

DEVELOPMENT AGREEMENT

TO PERMIT AN EVENING AFTER-HOURS PATIO LOUNGE USE,
PID No. 90078452

THIS AGREEMENT MADE THIS 4th DAY OF NOVEMBER 2021

BETWEEN:

JAMES E. D'ENTREMONT BOAT BUILDERS LIMITED, of Lower West Pubnico, Province of Nova Scotia
(hereinafter called the "Developers")

OF THE FIRST PART

- and -

THE MUNICIPALITY OF THE DISTRICT OF ARGYLE, a body corporate
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developers have good title to lands situated on 23 Du Pont Du Marais Chemin, in Lower West Pubnico, Nova Scotia and identified as PID number 90078452, and which said lands (hereinafter called the "Property") is more particularly described in Schedule "A" of this Agreement;

AND WHEREAS pursuant to Policy 4.5.11 of the Municipality of the District of Argyle's Municipal Planning Strategy the Developers have requested that a development agreement be entered into to permit the Property to be used for a craft distillery, lounge, and patio accessory to a forgoing serving food or drink between the hours of 9pm and 9am, hereinafter called the "Development";

AND WHEREAS the Municipality, by a resolution of Council passed on the 12th day of October 2021 approved entering into a Development Agreement to permit the Development.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the granting by the Municipality of the Development Agreement requested by the Developers, the Developers and the Municipality agree as follows:

PART 1: DEFINITIONS

For the Purpose of this Agreement, all other words shall carry their customary meaning except those defined under in the definitions section of the Municipality of the District of Argyle's Land Use Bylaw, as amended from time to time.

PART 2: GENERAL REQUIREMENTS

- 2.1 Subject to the provisions of this Agreement, the Developers shall be bound by all bylaws and regulations of the Municipality as well as by any applicable provincial and federal statutes and regulations.
- 2.2 Notwithstanding Section 2.1, where the provisions of this Agreement conflict with those of any provincial or federal regulations, bylaws or codes, the more stringent requirements shall apply.
- 2.3 The Developers shall assume full responsibility for meeting all obligations and financial liabilities required to meet all federal, provincial, or municipal regulations, bylaws or codes in force at the present time, or any time in the future.
- 2.4 The Developers shall ensure that any structure permitted by this Agreement meets the requirements of the National Fire Code and the National Building Code at the time of construction.
- 2.5 The Schedules to this Agreement form part of this Agreement and are binding upon the Developers. Where a provision of a Schedule conflicts with the body of this Agreement, the body of this Agreement shall prevail.

PART 3: DEVELOPMENT OF THE PROPERTY

3.1 Land Use

- 3.1.1 Only the following uses shall be permitted on the Property:
 - a) All uses permitted in the underlying zoning, as per the requirements of the Municipality of the District of Argyle Land Use Bylaw, as amended from time to time, in addition to any other uses permitted by this agreement; and
 - b) The developer shall be permitted to install a patio having a maximum area of 120 square metres. The following matters shall apply to the use of the patio:
 - i. The patio may be used to serve patrons alcohol with or without food;
 - ii. The hours of operation for the patio shall be between 8:30am until 12:00 (midnight), and additionally, from midnight to 2:00am when a wedding or scheduled event is held falling on a Saturday, Sunday, July 2nd, or January 1st;
 - iii. No live entertainment shall be permitted on the patio past 10:00pm, or 12:00 (midnight) when a wedding or scheduled event is held;
 - iv. Background music shall be permitted on the patio at a volume that will not disturb surrounding residential uses during the permitted hours of operation.
 - c) other uses, signage, parking or loading areas accessory to the principal use as per the requirements of the Municipality of the District of Argyle Land Use Bylaw, as amended from time to time.
- 3.1.2 Except where specifically stated otherwise in this agreement, all provisions of the Land Use Bylaw of the Municipality of the District of Argyle, approved by Municipal Council, as amended from time to time, shall apply to this development.

