

THIS MASTER PATIO AGREEMENT made in triplicate on the day of , 2023.

BETWEEN:

THE REGIONAL MUNICIPALITY OF PEEL

Hereinafter called the "Region",

of the FIRST PART

And

THE CORPORATION OF THE TOWN OF CALEDON

Hereinafter called the "Town"

of the SECOND PART

WHEREAS the Region has ownership of and jurisdiction over certain roads within the Town of Caledon ("Regional Roads").

AND WHEREAS the Region has ownership of and responsibility for sidewalks and multi-use trails on Regional Roads within its jurisdiction in the Town pursuant to the Sidewalks and Multi Use Trails Transfer of Jurisdiction Agreement dated January 12, 2017.

AND WHEREAS the Town has in place a by-law, policies and procedures for owners or occupants of lands abutting area roads to apply for a license to use certain adjoining areas of the untraveled portion of the area road allowances;

AND WHEREAS section 20 of the Municipal Act, 2001, provides that a municipality may enter into an agreement with one or more other municipalities to jointly provide, for their joint benefit, any matter which all of them have the power to provide within their own boundaries;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the covenants and agreements hereinafter contained on the part of the Town to be observed, fulfilled and performed, and the sum of FIVE (\$5.00) DOLLARS now paid by the Town to the Region, the receipt of which is hereby acknowledged, the Region hereby grants to the Town the rights expressed in this Agreement.

DEFINITIONS

1. In this Agreement:

- (a) "Applicant" shall mean an applicant applying to the Town for a Temporary Patio License, as contemplated by this Agreement;
- (b) "Temporary Patio" shall mean an outdoor area for patron seating and tables operated seasonally as determined by the Town of Caledon Business License By-Law in conjunction with the adjoining Premises;
- (c) "Premises" shall mean ground floor premises, owned or occupied by the applicant for a license, abutting a Regional Road that is used by the applicant as a restaurant, café, refreshment establishment or lunch counter, licensed by the Town and subject to inspection by the medical officer of health or other appropriate municipal officials and in which washroom facilities are located;
- (d) "Guideline" shall be the Temporary Patio Guideline that describes the technical standards by which the Temporary Patio must be designed, built, and maintained as agreed to by the Region, which Guideline may be updated annually at either party's reasonable discretion.

TERM

- 2. This Agreement shall be for an initial term commencing on April 1st, 2023 and ending on March 31st, 2024 and shall automatically renew every year unless otherwise terminated by either party pursuant to the terms of this Agreement.
- 3. The rights conferred by this Agreement shall cease absolutely and immediately upon the material breach by a party of the terms herein and upon the non-breaching party giving written notice to the breaching party.
- 4. Notwithstanding the foregoing, either party may terminate this Agreement by giving ninety (90) days' notice of such termination.

OUTDOOR PATIO ENCROACHMENTS

5. The Town is authorized to license portions of the Region's Right of Way along Regional Roads within the limits of the Town as shown specifically in Schedule "A" (the "Patio Program Area") for the purposes of a Temporary Patio in accordance with its own by-laws, procedures and policies respecting the license of Temporary Patio and on the following terms and conditions:

- (a) the Town shall enter into a license agreement with the Applicant substantially in the form hereto as Schedule "B" (the "Patio License"). In the event that the Town substantially amends the Patio License they shall first notify the Region of such substantial amendment and receive the Region's written approval. Such approval shall not be unreasonably withheld by the Region;
- (b) that the Temporary Patio shall be designed, installed, and maintained in accordance with the Guideline. The parties agree and acknowledge that any updates to the Guideline shall be made by the Town providing revisions to the Region by January 15 and the Region indicating in its sole discretion its agreement or necessary revisions by February 15 of each year of the term of this Agreement.
- (c) that the Town agrees to respond to all reasonable concerns of the Region related to the Temporary Patio and take all appropriate steps to rectify such concerns within a commercially reasonable time of receiving written notice of the concern from the Region.
- (d) that the Town shall ensure that the Region or any other public utility shall be permitted to enter the Patio Program Area for the purposes of any installation, repair, maintenance of pipes, road or railway construction, cables or any other Region or public services (the "Works"). Should a Temporary Patio be required to be removed for the Works, it shall be at the Applicant's sole cost and expense.
- (e) should the Region require that a portion or all of the Temporary Patio be removed temporarily or permanently for Regional or public service needs, the Town shall ensure that

the Applicant shall do so in a timely manner and at the Applicant's sole cost and expense with no liability whatsoever to the Region for such removal.

