

**GOLF COURSE RESTAURANT LEASE**

THIS AGREEMENT dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2022 is

BETWEEN:

**DISTRICT OF TUMBLER RIDGE**, of Box 100, Tumbler Ridge, British Columbia,  
VOC2WO

(the "Landlord")

AND: \_\_\_\_\_  
(Name)

Of \_\_\_\_\_  
(Address)

(the "Tenant")

GIVEN THAT:

A. The District is the registered owner of that parcel of land in Tumbler Ridge, British Columbia, having a civic address of 103 Golf Course Road, which parcel is legally described as:

Parcel Identifier: 005-215-838  
Lot 1 District Lot 3164 Peace River District Plan 31188

(the "Land"), on which the District operates a golf course and driving range known as the Tumbler Ridge Golf and Country Club (the "Golf Course");

B. The Land also contains a number of buildings, including:

- (a) a principal building (the "Building"), the first floor of which contains the pro shop for the Golf Course (the "Pro Shop") and the second floor of which contains the Golf Course restaurant, including an outdoor patio deck (the "Restaurant");
- (b) a public cart storage building (the "Cart Storage Building"); and
- (c) a maintenance shed (the "Shed");
- (d) a small storage shed (the "Storage Shed")
- (e) in accordance with section 26 of the *Community Charter* (British Columbia), the Landlord posted and published notice of its intention to lease the Restaurant to the Tenant;

C. There is also on the Land eight (8) constructed sites for parking and use of recreational vehicles (the

“RV Sites”); and

- D. The Landlord hereby wishes to lease the Restaurant, Patio and Storage Shed to the Tenant and the Tenant wishes to lease the Restaurant, Patio and Storage Shed from the Landlord on the terms and conditions herein;

NOW THEREFORE this Agreement is evidence that in consideration of the mutual promises contained in this Agreement, the payment of rent by the Tenant to the Landlord, and other good and valuable consideration (the receipt and sufficiency of which the Landlord and Tenant hereby acknowledge), the parties covenant and agree as follows:

1. **Lease of Restaurant** – The Landlord leases the Restaurant, Patio and Storage Shed to the Tenant and the Tenant leases the Restaurant, Patio and Storage Shed from the Landlord (the "Lease"), on the terms and conditions of this Lease and for the purposes set out in this Lease.
2. **Term** – The term of this Agreement is for the period of this golf season operating year which shall May 15, 2022 or as shortly thereafter as weather permits. The Tenant shall have access no later than May 3, 2022 to the Restaurant, Patio and Storage Shed upon proof of all licenses and insurances as described in this Agreement and access for operations of the Restaurant shall continue up to and including October 15, 2022 (the "Term"). The Term may be extended by mutual agreement of the District and the Tenant, provided:
  - a. during the extended Term, all conditions of this Agreement shall remain in full force and effect unless otherwise mutually agreed to by the District and the Tenant; and
  - b. during the extended Term the Tenant shall pay to the District utilities in an amount that exceeds the utility costs attributable to the premises during the period the premises are normally closed for operations, plus GST (the "Increased Utility Costs"). The utility costs for the premises during last closed season are provided below for the purposes of this calculation. The District shall provide monthly invoices to the Tenant on account of the Increased Utility Costs, and the Tenant shall pay such invoices within 15 days of receipt. Given the variability of utility costs during the closed season, the District agrees to deduct 10% of the Increased Utility Costs from invoices submitted to the lessee.

Month	Hydro	PNG	Total
October	\$1275.91	\$1240.30	\$2516.21 (calculate at ½ month)
November	\$855.74	\$1161.84	\$2017.58
December	\$855.74	\$1308.36	\$2164.10
January	\$639.86	\$1025.57	\$1665.43
February	\$639.86	\$1100.13	\$1739.99
March	\$492.02	\$1125.25	\$1617.27
April	\$492.02	\$637.30	\$1129.32
May	\$1299.25	\$770.73	\$2069.98 (calculate at 1/2month)

\*2019 fees used for Sample Lease Agreement

3. **Renewal** – If the Tenant is not in default under this Lease, the Tenant may have the ability to renew this Lease for 2 (two) additional Terms. The Tenant must give notice to the Landlord, in writing. Ability to renew this Lease will be based on District policy, as amended from time to time. The District is under no contractual obligation to renewal.

Any renewal of the Lease will be subject to approval by Council for the District of Tumbler Ridge and may be subject to successful renegotiation of the Rent. If the Lease is so renewed, then all references in this Lease to the Term include the applicable renewal term.

