The Corporation of the Town of South Bruce Peninsula

By-Law Number 39-2017

Being a By-Law to Authorize the Mayor and Clerk to Sign a Site Plan Control Agreement with Burnt Coast Inc., Pyxus Inc., Samuel Eric Robinson, Dale Patricia Robinson, Regal Point Elk Farm, Suzanne Kimberley Kearns and Michael John Kearns for Pt Lt 3, 22 PI 355 as in R224300 (Amabel)

Whereas Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

And whereas Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

And whereas Section 41 of the Planning Act, RSO 1990, Chapter P13 makes provision for site plan control;

And whereas a site plan control agreement has been negotiated with Burnt Coast Inc., Pyxus Inc., Samuel Eric Robinson, Dale Patricia Robinson, Regal Point Elk Farm, Suzanne Kimberley Kearns and Michael John Kearns for property known as Pt Lt 3, 22 PI 355 as in R224300; South Bruce Peninsula as described in PIN 33153-0079 (LT).

Now therefore the Council of the Corporation of the Town of South Bruce Peninsula enacts as follows:

1) That the Mayor and Clerk are hereby authorized to sign the site plan control agreement with Burnt Coast Inc., Pyxus Inc., Samuel Eric Robinson, Dale Patricia Robinson, Regal Point Elk Farm, Suzanne Kimberley Kearns and Michael John Kearns.

2) That such changes as are considered to be minor in nature or which do not materially change the development will be permitted to be made to the site plan control agreement without amendment to this by-law.

3) That the site plan control agreement as referred to herein shall be attached hereto and form part of this by-law.

Read a first and second time this 18th day of April, 2017.

[Signatures]

Mayor

Clerk
Read a third time and finally passed this 18th day of April, 2017.

Mayor

Clerk
This Site Plan Control Agreement made this 18th day of April, 2017

Between

Burnt Coast Inc., Pyxus Inc., Samuel Eric Robinson, Dale Patricia Robinson, Regal Point Elk Farm, Suzanne Kimberley Kearns and Michael John Kearns,
(hereinafter referred to as the “Owner”)

And

The Corporation of the Town of South Bruce Peninsula,
(hereinafter referred to as the “Town”)

Whereas the Owner is the owner of property described on Schedule “A” attached hereto (the “Lands”);

And whereas in accordance with the South Bruce Peninsula Official Plan and the Comprehensive Zoning By-Law for the Town of South Bruce Peninsula, the property described on Schedule “A” is subject to Site Plan Control;

And whereas the Owner has submitted a Site Plan to the Town relating to the construction of an aerial adventure park and accessory building;

And whereas the Town has approved the Site Plan and Drawings submitted by the Owner subject to the entering into of this Agreement;

And whereas Section 41(10) of the Planning Act permits the registration of this Agreement against the Lands to which it applies.

Now therefore in consideration of the premises and other good and valuable consideration, the receipt and sufficiency whereof the parties irrevocably acknowledge, the parties agree as follows:

1. The Owner agrees to construct and maintain the aerial adventure park and accessory building in substantial conformity with the Site Plan and Drawings described in Schedule “B” to this Agreement.

2. The Owner agrees to comply with any and all provisions of any Building Permit issued by the Town to the Owner with respect to the construction of an aerial adventure park and accessory building development in accordance with the Site Plan.

3. The Owner agrees to comply with any and all provisions including permits, fees and charges as they pertain to the development and property as described in

Site Plan Control Agreement 1-2017
Burnt Coast Inc. et al
May 2, 2017
Page 1 of 10
Schedule “A” to this Agreement.

Despite anything to the contrary, connection to municipal services including but not limited to municipal water and sewer shall be made in accordance with established policies and by-laws, as the case may be and as they pertain to the property as described in Schedule “A”.

4. The Owner hereby agrees to the special conditions as set forth in Schedule “D” attached hereto and forming part of this Agreement.

5. The Owner hereby agrees and will expeditiously cause to be paid to the Town, any and all fees, deposits or other such consideration as is deemed necessary by the Town for the fulfillment of this Agreement. Said fees, deposits or other consideration are set forth in Schedule “C” attached hereto and forming part of this Agreement. Other fees for services including but not being limited to building permits, water and sewer permits or other required permits will be the responsibility of the owner and may not necessarily be included in Schedule “C” attached hereto.

6. The Owner hereby agrees that this Agreement, together with any schedules thereto, will be registered upon title to the Lands. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Lands and shall be binding upon it, its successors and assigns as owners and occupiers from time to time and this covenant shall be to the benefit of the Town and its Lands and highways appurtenant and adjacent to the Lands. The Owner further covenants and agrees to pay to the Town the cost of registration of this Agreement, as well as any further costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement.

