

THIS LOAN AGREEMENT made the _____ day of July, 2022,

BETWEEN:

PORT GLASGOW YACHT CLUB

(the “Borrower”)

and

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN

(the “Lender”).

WHEREAS:

1. the Borrower has undertaken certain Paving Work on its property municipally known as 8536 Havens Lake Road, West Elgin and, with the consent of the Lender, on the adjacent property owned by the Lender;
2. the Borrower has agreed to be solely responsible for the cost of said Paving Work, but does not have the funds currently available to cover the said cost;
3. the Lender has agreed to lend monies to the Borrower to apply to the cost of the Paving Work;

IN CONSIDERATION of all covenants, premises, representations and warranties described below, and the sum of \$1.00, the sufficiency and receipt of which is hereby acknowledged, the Borrower and Lender agree as follows:

1. Interpretation

(1) *Definitions.* In this agreement, unless otherwise stated the following terms shall have the meaning prescribed for each as follows:

- (a) “Applicable Laws” means all present or future statutes, regulations, rules, orders, applicable common law standards and principles, treaties, conventions, judgments, awards, and other lawful determinations of any government or governmental agency or other comparable body, or court or other tribunal of competent jurisdiction in any applicable jurisdiction;
- (b) “Business Day” means any day other than Saturday or Sunday or a statutory holiday so recognized by the province of ;
- (c) “Loan” means the funds lent by the Lender to the Borrower described in clause 2 of this Loan Agreement, and includes all accrued outstanding interest on the principle amount;
- (d) “Loan Agreement” means the terms and conditions described in clauses 1 through 7, inclusive. This Loan Agreement also includes all subsequent amendments in writing and executed by authorized officials of the Parties; and
- (e) “Parties” means the Borrower and Lender, and “Party” means one of them as the context provides.
- (2) *Assignment.* The Lender may, without the prior consent of the Borrower, assign any or all of its rights and obligations under this Loan Agreement to another party (the “Assignee”), provided that the assignment does not increase the cost to the Borrower of the Loan or otherwise prejudice the rights of the Borrower hereunder. The Borrower may not assign any of its rights or obligations under this Loan Agreement without the prior written consent of the Lender, which consent may be arbitrarily withheld.
- (3) *Invalidity.* Any provision in this Loan Agreement which is held to be illegal or unenforceable shall be ineffective to the extent of such illegality or unenforceability without invalidating the remaining provisions of this Loan Agreement.
- (4) *Further Assurances.* The Parties shall with reasonable diligence do all things and provide all reasonable assurances as may be required to implement the provisions of this Loan Agreement, and each Party shall provide such further documents, instruments and cooperation requested by the other Party as may be reasonably necessary or desirable to give effect to this Loan Agreement and to carry out its provisions.

(5) *Gender and Number.* Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing one gender include the other gender and any self-identified.

(6) *Sections, Headings and Contra Proferentem.* The division of this Loan Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and shall not affect the interpretation or construction of this Loan Agreement. Unless otherwise indicated, any reference in this Loan Agreement to an Article, Section, Paragraph or Schedule refers to the prescribed Article, Section, Paragraph or Schedule to this Loan Agreement. Each Party acknowledges that it has reviewed and participated in determining the terms and conditions of this Loan Agreement and agree that any rule of construction or doctrine of interpretation, including contra proferentem, construing or interpreting any ambiguity against the drafting Party shall not apply.

(7) *Waiver.* No waiver of any provision of this Loan Agreement, including waiver of a breach of this Loan Agreement, shall constitute a waiver of any other provision or breach of this Loan Agreement unless expressly provided otherwise. No waiver shall be binding unless executed in writing.

(8) *Governing Law.* This Loan Agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the laws of Canada, other than rules regarding conflict of laws. The courts of the province of Ontario shall have exclusive jurisdiction to entertain any legal proceedings arising under this Loan Agreement.

(9) *Time of the Essence.* Time shall be of the essence of this Agreement and of every part of it, and no extension or variation to this Loan Agreement shall operate as a waiver of this provision.

