

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW #2381 (2002)

Being a by-law to authorize the Mayor & Clerk to enter into an Agreement with Snack Shack (Shane & Christine Dube) with respect to the operation of the Marlene Stewart Streit Park Concession.

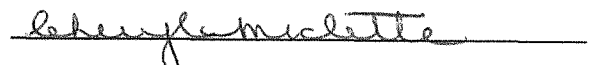
WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into an Agreement with Snack Shack (Shane & Christine Dube) regarding the operation of the Marlene Stewart Streit Park Concession;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and Snack Shack (Shane & Christine Dube) be and the same is hereby approved.
- (2) THAT the Mayor and Clerk be and each of them is hereby authorized and instructed on behalf of the Corporation of the Town of Pelham to execute the said Agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
6th. DAY OF MAY, 2002 A.D.


MAYOR (ACTING)


CLERK

THIS AGREEMENT dated this 1st, day of May, 2002

BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter referred to as the "Landlord"

-and-

SHANE & CHRISTINE DUBE', c.o.b. as

Snack Shack

Hereinafter collectively referred to as the "Tenants"

WHEREAS the Landlord and the Tenants have agreed to enter into a lease of the food and beverage concession located at Marlene Stewart Streit Park, located at 55 Park Lane, Fonthill, Ontario (the "Leased Premises") in order to enable the Tenants to operate a food and beverage concession (the "Concession") at the Pool Building;

NOW, THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual rents, covenants, and obligations stipulated herein the parties covenant, promise and agree to as follows:

1. GRANT OF LEASE

1.1 The Landlord leases the Leased Premises to the Tenants:

- a. at the Rent set forth in section 3;
- b. for the Term set forth in section 2; and
- c. subject to the conditions and in accordance with the covenants, obligations and agreements herein.

2. TERM AND POSSESSION

2.1 The Tenants shall, subject to any earlier termination of this lease, have possession of the Leased Premises for a period of ^{45D, CD} 5 months, commencing 1st day of May, ^{June SD, CD} 2002 to the 30th day of September 2002 (the "Term")

2.2 The parties agree that in the event that the Tenants are not in default pursuant to this lease and provided that the Landlord consents to a renewal, the Tenants shall have the option to attempt to negotiate a lease of the Leased Premises beyond the Term upon terms and conditions which are acceptable to all parties. Any negotiation will be subject to disclosure by the Tenants and their profits and financial statements related to the operation of the Concession and shall be completed within such time period as set by the Landlord. If the parties cannot reach agreement within such time period then the Tenants shall not be permitted to lease the Leased Premises, unless the Landlord agrees otherwise in writing. Nothing contained herein this lease gives the Tenants any right to compel the Landlord to lease the Leased Premises to them beyond the Term or any automatic right of renewal. The decision to renew shall be at the sole discretion of the Landlord.

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2.3 Subject to the Landlord's rights under this lease, and as long as the lease is in good standing, the Landlord covenants that the Tenants shall have quiet enjoyment of the Leased Premises during Term or any renewal thereof without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming through the Landlord.

2.4 The Landlord shall provide two sets of keys to the Tenants for the Leased Premises. The Tenants shall not without the written consent of the Landlord place any additional locks upon the door(s) to the Leased Premises and shall not permit any duplicate keys to be made therefor but shall use only additional keys obtained from the Landlord at the expense of the Tenants. The Tenants shall surrender all keys to the Landlord on termination of the lease.

3. RENT:

3.1 Rent means the amounts payable by the Tenants to the Landlord pursuant to this section.

3.2 The Tenants covenant to pay to the Landlord during the Term the sum of Two Hundred Twenty-Five Dollars (\$225.00) per month including all applicable taxes payable each month commencing as of the first day of the Term and continuing on the first day of each month thereafter. For the months of May and September, the rent will be pro-rated according to scheduled activities.

3.3 The Tenants agree to provide the Landlord, upon the execution of this lease, ~~one (1) cheque in the amount of Fourteen Dollars and Fifty-two Cents (\$14.52) dated~~^{SPCD} ~~May 1st, 2002,~~ and one (1) cheque in the amount of Sixty Dollars (\$60.00) dated September 1, 2002, and three (3) post dated cheques in the amount of Two Hundred Twenty-Five Dollars (\$225.00), representing payment of the Rent for the months of June, July and August.

3.4 The Tenants acknowledge and agree that the payments of Rent provided for in this lease shall be made without any deduction for any reason whatsoever unless expressly allowed by the terms of the lease or agreed to by the Landlord in writing and no partial payment by the Tenants which is accepted by the Landlord shall be considered as other than a partial payment on account of Rent owing and shall not prejudice the Landlord's rights to recover any Rent owing.

