

LICENCE OF OCCUPATION FOR TEMP CONSTRUCTION USAGE

THIS AGREEMENT dated for reference the ____ day of _____, 2021.

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its office at
1435 Water Street, Kelowna, BC., V1Y 1J4

(the "City")

OF THE FIRST PART

AND:

IRONCLAD DEVELOPMENTS INC. (#886249-4)
57158 Symington Road 20E, Springfield, MB, R2J 4L6

(the "Licensee")

OF THE SECOND PART

WHEREAS:

- A. The City owns 245 Aurora Cr, Kelowna, BC legally described as PID 017-741-637, Lot 13 Section 26 Township 26 Osoyoos Division Yale District Plan KAP46961. (the "Property");
- B. The Licensee wishes to use that portion of the Property shown in green on the sketch plan attached hereto as Schedule A (known as the "Licence Area") for the purposes of staff parking, construction material laydown and site office trailer (the "Purposes");
- C. The City is prepared to grant the Licensee a licence for the Purposes on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of the promises exchanged below and other good and valuable consideration (the receipt and sufficiency of which each party acknowledges) the City and the Licensee covenant and agree as follows:

- 1. **Grant** – The City grants to the Licensee the non-exclusive right and licence (the "Licence") to enter onto and use the Licence Area for only the Purposes.
- 2. **Fees** -The Licensee acknowledges and agrees to pay the City:
 - a. A non-refundable one-time fee of \$16,600 plus GST, to be paid at the time of executing this Agreement to remediate the soil due to compaction,
 - b. A monthly fee of \$2,600 plus GST for Licence to be made on the first day of February 1 and March 1, 2021 as the Licensee will only use half of the site during this time; and
 - c. A monthly fee of \$5,100 plus GST for the Licence to be made on the first day of each month from April 1, 2021 - March 31, 2022.
- 3. **Term** – The duration of this Agreement and Licence herein granted shall be for a term of fourteen (14) months (the "Term") commencing on the 1 day of February 2021, unless earlier terminated in accordance with Section 19.

4. **State of Licence Area at Termination** – In the event that this Agreement terminates or expires for any reason, the Licensee will immediately cease all use and occupation of the Licence Area and will return the Licence Area to the condition that it was in on the commencement date of this Agreement. The Licensee will leave the Licence Area in a safe, clean and tidy condition.
5. **Use of Licence Area** – The Licensee covenants and agrees to only use the License Area for the Purposes.
6. **Builders Lien** –The Licensee covenants and agrees with the City to promptly discharge any builders lien which may be filed against title to the Property relating to any improvements, works or construction which it undertakes or causes to be undertaken for the Purposes and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, works or construction undertaken on the Licence Area.
7. **Non-exclusive Use** – The Licensee agrees that:
 - (a) the rights granted under this Agreement do not constitute any interest in the Licence Area or the Property or entitle the Licensee to exclusive possession of the Licence Area;
 - (b) the Licensee's rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the Licence Area; and
8. **No Waste or Nuisance** – The Licensee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
9. **Perimeter Fencing** – The Licensee agrees to install and maintain perimeter fencing around the Licence Area during the Term of the Agreement at its own expense.
10. **No Burning or Flammable Materials** - The Licensee will not burn any materials and will not store any flammable materials on the Licence Area.
11. **Hazardous Materials** – The Licensee will not place, store, use, manufacture or release any Hazardous Materials on the Licence Area. "Hazardous Materials" means all explosives, radioactive materials, pollutants, contaminants, hazardous or toxic substances, special waste, or other waste (including chlorobiphenyls) the storage, use, manufacture, or release of which into the environment is prohibited, controlled or regulated under any laws, regulations, orders, bylaws, permits or lawful requirement of any governmental authority in respect of environmental protection or the regulation and use of hazardous materials. The Licensee will indemnify the City in respect of any costs, expenses, damages or claims which may be suffered by the City in respect of Hazardous Materials placed, stored, used, manufactured or released on the Licence Area determined to be by the Licensee, including all clean-up and remediation costs and legal or professional fees. This indemnity will survive the expiry or sooner termination of this Agreement.
12. **The Licensee's Acknowledgment** – The Licensee acknowledges and agrees:
 - a. the City has given no representations or warranties with respect to the Licence Area including, without limitation, with respect to the suitability of the Licence Area for the Licensee's intended use of the Licence Area under this Agreement;
 - b. the Licensee uses the Licence Area on an as is basis and the City has not made any representations, warranties or agreements as to the environmental condition of the Licence Area; and
 - c. it is the sole responsibility of the Licensee to satisfy itself with respect to the environmental conditions of the Licence Area, including, without limitation, by conducting any reports, tests,

investigations, studies, audits and other inquires as the Licensee, in its sole discretion, considers necessary in order to satisfy itself as to the environmental condition of the Licence Area.

