



LICENCE OF OCCUPATION

OUR FILE: 2380-21

THIS AGREEMENT, for a Beach Vending Licence of Occupation, is effective as of [insert date], 2023 ("Effective Date"),

BETWEEN:

THE CORPORATION OF THE DISTRICT OF SUMMERLAND,
13211 Henry Avenue, PO Box 159
Summerland, BC V0H 1Z0
(the "District")

AND:

<LEGAL NAME>
<ADDRESS>
(the "Licensee")

WHEREAS:

- A. The District is the registered owner in fee simple of the parcels of land located at 13827 Lakeshore Drive Lot 4037 (Gordon Beggs Rotary Beach), 14877 Lakeshore Drive (Peach Orchard Beach), and 6511 Powell Beach Road (Powell Beach), as outlined in Schedule B.

(the "Lands");
- B. The Licensee may operate their mobile truck in Summerland as per Business Licence and Regulations Bylaw No. 95-004. This Licence of Occupation provides authorization to operate only in the locations outlined in Schedule B;
- C. The District wishes to grant to the Licensee a non-exclusive licence to use and occupy the Licence Area on the terms and conditions of this Agreement;
- D. The District has the sole discretion to change vending locations as outlined in Schedule B with twenty-four (24) hours notice to the Licensee;

THIS AGREEMENT is evidence that, in consideration of the licence fee to be paid and the promises exchanged below and other good and valuable consideration (the receipt and sufficiency of which

the parties hereby acknowledge), the District and the Licensee agree as follows:

1. **Licence** – The District hereby grants to the Licensee, upon written proof that the Licensee holds a current and valid business licence, a non-exclusive licence to enter upon and use the sites at the Lands (the “Licence Area”), as shown in Schedule B, on the terms and conditions set out in this Agreement.
2. **Term** – The term of this Agreement is for one season (the “Term”), commencing on **May 19, 2023** (the “Commencement Date”) and expiring on **September 30, 2023**.
3. **Licence Fee** – The Licensee shall pay to the District a seasonal licence fee of \$700.00 (the “Licence Fee”), which amount excludes GST and any other applicable taxes. The Licensee shall pay the half amount of the Licence Fee (\$350.00) on or before the date of signing of the agreement and the remaining half (\$350.00) on or before August 1, 2023. All payments are non-refundable.
4. **Use of Licence Area** – The Licensee shall only use and occupy the Licence Area for the purpose of concession vending and for no other purpose whatsoever.
5. **Licensee Covenants** – The Licensee shall:
 - (a) promptly pay when due, the Licence Fee and any other amounts required to be paid by it under this Agreement;
 - (b) not do, suffer, or permit anything in, on, or from the Licence Area that may be or become a nuisance or annoyance to other occupiers or users of the Lands, or to the owners, occupiers, or users of other land or premises adjacent to or near the Licence Area, or to the public, including the accumulation of rubbish or unused personal property of any kind;
 - (c) keep and maintain the immediate operating area in a safe, tidy, and sanitary condition;
 - (d) use the Licence Area only for the purpose set out in section 4 of this Agreement;
 - (e) take all reasonable precautions to ensure the safety of all persons using the Licence Area in respect to the services provided under this agreement;
 - (f) provide the District with a copy of a valid Food Safe certificate as per the current Health Act Regulations;
 - (g) not commit or allow any wilful or voluntary waste or destruction of the Licence Area;
 - (h) not permit the accumulation of rubbish of any kind on the Licence Area;
 - (i) not display any sign or notice on or in the Licence Area unless the sign or notice has first been approved by the District;
 - (j) not use or sell products that are perceived by the District to present a safety hazard or

risk, or are otherwise not approved by the District for use or sale at the Licence Area, as may be communicated by notice from the District from time to time;