4. **Permitted Early Termination** – If the Tenant considers that it is not able to operate the Restaurant profitably, despite the best efforts of the Tenant, the Tenant was not able to operate the Restaurant profitably, then the Tenant may terminate this Lease on ninety (90) days written notice, without payment of damages or other compensation to the Landlord.
5. **Rent** – The Tenant must pay the Landlord annual rent in the amount of \$ \_\_\_\_\_ (during the Term (the "Rent")).
6. **Payment of Rent** – The Rent is payable, in advance, in equal monthly installments of \$ \_\_\_\_\_ on the 15th day of each month of the Term. Payments due for a portion of a calendar month shall be prorated based on the number of days in that month. If the first day of the Term is not the first day of a month, then the first instalment of Rent shall be payable on the first day of the Term and prorated as set out herein.
7. **GST** – The Rent does not include GST, and the Tenant shall pay to the Landlord GST (or other equivalent tax as may be imposed from time to time) in addition to the Rent.
8. **Socan License Fees** – The Tenant shall pay all Socan Music Licensing fees related to the restaurant. Socan fees cover all music played or in videos shown to the public. Yearly Socan fees are calculated based on square footage and/or patron attendance of restaurant.
9. **Taxes and Monthly Prepayment of Taxes** – The Tenant shall promptly pay all taxes, levies, charges and assessments in respect of the Restaurant and the Tenant acknowledges that the fact that the Restaurant is owned by the District of Tumbler Ridge does not mean that the Restaurant is property tax exempt while leased by the Tenant. The Tenant shall pay yearly property taxes when property taxes are levied against the Tenant or when invoiced by the District, in accordance with District Property Tax regulations.
10. **Additional Rent** – The Tenant shall also pay to Landlord, from time to time upon demand, as additional rent, all other sums payable to the Landlord pursuant to this Lease (the "Additional Rent"). All references in this Lease to the Rent include Additional Rent.
11. **Net Lease** – Without limiting any other provisions in this Lease but except to the extent that this Lease may expressly provide otherwise, the Tenant agrees that this Lease is absolutely net to the Landlord and the Tenant must promptly pay when due on its own account and without any variation, set-off, or deduction all amounts, charges, costs, duties, expenses, fees, levies, rates, sums, taxes and increases in any way relating to the Restaurant, and that to the extent of any such amounts remain unpaid after they come due, such amounts shall be deemed Additional Rent.
12. **Security Deposit** – Prior to the commencement of the Term, the Tenant shall pay to the Landlord the sum of \$ \_\_\_\_\_ (the "Security Deposit"), as security to the Landlord that the Tenant will promptly and properly perform its obligations under this Lease. If the Tenant fails to pay Rent or fails to meet any of its other obligations under this Lease, the Landlord may choose to use the Security Deposit, or a portion of it to address the Tenant's failure. If the Landlord uses the Security Deposit, or any portion of it, the Tenant must promptly reimburse the Landlord the applicable amount such that the Security Deposit is at all times \$ \_\_\_\_\_. If, at the expiry or other termination of this Lease, the Tenant has fully complied with all its obligations, the Landlord shall return the Security Deposit, without interest, to the Tenant, no later than 3 months past the end Term date.
13. **Permitted Uses** – The Tenant must use and occupy the Restaurant only for the purposes of

operating a restaurant open to the public and, specifically, persons using the Golf Course. Notwithstanding the form of liquor license that may now or in the future apply to the Restaurant, the Tenant shall not operate the Restaurant or any part of it at any times of the day or week as a bar, lounge or cabaret. The Tenant shall not permit any gambling within the Restaurant. The Tenant shall not smoke or permit smoking within the Restaurant.

14. **Hours** – The Tenant must have the Restaurant open for business at least during the following minimum hours of operation unless written permission is received by the District:
  - (a) Monday through Saturday, from 11:00 a.m. to 8: 00 p.m. and;
  - (b) Sunday, from 11:00 a.m. to 2:00 pm.
15. **Special Events** – Notwithstanding section 14 above, the Tenant must have the Restaurant open for business during all special events and tournaments (the "Special Events") being held at the Golf Course, notice of which has been given to the Tenant at least ten (10) days in advance. The Tenant acknowledges that such Special Events may fall outside of the minimum hours of operation set out in section 14 above, and the Tenant will extend its business hours as necessary to accommodate all Special Events of which it has been properly notified as set out herein.
16. **Kitchen Equipment** – This Lease includes the ability for the Tenant to use the kitchen equipment and all dining room furnishings in the Restaurant (all of which is called the "Equipment"), which items are listed on the inventory attached to this Lease as **Schedule "B"**. The Tenant shall pay to the District, within seven (7) days of receiving an invoice from the District, the full cost of any fees or lease amounts owed by the District for leased or rented equipment required to Tenant the restaurant.
17. **Beverage Cart** – the Tenant may supply on course alcohol sales, as permitted and regulated through the liquor license. The District will supply a beverage cart for on course alcohol sales at a rate of \$100 per month that will be payable at the same time as the rent or the Tenant may supply and store their own vehicle for this purpose. This vehicle must receive approval from the District prior to use. If the Tenant choses to sell on course alcohol, the Tenant will be responsible for monitoring and enforcing applicable laws and licensing requirements.
18. **Maintenance of Equipment** – The Tenant must ensure that the Equipment (including ancillary grease traps) is maintained in proper, clean, and safe working order and condition, and if any item should be lost, damaged or no longer in that condition, the Tenant shall be responsible for replacing or repairing the item, at the Tenant's own cost. The Tenant shall not remove any Equipment from the Restaurant except for the purpose of replacing it with items of equal or better quality. The Tenant shall keep proper records of all repairs, maintenance and replacements to the Equipment, and shall provide copies of such records to the Landlord upon request. As a minimum requirement, the Tenant must have all kitchen equipment listed in Schedule "B" serviced by a qualified professional on an annual basis and must deliver to the District, on or before September 30 of each year of the Term, proof of completion of such servicing, to the satisfaction of the District.
19. **Maintenance of Restaurant-** The Tenant must maintain the Restaurant in good and safe condition and consistent with the state of the Restaurant at the commencement of this Lease, subject only to reasonable wear and tear, including, without limitation, floor coverings, light fixtures, painting and decoration, plumbing fixtures, and cabinetry, but the Tenant is not responsible for maintenance or replacements of the structure of the Building, or its exterior condition, or building systems such as the plumbing, electrical, and ventilation systems.
20. **Maintenance Standards-** The Tenant shall ensure that any repairs or maintenance done with respect to the Restaurant, by or on behalf of the Tenant:

