

Operating Agreement - The Scotsman Hotel Inc. and Town of Niagara-on-the-Lake

This Operating Agreement (“Agreement”) is made as of [●], 2026, by and between:

The Scotsman Hotel Inc., (“Owner”, as herein after defined), having its principal place of business at 95 Johnson Street, Niagara-on-the-Lake, Ontario (“The Scotsman”);

and,

The Corporation of the Town of Niagara-on-the-Lake (“Town”)

1. Recitals/Background

WHEREAS, the Owner has applied for an amendment to the Official Plan and Zoning By-law applicable to The Scotsman property at 95 Johnson Street, Niagara-on-the-Lake (the “Property”) to permit the addition of a Hospitality Area (as hereinafter defined) as an accessory hospitality use to the inn;

AND WHEREAS the Town supports the Applicant’s initiative, acknowledging that the addition of a hospitality area to the Scotsman will provide meaningful economic benefits and strengthen the Town’s tourism sector, which is a cornerstone of the local economy;

AND WHEREAS as a condition of such rezoning, the Owner has agreed to enter into this Agreement with the Town to address operational matters and compatibility concerns;

AND WHEREAS, the parties wish to set out clear, objective operating standards and mitigation measures for the Hospitality Area, to support land use compatibility, address neighbourhood concerns, and provide objective compliance expectations.;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein, the parties agree as follows:

2. Definitions

In this Agreement, unless the context otherwise requires:

- “Agreement” means this Operating Agreement, including any Schedules, as amended from time to time in accordance with this Agreement.
- “Applicable Law” means all statutes, regulations, by-laws, codes, legally binding orders and requirements of any governmental authority having jurisdiction over the Owner, the Property, or the Hospitality Area.
- “Code of Conduct” means the rules governing behavior in the Hospitality Area, as adopted by the Owner and approved by the Town, set out in Exhibit B, as may be revised from time to time.

- “Effective Date” means the date on which the Official Plan Amendment authorizing the Hospitality Area is in full force and effect.
- “Hospitality Area” means the private, controlled area within the ground floor and courtyard area of The Scotsman, as illustrated in Exhibit A, where food and alcohol can be purchased and consumed by registered patrons of the Inn, but does not include the use of commercial cooking equipment on site.
- “Guests” means registered guests of The Scotsman who have booked a room for one or more evenings, and includes, if applicable, their permitted invitees.
- “Members” means individuals granted access to the Hospitality Area through a separate agreement with the Owner, for a term and subject to the Code of Conduct, and includes, if applicable, their permitted invitees.
- “Owner” means Scotsman Hotel Inc. and includes its successors and permitted assigns.
- “Patrons” means Guests and Members collectively.

Other terms shall have the meanings ascribed to them in this Agreement.

3. Term

3.1 This Agreement shall remain in effect for so long as the Hospitality Area is operated, subject to earlier termination or amendment by the Parties in accordance with this Agreement.

3.2 The Owner may terminate this Agreement upon not less than [90] days’ written notice to the Municipality if the Owner permanently ceases operation of the Hospitality Area and confirms such cessation in writing.

4. Scope of Services / Operations

4.1 The Owner shall manage and operate the Hospitality Area, including but not limited to food and beverage services and overall guest experience.

4.2 Liquor service shall comply with the terms of any liquor license issued by the Alcohol and Gaming Commission of Ontario (AGCO) under the Liquor License Act.

4.3 The Owner shall ensure all operations comply with applicable laws, regulations, and municipal by-laws, including the Town’s Noise and Public Nuisance By-law.

5. Hours of Operation

5.1 The Hospitality Area may operate seven (7) days a week, between 8:00 a.m. and 11:00 p.m., subject to the terms of any liquor license, unless otherwise agreed in writing by the Town. Alcohol service and/or last call (if applicable) shall cease no later than 30 minutes prior to closing.

5.2 The Owner shall ensure compliance with all applicable noise and public nuisance regulations, and the terms of any liquor license granted by applicable authorities.

6. Access and Admission

6.1 Patrons may enter the Hospitality Area through the pedestrian entrance on Johnson Street.

6.2 Access to the Hospitality Area is intended to serve primarily its Guests and Members, subject to the Code of Conduct, maximum occupancy, and this Agreement.

6.3 The Owner will maintain records including the Hospitality Area's operating hours, approximate peak occupancy count for special events (if permitted), complaints received and responses; and any incident requiring security or police attendance.

6.4 Records provided to the Municipality shall be limited to operational compliance information and shall not include personal information about patrons except as required by Applicable Law.

6.5 Guests are granted access as part of their hotel reservation. Members are granted access through a separate agreement with the Owner, the terms of which shall require them to abide by the provisions of this agreement, as applicable.

7. Occupancy

7.1 Except where permitted under a Town By-law, operation of the Hospitality Area shall not exceed the maximum occupancy permitted under the then-current Occupancy Permit, which, as of the effective date, allows 57 occupants including Patrons and staff. It is acknowledged that the desired guest experience relies on moderate, rather than maximum, occupancy of the Hospitality Area and the Owner intends to be guided by this principle in the operation of The Scotsman.