- (k) carry on and conduct its activities in, on, and from the Licence Area in compliance 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 omit to do anything in, on, or from the Licence Area in contravention thereof;
 - (l) operate only within the posted park operational hours or as outlined in Bylaw No. 95-013 (A Bylaw to regulate use of public parks, public beaches and municipal property within the corporate limits of the District;
 - (m) The Licensee shall remove all equipment and vehicles brought onto the Licence Area prior to park closure each day and shall leave the Licence Area in good repair and in a clean, tidy, safe condition. Any items not removed by the Licensee at park closure may be removed by the District. If the Licensee has not recovered the items from the District within thirty (30) days of abandonment, the items shall be absolutely forfeited to and become the property of the District and the District may, at its sole option, retain the items or it may remove and dispose of them. The cost of removal and disposal of any items shall be charged to the Licensee, and shall be paid by the Licensee to the District forthwith; and
 - (n) respect and uphold that vending locations are available on a first come basis among approved vendors and public parking.
6. **Security** – The District shall have no responsibility whatsoever for the security of the Licence Area or the Licensee’s property on the Licence Area, the sole responsibility for which rests with the Licensee, and the Licensee hereby releases the District from all claims, actions, damages, liabilities, losses, costs, and expenses whatsoever as may be suffered by the Licensee arising from or related to any lack of security at the Licence Area.
 7. **Licensee Improvements** – The Licensee shall not construct any improvements or installations on the Licence Area without the prior written consent of the District.
 8. **Minimum Work Standards** – The Licensee shall ensure that any improvements to or work done with respect to the Licence Area, including any improvements or alterations approved by the District, done by or on behalf of the Licensee comply with all applicable laws, statutes, enactments, regulations, bylaws and orders from time to time in force, including the applicable building code and bylaws of the District of Summerland.
 9. **Insurance Requirements** – The Licensee shall obtain and maintain during the Term insurance in accordance with the requirements of Schedule “A”. For clarity, the insurance requirements set out in Schedule “A” are minimum requirements and are not to be interpreted in a manner that limits the Licensee’s obligations under this Agreement and the Licensee shall be responsible for obtaining and maintaining such additional insurance as would a prudent licensee having similar obligations and interests to those of the Licensee under the terms of this Agreement.

10. **Insurance Certificates** – The Licensee shall, within ten (10) business days of the Effective Date of this Agreement and upon the District’s request from time to time during the Term, provide the District with certificates of insurance confirming the placement and maintenance of the required insurance.
11. **District May Insure** – If the Licensee fails to insure as required, the District may, after ten (10) business days’ notice to the Licensee, effect the insurance in the name and at the expense of the Licensee and the Licensee shall repay the District all costs reasonably incurred by the District within twenty-one (21) days of receipt of an invoice. For clarity, the District has no obligation to obtain any insurance required to be maintained by the Licensee under this Agreement.
12. **Licensee Indemnity** – The Licensee shall indemnify and save harmless the District and its elected and appointed officials, officers, employees, contractors, agents and others from and against any claim, action, damage, liability, cost, and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this Licence or any occurrence on or around the Licence Area during the term of this Licence, or by use or occupancy of the Licence Area by the Licensee or any default of the Licensee under this Agreement or any wrongful act, omission or negligence of the Licensee or its officers, employees, contractors, agents or others for whom the Licensee is responsible. This indemnity shall survive the expiry or earlier termination of this Agreement.
13. **Inspection by the District** – The District may enter on the Licence Area at any time and inspect the Licence Area to determine if the Licensee is complying with the requirements of this Agreement.
14. **Condition of Licence Area** – The Licensee accepts the Licence Area on an “as is” basis, without any representations, warranties or assurances from the District as to the state or condition of the Licence Area or its suitability for the Licensee’s purposes.
15. **Ownership of Improvements at Termination** – All improvements and alterations to the Licence Area done by or on behalf of the Licensee during the Term shall, without compensation to the Licensee, become the permanent property of the District as they are constructed, installed or placed in, on or under the Licence Area.
16. **Termination**– The District may terminate this Agreement without cause on forty-eight (48) hours written notice to the Licensee. The District will not be liable to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination or any termination of this Licence.
17. **Termination Due to Default** – If and whenever:
 - (a) the Licensee is in default in the payment of the Licence Fee or any sum payable under this Agreement forty-eight (48) hours after the receipt of written notice of such default from the District;
 - (b) the Licensee fails to observe or perform all other covenants, agreements, stipulations, obligations, conditions or other provisions of this Agreement applicable

to the Licensee at a time in excess of forty-eight (48) hours (or such longer time stipulated by the District) after the receipt of written notice of such failure from the District;

- (c) the Licensee vacates or abandons the Licence Area for more than forty-eight (48) consecutive hours and notice of such abandonment is given by the District, as evidenced by the removal of the Licensee's equipment;
- (d) any of the goods or chattels of the Licensee shall be at any time seized in execution or attachment by any creditor of the Licensee;
- (e) a receiver or receiver-manager is appointed in respect of any property of the Licensee;
- (f) the Licensee should make any assignment for the benefit of creditors or shall make any bulk sale;
- (g) if the Licensee should become bankrupt or insolvent or take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors, or if the Licensee receives from any of its secured creditors a notice under the *Bankruptcy and Insolvency Act* (Canada) advising the Licensee that the secured creditor intends to realize upon security located on the Licence Area; or
- (h) any order should be made for the winding up of the Licensee or other termination of the corporate existence of the Licensee;

then in any such case, at the option of the District, this Agreement may be immediately terminated by notice to the Licensee, and the Licensee shall cease all use and occupation of the Licence Area and return the Licence Area to the District in the manner required as if this Agreement had expired.