- (a) do not affect any structural or foundation elements of the Restaurant or the Golf Course; and;
  - (b) meet or exceed the standards of materials and construction employed in the original construction of the Restaurant and the Golf Course.
- 21. Notice to do Work-** Upon written notice from the Landlord, the Tenant must undertake such work as is required by the Landlord in the notice.
- 22. Tenant Alterations-** The Tenant must not make any improvements, extensions, alterations, additions or renovations to the Restaurant without the consent of the Landlord.
- 23. Tenant's Covenants-** The Tenant covenants and agrees with the Landlord:
- (a) Rent - to promptly pay the Rent and Additional Rent when due;
  - (b) Supplies – to provide all appliances, furnishings, linens, cookware, dishes, cutlery, decorations, food, beverages, menus and other supplies that may be required to use the Restaurant for the purposes of this Lease (the "Supplies"), and the Tenant shall not remove any Supplies, supplied by the District, from the Restaurant except for the purpose of replacing them with items of equal or better quality, and the Tenant shall not grant any security interest in the Supplies, such that the Supplies are liable to be seized in the event of financial difficulties of the Tenant;
  - (c) No Nuisance – not to do, suffer or permit anything that may be or become a nuisance or annoyance in, on or from the Restaurant to the users of the Golf Course or to the owners, occupiers or users of adjoining lands or to the public, including by the accumulation of rubbish or unused personal property of any kind;
  - (d) No Injury - not to do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Restaurant or to the Golf Course or the Lands;
  - (e) Permits – to obtain and strictly comply with all required permits and licenses, including any liquor license, and pay all permit and license fees, and the Tenant acknowledges that the fact that the Restaurant is owned by the District of Tumbler Ridge does not relieve the Tenant from full compliance with municipal bylaws and other requirements;
  - (f) Utilities - pay all telephone, cablevision, internet, operating software and other telecommunication charges payable in respect of the Restaurant and to pay within seven (7) days of receiving an invoice from the District, and any other costs attributable to the tenant;
  - (g) Safety – to take all reasonable precautions to ensure the safety of all persons using the Restaurant;
  - (h) Rubbish – to keep the Restaurant free of any litter, rubbish and debris, and promptly dispose of it in the dumpsters located in the Common Areas, and to reimburse the District for any excess costs incurred by the District to remove excess rubbish resulting from the Tenant's operations at the Restaurant;
  - (i) Compliance with Laws and No Illegal Activities - to comply with any and all laws, statutes, enactments, bylaws, regulations and orders from time to time in force and to obtain all required approvals and permits thereunder, and not to do or permit or omit to do anything in, on or from the Restaurant in contravention thereof and in particular, the Tenant shall not undertake or permit any gambling, drug sales or

other illegal activities from or within the Restaurant;

- (j) Standard – to operate the Restaurant, meeting COVID 19 Guidelines, as a first-class facility, as befits a public restaurant associated with a municipal Golf Course;
- (k) No Abandonment – not to vacate or abandon the Restaurant, or cease to use the Restaurant for the purposes permitted by this Lease, for more than 5 consecutive days; and
- (l) Builders Liens - to promptly discharge any builders' lien which may be filed against the title to the Lands relating to any improvements, work or construction that the Tenant undertakes on the Restaurant and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, work or construction undertaken on the Restaurant.

- 24. Charges on Title** – The Tenant shall abide by and comply with all legal notations filed and all charges registered on title to the Lands as of the execution date of this Lease, and such further charges as the Landlord may grant from time to time in the future, provided that such future charges do not materially interfere with the Tenant's use and occupation of the Restaurant and Common Areas as permitted under this Lease.
- 25. Tenant's Representations and Warranties** – The Tenant represents and warrants that the Tenant has the power and capacity to enter into and carry out its obligations under this Lease, and has completed all necessary steps and preconditions to the validity of this Lease.
- 26. Acknowledgments and Agreements of the Tenant** – The Tenant acknowledges and agrees that:
- (a) No Representations- the Landlord has given no representations or warranties with respect to the Restaurant including, without limitation, with respect to the suitability of the Restaurant for the Tenant's intended use, the size of the Restaurant, the feasibility of the Tenant's operations, the structural stability of the Golf Course or other condition of the Golf Course, or with respect to expected or projected income or profits that the Tenant could expect from the Restaurant;
  - (b) As-Is Basis- the Tenant leases the Restaurant on an "as-is where-is" basis and by taking occupation of the Restaurant, the Tenant confirms that the Restaurant is suitable for its purposes;
  - (c) Ownership- the Lands, the Golf Course, the Restaurant, and all structures, fixtures, and improvements belong at all times to the Landlord.

