

**LICENCE TO USE**

**THIS AGREEMENT DATED FOR REFERENCE THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.**

BETWEEN:

DISTRICT OF MACKENZIE  
Bag 340  
Mackenzie, BC  
V0J 2C0

(hereinafter called the "District")

OF THE FIRST PART

AND

CARA BOWEN  
Purple Bicycle Natural Foods  
520 Mackenzie Boulevard  
Mackenzie, BC  
V0J 2C0

(hereinafter called the "Licensee")

OF THE SECOND PART

**WHEREAS:**

1. The District is the owner of the highway known as the 616 Parking Lot (the "Highway") in the District of Mackenzie.
2. The Licensee is the lessee of the lands legally described as Lot A District Lot 12463 Cariboo, District, Plan 21718 and operates a café and natural food store on those lands known as the Purple Bicycle Natural Foods at 520 Mackenzie Boulevard.
3. The Licensee wishes to utilize that portion of the Highway outlined in black on the plan that is attached to this agreement as Schedule "A" (the "Licence Area") for the sole purpose of an outdoor patio to serve food and beverages to customers.

4. Pursuant to section 35 (11) of the *Community Charter* the District may grant a licence of occupation in respect of the proposed use of the Licence Area and has agreed to do so on the terms set out in this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the licence fee paid by the Licensee to the District and in consideration of the premises and covenants and agreements contained in this Agreement, the District and the Licensee covenant and agree with each other as follows:

## **1.0 RIGHT TO OCCUPY**

- 1.1 The District, subject to the performance and observance by the Licensee of the terms, conditions, covenants and agreements contained in this Agreement, grants to the Licensee a right by way of licence for the Licensee, its agents, employees, and customers to use the Licence Area for the sole purpose of an outdoor patio to serve food and beverages to customers.

## **2.0 RESERVATION OF RIGHTS**

- 2.1 The District reserves to itself from the grant and the covenants made by it to the Licensee under section 1 above, the right for the District, its agents, employees, contractors, subcontractors, Licensees, invitees and other persons, to have full and complete access to the area for maintenance purposes, provided that nothing in this provision shall derogate from the duties of the Licensee to maintain the License Area.
- 2.2 The parties agree that without limitation to section 2.1, the District shall have the right at all reasonable times to enter into and upon the Licence Area for the purpose of constructing, maintaining, inspecting or removing any public structure, work, service or utility running under, over or near the Licence Area, and the District shall not be liable to the Licensee for any damage, loss or costs suffered as a result of such entry.

## **3.0 LICENCE FEE**

- 3.1 In consideration of the grant of the License hereunder, the Licensee shall pay to the District an annual licence fee of \$1.00.

## **4.0 TERM**

- 4.1 The Term of the Licence granted under this Agreement shall be for a period of five years commencing on the 1<sup>st</sup> day of May 2021 and ending on the 30<sup>th</sup> day of April 2026, unless earlier terminated under this Agreement.

- 4.2 The outdoor patio may only be in place between April 15<sup>th</sup> and October 15<sup>th</sup> of each year of the agreement as to not obstruct District snow removal activities during the winter months.

## **5.0 CONSTRUCTION OF PATIO**

- 5.1 Prior to using the Licence Area for purposes of an outdoor patio the Licensee must meet the following requirements:
- (1) The Licensee must construct a 16' x 20' temporary outdoor barricade to demarcate the extent of the patio Licence Area as identified and depicted on Schedule A.
  - (2) Install a pylon in the parking space immediately adjacent to the outdoor patio to obstruct parking.
  - (3) Maintain free and clear the pedestrian walkway and loading area as identified and depicted on Schedule A.
  - (4) The Licensee must obtain the District's approval of all improvements to the Licence Area and shall give notice to the District following completion of the improvements so that an inspection of those improvements may be undertaken by the District.
- 5.2 The Licensee is responsible for all costs of the design and construction of the outdoor patio and other improvements to the Licence Area.

## **6.0 MISCELLANEOUS**

- (1) All improvements to the Licence Area and any other works required under this Agreement must be constructed in accordance with plans and specifications approved in advance by the District.
- (2) The Licensee must not construct any improvements on the Licence Area other than the parking stalls and other works specifically referred to in this Agreement without the advance written approval of the District.
- (3) The Licensee must remove any and all improvements to the License Area and any other works required under this Agreement at the end of the term, unless otherwise directed by the District, and must restore the Licence Area to its condition as at the date of this Agreement, all at the sole cost of the Licensee.
- (4) The Licensee must at all times, keep and maintain the Licence Area and the improvements on the Licence Area in good and sufficient repair, to the satisfaction of the District acting reasonably;

- (5) The Licensee must use all reasonable efforts to cause a minimum of obstruction and inconvenience during any construction, maintenance or repairs in the Licence Area, and must place and maintain sufficient warning signs, barricades, lights or flares at or near the site of any work in progress and as well give reasonable warning and protection to members of the public;
- (6) The Licensee must perform all work in such a manner as not to interfere with any existing utilities, works or services located in or on the Highway.
- (7) The Licensee must not carry on or do or allow to be carried on or done on the Licence Area, anything that is, may be or become a nuisance to the District or the public.