3.1.3 The Developers shall ensure that:

- a) all structures are maintained in good repair and in a tidy, attractive and usable state;
- b) all lawns, trees, shrubs, parking areas, lighting systems, and other landscaping elements are maintained in a tidy, attractive and usable state free of unkempt matter of any kind;
- c) the Development shall not generate emissions such as noise, dust, radiation, odors, liquids, or light to the air, water, or ground so as to create a recognized health or safety hazard, or create an unreasonable nuisance to adjacent properties.

3.2 Development Permit

3.2.1 This development agreement shall be administered by the Development Officer as appointed by the Council of the Municipality of Argyle.

3.2.2 The Development Officer, at their discretion, may revoke a development permit pursuant to this agreement if:

- a) the development is not in accordance with:
 - i. the Land Use Bylaw where not varied by this agreement,
 - ii. this agreement, or
 - iii. the plans associated with the approved development permit.
- b) the permit was issued based on incorrect information provided by the applicant when applying for a development permit; or
- c) the permit was issued in error; or
- d) continued complaints and matters of non-compliance arise due to noise generation related to the operation of the outdoor patio use.

3.2.3 Development permits issued pursuant to this agreement will have a condition that the use of the patio may be revoked at the discretion of the development officer if compliance issues persist related to the development.

3.2.4 The development described in this agreement shall not be approved until the Development Officer has issued a development permit. In addition, the Development Officer shall not issue a development permit until:

- a) Nova Scotia Department of Transportation and Active Transit has granted positive recommendation on all transportation issues within their responsibility and has given their approval, if any is required.
- b) Payment for all required permit fees, registration of the document at the Registry of Deeds, and costs associated with advertising and processing the application have been received by the Municipality.

3.3 Building and Site Requirements

3.3.1 Municipal Services

All on site servicing and connections to the Municipality's Sanitary Sewer Services by the Developers will be maintained in a manner that is satisfactory to the Municipality.

3.3.2 Parking and Loading Areas

- a) The parking and loading areas shall be surfaced with asphalt, gravel, or similar hard

surface materials.

- b) The Developers shall be responsible for supplying, installing, and maintaining at the Developers' cost, directional and regulatory signage on the Property as required by the Provincial Traffic Authority.

3.3.3 Traffic and Vehicle Access

Final design and location of all driveways, pedestrian walkways, and regulatory signage are subject to approval by the Provincial Traffic Authority.

- 3.3.4 All outdoor lighting shall be installed so as to reflect light away from adjacent properties. In order to preserve the night sky, the Developer is encouraged to use sensitive lighting which is orientated downward, is low wattage, energy efficient and minimizes glare.

3.3.5 Operation and Maintenance of Property

- a) Any refuse, composting, or recycling container must be screened from public view and not situated within 6 m of any property abutting the development.
- b) The Developers shall keep the Property free from litter and debris and shall provide litter (and recycling if provided) receptacles in appropriate and easily accessible locations and service, maintain, and empty the receptacles as required.

PART 4: VARIANCE

- 4.1 The Development Officer may grant a variance in the terms of this Agreement in accordance with Section 235 of the Municipal Government Act.

PART 5: AMENDMENTS

- 5.1 Any amendment to this agreement, whether substantive or otherwise, must be approved by both parties in writing.
- 5.2 The following shall be considered non-substantial matters:
 - a) The addition, removal or relocation of accessory buildings.
 - b) An extension to the time limits identified in Part 7 of this agreement by a period to be decided by Council.
 - c) Matters dealing with signage.
 - d) Matters dealing with parking.
 - e) Matters dealing with landscaping.
 - f) Changes to the permitted use of the property that are necessary to accommodate features that are subject to approval or authorization by other authorities such as, but not limited to, the Nova Scotia Department of Transportation and Active Transit and Nova Scotia Environment.
- 5.3 Any non-substantial amendment to either the terms of this agreement or to any Schedules shall be subject to the amendment procedures set out in the Municipal Government Act.
- 5.4 Substantial matters shall relate to any matter not identified as insubstantial in this Part or otherwise addressed in this Agreement. This Agreement may be amended in order to provide for substantial matters according to the Municipal Government Act.