(10) *Amendment.* This Loan Agreement may only be changed by a document in writing signed by both Parties.

(11) *Entire Agreement.* This Loan Agreement constitutes the entire agreement between the Parties in regard to its subject-matter. It supersedes all prior agreements, understandings, representations, warranties, proposals, negotiations and discussions, whether oral or written, between the Parties.

2. Loan

(1) The Lender agrees to lend to the Borrower and the Borrower agrees to borrow from the Lender the sum of ONE HUNDRED SIXTY-FIVE THOUSAND dollars (\$165,000.00) of lawful money of Canada (the "Principal Sum").

(2) The Lender and the Borrower agree that the Loan will not be interest bearing and that the Borrower will not be required to pay any interest to the Lender on the Principal Sum.

3. Loan Repayment

(1) The Borrower agrees to repay to the Lender the Principal Sum set out as follows:

(a) The Principal Sum is to be repaid in consecutive annual instalments of THIRTY-THREE THOUSAND dollars (\$33,000.00) each commencing on the 31st day of July, 2023 and on the 31st day of July in each of 2024, 2025, 2026 and 2027 until the Principal Sum is repaid in full;

(2) The Borrower may at any time and from time-to-time, in its sole discretion and without penalty, repay any amount of Loan in addition to that described in subsection 3(1)(a).

4. Default

(1) On the happening of any of the following events of default the Lender may, at its option, forthwith and upon written notice, cancel the Loan and declare the outstanding principle and accrued interest to be immediately due and repayable, and the same shall be immediately due and payable:

(a) The Borrower fails to make any of the payments in the amounts and at the times specified in this Loan Agreement;

(b) The Borrower is in breach of any other agreement between the Lender and the Borrower;

(c) The Borrower makes any assignment for the benefit of creditors or any petition for a receiving order has been made against the Borrower under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, or is otherwise in breach of any covenant, representation and warranty, or condition precedent under this Loan Agreement;

(d) The Borrower suspends or otherwise fails to carry on its business;

(e) The Borrower defaults in the payment of moneys owing to any other creditor for the Borrower's business; or

(f) The Lender in good faith believes that the prospect of repayment of the Loan, or performance otherwise by the Borrower of its obligations under this Loan Agreement, is impaired or doubtful.

5. Representations and Warranties

(1) *General.* Borrower makes the following representations and warranties to the Lender acknowledging that the Lender is relying on the truthfulness and accuracy of each representation and warranty in entering into this Loan Agreement, and with the further acknowledgment that the Lender would not have entered into this Loan Agreement without any of the representations and warranties of the Borrower:

(a) *Due Incorporation and Subsistence.* Borrower represents and warrants to the Lender that it is a corporation, duly incorporated and organized and validly subsisting under the laws of and has the corporate power to enter into this Loan Agreement and to perform its obligations hereunder.

(b) *Authorization.* Borrower represents and warrants to the Lender that this Loan Agreement has been duly authorized, executed and delivered by the Borrower and is a legal, valid and binding obligation of the Borrower, enforceable against the Borrower by the Lender in accordance with its terms except only as such enforcement may be restricted or limited by any applicable laws in regard to bankruptcy, insolvency or the enforcement of creditors' rights generally.

(c) *Authorization to do Business.* Borrower represents and warrants to the Lender that the Borrower has all requisite licences, permits, consents and other legal authority under Applicable Laws to carry on business in Ontario.

(d) *Conflicting Agreements.* Borrower represents and warrants to the Lender that the entering into and performance of this Loan Agreement, does not conflict, nor with the passage of time will conflict or result in a breach or violation of, the Borrower's articles of incorporation or by-laws, or conflict with or breach any other agreement to which the Borrower is a party.