**27. License and Insurance Requirements**

a) Establishment and Maintenance of Liquor License

The District shall obtain at the expense of the Tenant an Establishment Liquor License through the Liquor Control and Licensing Branch. The Tenant shall be responsible for the payment of all fees associated with this license on or before the end of the Term. The Tenant shall be responsible to adhere to all requirements, licenses, and regulations associated with this License. Any fines levied against the District in association with this License will be the sole expense of the Tenant and will be required to be paid on or before the end of the Term.

b) District of Tumbler Ridge Business License

The Tenant must, at its sole expense, obtain and maintain during the Term a current District Business License under the name of the Tenant contained in this Agreement at the time of signing the Agreement.

c) General Comprehensive Liability Insurance

The Tenant must, at its sole expense, obtain and maintain during the Term comprehensive general liability insurance, covering third party liability claims, providing coverage for death, bodily injury, property loss and damage, arising out of or in connection with the operations, use and occupation of the Land and the Golf Courses in an amount of not less than \$5,000,000.00 per occurrence, or such greater amount as the District may reasonably require from time to time throughout the Term.

d) Workers Compensation Insurance

The Tenant must, at its sole expense, obtain and maintain during the Term be registered and current with provincial worker compensation insurance.

e) Socan Music License

The District shall obtain at the expense of the Tenant a Restaurant Socan Music License through the Socan Rights Management Licensing Branch. The Tenant shall be responsible for the payment of all fees with this license on or before the end of the Term.

**28. Insurance Policies** – Policies of insurance required to be taken out by the Tenant must be with companies satisfactory to the Landlord and must:

- (a) the liability policy in section 27(c) shall name the Landlord as an additional insured, and the "additional insured clause" shall include a severability of interests clause and cross-liability clause;
- (b) the Landlord reserves the right to impose other forms of insurance coverage as would be reasonably required of a prudent tenant;
- (c) it is understood and agreed that the insurance policies will be considered as primary insurance and shall not call into contribution any other insurance that may be available to the Landlord;
- (d) the policy in section 27(c) shall contain a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord or those for whom the Land is in law responsible;
- (e) include that the Landlord is protected notwithstanding any act, neglect or misrepresentation by the Tenant which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
- (f) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- (g) be primary and non-contributing with respect to any policies carried by the Landlord and that any coverage carried by the Landlord is excess coverage;
- (h) all such insurance policies shall stay in force and not be amended, cancelled or allowed to

lapse and shall contain an endorsement to provide the Landlord with thirty (30) days prior written notice to the Chief Administrative Officer of the District of Tumbler Ridge;

- (i) include a cross liability clause; and
  - (j) be on other terms acceptable to the Landlord, acting reasonably.
- 29. Insurance Certificates** – The Tenant must obtain all required insurance at its sole expense and must, at least five (5) days before the commencement of the Term and promptly upon the Landlord's request at such other times during the Term, provide the Landlord with certificates of insurance confirming the placement and maintenance of the required insurance. Failure to provide proof of insurance may result in immediate termination of this Lease.
- 30. Landlord May Insure** – If the Tenant fails to insure as required, the Landlord may, but is not required to, with no notice to the Tenant, effect the insurance in the name and at the expense of the Tenant and the Landlord may collect all costs of such insurance as Additional Rent.
- 31. Damage or Destruction** – The partial destruction or complete destruction by fire or other casualty of the Restaurant or the Building shall not terminate this Lease or entitle the Tenant to surrender possession of the Restaurant or to demand any abatement or reduction of the Rent or other charges payable under this Lease, notwithstanding any law or statute now or in the future to the contrary.
- 32. Tenant's Obligations When Damage or Destruction** – In the event of damage to or destruction of the Restaurant or the Golf Course, the Landlord shall have sixty {60} days to decide whether to repair or reconstruct, or to terminate this Lease, with no compensation to the Tenant. If the Landlord chooses to repair or reconstruct, the Rent shall abate during the time of repair or reconstruction only. If the Landlord chooses to terminate the Lease, Rent shall no longer be payable from the date of the Landlord's notice of termination.
- 33. Quiet Possession** – The Landlord covenants and agrees with the Tenant to permit the Tenant, so long as the Tenant is not in default of the Tenant's obligations under this Lease, to peaceably possess and enjoy the Restaurant for the Term, without interference or disturbance from the Landlord or those claiming by, from or under the Landlord except for the Landlord's express rights under this Lease to enter within the Restaurant.
- 34. Release** – The Tenant hereby releases the Landlord and its elected and appointed officials, officers, employees, agents, successors and assigns (the "Landlord's Representatives") from any and all liabilities, actions, damages, claims, demands, losses, costs, expenses, remediation costs, and harm whatsoever that the Tenant may in any way have, directly or indirectly, in relation to this Lease, the Restaurant, the Common Areas, or the occupation, activities or actions of the Tenant on or from the Restaurant and/or Common Areas.
- 35. Indemnity** – The Tenant shall indemnify and save harmless the Landlord and the Landlord's Representatives from any and all liabilities, actions, damages, claims, demands, losses, costs, expenses, remediation costs, and harm whatsoever (including without limitation, the full amount of all consultant fees, costs, charges and expenses whatsoever) suffered by the Landlord or any of the Landlord's Representatives, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, which may in any way, directly or indirectly, arise from or relate to:
- (a) this Lease;
  - (b) any incident or occurrence in, on or from the Restaurant and/or Common Areas;