## **7.0 ENVIRONMENT**

7.1 In this Agreement:

(a) "Contaminants" means any materials or structures of any kind the storage, manufacture, disposal, treatment, generation, use, transportation, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws;

(b) "Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the License Area now or hereafter in force relating in any way to the environmental, health, occupational health and safety or transportation of dangerous good, including the principles of common law and equity.

7.2 The Licensee agrees that the Licence herein is granted on an "as is" basis, and the Licensee further agrees that the District has not made any representations, warranties, covenants and agreements with respect to the condition of the Licence Area, the suitability of the Licence Area for the Licensee's intended use or any use whatsoever, and in particular and without limiting the generality of the foregoing, as to the environmental condition of the Licence Area;

7.3 The Licensee agrees it shall not bring or store upon the Licence Area any Contaminants, and further that if the Licensee does bring, store or release any Contaminants on or upon the Licence Area in breach of the terms of this Agreement that, notwithstanding any rule of law to the contrary, such Contaminants shall be and remain the sole and exclusive property of the Licensee and shall not become the property of the District, notwithstanding the degree of affixation of the Contaminants or the goods containing the Contaminants to the Licence Area and notwithstanding the expiry or earlier termination of this Licence;

7.4 The Licensee agrees that it will promptly deliver written notice to the District of any spill or release of any Contaminants on the Licence Area, that it shall comply with the orders of all authorities having jurisdiction with respect the spill or release of any Contaminants upon the Licence Area and that in the event of such spill or release it shall at its sole cost and expense remediate the Licence Area in accordance with the requirements of Environmental Laws.

## **8.0 INSURANCE**

- 8.1 (1) The Licensee must take out and maintain during the term of the Licence, a policy of commercial general liability insurance against claims for bodily injury, death or property damage arising out of the use of the Licence Area by the Licensee and its employees, agents, invitees and customers in the amount of not less that two million dollars (\$2,000,000) per single occurrence or such greater amount as the District may from time to time designate, naming the District as an additional insured party thereto and the Licensee shall provide the District with a certified copy of such policy or policies;
- (2) All policies of insurance shall contain a clause requiring the insurer not to cancel or change the insurance without first giving the District thirty days prior written notice;
- (3) If the Licensee does not provide or maintain or enforce the insurance required by this Agreement, the District may take out the necessary insurance and pay the premium for period of one year at a time and the Licensee shall pay to the District as additional Licence fees the amount of the premium immediately on demand;
- (4) If both the District and the Licensee claim to be indemnified under any insurance required by this Agreement, the indemnity shall be applied first to the settlement of the claim of the District and the balance, if any, to the settlement of the claim of the Licensee.

## **9.0 INDEMNIFICATION**

9.1 The Licensee releases and will indemnify and save harmless the District, its elected and appointed officers, employees and agents from and against all lawsuits, damages costs, expenses, fees or liability which the Licensee or anyone else may incur suffer or allege by reason of the use of the Licence Area by the Licensee or its employees, agents, officers or directors or by any customer of the Licensee or a member of the public using the Licence Area or improvements built or placed by the Licensee on the Licence Area, or the carrying on upon the Licence Area of any activity by the Licensee.

## 10.0 BUILDERS' LIENS

The Licensee must indemnify the District from and against any liens for wages or materials or for damage to persons or property caused during the making of or in connection with any excavation, construction, repairs, alterations, installations, and additions which the Licensee may make or cause to be made on, in or to the Licence Area.

## 11.0 NOTICES

11.1 It is hereby mutually agreed:

Any notice required to be given under this Agreement shall be deemed to be sufficiently given if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

- (1) if the Licensee:  
Cara Bowen  
[cara@purplebicycle.ca](mailto:cara@purplebicycle.ca)  
(250) 997-1453  
Mackenzie, BC V0J 2C0
  
- (2) If to the District:  
Diane Smith, Chief Administrative Officer  
[diane@districtofmackenzie.ca](mailto:diane@districtofmackenzie.ca)  
Bag 340  
Mackenzie, BC V0J 2C0

or at the address a party may from time to time designate, then the notice shall be deemed to have been received forty-eight (48) hours after the time and date of mailing. If, at the time of mailing, the notice, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lock-out or other labour dispute, then the notice may only be given by actual delivery of it.

## 12.0 TERMINATION

12.1 If the Licensee is in default on the payment of Licence fee, or the payment of any other sum payable under this Agreement or is in breach of this Agreement or any schedule attached hereto, and if the default continues after the giving of notice by the District to the Licensee, then the District may terminate this Agreement and reenter the Licensee and the rights of the Licensee with respect to the License Area shall lapse and be absolutely forfeited.

12.2 In addition, the District may at any time, in the event that the License Area is required for the improvement, widening or better use of the Highway, withdraw the rights it has granted herein and terminate this Agreement by giving six months' notice to the Licensee and the District shall not be liable in any way to the Licensee for any costs, damages or loss suffered as a result of such termination.

