

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW NO. #3272 (2012)

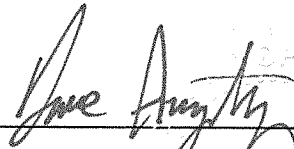
Being a by-law to authorize the Mayor and Clerk to enter into an Encroachment Agreement with Virgilio Battaglini, Owner of the property known municipally as 1455 Pelham Street, and 1692765 Ontario Ltd., cob as The Café on Main and Wine Bar situate therein, for the purpose of operating an outdoor patio for the period ending October 31st, 2012.

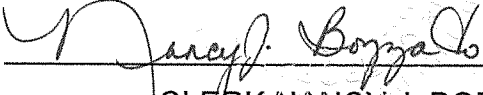
WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into an Encroachment Agreement with the owner of the property known municipally as 1455 Pelham Street, Virgilio Battaglini, and with Patti Fagan, President, 1692765 Ontario Ltd., cob as The Café on Main and Wine Bar situate at this location.

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

- (1) THAT an Encroachment Agreement between the Corporation of the Town of Pelham, Virgilio Battaglini and 1692765 Ontario Ltd., cob as The Café on Main and Wine Bar be and the same is hereby approved;
- (2) THAT the Agreement shall incorporate matters including but not limited to the operation of an outdoor patio in compliance with the requirements of Town of Pelham Policy, the Alcohol and Gaming Commission of Ontario, and the Ontario Building Code, for the property known municipally as 1455 Pelham Street in the Town of Pelham; and
- (3) 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 Encroachment 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
18TH DAY OF JUNE 2012 A.D.


MAYOR DAVE AUGUSTYN


CLERK NANCY J. BOZZATO

ENCROACHMENT AGREEMENT

THIS AGREEMENT, made this 5th day of July, 2012
BETWEEN:

VIRGILIO BATTAGLINI,

Hereinafter referred to as the "OWNER"

-AND-

1692765 ONTARIO LTD., cob THE CAFÉ ON MAIN AND WINE BAR

Hereinafter referred to as the "LICENSEE"

-AND-

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter referred to as the "TOWN"

WHEREAS the Owner is the owner of the lands more particularly described as Part Lot 31, Plan 25, known municipally as 1455 Pelham Street in the Town of Pelham;

AND WHEREAS the Licensee is the Tenant of said lands described above and the owner/operator of The Café on Main and Wine Bar;

AND WHEREAS the Licensee has applied to the Town for permission to occupy a portion of the sidewalk for the purposes of establishing and operating a sidewalk café on certain lands shown on Schedule A attached hereto (hereinafter referred to as "Town Lands");

AND WHEREAS the Town has agreed to permit the encroachment of an Outdoor Patio as part of the establishment known as The Café on Main and Wine Bar for the period ending October 31st, 2012 for such consideration and upon such terms and conditions contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH, that in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. The Licensee shall be permitted to occupy and use the Town Lands to operate an outdoor patio for the purposes of serving food and beverages to patio patrons between the hours of 8:00 a.m. to 11:00 p.m. from Monday to Saturday until October 31st, 2012 for the sidewalk area situated along Pelham Street having an entire area not to exceed 46.5 square metres in accordance with the drawing attached to this Agreement as Schedule A;
2. The Licensee agrees to pay all costs and expenses in connection with the occupancy and use of the Town Lands for the purposes of a sidewalk café, including its

establishment; and the Licensee shall, at its expense and throughout the term of this Agreement, be responsible for the maintenance and repair of all aspects of the outdoor patio ensuring a proper state of repair and safety of all outdoor furniture including but not limited to the tables, seating accommodation and shade umbrellas, as well as the costs to provide for and maintain fencing and streetscaping measures and shall not make any additions, expansions or extensions to the approved outdoor patio area;

3. The Licensee shall keep that portion of the encroachment lands free and clear at all times of garbage, debris and all obstructions including but not limited to food and beverage;

4. The Licensee acknowledges and agrees that this Agreement does not in any way whatsoever diminish the rights of the Town and its respective officers, servants, workers, employees, agents and contractors, to enter at all times upon the Town Lands for the purpose of constructing, repairing, maintaining, replacing or removing any municipal infrastructure or other underground services and installations and appurtenances thereto and that the Licensee shall not be entitled to any damages or compensation by reason of the exercise of the Town's rights contained in this clause and the Licensee, at its own expense, shall carry out removal of outdoor furniture or streetscaping enclosure as the Town may direct pursuant to the exercise of the Town's rights;

5. If the Licensee shall have breached any covenant or failed to perform any of its obligations pursuant to this Agreement, and the Town shall have given written notice to the Licensee specifying the nature of default and the steps required to correct it and the Licensee shall have failed to correct the default in the time as required by the notice, which said time shall not be less than 10 days, the Town, at its option, may immediately terminate this Agreement;

6. The Licensee acknowledges and agrees that this Agreement and the permission granted by the Town for the encroachment of the Outdoor Patio shall immediately terminate upon the earlier of:

(i) The Town electing to terminate this Agreement in accordance with paragraph 5;