- (c) any incident or occurrence in, on or from the Golf Course related to the actions or activities of the Tenant;
  - (d) any breach or default of the Tenant under this Lease;
  - (e) any wrongful act, omission or negligence of the Tenant or any member, director, officer, employee, agent, volunteer, invitee, or licensee of the Tenant or any other person for whom the Tenant is responsible in law.
35. **Survival** – The obligations of the Tenant under sections 33 and 34 survive the expiry or earlier termination of this Lease.
36. **Permission to Enter** – The Landlord or its authorized representative may enter the Restaurant at all reasonable times, without prior notice, for the purposes of inspection of the Restaurant and to determine whether the Tenant is compliance with the terms of this Lease.
37. **Ownership of Improvements at Termination** – At the expiration of the Term, or earlier termination of this Lease, any improvements, extensions, installations, alterations, renovations or additions to the Restaurant, whether done by or on behalf of the Tenant, are forfeited to and become the permanent property of the Landlord, without compensation to the Tenant.
38. **State of Restaurant at Termination** – At the expiration of the Term, or earlier termination of this Lease, the Tenant must leave the Restaurant and the Common Areas, as well as the Equipment, in a safe, clean, proper, and well-maintained condition, excepting only reasonable wear and tear, and if the Tenant fails to do so, the Landlord may take such steps as necessary to do so on behalf of the Tenant and the Tenant must, on demand, compensate the Landlord for all costs incurred by the Landlord or the Landlord may use the Security Deposit for this purpose.
39. **No Assignment or Sublease** – The Tenant shall not assign the Tenant's interest in this Lease, or sublet the Restaurant or any part of the Restaurant, nor may the Tenant charge, mortgage or encumber or purport to charge, mortgage or encumber the Tenant's interest in the Restaurant or this Lease. Nothing in this Lease prevents the Tenant from permitting short-term rentals of the Restaurant for the purposes of weddings, birthday parties and other such short-term events, during which the Tenant remains fully liable for all of its covenants and promises under this Lease. During these short-term rentals, the Tenant may close all or part of the Restaurant to the public.
40. **Landlord's Rights and Remedies** – These sections are contained in Schedule "A".
41. **Holding Over** – If the Tenant continues to occupy the Restaurant with the written consent of the Landlord after the expiration of the Term or earlier termination of this Lease, then, without any further written agreement, the Tenant shall be a monthly lessee paying monthly rent in an amount of \$\_\_\_\_\_ and subject always to the other provisions in this Lease insofar as the same are applicable to a month to month tenancy, and a tenancy from year to year shall not be created by implication of law, and nothing shall preclude the Landlord from taking action for recovery of possession of the Restaurant.
42. **Remedies Cumulative** – No reference to or exercise of any specific right or remedy by the Landlord prejudices or precludes the Landlord from any other remedy, whether allowed at law or in equity or expressly provided for in this Lease. No such remedy is exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination.
43. **Environmental Provisions**
- (a) In this Lease:

- (i) "Environmental Contaminants" means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable, explosive or radioactive materials, noxious substances, mould, and any other substances or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, regulated, controlled or licensed under Environmental Laws; and
  - (ii) "Environmental Laws" means any laws, statutes, regulations, orders, bylaws, permits, or lawful requirements of any government authority with respect to environmental protection, or regulating, controlling, licensing or prohibiting Environmental Contaminants.
- (b) It is the sole responsibility of the Tenant to satisfy itself with respect to the environmental conditions of the Restaurant and the Tenant covenants and agrees with the Landlord to:
- (i) use the Restaurant and Common Areas in strict compliance with all Environmental Laws;
  - (ii) not store, manufacture, dispose, treat, generate, use, transport, remediate, or release Environmental Contaminants on or from the Restaurant, the Common Areas, the Golf Course, or the Lands;
  - (iii) promptly remove any Environmental Contaminants for which it is responsible from the Restaurant, the Common Areas, the Golf Course, and the Lands in a manner that conforms to Environmental Laws governing their removal.

**44. No Joint Venture** – This Lease is intended to create only the relationship of Landlord and Tenant, and nothing in this Lease creates the relationship of principal and agent, or of partnership, joint venture or business enterprise or gives the Tenant any power or authority to bind the Landlord in any way.