### **13.0 FORFEITURE**

13.1 The District, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of re-entry upon breach of this Agreement, does not waive the District's rights upon any subsequent breach of the same or any other provision of this Agreement.

### **14.0 FIXTURES**

14.1 If the District gives written notice to the Licensee not to remove them following the end of the Term, the improvements constructed on the License Area by the Licensee shall at the termination of the Agreement, become the sole property of the District at no cost to the District.

### **15.0 REPAIRS BY THE DISTRICT**

- 15.1 (a) If the Licensee fails to repair or maintain or remediate the License Area or any structure or improvement on the License Area in accordance with this Agreement or any applicable laws or regulations including Environmental Laws, the District may, by its agents, employees or contractors, enter the License Area and make the required repairs or do the required maintenance or perform the required remediation and the cost of the repairs or maintenance or remediation shall be a debt due from the Licensee to the District.
- (b) In making the repairs or doing the maintenance or remediation, the District shall not be liable to the Licensee for any inconvenience, annoyance, loss of business or other injuries suffered by the Licensee by reason of the District effecting the repairs or maintenance.
- (c) The Licensee releases the District its elected and appointed officers, employees and agents from any claims, rights, remedies, actions, causes of action, loss, damages, expenses, fees or liabilities which the Licensee may have against any or all of them in respect of this Agreement or its performance or its breach of this Agreement or breach of any statutory or other duty of care on the part of the District.

## **16.0 CLEAN UP**

16.1 At the end of the term, the Licensee shall clean up the Licence Area and restore the Licence Area as reasonably as may be possible to the condition of the Licence Area prior to the commencement of the term of this Agreement.

## **17.0 REGULATIONS**

17.1 The Licensee must:

- (a) comply promptly at its own expense with the legal requirements of all authorities, including an association of fire insurance underwriters or its agents, and all notices issued under them that are served upon the District or the Licensee;
- (b) comply with all laws and regulations, including Environmental Laws, and all applicable bylaws of the District as they may relate to the Licence Area, and must obtain all required permits and licences that relate to this Agreement, the Licence Area, or any activity on the Licence Area;
- (c) indemnify the District from all lawsuits, damages, loss, costs or expenses the District may incur by reason of non-compliance by the Licensee with such legal requirements or by reason of any defect in the License Area or any injury to any person or to any personal property contained on the License Area.

17.2 The Licensee shall be responsible for any damage to the Licence Area occurring while the Licensee is exercising its rights under this Agreement and the Licensee acknowledges and agrees that in the event that the Licence Area or any building, structure or improvement on the Licence Area is damaged, then the amount of the cost of repair, restoration shall be a debt due from the Licensee to the District.

## **18.0 NO COMPENSATION**

18.1 The Licensee shall not be entitled to compensation for any loss or injurious affection or disturbance resulting in any way from the termination of the Licence or the loss of interest in any building, structure or improvement built or placed on the Licence Area.

## **19.0 RENEWAL**

19.1 This Agreement may be renewed at the option of the parties and on terms and conditions agreed to by the parties, for up to two (2) successive five-year terms.

## **20.0 MISCELLANEOUS**

- 20.1 (a) The Licensee warrants and represents that the execution of this Agreement has been properly authorized by the Licensee and that the Licensee has sufficient power, authority and capacity to enter into this Agreement with the District.
- (b) This Agreement shall not be interpreted as granting any interest in the License Area to the Licensee.
- (c) Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default.
- (d) This Agreement may not be assigned by the Licensee except with the advance written consent of the District, which may be withheld for any reason.
- (e) Nothing in this Agreement shall prejudice or limit the authority of the District in the exercise of any of its statutory powers, duties or functions.

## **21.0 INTERPRETATION**

- 21.1 (1) That when the singular or neuter are used in this Agreement they include the plural or the feminine or the masculine or the body politic where the context of the parties require.
- (2) The headings of the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope of meaning of this Agreement of any provision of it.
- (3) That this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators, and permitted assignees.
- (4) The Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- (5) All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements are used in each separate paragraph.

**Signatures on next page →**

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

**DISTRICT OF MACKENZIE**, by its )  
authorized signatory(ies): )  
 )  
 )  
\_\_\_\_\_)  
Diane Smith )  
Chief Administrative Officer )  
 )

**PURPLE BICYCLE NATURAL FOODS** by )  
its authorized signatory(ies): )  
 )  
 )  
\_\_\_\_\_)  
Cara Bowen )  
Purple Bicycle Natural Foods )  
 )  
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 )

**SIGNED, SEALED AND DELIVERED by** )  
**PURPLE BICYCLE NATURAL FOODS** )  
in the presence of )  
 )  
\_\_\_\_\_)  
Signature of Witness )  
 )  
\_\_\_\_\_)  
Name of Witness )

)  
\_\_\_\_\_) Cara Bowen  
Purple Bicycle Natural Foods  
 )  
\_\_\_\_\_)  
Address of Witness )  
 )  
\_\_\_\_\_)  
Occupation of Witness )

**Schedule "A"**