4. ASSIGNMENT

4.1 The Tenants shall not be permitted to assign this lease or sublet the whole or any part of the Leased Premises.

5. USE

- 5.1 During the Term the Leased Premises shall not be used for any purpose other than for the operation of the Concession and for the sale food, beverages and related products.
- 5.2 The Tenants shall provide the Town's Facilities Manager (the "Facilities Manager") with a statement as to the proposed hours of operation of the Concession. The Tenants shall only be permitted to operate the Concession during those hours as approved the Facilities Manager in writing.
- 5.3 The Tenants shall not do or permit to be done at the Leased Premises anything which may:
- a. constitute a nuisance;
 - b. cause damage to the Leased Premises;
 - c. cause injury or annoyance to occupants of neighbouring premises;
 - d. make void or voidable any insurance upon the Leased Premises;
 - e. constitute a breach of any by-law, statute, order or regulations of any municipal, provincial or any other competent authority relating to the Leased Premises.

6. REPAIRS AND MAINTENANCE

- 6.1 The Tenants covenant that during the term they shall, at their own expense, maintain in clean, sanitary, good order and condition the Leased Premises and all fixtures, equipment contained in or serving the Leased Premises, including all alterations and additions made thereto, and shall promptly make all needed repairs and all necessary replacements as would a prudent owner and as required by the Landlord. The Tenants further covenant to regularly dispose of all garbage, waste material and other rubbish which accumulates in and around the Leased Premises and in connection with the operation of the Concession.
- 6.2 The Tenants acknowledge that the Landlord or a person authorized by the Landlord has a right to enter the Leased Premises to examine the condition thereof and view the state of repair at reasonable times:
- a. and if upon such examination repairs are found to be necessary, written notice of the repairs required shall be given to the Tenants by or on behalf of the Landlord and the Tenants shall make the necessary repairs within the time specified in the notice;
 - b. and if the Tenants refuse or neglect to keep the Leased Premises in good repair the Landlord may, but shall not be obligated to, make any necessary repairs and shall be permitted to enter the Leased Premises for the purpose of effecting the repairs without being liable to the Tenants for any loss, damage or any inconvenience to the Tenants in connection with the Landlord's entry and repairs and if the Landlord makes such repairs the Tenants shall pay the costs of them immediately.

- 6.3 Upon the expiry of the Term, or any earlier termination of this lease, the Tenants agree peaceably to surrender the Leased Premises, including any alterations or additions made thereto, to the Landlord in a state of good repair, reasonable wear and tear and damage by fire, lightning and storm only accepted.
- 6.4 The Tenants shall immediately give written notice to the Landlord of any substantial damage that occurs to the Leased Premises from any cause.

7. ALTERATIONS AND ADDITIONS

- 7.1 If the Tenants, during the term, desire to make any alterations or additions to the Leased Premises, including but not limited to, erecting partitions, attaching equipment, and installing necessary furnishing or additional equipment, the Tenants may do so at their own expense at any time and from time to time if the following conditions are met:
- a. before undertaking any alteration or addition the Tenants shall submit to the Landlord a plan showing the proposed alterations or additions and the Tenants shall not proceed to make any alterations or additions unless the Landlord has approved the plan; and
 - b. any and all alterations or additions to the Leased Premises by the Tenants must comply with all applicable building code standards by-laws of the Landlord and any other competent authority.
- 7.2 The Tenant shall be responsible for and pay the costs of any alterations, additions, installations or improvements that any governing authority, municipal, or provincial or otherwise, may require to be made in, on or to the Leased Premises.
- 7.3 No sign, advertisement, notice board, painting or notice shall be inscribed, painted exhibited or affixed by the Tenants, or any person on the Tenants' behalf.
- 7.4 All alterations and additions done to the Leased Premises made by or on behalf of the Tenants shall immediately become the property of the Landlord without compensation to the Tenants.
- 7.5 The Tenants, agree at their own expense by whatever means may be necessary, immediately to obtain the release or discharge of any encumbrance that may be registered against the Landlord's property in connection with any additions or alterations to be leased Premises made by the Tenants or in connection with any other activity of the Tenants.
- 7.6 The Tenants shall, at their own expense, if requested by the Landlord, remove any or all additions or improvements made by the Tenants to the Leased Premises during the Term or any renewal thereof and shall repair all damaged caused by the installation or the removal or both.
- 7.7 The Tenants shall not bring onto the Leased Premises or any part of the Leased Premises any machinery, equipment or any other thing that might in the opinion of the Landlord, by reason of its weight, size or use, damage the Leased Premises or overload the floors of the Leased Premises and if the Leased Premises are

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damaged or overloaded the Tenants shall restore the Leased Premises immediately or pay the Landlord the cost of restoring the Leased Premises.

8. INSURANCE

- 8.1 The Tenants shall carry insurance in their own name insuring against the risk or damage to the Tenants' property in the leased Premises caused by fire or other perils and the policy shall provide for coverage on a replacement cost basis to protect the Tenants' fixtures, equipment, chattels, alterations, improvements, additions and decorations.
- 8.2 The Tenants shall carry public liability and property damage insurance in which the Landlord shall be a named insured and which said policy shall include a cross liability endorsement. The policy shall be the amount of not less than Two Million Dollars (\$2,000,000.00) and the Tenants shall provide the Landlord with a copy of the policy.
- 8.3 The Tenants covenant and agree to indemnify and save the Landlord harmless against any and all claims, losses, actions, causes of actions, demands, costs, expenses or otherwise arising out of or occasioned by the maintenance, use or occupancy of the Leased Premises or the operation of the Concession.