7. The Owner acknowledges that the Town, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with s. 446 of the Municipal Act, 2001.

8. Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction over the Lands.

9. Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words “at the expense of the Owner” unless the context otherwise requires, including the payment of any and all applicable taxes.

10. References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time

Site Plan Control Agreement 1-2017
Burnt Coast Inc. et al
May 2, 2017
Page 2 of 10
to time and any successor statute thereto.

11. The Owner and the Town agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

12. The failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its rights at law to enforce this Agreement.

13. The parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party’s right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision in s. 41 of the Planning Act interpreted to the contrary. The parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.

14. This Agreement shall be binding on all successors, assigns and heirs.

15. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.

16. The parties hereto hereby agree that such changes as may be required to the Agreement, Site Plan or any documentation thereto may be made without the requirement to return for Council approval provided that the changes are minor in nature and do not constitute a substantial material change from that originally approved by Council.

The parties hereto must agree with the changes to the Agreement and said agreement will be in writing and signed by the parties hereto.

In witness whereof the Owner has executed this Agreement, and the Town has executed this Agreement by its officers duly authorized in that behalf.

Site Plan Control Agreement 1-2017
Burnt Coast Inc. et al
May 2, 2017
Page 3 of 10
The Corporation of the Town of South Bruce Peninsula

Per:

Janice Jackson, Mayor

Angela Cathrae, Clerk

We have the authority to bind the Corporation.

The Owner

Per:

Witness

Burnt Coast Inc.

Witness

Pyxus Inc.

Witness

Samuel Eric Robinson

Witness

Dale Patricia Robinson

Witness

Regal Point Elk Farm

Witness

Suzanne Kimberley Kearns

Witness

Michael John Kearns

Site Plan Control Agreement 1-2017
Burnt Coast Inc. et al
May 2, 2017
Page 4 of 10
Schedule “A”

to the Site Plan Control Agreement dated the 2nd day of May 2017 between Burnt Coast Inc., Pyxus Inc., Samuel Eric Robinson, Dale Patricia Robinson, Regal Point Elk Farm, Suzanne Kimberley Kearns and Michael John Kearns and The Corporation of the Town of South Bruce Peninsula

Legal Description

Pt Lt 3, 22 Pl 355 as in R224300; Town of South Bruce Peninsula

PIN 33153-0079 (LT)

Roll Number 41-02-540-011-08100
Schedule “B”

to the Site Plan Control Agreement dated the 2nd day of May 2017 between Burnt Coast Inc., Pyxus Inc., Samuel Eric Robinson, Dale Patricia Robinson, Regal Point Elk Farm, Suzanne Kimberley Kearns and Michael John Kearns and The Corporation of the Town of South Bruce Peninsula

Drawings are available for viewing in paper format at the Town of South Bruce Peninsula office during regular business hours:

1. Seasonal Amusement Shop Elevations A4
   Dated: April 13, 2017
   Prepared By: pj Design.ca
   Project Number: 17-536

2. Seasonal Amusement Shop Elevations A5
   Dated: April 13, 2017
   Prepared By: pj Design.ca
   Project Number: 17-536

3. Ascent-Sauble Beach Adventure Park
   Plans and Date:
   Cover, Spec, Key Plan April 5, 2017
   Site Plan and Course Elevation April 11, 2017
   Main Deck Foundation April 5, 2017
   Main Deck Structure April 5, 2017
   Stair Construction April 5, 2017
   Typical Challenge Deck April 5, 2017
   Beam and Brace April 5, 2017
   Prepared By: Caliber Engineering Corporation
to the Site Plan Control Agreement dated the 2nd day of May 2017 between Burnt Coast Inc., Pyxus Inc., Samuel Eric Robinson, Dale Patricia Robinson, Regal Point Elk Farm, Suzanne Kimberley Kearns and Michael John Kearns and The Corporation of the Town of South Bruce Peninsula

Fees

1. Site Plan Control Application Fee $1,000.00

2. Legal Fees (Including Applicable Taxes) Actual Costs
   - shall include but not be limited to the registration of the Site Plan Control Agreement on title

3. Cash in Lieu of Parking $4,000.00
   - one-time payment
   - see Schedule “D” for detail

Securities

1. Site Deposit $4000.00
   - reduced to 50% of the deposit amount at substantial completion
   - remainder to be held by the Town for a period of one (1) year after substantial completion of the project as described herein

Type of Securities

The Town of South Bruce Peninsula requests that the security be given to the Town in the form of a certified cheque, money order or bond security which will be held by the Town until such time as the securities may be released. No interest will be paid to the Owner for any securities or funds held by the Town.

