

LICENCE AGREEMENT FOR SIDEWALK CAFÉ

THIS AGREEMENT effective this 26th day of August, 2019

BETWEEN:

THE CORPORATION OF THE TOWN OF KINGSVILLE

**Attention: Town Clerk
2021 Division Road North
Kingsville, Ontario N9Y 2Y9**

(Hereinafter referred to as the “Licensor”)

-and-

Downtown Business

(Hereinafter referred to as the “Licensee”)

WHEREAS the Licensee has applied for a licence to operate a sidewalk café on a public sidewalk under the jurisdiction of the Licensor.

AND WHEREAS the Licensor has agreed to grant a licence to the Licensee to operate a sidewalk café on a public sidewalk within the Town of Kingsville on the terms and conditions contained in this Agreement and on the condition that the Licensee perform such requirements and undertakings as may be required herein.

NOW THEREFORE this Agreement witnessed that in consideration of the Licensor approving the Application for a licence, the covenants hereinafter expressed and other good and valuable consideration, the parties hereto covenant and agree with one another as follows:

INSTALLATION OF THE SIDEWALK CAFÉ

1. The licensed area covered by this Agreement is that certain portion of the sidewalk abutting the property municipally known as “TBD”, Kingsville as shown on Schedule “A” attached hereto and forming part of this Agreement.
2. The licensed area shall be used for the purposes of a sidewalk café in conjunction with the business carried on by the Licensee and for no other purpose without the express written consent of the Licensor.
3. All elements of the sidewalk café **shown on the approved site plan**, including but not limited to enclosures, furnishings, heating devices, plants and flowers shall be provided and maintained by the Licensee in accordance with this Agreement at the sole expense of the Licensee **and the satisfaction of the Town.**
4. No advertising boards or plaques shall be posted on the enclosure surrounding the sidewalk café except for a temporary menu display board

which shall not in any way obstruct the sidewalk abutting the enclosure or the entrance to the sidewalk café.

5. The abutting sidewalk shall not be encumbered by sandwich board signs, planters, extraneous advertising objects or bicycles permitted to be affixed or leaned against the sidewalk café enclosure, or by anything else which may impede pedestrian passage or the passage of wheelchairs and permitted motorized devices. Any umbrellas or other shade or heating devices within the sidewalk café shall be sufficiently maintained, affixed, or weighted to prevent their being lifted or carried by wind.
6. The Licensee shall abide by all regulations prescribed by the Alcohol and Gaming Commission of Ontario, or any successor body thereto, in relation to the operation of the sidewalk café, including but not limited to the Smart Serve Program and the Code of Conduct for Patrons.
7. The Licensee shall abide by all by-laws, laws, regulations, orders and ordinances of any federal, provincial and municipal authorities and public bodies having jurisdiction over the sidewalk café and shall indemnify the Licensor against any and all damages, charges, actions or costs resulting from any non-compliance.
8. The sidewalk café shall not interfere with pedestrian crossing areas or designated accessible parking and passenger pick-up and drop-off areas nor with commercial loading zones.
9. The size and capacity of the sidewalk café shall not exceed any limitations imposed by the Town Building Department, Kingsville Fire Department and the Alcohol and Gaming Commission of Ontario.
10. The sidewalk café enclosure shall be constructed or demarcated in all respects to the satisfaction of the Director of Municipal Services and the Chief Building Official or delegated municipal manager(s).
11. The sidewalk café shall not interfere with or obstruct the main entrance to any other building in the vicinity of the sidewalk café.
12. The sidewalk café shall allow an unobstructed pedestrian aisle to the abutting sidewalk. This cleared aisle shall not be obstructed by the queuing of the Licensee's patrons.