18. **Catastrophic Events** – If any vending locations in the Licence Area, at any time during the Term, are damaged by fire, lightning, explosion, tempest, flood, earthquake, terrorism, or other catastrophic event, so as to render them unfit for the purpose of the Licensee, the Licence shall be suspended for those vending locations until they have been made fit for the purpose of the Licensee. The District may elect not to undertake restoration of any damaged areas during the Term.
19. **Assignment** – The Licensee shall not assign or sub-licence its interest in the Licence Area or its rights under this Agreement in whole or in part. The Licensee shall not permit or allow any other person to occupy or use the Licence Area.
20. **Notices** – Where any notice, request, direction or other communication (“Notice”) must be given or made by a party under this Agreement, it must be in writing and is effective if delivered in person, sent by registered mail addressed to the party for whom it is intended at the address set forth above in this Agreement, by facsimile, or email addressed as follows:

To the District:

District of Summerland

13211 Henry Ave, Box 159
 Summerland, BC V0H 1Z0
 Attention: Director of Community Services
 Email: lmullin@summerland.ca
 Facsimile Number: 250-494-1415

To the Licensee:

<LICENSEE NAME>

[insert address]

Attention:

Email:

Facsimile Number:

Any Notice, request, direction or other communication is deemed to have been given if delivered in person, when delivered; if by registered mail, when the postal receipt is acknowledged by the other party; if by facsimile, when transmitted; and if by email on the day it is sent if that day is a business day, and if that day is not a business day, it is to be considered given on the next business day after the date it is sent. In this section, business day means a day other than a Saturday, Sunday or BC statutory holiday. The address or facsimile number of a party may be changed by notice in the manner set out in this provision.

21. **Enurement** – This Agreement enures to the benefit of and binds the Licensee and the District and their respective successors and, in the case of the District, its assigns.
22. **Licensee's Representations and Warranties** – The Licensee represents and warrants to the District that the Licensee:
 - (a) has the power and capacity to enter into and carry out the obligations under this Agreement; and
 - (b) has completed all necessary resolutions and other preconditions to the validity of this Agreement.
23. **No Joint Venture** – Nothing contained in this Agreement creates a relationship of principal and agent or of joint venture or business enterprise or entity between the parties or gives the Licensee any power or authority to bind the District in any way.
24. **No Restriction** – The covenants herein shall not in any way restrict the right of the District at any time from altering the Licence Area in any way. Nothing in this Agreement affects the right of the District to exercise its powers within its jurisdiction.
25. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject matter. This Agreement may not be modified or amended except by an instrument in writing signed by both parties.
26. **Waiver or Non-Action** – Waiver by the District of any breach of any term, covenant or

condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the District to take any action with respect to any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.

27. **Severance** – If any portion of this Agreement 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 Agreement.

28. **Schedules** – The following are the Schedules to this agreement and form an integral part of this Agreement:

- Schedule “A” – Insurance Requirements
- Schedule “B” – Approved Locations

29. **Time of Essence** – Time is of the essence in this Agreement.

30. **Governing Law** – This Agreement is governed by, and is to be construed in accordance with, the laws in force in the Province of British Columbia.

IN WITNESS WHEREOF the District and the Licensee have executed this Agreement as of the dates written below.

DISTRICT OF SUMMERLAND
by its authorized signatories:

<LICENSEE NAME>
by its authorized signatories:

Name:

Name:

Name:

Name:

Date: _____

Date: _____

SCHEDULE "A"

Insurance Requirements

The Licensee shall obtain and maintain:

- (a) comprehensive general liability insurance providing coverage for death, bodily injury, property loss and damage, and all other losses, arising out of or in connection with the Tenant's use and occupation of the Premises in an amount of not less than \$2,000,000.00 per occurrence and \$5,000,000.00 aggregate (or in such greater amount as may be required from time to time by the District);
- (b) "all risks" property insurance for replacement cost of all of the Licensee's improvements, personal property and fixtures that are in the nature of trade fixtures;
- (c) Automobile Liability insurance with an inclusive third-party liability limit of not less than \$5,000,000 per occurrence. All vehicles owned, leased or not owned but operated by or on behalf of the insured must be covered by either Automobile or Commercial General Liability Insurance; and
- (d) any other form or forms of insurance that the District may reasonably require from time to time in such amounts and for such perils against which a prudent licensee acting reasonably would protect itself in similar circumstances.