PART 6: IMPLEMENTATION

- 6.1 Upon breach by the Developers of any of the terms or conditions of this Agreement, the Municipality may, after thirty days notice in writing to the Developers of the breach, enter the Property and perform any of the terms and conditions of this Agreement. It is agreed that all reasonable expenses arising out of the entry or the performance of the terms and conditions may be recovered from the Developers by direct suit and shall form a charge on the Property.
- 6.2 This Agreement shall be binding upon the Developers' assigns, mortgagees, lessees, successors and occupiers of the Property.
- 6.3 This agreement shall be filed by the Municipality in the Registry of Deeds at Bridgewater, Nova Scotia, and shall form a charge or encumbrance upon the property as described in Schedule "A" attached hereto.
- 6.4 The Developers hereby certify that they are the sole owner of the Properties.
- 6.5 The Developers further certify that they have not disposed of any interest in the Property and there are no judgements, mortgages or other liens or encumbrances affecting the Property in addition to those described in this Agreement.
- 6.6 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforcement of any other provisions.
- 6.7 The Developer shall at all times indemnify and save harmless the Municipality from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomever made, brought or prosecuted to the extent that the foregoing are based upon, occasioned by or attributable to anything done or omitted by the Developer or his servants or his agents or his employees in the fulfillment of any of his obligations under this Agreement.
- 6.8 Upon completion of the Development, or after three (3) years from the date of approval of this Agreement, whichever time period is less, Council may review this agreement, in whole or in part, and may:
 - a) retain the Agreement in its present form; or
 - b) discharge the Agreement on the condition that for those portions of the development that are deemed complete by the Council, the Developer's rights hereunder are preserved, and Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use Bylaw.

PART 7: TIMING

- 7.1 The Developers shall enter into this Agreement within one year of the Municipality of the District of Argyle's approval of this Agreement.
- 7.2 Pursuant to the terms and conditions of this agreement, the Developer shall apply for a development permit for the patio within three (3) years of the parties entering into this development agreement. Once a development permit has been issued, the development shall be made consistent with all terms and conditions of this agreement no later than two (2) years after the development permit has been issued, otherwise the development agreement may be terminated and the existing zone and all provisions of the Land Use Bylaw shall apply without the concurrence of the property owner.




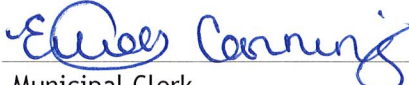
- 7.3 If the Developers fails to conform to any of these specified time limits, or breaches any other term of this Agreement, this Agreement may be discharged by Council, with or without the concurrence of the property owner, and the lands will become subject to the Municipal Planning Strategy and Land Use Bylaw.

SCHEDULES

- A Legal description of property

IN WITNESS WHEREOF the parties hereto have executed these presents on the day and year first above written.

SIGNED, SEALED & DELIVERED
in the presence of:

)	<u>DEVELOPER</u>
)	
)	
_____)	_____
Witness)	James E. D'Entremont Boat Builders Limited
)	
)	
)	<u>THE MUNICIPALITY OF THE DISTRICT OF</u>
)	<u>ARGYLE</u>
)	
_____)	
Witness)	Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF YARMOUTH

On this _____ day of November 2021, before me, the subscriber, personally came and appeared _____, a subscribing witness to the foregoing agreement, who having been by me duly sworn, made oath and said that the developer, one of the parties thereto, caused the same to be executed in their name in his/her presence.

A Barrister of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF YARMOUTH

On this _____ day of November 2021, before me, the subscriber, personally came and appeared _____, a subscribing witness to the foregoing agreement who having been by me duly sworn, made oath and said that the Municipality of the District of Argyle, a Municipal Body Corporate, duly affixed its Corporate Seal and executed by Mr. Alain Muise, its Chief Administrative Officer, its proper officers duly authorized in that behalf in his/her presence.

A Barrister of the Supreme Court of Nova Scotia

SCHEDULE "A"

PID 90078452

This agreement applies to property identified by PID 90078452 and further described by Plan filed at the Registry of Deeds Office for the registration district of Yarmouth in Bridgewater, Nova Scotia, registered under the *Land Registration Act*.