- (f) Nothing in the Patio License shall limit the Town or the Region's rights, including the Town and Region's right to full access to the Regional Roads. .
- (g) that the Patio License is restricted to Temporary Patios and not any other type of structure or appurtenance;
- (h) that if a Temporary Patio is not removed by the Applicant at the end of the patio season as defined in the Guideline , the Town shall remove the same at the Town's sole cost and expense. If the Town fails to complete the aforementioned removal works within thirty (30) days after the end of the patio season then the Region may at its sole discretion exercise an option to remove the Temporary Patio and the Town shall be responsible for one hundred percent (100%) of the Region's costs associated with the same.

FEES

- 6. the Town shall be entitled to keep all fees that it collects pursuant to its By-Laws in relation to the administration of its obligations of this Agreement.
- 7. Any amounts collected by the Town in relation to the Regional Roads pursuant to the Patio License shall be collected by the Town and then paid to the Region.
- 8. If the Region or Town or any external authority enacts a by-law levying an annual tax or fee on all encroachments of buildings or other structures and appurtenances thereto upon or over any road, street or land in the Town of Caledon, the Town shall ensure that all future Patio License agreements will provide for the Applicant to pay whatever annual tax or fee may be levied in respect of the encroachment permitted hereby.

INDEMNIFICATION

9. The Town, both during and after the term of this Agreement, shall at all times, and at its own cost, expense and risk, indemnify and hold harmless the Region, its elected official, officers, employees, volunteers, agents, contractors, and all respective heirs, administrators, executors, successors and assigns from any and all losses, damages (including, but not limited to, incidental, indirect, special and consequential damages, or an loss of use, revenue or profit by an person, organization or entity), fines, penalties and surcharges, liabilities (including, but not limited to, any and all liability for damage to property and injury to persons, including death), judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind (including, but not limited to proceedings of a criminal, administrative or quasi criminal nature) and expenses (including, but not limited to, legal fees on a substantial indemnity basis), which the indemnified person or persons may suffer or incur, howsoever caused, arising out of or in consequence of or directly or indirectly attributable to the rights granted to the Town pursuant to this Agreement, its agents, employees and sub-consultant on behalf of the Region, provided such losses, damages, fines, penalties and surcharges, liabilities, judgments, claims, demands, causes of action, contracts, suits, action or the proceedings of any kind and expenses as defined above are due or claimed to be due to the negligence, breach of contract, and/or breach of law of the Town, its agents, employees or sub-contractor.

CONFIDENTIALITY

10. Each party acknowledges and agrees that the other party shall be bound and comply with all applicable privacy laws, including but not limited to the *Municipal Freedom of Information and Protection of Privacy Act* in the performance of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

CONFLICT RESOLUTION

11. Should any of the Town's by-laws, guidelines, policies and procedures for Temporary Patios conflict with the terms of this Agreement, the terms of this Agreement shall prevail.
12. The parties agree that if any dispute of claim arising out of or in connection with this Agreement that is solely as between parties hereto cannot be resolved through good faith negotiation to the satisfaction of the parties within thirty days (or such longer period as may be agreed upon in writing) from the date that either party notifies the other in writing that such dispute or claim exists, then the parties agree to the fullest extent permitted by applicable law that any dispute relating to this Agreement and/or the subject matter contemplated herein shall be exclusively and finally resolved by binding arbitration before a single arbitrator selected by the parties. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and said arbitrators shall then select a third arbitrator, and all three arbitrators shall then arbitrate the dispute. The arbitrator(s) shall take all reasonable steps to render their decision in writing within ninety (90) days after the commencement of the arbitration proceeding. The decision of the arbitrator(s), or any two of the three arbitrators, shall be final and binding on the parties and all their respective heirs, executors, administrators, successors and assigns. Judgment rendered by the arbitrator(s) may be entered in any court having jurisdiction. Any requirement for arbitration in accordance with this Agreement shall be governed by the Arbitration Act, 1991 (Ontario), or any successor legislation thereto, and the arbitration shall be held in the Regional Municipality of Peel, Ontario, Canada. This provision shall survive any termination of this Agreement and shall continue in full force and effect.

