agreement, including but not limited to legal and arbitration costs.

9. GENERAL

- 9.1. This Agreement constitutes the entire agreement between the parties relating to matters set out herein. There are no representations, promises, covenants or other terms relating to the subject matter of this Agreement and this Agreement supersedes any prior discussions, understandings or agreements between the parties in relation to its subject matter.

- 9.2. The rights and obligations specified in any provision of this Agreement which by their nature would reasonably be interpreted as intended by the parties to survive the termination of this Agreement shall survive such termination.
- 9.3. The invalidity or unenforceability of any particular term of this Agreement shall not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms of this Agreement.
- 9.4. Waiver by a party of any provision of this Agreement shall not constitute a waiver in any other instance and any such waiver must be made in writing. Any delay or failure on the part of either party to enforce any right, power or remedy conferred by this Agreement shall not constitute a waiver and shall not operate as a bar to that party exercising or enforcing such right, power or remedy at any subsequent time.
- 9.5. This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.
- 9.6. This Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and laws of Canada applicable therein.
- 9.7. All communications required under or contemplated by this Agreement shall be considered to have been sufficiently given if delivered by hand, sent by registered mail or sent by email to the party to which such notice is directed as set forth below:

If to the Licensee:

NAME

ADDRESS

Attention:

CONTACT NAME

EMAIL

If to the Town:

The Corporation of the Town of Pelham

P.O. Box 400

20 Pelham Town Square

Fonthill ON L0S 1E0

Attention: Jason Marr, Director of Public Works

jmarr@pelham.ca

or such other address of which either party has notified the other, in writing, and any such notice mailed or delivered shall be deemed sufficient under the terms of this Agreement.

- 9.8. Notices delivered or sent by registered mail are deemed to be effective on the date of receipt. Notices sent by email are deemed to be effective on the day the email is sent or, if sent after 4:00 p.m., on the following day.

- 9.9. This Agreement may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email or facsimile transmission.

[signature page follows]

DRAFT

IN WITNESS WHEREOF the parties have executed this Agreement by their authorized representatives and agree to be bound thereby as of the first day of the Term.

THE CORPORATION OF THE TOWN OF PELHAM

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

MOUNTAINVIEW SUMMERSIDES INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

SCHEDULE "A"
THE PARKING AREA