**45. Interpretation** — In this Lease:

- (a) reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
- (b) an "enactment" is a reference to an enactment as that term is defined in the *Interpretation Act* (British Columbia) on the day this Lease is made;
- (c) any enactment is a reference to that enactment as amended, revised, consolidated or replaced;
- (d) section headings are inserted for ease of reference and are not to be used in interpreting this Lease;
- (e) time is of the essence; and
- (f) where the word "including" is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word "including".

**46. Notices** – Where any notice, request, direction or other communication (any of which is a "Notice") must be given or made by a party under the Lease, it must be in writing and is effective if delivered by hand to the Restaurant or the Landlord's Municipal Hall, if sent by registered mail

addressed to the party for whom it is intended at the address set forth above in the Lease, or if sent by fax to the Landlord at fax number (250) 242-3993, as the case may be, provided that any Notice to the Landlord must be to the attention of the Chief Administrative Officer. Any Notice is deemed to have been given if delivered by hand, when delivered; if by registered mail, when the postal receipt is acknowledged by the other party; and, if by fax, when transmitted. The address or fax number of a party may be changed by notice in the manner set out in this provision.

47. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the Landlord's rights and powers in the exercise of its functions pursuant to the *Local Government Act* (British Columbia) or the *Community Charter* (British Columbia), or their successor enactments, or its rights and powers under any enactment to the extent the same are applicable to the Lands, all of which may be fully and effectively exercised in relation to the Restaurant as if this Lease had not been fully executed and delivered.
48. **Landlord Discretion** – Wherever in this Lease the approval or consent of the Landlord is required, some act or thing is to be done to the Landlord's satisfaction, the Landlord is entitled to form an opinion, or the Landlord is given discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the Landlord or its authorized representative;
  - (b) the approval, consent, opinion or satisfaction is in the sole discretion of the Landlord;
  - (c) any discretion of the Landlord is not subject to public law duties and the principles of procedural fairness and the rules of natural justice have no application; and
  - (d) the discretion of the Landlord is deemed to be the sole, absolute and unfettered discretion of the Landlord.
49. **Severance** – If any portion of this Lease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of the Lease.
50. **Binding on Successors** – This Lease endures to the benefit of and is binding upon the parties and their respective corporate successors, notwithstanding any rule of law or equity to the contrary.
51. **Laws of British Columbia** – This Lease must be construed according to the laws of the Province of British Columbia.
52. **Whole Agreement** – The provisions in this Lease constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Lease.
53. **Registration of lease** – The Tenant, if it chooses to register this Lease in the Land Title Office, is responsible for all costs of registration, including any applicable property transfer tax pursuant to the *Property Transfer Tax Act* (British Columbia) and including possibly the preparation of a survey plan of the area of the Restaurant.
54. **Waiver or Non-Action** – Waiver by the Landlord of any breach of this Lease by the Tenant must not be deemed to be a waiver of any subsequent breach by the Tenant. Failure by the Landlord to take any action in respect of any breach of this Lease by the Tenant must not be

deemed to be a waiver of such breach. All waivers must be in writing.

55. **Joint and Several** – Where the Tenant consists of more than one person, the term "Tenant" shall mean all such persons jointly and severally.
56. **Schedules** – List of Schedules is as follows:  
Schedule "A" - Landlord's Rights and Remedies

SAMPLE

As evidence of their agreement to be bound contractually by the terms and conditions contained in this Lease, the parties have executed and delivered this Lease on the dates set out below:

**DISTRICT OF TUMBLER RIDGE**, by its authorized signatories:

\_\_\_\_\_  
Mayor Keith Bertrand

\_\_\_\_\_  
Corporate Officer

\_\_\_\_\_  
Date

Signed Sealed and Delivered in the presence of:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

SAMPLE

**Schedule "A"**  
**Landlord's Rights and Remedies**

**28. LANDLORD'S RIGHTS AND REMEDIES**

**28.1 Default**

If and whenever:

- (a) the Rent hereby reserved, or any part thereof, is not paid on the day appointed for payment thereof, whether demanded or not, or
- (b) in the case of breach or non-observance or non-performance of any of the covenants, agreements, provisos, conditions, or rules and regulations on the part of the Tenant to be kept, observed, or performed, or
- (c) in case the Term is taken in execution of attachment for any cause whatsoever,
- (d) if, without being permitted under this Lease, the Restaurant should be used by any person other than the Tenant, or for any purpose other than that for which the same was let, or

then if the Landlord considers the default is curable by the Tenant, the Landlord may give to the Tenant notice of such default and if at the expiration of 15 days after the giving of such notice the default continues to exist, or if the Landlord considers the default to be non-curable, then in every such case, it will be lawful for the Landlord at any time thereafter to enter into and upon the Restaurant or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease contained to the contrary notwithstanding.

Whenever the Landlord is entitled to re-enter the Restaurant it may, at its option and without limiting its other remedies, terminate the Lease and, if so terminated, the full amount of Rent for that part of the Term that would have remained will become due and payable.