GENERAL PROVISIONS

13. The validity and interpretation of this Agreement, and of each clause and part thereof, shall be governed by the laws of the Province of Ontario.

14. Any notice to be given or document to be delivered to the Region or the Town shall be sufficiently given or delivered if delivered personally or if sent by facsimile transmission, ordinary prepaid mail, or email to the following addresses:

If intended for the Region, at:

Name: Manager, Traffic Engineering

Address: 10 Peel Centre Drive, Suite B, Brampton, ON L6T 4B9

Fax: 905-791-1442

Email: trafficinquiry@peelregion.ca

and if intended for the Town, at:

Name: Town Clerk

Address: 6311 Old Church Road, Caledon ON L7C 1J6

Fax: 905-584-4325

Email: legislative.services@caledon.ca

The parties may designate in writing to each other a change of address at any time. Notice by mail shall be deemed to have been received on the fourth (4th) Business Day after the date of mailing, and notice by personal delivery shall be deemed to have been received at the time of delivery. If transmitted by fax or e-mail before 4:00 p.m. on a Business Day, is deemed to have been given on that Business Day, defined below, and if transmitted by fax or e-mail after 4:00 p.m. on a Business Day, is deemed to have been given on the next Business Day. In the event of an interruption in postal service, notice shall be given by personal delivery. For the purposes of this section, "Business Day" means every day except Saturday, Sundays and statutory and civic holidays in the Province of Ontario.

15. Both parties shall comply with all applicable federal, provincial and municipal laws, rules, orders, regulations, and by-laws in respect of the performance of this Agreement including without limitation the *Accessibility for Ontarians with Disabilities Act, 2005* and its regulations.
16. That the parties agree that the execution of this Agreement may be facilitated through facsimile or electronic means and/or this Agreement may be executed in several counterparts and any such facsimile or electronic copy and any such counterpart shall be deemed to be an original and such facsimile or electronic copies or such counterparts together shall constitute one and the same instrument and shall have the same force and effect as an executed original.
17. If applicable, the parties agree that the execution of this Agreement by either party may be facilitated through an electronic approvals process (the "Approval Process") whereby an e-mail confirmation is provided by the signing party to the other party to evidence the execution of the Agreement and binds the individual/corporation, which e-mail confirmation shall be attached to this Agreement and shall have the same force and effect as an executed original. Each of the parties shall maintain a record of such electronic documents pursuant to this Approval Process, and shall provide an executed copy of the Agreement to the other party with a wet signature, within a reasonable time as soon as practicable. This Approval Process shall apply until such time as The Regional Municipality of Peel has implemented a corporate electronic execution process.

IN WITNESS WHEREOF the parties have shown their agreement by affixing hereto the signature of their duly authorized signing officers.

Dated at the Town of Caledon, this ____ day of _____, 202__.

THE CORPORATION OF THE TOWN OF CALEDON

Authorized signatories, as
authorized by resolution
number _____ and dated
_____, 2023

Per: _____
Name:
Title:

Per: _____

Name:

Title:

We have the authority to bind the Corporation.

Dated at the City of Brampton, this ____ day of _____, 202__.