13. **Cleanliness** – The Licensee hereby acknowledges and agrees to not permit the Licence Area to become untidy, unsightly or hazardous, and at the end of each business day the Licensee will ensure the Licence Area is kept in a clean and neat condition.
14. **Compliance with Laws** – The Licensee covenants and agrees to comply with any and all laws, statutes, enactments, bylaws, orders and regulations from time to time in force pertaining to its use and occupation of the Licence Area and to obtain all required approvals and permits thereunder and not to do or omit to do anything in, on or from the License Area or the Property in contravention thereof.
15. **Inspection by the City** – The Licensee agrees and acknowledges that the City may inspect the Licence Area to determine if the Licensee is in compliance with the terms of this Agreement.
16. **No Assignment** – The Licensee may not assign the rights granted to the Licensee under this Agreement, in whole or in part.
17. **Risk** – The Licensee acknowledges and agrees that it will use the Licence Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to property, loss of property or other loss or damage suffered by the Licensee, its contractors, subcontractors, agents, invitees, employees or any other person arising out of this Agreement or the use and occupation of the Licence Area except in the case of negligence or wilful act or omission by the City, its employees, agents or invitees.
18. **Indemnity** – The Licensee will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense incurred in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising out of, directly or indirectly, from this Agreement or any occurrence on or around the Licence Area during the term of this Agreement, 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 will survive the expiry or sooner termination of this Agreement.
19. **Release** – The Licensee hereby releases and forever discharges the City, its elected officials, officers, employees, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or in equity, including without limitation any claim under the *Property Law Act* (collectively "Claims"), which the Licensee may have, sustain or suffer, as the case may be, now or in the future arising from other improvements and use of the Licence Area, the expiry or termination of this Agreement, the exercise by the City of any of its rights under this Agreement or from or in any way connected with the Licensee's use of the Licence Area, except claims arising from the negligence of the City.
20. **Insurance** – During the term of this Agreement, the Licensee will carry public liability insurance, in a form and with an insurer acceptable to the City, insuring the Licensee and the City under this Agreement in an amount not less than \$10,000,000.00 per occurrence as set out in Schedule B, and any other type of insurance that the City may reasonably require. The Licensee will provide the City with proof of insurance at the time of execution of this Agreement and at other times upon request. All policies of insurance required to be taken out by the Licensee must be with companies satisfactory to the City and must:

- a. name the City as an additional insured;

- b. be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
 - c. be primary and non-contributing with respect to any policies carried by the City and that any coverage carried by the City is in excess coverage;
 - d. not be cancelled without the insurer providing the City with 30 clear days written notice stating when such cancellation is to be effective;
 - e. be maintained for a period of 12 months per occurrence;
 - f. not include a deductible greater than \$5,000 per occurrence;
 - g. include a cross liability clause; and
 - h. be on other terms acceptable to the City, acting reasonably.
21. **Termination on Default** – The City reserves the right to terminate this Agreement if the Licensee breaches any of its obligations under this Agreement and fails to remedy the breach within thirty (30) business days of receiving written notice from the City. The City 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 Agreement.
22. **Early Termination** – The Licensee may at any time, in its sole discretion terminate this Agreement by giving 30 days written notice to the City. In the event of such early termination, the Licensee shall leave the Licence Area in accordance with section 4. The Licensee acknowledges that the City will not reimburse the Licensee the one-time fee outlined in section 2(a) and the City will not reimburse the Licensee for any proportionate share of the pre-paid rent for the unused portion of the Term.
23. **Notices** – Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph.

All notices to the City must be marked to the attention of the Manager, Property Management.

A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a business day, the next day that is a business day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

24. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Licence Area, all of which may be fully and effectively exercised in relation to the Licence Area as if this Agreement had not been fully executed and delivered.
25. **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 must not affect the validity of the remainder of the Agreement.

26. **Further Actions** – Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
27. **Waiver or Non-action** – Waiver by the City 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 City to take any action in respect of 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.
28. **Reference** – Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.
29. **General** –
- (a) This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors;
 - (b) The Schedules attached to this Agreement form part of this Agreement;
 - (c) This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement;
 - (d) Time is of the essence of this Agreement;
 - (e) This Agreement must be construed according to the laws of the Province of British Columbia.
 - (f) This Agreement may be subject to approval of City of Kelowna Council.

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed this Agreement below on the dates written below.

CITY OF KELOWNA by its authorized Signatory:)

_____))
Mayor)

_____))
Clerk)

IRONCLAD DEVELOPMENTS INC. by its authorized signatory:)

_____))
Signature)

_____))
Lauren Clemens, Secretary)
Print Name)

Schedule A

THE PROPERTY AND LICENSE AREA

245 Aurora Cr, Kelowna, BC

PID 017-741-637, Lot 13 Section 26 Township 26 Osoyoos Division Yale District Plan KAP46961

From February 1, - March 31, 2021, the Licensee will only use the half of the site closest to Aurora Cr.

From April 1, 2021 – March 31, 2022, the Licensee will use the entire license area.



Schedule B

INSURANCE REQUIREMENTS



1435 Water Street
Kelowna, BC V1Y 1J4
250 469-8500
kelowna.ca

CERTIFICATE OF INSURANCE

City staff to complete prior to circulation

City Dept.: _____
Dept. Contact: _____
Project/Contract/Event: _____

Insured

Name:
Address:

Broker

Name:
Address:

Location and nature of operation and/or contract reference to which this Certificate applies:

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Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>10,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>10,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name

Title

Company (Insurer or Broker)

Signature of Authorized Signatory

Date