7.2 The use of the Hospitality Area by members will be based on availability of seated areas and will be managed through a reservation system.

7.3 It is acknowledged that, where a Special Occasion Permit is required by the Town's By-law, such permit shall be secured from the Town prior to the Special Event.

8. Staffing

8.1 The Owner is solely responsible for hiring, training, supervising, and compensating all staff involved in the operation of the Hospitality Area.

8.2 The Owner shall ensure all staff adhere to the Code of Conduct.

9. Facility Use and Maintenance

9.1 The Hospitality Area shall occupy solely the designated areas within The Scotsman as set out in Exhibit A.

9.2 The Owner shall maintain the structural integrity and cleanliness of the Hospitality Area and ensure a safe and operational environment.

10. Parking

10.1 The Owner shall notify Patrons of the limited parking available at The Scotsman and provide information on alternate parking locations, as determined by the parking study provided to the Town in connection with the amendment to the Official Plan and Zoning By-law, additional off-site third party parking spaces obtained by the Scotsman Hotel, as well on options for other forms of transportation and transit.

11. Licensing, Permits, and Compliance with Law

11.1 The Owner acknowledges that this Agreement does not, by itself, constitute a planning approval, building permit, liquor licence, or any other permit or authorization required under Applicable Law. The Owner shall obtain and maintain all necessary licenses, permits, and approvals required for the operation of the Hospitality Area.

11.2 The Owner shall comply with all applicable laws, regulations, and policies, including but not limited to the Liquor License Act, Zoning By-law, Ontario Fire Code, Health Regulations, Building Code, and the Town's Short Term Rental By-law 4634-13, as may be amended or replaced from time to time to the extent that such Applicable Law is lawfully applicable and enforceable against the Owner and the Property.

For greater certainty, nothing in this Agreement shall be construed as a waiver, release or surrender of any right, defence, protection or "acquired right" that the Owner may have now or in the future at law or in equity, including any protection relating to legal non-conforming use / grandfathering and the non-retroactive application of zoning controls (including, without limitation, any protections contemplated by section 34(9) of the Planning Act, R.S.O. 1990, c. P.13, as amended), to the extent such protections may apply from time to time following the lawful establishment and continuous operation of the Hospitality Area.

11.3 If the Town asserts that any amendment to Applicable Law applies so as to materially restrict the Owner's continued operation of the Hospitality Area notwithstanding any such protections, the Municipality shall, upon written request, provide written particulars of the basis for that position, and the parties shall meet promptly and act reasonably and in good faith to address compliance expectations and operational impacts. Pending resolution, the Owner shall continue to comply with Applicable Law and this Agreement to the extent not genuinely in dispute and not inconsistent with any applicable legal non-conforming / grandfathering protections

11.4 The Town agrees that, except as expressly set out in this Agreement, it shall not require the Owner to accept additional operational conditions specifically applicable to the Hospitality Area through administrative processes, staff directives, or informal requirements, unless such additional conditions are:

(a) necessary to address an immediate and demonstrable risk to public health or safety;
or

(b) required to remedy a material breach of this Agreement that remains uncured following written notice and the expiry of the applicable cure period.

12. Insurance

12.1 The Owner shall maintain general liability insurance with coverage appropriate to hospitality operations, including liquor liability if applicable, and any other insurance as may be required by law.

12.2 Proof of insurance shall be provided to the Town prior to the commencement of operations.

13. Dispute Resolution

13.1 The Town will notify the Owner in writing of any concerns regarding the operations of the Hospitality area, including specific details of the concerns and any supporting information available. The Owner and the Town will promptly engage in and diligently pursue cooperative discussions to address the concerns. The parties will make good faith, reasonable efforts to reach a mutual agreement on resolution of all such issues. If unresolved, disputes may be referred to mediation or arbitration, as agreed by the parties. The Town shall not pursue enforcement steps under this Agreement while a breach is being cured in accordance with this section, except where the breach poses an immediate risk to public health or safety.

13.2 The parties shall first use reasonable, good faith efforts to resolve any disputes arising under this Agreement through cooperative discussions.

14. Force Majeure

14.1 The Owners shall not be liable for failure to perform its obligations due to events beyond its reasonable control, including acts of God, government actions, or emergencies.

15. Notices

15.1 All notices under this Agreement shall be in writing and:

- In the case of the owner, delivered to the business addresses set out above, marked "Attention: Manager", with a copy to [Name][email address];
- In the case of the Town, delivered to [insert]

16. General Provisions

16.1 This Agreement may only be amended in writing signed by both parties.

16.2 If any provision is found invalid, the remainder shall remain in effect.

16.3 This Agreement constitutes the entire agreement between the parties with respect to its subject matter.

16.4 This Agreement shall be governed by the laws of the Province of Ontario.

17. Schedules/Exhibits

- Exhibit A: Description of Hospitality Area
- Exhibit B: Code of Conduct as of effective date (to be attached)

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

The Scotsman Hotel Inc.

By: _____

Name:

Title:

The Corporation of the Town of Niagara-on-the-Lake

By: _____

Name:

Title:

66181052.2

•