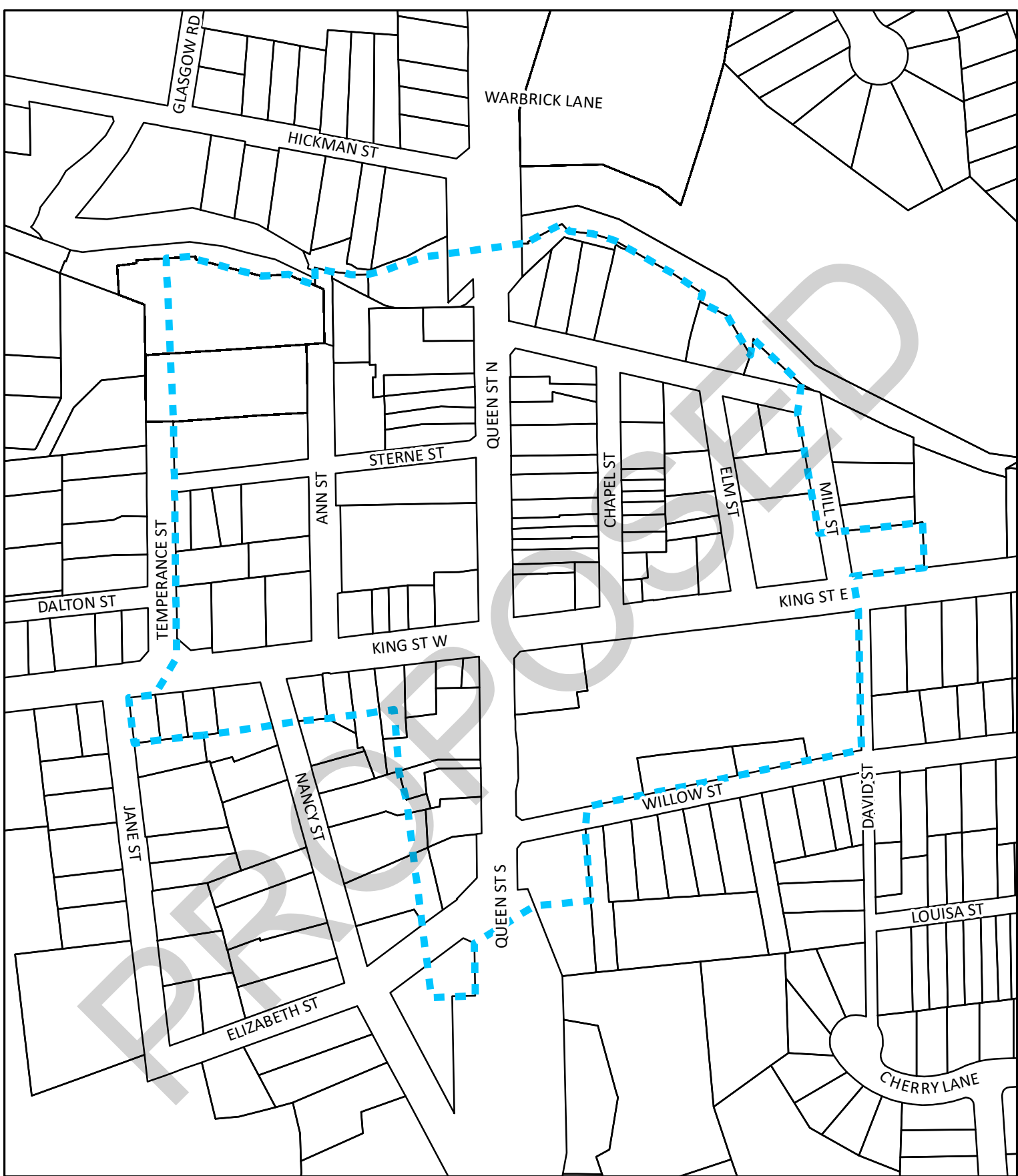
THE REGIONAL MUNICIPALITY OF PEEL

Per: _____

Name:

Title:

I have the authority to bind the Regional Corporation.