9. ACTS OF DEFAULT AND LANDLORD'S REMEDIES

- 9.1 An Act of Default has occurred when:
- a. the Tenants have failed to pay Rent on the due date, regardless of whether demand of payment has been made or not;
 - b. the Tenants have breached their covenants or failed to perform any of their obligations under the lease;
 - c. any insurance policy is cancelled or not renewed by reason of the use or occupation of the Leased Premises, or by reason of non-payment of premiums; or
 - d. the Leased Premises:
 - i. become vacant or remain unoccupied for a period of thirty (30) consecutive days; or
 - ii. are used by any other person or persons, or for any other purpose than as provided for this lease without the written consent of the Landlord.
- 9.2 When an Act of Default on the part of the Tenants has occurred the Landlord shall have the right to terminate this lease on ten (10) days written notice to the Tenants or to re-enter the Leased Premises and deal with it as it may choose.
- 9.3 If, when an Act of Default has occurred, the Landlord chooses not to terminate the lease or re-enter the Leased Premises, the Landlord shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Tenants and to charge the costs of such rectification to the Tenants and to recover the costs as Rent.

- 9.4 If, when an Act of Default has occurred, the Landlord chooses to waive its right to exercise the remedies available to it under this lease or at law the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the Landlord to prevent it exercising its remedies with respect to the subsequent Act of Default.

No covenant, term, or condition of this lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord.

10 TERMINATION UPON NOTICE AND AT END OF TERM

- 10.1 The Tenants covenant and agree that upon the end of the Term or any renewal thereof, or upon any earlier termination as provided for in this lease, they will surrender this lease, including any unexpired remainder of the Term or any renewal thereof, and vacate the Leased Premises and give the Landlord possession.

- 10.2 In the event that this lease is terminated at the end of the Term the Tenants shall have until the 15th day of October, 2002 to remove their equipment and supplies. If the lease is terminated earlier than the end of the Term the Tenants shall remove such equipment and supplies immediately. The Tenants shall be responsible for any damage caused or repairs made necessary as a result of the removal of such equipment and supplies or as a result of complying with sections 6.3 and 7.6.

11 RULES AND REGULATIONS

- 11.1 The Tenants covenant and agree on their behalf and on behalf of all persons entering the Leased Premises with Tenants' authority or permission will abide by such reasonable rules and regulations that form part of this lease and as the Landlord may make from time to time.

12 NOTICE

- 12.1 Any notice required or permitted to be given by one party to the other pursuant to the terms of this lease shall be delivered or mailed by registered mail:

To the Landlord at: 20 Pelham Town Square,
P.O. Box 400,
Fonthill, On L0S 1E0

To the Tenants at: 57 McCrae Drive
Welland, On L3C 6C9

13 REGISTRATION

- 13.1 The Tenants shall not at any time register notice of or a copy of this lease on title to the property of which the Leased Premises form part.

14 MISCELLANEOUS

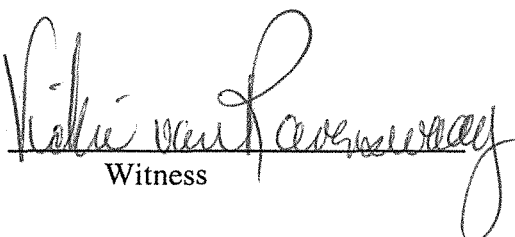
- 14.1 This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and there are no other written or verbal agreements or representations between the parties hereto pertaining to the subject matter hereof. Any amendments to this agreement shall be in writing signed by both parties hereto.
- 14.2 Both parties agree that each of them shall and will, upon reasonable request of the other party, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deed, things, devices and assurances whatsoever for the further and more perfect and absolute perfection of the terms, conditions and covenants of this agreement.
- 14.3 If any term, clause or provision of this agreement shall be adjudged to be invalid, the validity of any other term, clause, or provision shall not be affected, and such invalid term, clause or provision shall be deleted from this agreement.
- 14.4 This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

15 INTERPRETATION

- 15.1 The words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include the successors and assigns of the Landlord and Tenants, respectively.
- 15.2 Unless the context otherwise required, the word "Landlord" and the word "Tenants" wherever used herein shall be construed to include the successors and assigns of the Landlord and Tenants, respectively.
- 15.3 When there are two or more Tenants bound by the same covenants herein contained, their obligations shall be joint and several.

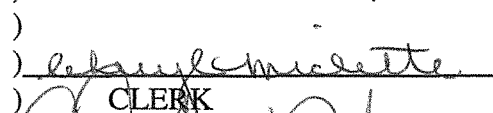
IN WITNESS WHEREOF the parties have executed this agreement as of the date first above written.

SIGNED, SEALED AND DELIVERED
In the Presence of


Witness

)THE CORPORATION OF THE TOWN
)OF PELHAM

)
) 
) MAYOR (ACTING)

)
) 
) CLERK

)
) 
) CHRISTINE DUBE'

)
) 
) SHANE DUBE'