All policies of insurance required to be taken out by the Licensee shall be with companies satisfactory to the District and shall, unless otherwise approved in writing by the District:

- (a) name the District as an additional insured;
- (b) include that the District is protected notwithstanding any act, neglect or misrepresentation by the Licensee 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;
- (c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- (d) be primary and non-contributing with respect to any policies carried by the District and that any coverage carried by the District is in excess coverage;
- (e) not be cancelled or materially modified without the insurer providing the District with 30 days written notice stating when such cancellation is to be effective or identifying the modification;
- (f) not include a deductible greater than \$5,000.00 per occurrence;
- (g) include a cross liability clause; and
- (h) be on other terms acceptable to the District, acting reasonably.

SCHEDULE "B"

A. Rotary Beach

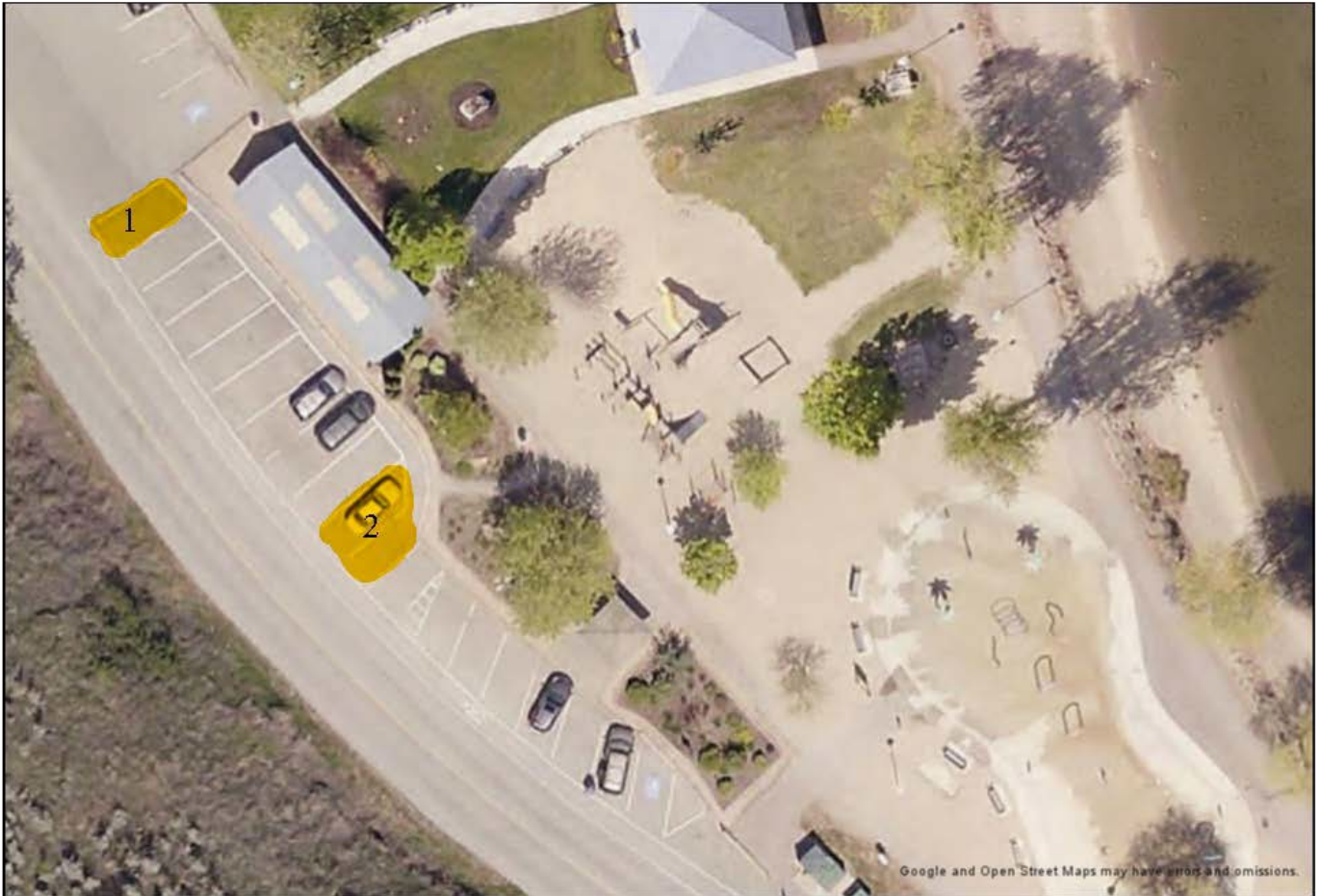
Rotary Beach



SCHEDULE "B"

B. Peach Orchard Beach

Peach Orchard Beach



SCHEDULE "B"

C. Powell Beach