0 25 50 100 Metres

Schedule A Bolton Patio Program Area

NOTE: This data is provided for your convenience only. The data is not warranted or certified or guaranteed in any way. The Town of Caledon accepts no liability for any damages whatsoever, including any consequential damages, for any deficiency in the data. The reproduction of this data, in whole or in part, is forbidden without the express written permission of the Town of Caledon

Source: Teranet

Date: 12/14/2022

PATIO LICENSE

BETWEEN:

THE CORPORATION OF THE TOWN OF CALEDON

(hereinafter called "the Town")

OF THE FIRST PART

-AND-

(hereinafter called "the Licensee")

OF THE SECOND PART

WHEREAS the Licensee has the legal right to operate a restaurant on the lands known municipally as * in the Town, being legally described on Schedule "A" attached hereto;

AND WHEREAS the Licensee has requested the Town to permit a * (hereinafter referred to as the "Encroachment") to encroach upon the widened limits of * (Regional Road *) being described as Parts * on 43R- (or if no reference plan then use the following wording – on drawing number # * prepared by *) (hereinafter referred to as the "Region Road");

AND WHEREAS the Town and The Regional Municipality of Peel (the "Region") have entered into a Master Patio Agreement commencing on April 1st, 2023 and ending on March 31st, 2024, which automatically renews every year unless otherwise terminated by either party pursuant to the terms of this agreement (the "Master Patio Agreement"); and

AND WHEREAS the Master Patio Agreement permits the Town to license portions of the Region's Right of Way along Regional Roads within the limits of the Town as shown specifically in Schedule "A" therein for the purposes of a temporary patio;

AND WHEREAS the Town and the Region have agreed that the Encroachment as herein defined satisfies the definition and meets the conditions for "Temporary Patios" as set out in the Master Patio Agreement.

NOW WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set out, the parties agree as follows:

1. The recitals herein are true and accurate.
2. Subject to the provisions hereinafter set out, the Town permits the Owner to have the Encroachment remain from * and terminating on * (hereinafter referred to as the "Term").
3. The Licensee agrees to pay the Town the following:
 - (a) Licensing fee (one time) \$, plus applicable taxes

4. The Licensee shall be the owner of the Encroachment. Notwithstanding the foregoing, nothing in this agreement shall limit or exclude the Town's liabilities or responsibilities under the Master Encroachment Agreement.
5. This written notice to the other party. The Licensee agrees to remove the Encroachment at the Licensee's sole expense within sixty (60) days of any such notice of termination. The Licensee shall restore the area previously occupied by the Encroachment in a manner satisfactory to the Town, acting reasonably. The Licensee agrees not to make any claims, demands, and/or commence any actions, suits, proceedings or maintain the same for any and all costs, damages, losses, compensations, injurious affection arising from the Encroachment or as a result of the early termination of this Agreement.
6. At the end of the Term, the Licensee shall, at their sole cost and expense, remove the Encroachment and restore the area previously occupied by the Encroachment in a manner satisfactory to the Town and Region, acting reasonably. The Licensee agrees not to make any claims, demands, and/or commence any actions, suits, proceedings or maintain the same for any and all costs, damages, losses, compensations, injurious affection arising from the Encroachment or as a result of the termination of this Agreement.
7. The Licensee agrees and covenants that it will bear all costs associated with the Encroachment. The Licensee agrees and covenants that the Encroachment is now in a good and workmanlike condition and in compliance with all municipal by-laws and the laws of the Province of Ontario and shall be maintained in a good and workmanlike condition throughout the Term of this Agreement.
8. The Licensee agrees not to hold the Town or The Regional Municipality of Peel (the "Region") responsible in any way for any loss, accident, or damage or injury to person or persons on the Region Road resulting from the Encroachment. The Town or the Region shall not in any event whatsoever be liable or responsible in any way for any kind of liability, suit, claim, demand, fine, action, or proceeding of any kind for which the Licensee, or those for whom they are in law responsible, may become liable or suffer by reason of the Encroachment, including any breach of or non-performance by the Licensee of any provision of this Agreement, saving and excepting therefrom the sole gross negligence by the Town, or those for whom it is in law responsible. The Licensee agrees to indemnify and save harmless the Town and the Region of and from all liabilities, fines, damages, suits, claims, demands, actions, and cost for such actions for which the Town may become liable or suffer by reason of the Encroachment, its use and or removal. Without restricting the generality of the foregoing, the Licensee shall indemnify and save harmless the Town and the Region of and from all damages to persons or properties as a result of such Encroachment and its use and/or removal. This provision shall apply and survive the termination of this Agreement with respect to any act or omission that occurred during the Term of this Agreement.
9. The Licensee agrees that the encroachment shall be constructed and maintained in accordance with the Bolton Heritage District Temporary Patio Guide, attached as Schedule "B" and the approved plans, attached as Schedule and C and that there shall not be any addition, vertically, horizontally or otherwise, to the Encroachment. In the event that the Encroachment is being added to or materially altered, it will be removed at the expense of the Licensee. Upon such removal this Agreement will be terminated.