(ii) The Outdoor Patio being destroyed or demolished in total or in part or otherwise removed from the approved location;

(iii) The close of business no later than October 31st, 2012;

If the Licensee is in default or breach, at the Licensee's expense, and the Town shall be permitted to recover the expenses incurred in remedying the default or breach from the Licensee by adding the expenses to the Licensee's municipal taxes to be collected in accordance with section 391 of the *Municipal Act*, S.O. 2001, c.25 and any successor legislation thereto;

7. The Licensee agrees to assume all liability and obligations for any and all loss, costs, damage or injury (including death) to persons or property that would not have happened but for this licence or anything done or maintained by the Licensee thereunder or intended so to be and the Licensee shall at all times indemnify and save harmless the Town, its officers, employees, and agents from and against all liability, losses, damages, injury, and all actions, causes of action, claims, suits, proceedings, charges, demands,

expenses or any costs whatsoever in any manner based thereupon arising by reason of or in any way related to, directly or indirectly, the existence of this licence or anything done or maintained hereunder;

8. The Licensee agrees to take out and keep in force a comprehensive policy of general liability and property damage insurance satisfactory to the Town protecting and indemnifying the Licensee and the Town, its officers, employees, and agents against any claims for damage or bodily injury to or death of one or more persons and the loss of or damage to property occurring in, upon, or about the Town Lands with all inclusive coverage of not less than \$2,000,000.00, such policy to include the Town as an additional insured and to be endorsed to include the contractual obligation of the Licensee to the Town under this agreement and to contain a "cross liability" and tenants liability endorsement;

9. The Licensee shall furnish the Town with a certified copy of the aforementioned insurance policy or an insurance certificate in a form acceptable to the Town prior to commencement of this licence;

10. The Licensee shall comply with all the laws of the federal, provincial, or municipal governments that may be applicable to the occupancy and use of the Town Lands for a sidewalk café in accordance with this licence;

11. The Licensee agrees to maintain the Town Lands in a condition acceptable to the Town and shall make no structural changes of any kind whatsoever to the Town Lands without first giving the Town notice of the proposed changes and obtaining the consent of Town Council for the proposed changes;

12. The Licensee agrees that no building, structure or fixture other than that required for a sidewalk café shall be erected on the Town Lands and such sidewalk café and all improvements required to the Town Lands to make it suitable for the purposes of the Licensee shall be undertaken and carried out and at all times maintained at the sole cost and expense of the Licensee and shall be entirely at the risk of the Licensee in respect of loss, damage, destruction or accident from whatsoever cause arising;

13. Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

The Licensee:

The Café on Main and Wine Bar
Attention: Patti Fagan
1455 Pelham Street
Fonthill, ON L0S 1E0
The Town:

The Corporation of the Town of Pelham
Attention: Town Clerk
Town of Pelham
P. O. Box 400
Fonthill, ON L0S 1E0

Or any such other address that the parties may from time to time give notice of same in writing pursuant to this paragraph and every such notice shall be deemed to have been given upon the day it was so delivered or in the third day after the date upon which it is mailed by registered mail;

14. The Licensee shall not be at liberty to assign or transfer either in whole or in part the privileges hereby granted by the Town in this Agreement without the written consent of the Town;

15. (a) Either party may terminate this licence upon 30 days' notice, in writing, to the other as to its intention to terminate;

(b) The Town may modify the site area to which the licence applies to upon 30 days' notice, in writing, if solely in the Town's opinion, continuation of the licence compromises pedestrian safety on the sidewalk, including but not limited to an increase in pedestrian volume, or the Town Lands are required for any purpose by the Town or by any public agency; and

(c) Notwithstanding any provision in this agreement, in the event of an immediate threat to public safety the Town shall have the unrestricted right to modify the site area;

16. Upon termination of the term of this licence, the Licensee shall remove entirely, at its sole expense, from the Town Lands all retaining walls, concrete, hard surfacing, fill related to café construction, rails, gates, steps, chairs, tables, structures, objects, lighting and other items used for the sidewalk café and restore the Town Lands to its original condition or equivalent;

17. 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 and signed by all parties hereto;

18. 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;

19. Any condoning, excusing or overlooking by the Town of any default, breach or non-observance by the Owner of any covenant or condition contained herein does not operate as a waiver of the Town's rights hereunder in respect of subsequent default, breaches or non-observances and does not defeat or affect in any way the rights of the Town herein in respect of any subsequent defaults, breaches or non-observances;

20. 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 vice versa; and words importing persons shall include firms and corporations and vice versa;

21. This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and transferees and upon those persons or corporations hereafter acquiring title to or an interest in all or any part of the lands described and depicted in Schedule A.

SIGNED, SEALED AND DELIVERED)

PER: *Dave Augustyn*
Mayor, Dave Augustyn

PER: Nancy J. Bozzato
Town Clerk, Nancy J. Bozzato

We have authority to bind the corporation.

PER: Virgilio Battaglini
Virgilio Battaglini, Owner

PER: Talli Sagcan
1692765 Ontario Ltd.

Patti Fagan, President

☒ I have authority to bind the corporation

Jada Arew
Witness as to signature of Owner

Witness as to signature of Licensee