If this Lease is so terminated, the Landlord, to the extent permitted by law, may immediately repossess the Restaurant, sell or dispose of such Tenant's fixtures, trade fixtures, personal property or leasehold improvements therein as the Landlord considers appropriate, or store any of the Tenant's fixtures, trade fixtures, personal property or leasehold improvements therein in a public warehouse or elsewhere at the cost of the Tenant, all without service of notice, without legal proceedings, and without liability for loss or damage and wholly without prejudice to the rights of the Landlord to recover arrears of Rent or damages for any default by the Tenant of its obligations or agreements under this Lease or of any term or condition of this Lease, and wholly without prejudice to the rights of the Landlord to recover from the Tenant damages for loss of Rent suffered by reason of this Lease having been prematurely terminated, and the Landlord reserves a right to claim all costs (on a solicitor and client basis) losses, damages, and expenses arising from the Tenant's breach.

## 28.2 Right of landlord to Relet

If the Restaurant is abandoned or vacated or the Tenant is not carrying on operations therein as required by this Lease or the Tenant is otherwise in default pursuant to section 28.5, the Landlord will have the right, if it thinks fit, to enter the same as the agent of the Tenant either by force or otherwise, without being liable to any prosecution therefor and without terminating this Lease, to make such alterations and repairs as in the Landlord's opinion are necessary to facilitate a re-letting of the Restaurant, and to re-let the Restaurant as the agent of and at the risk of the Tenant and to receive the Rent therefor.

Upon each such re-letting, all Rent received by the Landlord from such re-letting will be applied: first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of such re-letting, including brokerage and solicitor's fees, and of costs of any alterations and repairs; and third, to the payment of Rent due and unpaid hereunder. The residue, if any, will be held by the Landlord and applied in payment of future Rent as the same becomes due and payable hereunder. If such Rent received from such re-letting during any month is less than that to be paid during that month by the Tenant hereunder, the Tenant will pay any such deficiency, which will be calculated and paid monthly in advance on or before the first day of each and every month.

No such re-entry or taking possession of the Restaurant by the Landlord pursuant to this clause 28.2 will be construed as an election on its part to terminate this Lease, unless a written notice of such intention is given to the Tenant.

## 28.3 Bankruptcy

If, during the Term:

- (a) any of the goods or chattels of the Tenant are at any time seized or threatened to be seized in execution or attachment by any creditor of the Tenant, or
- (b) the Term should be taken in execution or attachment for any cause whatever, or any steps or proceedings commenced in that respect, or
- (c) if a receiver or receiver-manager should be appointed in respect of any property of the Tenant, or any steps or proceedings commenced in that respect, or
- (d) the Tenant should make any assignment for the benefit of creditors or any bulk sale or become bankrupt or insolvent or take the benefit of any applicable law now or hereafter in force for bankrupt or insolvent debtors, or any steps or proceedings commenced in any of those respects, or
- (e) if the Tenant receives from any of its secured creditors a notice under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, advising the Tenant that the secured creditor intends to realize upon security located at the Restaurant and/or Common Areas, or
- (d) if the Tenant is a corporation and any order should be made for the winding-up of the Tenant or other termination of the corporate existence of the Tenant, or any steps or proceedings commenced in those respects,

then in any such case at the option of the Landlord this Lease will cease and determine and the

Term will immediately become forfeited and void and the then-current month's Rent and the next ensuing three months' Rent will immediately become due and be paid and the Landlord may immediately claim the same together with any arrears then unpaid and any other amounts owing to the Landlord by the Tenant, and the Landlord may without notice or any form of legal process forthwith re-enter upon and take possession of the Restaurant and become the owner of and remove the Tenant's effects therefrom, any statute or law to the contrary notwithstanding, the whole without prejudice to and under reserve of all other rights, remedies, and recourses of the Landlord.

#### **28.4 Reorganization of Debts**

If, during the Term, the Tenant takes any action or commences any proceeding, or any action or proceeding is being taken or commenced by another person or persons against the Tenant relating to the reorganization, readjustments, compromise or settlement of the debts owed by the Tenant to its creditors, including, without limitation, the filing of a notice of intention to make a proposal or the filing of a proposal pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada), the making of an order under the *Companies' Creditors Arrangement Act* (Canada) or the commencement of any similar action or proceeding by the Tenant or such person or persons, then, in any such case, at the option of the Landlord, this Lease will cease and determine and the Term will immediately become forfeited and void and the then-current month's Rent and the next ensuing three months' Rent will immediately become due and be paid and the Landlord may immediately claim the same, together with any arrears then unpaid and any other amounts owing to the Landlord by the Tenant, and the Landlord may without notice or any form of legal process forthwith re-enter upon and take possession of the Restaurant and become the owner of and remove the Tenant's effects therefrom, any statute or law to the contrary notwithstanding, the whole without prejudice to and under reserve of all other rights, remedies, and recourses of the Landlord.