10. Nothing in this agreement shall limit the Town or the Region's rights, including the Town and Region's right to full access to the Regional Road. The parties acknowledge and agree that the Region, including its officers, or any other authorized agent or official may inspect the Encroachment at all reasonable times upon reasonable notice to the Town except in the case of emergencies.
11. The Licensee further acknowledges and agrees that, in the event the Town or the Region exercises its right to enter onto the Region Road or the widened limits thereof for any type of construction, installation, alteration, removal, replacement, reconstruction, repair, maintenance and/or inspection to the Region Road or any of the Regional infrastructure therein the Town and Region shall not be responsible for repairing or replacing the Encroachment and the Licensee shall assume any and all costs and responsibilities relating to the replacement of same.
12. Nothing in the Agreement shall be construed to mean that the Town by virtue of this Agreement has assumed the responsibility of such compliance or any compliance with any municipal by-laws. The Licensee covenants to fully comply with any order, by-law, law, regulation, and direction of any lawful authority, including the municipal, provincial, or federal governments or their respective agents with respect to the Encroachment.
13. The rights conferred by this Agreement shall not be assignable.
14. Any notice to be given or document to be delivered to the Licensee or the Town shall be sufficiently given or delivered if delivered personally or if sent by facsimile transmission or ordinary prepaid mail to the following addresses:

If intended for the Licensee, at:

* **Name**

* **Address**

Fax:

and if intended for the Town, at:

Name

Address

Attention:

Fax:

Or to such other address or fax number as either party may from time to time notify the other in writing. Any notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof, or if given by Fax, on the first business day following the transmittal thereof. Any notice sent by prepaid first class mail shall be deemed to have been delivered on the fifth (5th) business day following the date of mailing thereof provided that the postal services have not been interrupted in which case notice shall only be given by personal delivery or Fax as aforesaid.

15. The Licensee shall obtain and maintain throughout the Term a comprehensive insurance policy with a minimum liability coverage of TWO MILLION DOLLARS (\$2,000,000.00) [NTD: where alcohol is served coverage shall be not be less than FIVE MILLION DOLLARS (\$5,000,000)] per occurrence, covering the Encroachment to protect the Licensee, the Town and the Region, and those for whom the Town and Region are in law responsible, from any and all claims for damages, personal injury including death, and for claims from property damage which may arise from the Licensee's use and/or removal or in relation to the Encroachment under this Agreement, including the use or maintenance or removal of the Encroachment or any act or omission of Licensee's contractors, agents or employees while engaged in the work of placing, maintaining, renewing or removing the Encroachment, and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage. The insurance policy shall constitute primary coverage and not merely coverage in excess of, or co-coverage with, any insurance otherwise available to the Town or Region, shall extend to cover the contractual obligations of Licensee as stated within this Agreement, and shall be in the name of the Licensee and shall name the Corporation of the Town of Caledon and The Regional Municipality of Peel as additional insureds thereunder. The policy shall provide that it cannot be cancelled, lapsed or materially changed without at least thirty (30) days' notice to the Town by registered mail. Evidence of insurance satisfactory to the Town shall be provided prior to the execution of this Agreement.
16. This Agreement, when executed by the said parties shall constitute a binding agreement

For the Licensee

Name,
Position

Date

I have the authority to bind the Licensee

For the Town

Authorized signatories, as authorized by
resolution number _____ and dated
_____, 20__:

Director, Municipal Law Enforcement
and Building Services

Date