(e) *Not Bankrupt or Insolvent.* Borrower represents and warrants to the Lender that the Borrower has not made any assignment for the benefit of creditors, nor has any receiving order been made against the Borrower under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3,

or other applicable bankruptcy and insolvency legislation, nor has any petition for such an order been served on the Borrower, nor any proceedings initiated or contemplated, nor has any receiver, receiver and manager, monitor, custodian or official with similar powers been appointed by court order or privately respecting the Borrower or any of its assets.

(f) *No Default.* Borrower represents and warrants to the Lender that the Borrower is not in default under any bond, guarantee or other instrument of indebtedness.

(g) *No Legal Jeopardy.* Borrower represents and warrants to the Lender that there is no claim, action, prosecution or other legal proceeding of any kind pending or threatened in any jurisdiction in which the Borrower does business, and before any court or other tribunal, including any administrative agency, in regard to any matter which, if adversely determined, may have a material adverse effect on its financial condition or ability otherwise to undertake its business or meet its obligations under this Agreement.

(h) *Compliance with Laws.* Borrower represents and warrants to the Lender that the Borrower is in compliance with all Applicable Laws and, to the knowledge of the Borrower there is no fact, circumstance or event currently or with the passage of time that would cause or result in any violation of the same.

(i) *Taxation Compliance.* Borrower represents and warrants to the Lender that the Borrower has made all requisite tax filings and other information in all jurisdictions in which it is legally required to file the same.

(j) *No Change.* Borrower represents and warrants to the Lender that since the Business has been carried on in the ordinary and normal course, consistent with past practice and in accordance with prudent, responsible and ethical business practice.

(k) *Full Disclosure.* Borrower represents and warrants to the Lender that neither this Loan Agreement, nor any document to be delivered by the Borrower, nor any certificate, report or statement delivered pursuant to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements not misleading.

(2) *Continuation of Representations and Warranties.* The representations and warranties of the Borrower described in subsection 5(1) shall remain in effect for the term of this Agreement.

(3) *Disclaimer.* EXCEPT AS EXPRESSLY STATED IN THIS CLAUSE 5, ALL REPRESENTATIONS AND WARRANTIES OF THE BORROWER, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXCLUDED. THE LIABILITY OF THE BORROWER TO THE LENDER IS SOLELY THAT PROVIDED FOR ELSEWHERE IN THIS AGREEMENT.

6. General

(1) *Notices.* All notices to be given under this Loan Agreement shall be in writing and either hand delivered, sent by registered mail to the address of the other Party set out below or sent by electronic means to the email address set out below, if such an email address is detailed. If by registered mail, any such notice shall be deemed to have been received on the fifth (5th) Business Day after mailing, and if hand delivered, on the date of delivery.

Borrower Address: P.O. Box 315 Rodney ON, N0L 2C0
ATTENTION: Rick McFadden, President
ricksautorepair@bellnet.ca
519-785-9937

Lender Address: 22413 Hoskins Line, Rodney, ON N0L 2C0
ATTENTION: CAO/Treasurer

Either Party may change its address by written notice to the other given in the manner set out above.

(2) *Record of Indebtedness.* The outstanding amount of the Loan owed by the Borrower to the Lender from time-to-time will be determined by the records of the Lender. The records shall constitute prima facie proof of the validity of the amount owing.

(3) *Independent Legal Advice.* The Parties acknowledge that they have had the opportunity to obtain independent legal advice in regard to their respective rights and obligations under this Loan Agreement. The Parties further acknowledge having read this Loan Agreement in its entirety, and executed the same, voluntarily, without duress, coercion or undue influence.

(4) *Survival.* The provisions of this Loan Agreement which, by their terms, are intended to survive, or must survive to give effect to continuing obligations of the Parties, shall survive the termination of this Loan Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, under seal, as of the date first written above.

**CORPORATION OF THE MUNICIPALITY OF WEST
ELGIN**

Per:

Magda Badura, CAO/Treasurer

Per:

Duncan McPhail, Mayor

We have the authority to bind the Municipality.

PORT GLASGOW YACHT CLUB

Per:

Rick McFadden, President

Per:

Remy Begin, Vice-President

We have the authority to bind the Corporation.