#### **28.5 Winding Up**

If, during the Term, the Tenant takes any action or commences any proceeding, or any action or proceeding is being taken or commenced by another person or persons against the Tenant in respect of the liquidation, dissolution or winding up of the Tenant, including without limitation, any action or proceeding under the *Winding-Up and Restructuring Act*, the *Business Corporations Act*, the *Canada Business Corporations Act* or other similar legislation, then, in any such case, at the option of the Landlord, this Lease will cease and determine and the Term will immediately become forfeited and void and the then-current month's Rent and the next ensuing three months' Rent will immediately become due and be paid and the Landlord may immediately claim the same, together with any arrears then unpaid and any other amounts owing to the Landlord by the Tenant, and the Landlord may without notice or any form of legal process forthwith re-enter upon and take possession of the Restaurant and become the owner of and remove the Tenant's effects therefrom, any statute or law to the contrary notwithstanding, the whole without prejudice to and under reserve of all other rights, remedies, and recourses of the Landlord.

#### **28.6 Bankruptcy and Insolvency Act**

The Tenant acknowledges and agrees that under no circumstances will it file any notice of termination, rescission or disclaimer seeking to take advantage of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time, and now waives any and all rights to do so. The Tenant agrees that if, in breach of this section, it files such a notice, the Landlord may, in addition to all of its other remedies, produce and rely on this section in challenging the validity of the notice in the court proceedings contemplated by s. 65.2(2) of the

*Bankruptcy and Insolvency Act*, and the Landlord may, in those or any other proceedings, apply for injunctive or other relief against the Tenant filing the notice.

#### **28.7 Right of Landlord to Seize**

The Tenant waives and renounces the benefit of any present or future law taking away or limiting the Landlord's rights against the property of the Tenant and, notwithstanding any such law, the Landlord may seize and sell (either by public or private sale) all of the Tenant's goods and property which at any time have been located within the Restaurant and Common Areas, and apply the proceeds of such sale upon Rent outstanding and upon the costs of the seizure and sale, in the same manner as might have been done if such law had not been passed. The Tenant further agrees that if it leaves the Restaurant, leaving any Rent unpaid, the Landlord, in addition to any remedy otherwise provided by law, may follow, seize, and sell such goods and property of the Tenant at any place to which the Tenant or any other person may have removed them, in the same manner as if such goods and property had remained upon the Restaurant and Common Areas.

#### **28.8 Fraudulent or Clandestine Removal of Goods**

Removal by the Tenant of its goods outside the ordinary course of its operations either during or after public hours will be deemed to be a fraudulent or clandestine act, thereby enabling the Landlord to avail itself of all remedies at law including, but not limited to, the Landlord's rights to follow the Tenant's goods and to recover more than the value of the goods so removed.

#### **28.9 Right of Landlord to Perform Tenant's Covenants**

If at any time the Tenant defaults in the observance or performance of any obligation herein contained on its part to be observed or performed and so often as the default happens, then the Landlord may, but will not be obligated so to do, without waiving or releasing the Tenant from its obligations under this Lease, itself observe and perform the covenant or covenants in respect of which the Tenant has made default or make payment of the amounts the Tenant has failed to pay, and all costs and expenses incurred by the Landlord in the observance or performance of such covenant or covenants, including, without limitation, legal costs on a solicitor-client basis, and any amounts so paid by the Landlord will bear interest at 6% p.a. from the date such amounts are paid until repaid by the Tenant to the Landlord, and will be a charge on the Restaurant in favour of the Landlord in priority to the interest of the Tenant hereunder and of any person claiming through or under the Tenant, and all such costs, expenses, and amounts and interest thereon will be payable forthwith by the Tenant to the Landlord, and the Tenant covenants to pay the same forthwith on demand by the Landlord, and the same will be treated as Additional Rent due and payable to the Landlord hereunder, and the Landlord will have the same rights and remedies and may take the same steps for recovery thereof as for the recovery of Additional Rent in arrears.

#### **28.10 Payment of Landlord's Expenses**

If at any time an action is brought or the Landlord is otherwise required to employ the services of a bailiff, an agent, or its solicitors for recovery of possession of the Restaurant, recovery of Rent or any part thereof, or because of a breach by act or omission of any covenant herein contained on the part of the Tenant, the Tenant will pay to the Landlord all expenses incurred by the Landlord in the enforcement of its rights and remedies hereunder (including the Landlord's administrative costs in connection therewith) together with interest thereon at 6% p.a. from the date such expenses are incurred until paid, whether or not any formal proceedings in or before any court, arbitrator, or other tribunal will have been initiated.

**28.11 Interest**

The Tenant will pay to the Landlord interest at the rate equal to 6.0% per annum on all payments of Rent which have become overdue so long as such payments remain unpaid.

**28.12 Non-acceptance of Surrender**

No acceptance of keys for the Restaurant by the Landlord and no other act of the Landlord will be considered as an acceptance by the Landlord (implied or otherwise) of a surrender of this Lease by the Tenant. Only a written acknowledgment of surrender agreement executed by two {2} authorized representatives of the Landlord will be effective as an acceptance by the Landlord of a surrender of this Lease.

**END OF DOCUMENT**