OPERATION OF THE SIDEWALK CAFÉ

13. The Licensee shall operate the sidewalk café only during the sidewalk café season which shall commence May 1st and end on November 1st.
14. The Licensee shall maintain the sidewalk café in a clean and sanitary manner and keep the adjacent sidewalk clear of litter and debris. This responsibility shall include, but shall not be limited to, sweeping and cleaning of the sidewalk, painting, cleaning and repairing the enclosure and furnishings of the sidewalk café at the entire expense of the Licensee. In the event that the Licensee shall fail to maintain the adjacent sidewalk as required herein, the Licensor shall have the right to do so, and the Licensee shall be responsible for the payment of all expenses of the Licensor in connection therewith. In addition, the Licensor shall have the right to revoke the temporary licence granted herein, without notice, in the event that the Licensee fails to maintain the sidewalk café in accordance with the terms and conditions of this Agreement.
15. The Licensee shall preserve and protect all existing trees and plantings in the public right-of-way to the satisfaction of the Director of Municipal Services or delegated municipal manager(s) and shall replace at its entire expense, any trees damaged by the Licensee in relation to the sidewalk café. Absolutely nothing shall be placed in, on or affixed to trees, utility poles, light standards, receptacles or furniture owned by either the Licensor or the business improvement area board of management.
16. Except as expressly permitted herein, the Licensee shall not permit endorsements or other advertising on or within the sidewalk café. The Licensee shall not permit any free standing lighting or refuse receptacles within the sidewalk café. The Licensee shall not permit any umbrellas or other shade or heating devices to overhang outside of the licensed area or obstruct visibility on the abutting sidewalk area. Any heating devices used by the Licensee on or within the sidewalk café shall be used and, when not in use, shall be stored, in compliance with the applicable legislation and regulations in place regulating such use and storage having regard to the nature of the fuel source used by the heating device.
17. The Licensor shall be entitled to inspect the sidewalk café at any time during the operating season to ensure compliance with this Agreement.
18. All chattels, fixtures and equipment must be removed from the public sidewalk and the surface of the public sidewalk shall be restored to its original condition on or before the 1st day of November each year, provided that if the Licensee does not remove and restore, the Licensor shall be

entitled to do so and the Licensee shall be responsible for the payment of all expenses of the Licensor in connection therewith.

INSURANCE AND INDEMNITY

19. The Licensee shall indemnify and save harmless the Licensor against all actions, suits, claims and demands which may be brought against the Licensor and against all loss, costs, charges or expenses whatsoever for damaged property or injury (including death) to any person or persons which may be incurred or sustained or paid by the Licensor by the reason of the presence or operation of the sidewalk café.
20. The Licensee shall provide and maintain public liability and property damage insurance in the amount of Two Million (\$2,000,000.00) Dollars naming the Licensor as an additional insured and including cross-liability provisions, which insurance shall be satisfactory to the Licensor. A certified copy of the said insurance policy shall be filed with the Town Clerk prior to the commencement of the installation of the sidewalk café.

FEE AND DEPOSIT

21. The licence fee shall be the sum of **\$TBD plus HST**, payable in equal monthly installments paid by way of postdated cheques dated for the first day of May through October 2019 inclusive. This amount represents patio implementation costs of \$TBD and the use of two municipal parking spaces at a cost of \$TBD/spot/month for six months.
22. Prior to the installation of the sidewalk café on the public sidewalk, the Licensee shall pay an indemnity deposit to the Licensor in the sum of one thousand dollars (\$TBD) which shall be retained by the Licensor without interest, until the removal of the sidewalk café at the end of the sidewalk café season and the restoration of the sidewalk to the satisfaction of the Director of Municipal Services or delegated municipal manager(s), provided, however that, if the public sidewalk has not been satisfactorily restored, the Licensor shall apply the costs of any restoration work undertaken by it or on its behalf, against the indemnity deposit and refund the amount remaining, if any, without interest. If the restoration costs exceed the amount of the indemnity deposit, the Licensee shall be responsible to pay the deficiency to the Licensor forthwith following demand.
23. Any amount owing for any reason under this Agreement by the Licensee to the Licensor may be recovered, in whole or in part, from the indemnity deposit, at the Licensor's option.