Release of Securities

The Town shall release 50% of the securities to the Owner upon substantial completion of the project. The Town shall release all securities to the Owner one year after the substantial completion of the project.

Substantial completion shall be achieved once:

a) the Owner commissions at his own expense and to the satisfaction of the Town, the services of a Professional Engineer to review the development as constructed and

Site Plan Control Agreement 1-2017
Burnt Coast Inc. et al
May 2, 2017
Page 7 of 10
provide satisfactory written confirmation that the development has been constructed in conformance with the submitted plans;

b) the requirements under the Building Code Act have been met with regard to occupancy of buildings; and

c) all provisions with regard to the site plan control agreement and approved drawings have been completed to the satisfaction of the Town.

The Owner must make application in writing to the Town to notify of substantial completion and must also make application in writing to the Town for the release of the securities, in part and in full.

Failure to comply with any provision herein may result in the loss of securities. The Town reserves the right to use any securities to complete any works it deems necessary with regard to the Site Plan Control Agreement.
Schedule “D”

to the Site Plan Control Agreement dated the 2nd day of May 2017 between Burnt Coast Inc., Pyxus Inc., Samuel Eric Robinson, Dale Patricia Robinson, Regal Point Elk Farm, Suzanne Kimberley Kearns and Michael John Kearns and The Corporation of the Town of South Bruce Peninsula

Special Conditions

1. There will be no garbage storage except for in the interior of the building. Garbage disposal containers for patron use will be permitted on the exterior of the building as long as garbage does not accumulate or remain on the exterior of the building overnight.

2. There is no landscaping requirement beyond sand.

3. Prior to the aerial park and accessory building development, 12 parking spaces were required. 2 parking spaces existed on the property. Off-site parking credit amounted to 10 parking spaces. In keeping with current zoning requirements, 14 spaces would be required. Credit is being provided in the amount of 10 spaces leaving the on-site requirement of 4 parking spaces. No parking spaces are being provided on-site. In keeping with the Town Fee By-Law, $1,000 per parking space is hereby required for the 4 required parking spaces. The required fee is included in Schedule “C” hereto.

4. Aerial adventure parks are governed by the Technical Standards and Safety Authority (TSSA) for certification and inspection. The Owner will provide confirmation that the Owner initiates the appropriate permit process through TSSA or that TSSA has indicated that no permit from their organization is required.

5. The Town’s Fire Department does not provide high angle rope rescue as a service. The Owner shall provide to the Town a safety plan for the operation of the aerial park. The safety plan will provide specific instructions for the staff of the Owner in the event of an emergency.

6. The Owner shall save harmless the Town from any damage which may occur as a result of blasting, digging or in any way disturbing the soil, bedrock, surface or subsurface of the Lands as described in Schedule A attached hereto. The Owner shall assume sole responsibility and cost for any infrastructure or any other thing which is disturbed or in any way damaged or altered as a result of site preparation or construction on the Lands described herein.

7. Care shall be exercised during the installation of the components of the development (including the installation of guide wires and utility poles) so as to not

Site Plan Control Agreement 1-2017
Burnt Coast Inc. et al
May 2, 2017
Page 9 of 10
impair the functionality of the entire septic system.

8. Overhead electrical wires shall be relocated at the sole expense of the Owner and in accordance with any regulations thereto.

9. Existing grades shall be maintained and the Owner shall ensure that no additional storm water flows onto neighboring properties.

10. Concessions on the property will be confined to the interior of the building. Food preparation and consumption on site will be subject to Public Health regulations and will be confined to the interior of the building.

11. Exterior lighting will be required at the entrance to the building. Lighting will not shine toward adjacent buildings nor will it shine in such a manner as to obstruct traffic on any road or highway. All lighting will be dark skies compliant.

No lighting will be placed on the aerial park structures. Non-illuminated structures will not be used after sunset or before sunrise.

12. Speakers or public address systems will not be positioned so as to direct sound toward adjacent buildings or uses. The Owner will comply with all Town by-laws including the Noise By-Law, as amended from time to time.

13. Wherever possible, the Owner will incorporate the Town’s Community Design Toolkit in the design of the property and will give due consideration to colour and branding in accordance with the Sauble Beach established themes.

14. A setback will be provided between any fence erected and the property line. The fence shall not be erected exactly on the property line.

All conditions and special conditions shall be at the sole expense of the Owner.