

LEASE AGREEMENT (Regional Roads)

THIS AGREEMENT made as of the _____ day of _____, 20.. A.D.

BETWEEN;

THE CORPORATION OF THE CITY OF CAMBRIDGE

(HEREINAFTER CALLED THE “City”)

OF THE FIRST PART

(HEREINAFTER CALLED THE “OCCUPANT”)

OF THE SECOND PART

WHEREAS the Municipal Act, 2001, S.O. 2001, c. 25, Section 8 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act, 2001, S.O. 2001, c. 25 or any other Act.

AND WHEREAS the Municipal Act, 2001, S.O. 2001, c. 25, Section 28 provides for jurisdiction over highways by local municipalities.

AND WHEREAS the Municipal Act, 2001, S.O. 2001, c. 25, Section 30 provides that a highway is owned by the municipality that has jurisdiction over it subject to any rights reserved by a person who dedicated the highway or any interest in the land held by any other person.

AND WHEREAS the Municipal Act, 2001, S.O. 2001, c. 25, Section 55 provides that the sidewalks on the highways of an upper-tier municipality are under the jurisdiction of the lower-tier municipality.

AND WHEREAS the Council of the Corporation of the City of Cambridge deems it advisable to enter into lease agreements to regulate and control the use of such portion of highways (sidewalks) under the jurisdiction of the local municipality for the purpose of placing furniture and barriers and serving food and beverages to patrons;

AND WHEREAS the Occupant owns and operates a business on the premises known municipally as _____, which adjoins the highway referred to herein;

AND WHEREAS the Occupant desires to lease that portion of the untraveled highway (sidewalk) described on Schedule “A” attached to this agreement, for the purpose of placing furniture and barriers as required and serving food and beverages to the patrons of the Occupant’s business;

NOW THEREFORE in consideration of the payments required herein, the City hereby leases the within lands to the Occupant on the following terms and conditions:

- 1) In return for the annual sum of One Hundred and Fifty Dollars (\$150.00) plus Goods and Services Tax, of lawful money of Canada now paid by the Occupant to the City, the City hereby leases to the Occupant that portion of

municipal sidewalk described in Schedule "A" to this Agreement, for the purpose of placing furniture and barriers as required and serving food and beverages to the Occupant's patrons.

- 2) The Occupant will indemnify and save harmless the City and the Regional Municipality of Waterloo (the "Region") from all claims, actions, costs (including legal costs on a solicitor-client basis), demands and liabilities with respect to any personal injury, death or property damage done or sustained by anyone with respect to the said lands of the City and the Region and the said furniture, railings or barriers save and except for any willful act or negligent act by the City or the Region or any of its agents. The Occupant will take out and maintain, with an insurer licensed to carry on business in Ontario, a comprehensive policy of public liability and property damage insurance acceptable to the Region's Risk Manager and the City's Treasurer providing occurrence-based insurance coverage in an amount of not less than TWO MILLION (\$2,000,000.00) DOLLARS per occurrence exclusive of interest and costs. Such policy shall protect the City and the Region from all loss, damage, claims or actions arising howsoever out of use and maintenance of the leased lands and shall name each of the City and the Region as an additional insured there under. Such policy shall provide, for the following endorsements: Cross Liability with a Severability of Interests Clause, Contractual Liability, Host Liquor Liability and a 30 day notice of cancellation clause. Such insurance shall be primary insurance that will not call in to contribution any other insurance that may be available to the City or the Region. The Occupant shall forward to each of the Region's Risk Manager and the City's Treasurer a certificate of the said policy satisfactory to the Region's Risk Manager and the City's Treasurer forthwith upon execution of this Agreement and a certificate of each subsequent renewal thereafter. The Occupant will obtain and maintain proof of proper liquor licensing to the City Clerk. The Occupant will adhere strictly to all liquor licensing requirements.
- 3) No structure except a non-permanent barrier or railing necessary to meet the requirements of the Liquor License Board of Ontario shall be erected upon the said lands. The means of securing any railing to the sidewalk shall be subject to City approval.
- 4) The public sidewalk must be maintained, clear of obstruction, with a minimum width of 1.5 metres around the leased portion, to the satisfaction of the Commissioner of Transportation and Public Works or his designate.
- 5) The placing of barriers and furniture on the said lands by the Occupant shall be at the sole risk of the Occupant. The location of barriers and furniture are described in Schedule "A" (the application) to this Agreement.
- 6) Furniture shall be "patio-type" of a weather-durable quality, and maintained in good repair.
- 7) The Occupant covenants and agrees to maintain the leased premises in a wholesome condition, and not to allow the accumulation of refuse or debris.
- 8) The Occupant covenants and agrees that the City, and any person, agency or body authorized in writing by the City may enter the subject lands for the purpose of constructing, maintaining, repairing, moving or otherwise dealing with any services or utilities located or to be located in, under or above the said lands, including, but not so as to limit the generality of the following, hydro, gas, telephone, cable television, water storm drainage and sewer service facilities.

- 9) The term of this agreement shall extend from **March 15, 20(**) to November 15, 20(**)**. This agreement may be automatically renewed for this period in each successive year by way of payment of the annual fee, and provision of proof of liquor licensing and insurance, subject to the termination provisions of this agreement. The annual fee may be amended from time to time by Council.
- 10) Any party may terminate this Agreement at any time upon giving the other party not less than 30 days written notice.
- 11) Such notice shall indicate the date upon which the Agreement is terminated and shall be signed by the Mayor and City Clerk. The Occupant covenants and agrees to remove any furnishings and barriers if required to do so by the City. Should the City require the Occupant to remove furnishings and barriers, and the Occupant fails to do so; the City has the right to remove the furnishings and barriers and costs to be borne by the occupant.
- 12) In the event of a circumstances deemed by the Commissioner of Transportation and Public Works, or his designate, to be an emergency, the said Commissioner of Transportation and Public Works or designate may remove or authorize the removal of all or any of the furnishings and barriers without notice to the Occupant.
- 13) Notwithstanding the above conditions, the hours of operation will be subject to the review of the City Clerk, and Council may change the hours of operation if necessary.
- 14) Subletting by the Occupant of the sidewalk separate from the adjoining premises is not permitted.
- 15) This Agreement shall be governed by the laws of the Province of Ontario.
- 16) This Agreement shall ensure to the benefit of the parties hereto and to their respective heirs, successors and assigns. In case of any conflict between this agreement and any other legal requirement, the greater restriction shall apply.
- 17) Any notice shall have been deemed to have been sufficiently given to the Occupant by delivering such notice to him in any of the following ways, namely:
 - a) By mailing such notice by prepaid registered mail to the municipal address referred to in the first recital to this agreement. Such notice shall be deemed to have been given on the fifth day following such mailing; or
 - b) By personal service upon the Occupant.

Service of notice by the Occupant upon the City shall be made by mail to the City Clerk, 50 Dickson St., 2nd Floor, P.O. Box 669, Cambridge, ON. N1R 5W8.

Service of notice in respect of cancellation of liability insurance coverage by the Occupant upon the Regional Municipality of Waterloo shall be made by mail to the Regional Clerk, 2nd Floor, 150 Frederick St., Kitchener N2G 4J3.

IN WITNESS WHEREOF the parties hereto have hereunto set their hand and seal.

OCCUPANT

WITNESS TO THE OCCUPANT'S SIGNATURE

DATE

THE CORPORATION OF THE CITY OF CAMBRIDGE:

MAYOR

CLERK

DATE