TERMINATION AND SUSPENSION OF THIS AGREEMENT

24. If, due to any emergency, vacant possession of the licensed area is required by the Licensor for the purpose of installing, repairing or maintaining watermains or pipes, wires, conduits, sewers or other public services or utilities, upon receiving notice from the Licensor, the Licensee shall immediately deliver vacant possession of the licensed area to the Licensor and remove all chattels, equipment and fixtures from it, provided that if the Licensee fails to do so, the Licensee shall pay to the Licensor any costs or additional costs, expenses or damages incurred by the Licensor by reason of the failure to so remove all chattels, equipment and fixtures. Any such notice shall not terminate the Agreement, but will suspend it temporarily until the completion of such work, at which time the Agreement shall resume.
25. If the Licensee is in breach of any of the terms of this Agreement, the Licensor may, at its option, immediately terminate this Agreement without notice and require vacant possession from the Licensee.
26. Notwithstanding any other right or remedy of the Licensor, both the Licensee and the Licensor may cancel this Agreement, upon thirty (30) days written notice, and the Licensee shall be required to give vacant possession at the end of the notice period.
27. If the Licensor exercises its right to suspend or terminate this Agreement for any reason, the Licensor shall not be liable in any way to compensate the Licensee for any loss, costs, or damages which may be suffered by the Licensee or by any person claiming under the Licensee by reason of such termination.
28. If vacant possession of the area is not given to the Licensor or, if chattels, equipment and fixtures have not been removed from it in accordance with the terms of this Agreement, the Licensor shall have the right to remove the chattels, equipment and fixtures at the expense of the Licensee.
29. If the Licensee is delinquent in the payment of the fees or assessments levied by the Licensor pursuant to any Agreement or work carried out by the Licensor, the Licensor is authorized to remove the sidewalk café and restore the area to its original condition at the entire expense of the Licensee.

ENFORCEMENT

30. Notwithstanding any specific reference made herein, in the event that the Licensee fails to do anything required of it under this Agreement, the

Licensor has the right to perform such activity and the Licensee shall be responsible to the Licensor for the cost of the performance.

31. Ninety (90) days following a demand for payment, or the issuance of an invoice, the payment of any fees, taxes, rates, charges or other expenses under this Agreement, may be enforced by the Licensor in the same manner as property taxes. If the Licensee is also the owner of the property abutting the sidewalk café, the Licensee agrees that such fees, taxes, rates, charges or other expenses may be added by the Town's Director of Financial Services to the property tax roll and shall form a lien or charge against the Licensee's property as though assessed against it.

ASSIGNMENT OF THIS AGREEMENT

32. The Licensee shall not assign or sublet this Agreement or the use of the licensed area without the written consent of the Licensor, which consent may be arbitrarily withheld in the sole and unfettered discretion of the Licensor.
33. If the Licensee sells its business, it shall give notice to the Licensor at least ten (10) days prior to the completion of the sale.
34. If the Licensee sells, conveys, transfers, assigns or enters into an Agreement for sale, assignment of or transfer of any title to or interest in part of or all of its business to a purchaser, assignee or transferee not approved of in writing by the Licensor, the Licensor, in its sole discretion, may forthwith terminate this Agreement or demand the immediate removal of the sidewalk café or forthwith revoke the permission granted for the sidewalk café, and may enter upon the lands depicted in Schedule "A" in whole or in part and remove the sidewalk café and restore the public sidewalk and the expense of such removal and restoration shall be paid by the Licensor or by such unapproved purchaser, assignee or transferee forthwith on demand, or, at the Licensor's option, the payment of such expense may be enforced pursuant to the provisions of this Agreement. The Licensor shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or by such unapproved purchaser, assignee or transferee by reason of such termination, demand, revocation, entry or removal or restoration.

OWNER'S CONSENT

35. If the Licensee is not the owner of the property abutting the sidewalk café, the owner of the said property hereby consents to the licence granted by this Agreement and the owner of the property and Licensee waive and

release all claims they may have against the Licensor by reason of the construction, existence and operation of such sidewalk café.

GENERAL

- 36. This Agreement shall be binding upon and enure to the benefit of the parties to it, and their respective heirs, personal representatives, successors and permitted assigns.
- 37. This licence shall expire on November 1, 2019. There is no automatic entitlement on the part of the Licensee to renewal of this licence.

IN WITNESS WHEREOF the parties have duly executed this Agreement.

**THE CORPORATION OF
THE TOWN OF KINGSVILLE**

Per: _____

Per: _____
(Licensor)

Downtown Business

Per: _____

Per: _____
I/We have the authority to bind
the corporation (Licensee)

Schedule “A”

PROPOSED SIDEWALK CAFÉ SITE PLAN