

By-law 8583-2013
“Schedule C”

AGREEMENT FOR A SIDEWALK LEASE AGREEMENT
[Municipal Address]

This agreement made this ____ day of _____, 2013

Between [Name]
(hereinafter referred to as the ‘Lessee’)

And THE CORPORATION OF THE TOWN OF SMITHS FALLS
(hereinafter referred to as the ‘Town’)

WHEREAS the Municipal Act, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS the Municipal Act, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

AND WHEREAS the Lessee is the owner of lands identified as [Address], hereafter referred to as the ‘Owners Lands’, and more particularly described as:

[Legal Description]

AND WHEREAS the Town wishes to enter into a Sidewalk Lease Agreement with [Owner] respecting use of a portion of the sidewalk/road allowance/boulevard in proximity to [Address], Smiths Falls;

NOW THEREFORE the parties agree as follows:

1. The leased area shall be used on a seasonal basis during the period commencing April 1st to October 31st, inclusive.
2. At all times when the patio is not in operation during the period November 1st to March 31st, inclusive, the sidewalk is required to be cleared so that snow removal operations are not impeded in any way.
3. The fullest possible free and clear pedestrian movement shall be provided.
4. No tables or chairs shall be placed in any manner that will interfere with access by wheelchairs.
5. The establishment shall not be conducted in a noisy manner such as to interfere with other businesses or obstruct pedestrians, and shall be subject to closure daily at 11pm.
6. The lessee shall abide by all provisions of the Smoke Free Ontario Act, and that ash-trays are provided at each table to encourage proper disposal of cigarettes. The lessee shall also be responsible for the regular maintenance and cleaning of the patio and adjacent sidewalks of such litter.

7. Where the proposed use of the leased sidewalk is for a licensed patio café, the regulations prescribed by the Alcohol and Gaming Commission of Ontario shall be adhered to unless otherwise stipulated by Council. The revocation of any sidewalk patio lease agreement shall be enforced after any breach of the liquor laws of Ontario.
8. The lessee shall carry public liability insurance (\$5 million) naming the Town as additional insured, satisfactory to the Town, to indemnify and save harmless the Town of Smiths Falls from any and all claims as a result of the use of any Town property. Said insurance shall be provided and approved prior to use of the Town lands and shall remain in effect during the use of the leased sidewalk.
9. Any construction work that is undertaken shall be in accordance with the Ontario Building Code and a Building Permit shall be obtained when required. Any leasehold improvements permitted in the approved plan shall be done under the supervision and to the satisfaction of the Town and shall be maintained by the Lessee at the Owner's sole risk and expense to the satisfaction of the Corporation and in default the provisions of Clause 11 shall apply.
10. The Town shall be granted the power to terminate the lease within fifteen (15) days written notice should the property be required for municipal purposes upon reasonable grounds or if the lessee fails to comply with the terms of the lease.

In the event of a default by the Lessee or its assigns in the provision or maintenance of any of the matters and things required to be done by the Lessee pursuant to this Agreement, the Corporation may, at the expense of the Lessee, send a notice in writing to the Lessee which notice shall specify the default and the requirements to rectify such default. If the Lessee has not completed the rectification of any such default or has failed to take, in the opinion of the Corporation, sufficient action to do so within twenty-one (21) days of receiving such notice, then the Corporation may, at the expense of the Lessee, enter upon the lands and do all such matters and things as are in default. Any cost incurred by the Corporation plus twenty-five (25%) percent as a charge for overhead pursuant to this cause shall be paid by the Lessee to the Corporation within thirty (30) days of the mailing of an invoice by the Corporation addressed to the then current owner of the Lessee lands as shown in the last revised assessment roll of the Corporation. In default of payment, such an amount referred to in this clause may be recovered by the Corporation in a like manner as taxes charge to the Owner's Lands pursuant to the provision of Section 427 of the Municipal Act, RSO, 2001 as amended.

12. Current standards of Engineering requirements for public services shall be maintained, i.e., drainage, fire hydrants, etc.
13.
 - (a) The lessee agrees to pay rent for the leased space during the three (3) year term of this lease agreement.
 - (b) The lessee shall have the option to extend the term of this agreement for a period of three years upon delivery of written notice to the Town not later than the 30th day prior to the expiry of this agreement provided that the Town has not served notice on the lessee that the land will be required for municipal purposes. The terms and conditions of this agreement shall continue to apply during the extension.
14. The annual rental charge for lease of space, if the area is being used for the active selling of food, drink or merchandise, is \$150/season. Tables, chairs and decorative accessories on patios that are used for the active selling of food, drink or merchandise shall be placed a minimum distance of one meter from the curb line and ten centimeters from abutting properties. The annual rent shall

be paid prior to occupancy of the sidewalk and in default interest in accordance with municipal policy shall apply and the municipality may recover said amount in like manner of taxes against the Owner's Lands.

15. The use of rain screens/curtains shall be in accordance with the following conditions:
 - a) the material shall be clear plastic or mesh screening only; no rigid materials shall be permitted;
 - b) rain screens/curtains shall only be permitted during rainy periods;
 - c) an additional per square meter rental base of \$10.00 per square meter shall be charged;
 - d) the period of operation shall be April 1 to October 31 of each year;
 - e) in the case of designated or listed buildings, the design and guidelines of the front rain screens/curtains shall be subject to final approval by the Municipal Heritage Committee.
 - f) any other provisions as set out by the Town of Smiths Falls
 - g) umbrellas are excluded from this provision, but must be approved by the Town, said approval which may be withheld and/or subject other provisions as set out by the Town of Smiths Falls
16. The patio will be subject to an annual inspection by a representative of the Planning and Sustainable Growth Department of the Town of Smiths Falls, prior to the opening of the sidewalk patio. Following this inspection, and approval that such sidewalk patio conforms, a "Certificate of Compliance" shall be issued to the sidewalk patio operator.
17. The lessee agrees not to encumber the sidewalk surrounding the leased area in any way and specifically not to permit the placement of "sandwich board" signs, planters or extraneous advertising objects on the sidewalk or to allow bicycles to be affixed to or leaned against the sidewalk patio fence.
18. The planting of annuals, vines and container growth is encouraged and will be subject to Planning and Sustainable Growth Department approval/conditions. Containers shall be removed at the end of the approved seasonal use period.
19. The lessee agrees to maintain the patio in the manner of the approved plan attached hereto. The lessee agrees to maintain the patio fence, especially the top rail, as well as the top surface of the curb along the widened sidewalk around the patio so as to provide greater visibility. This is all to be done in a manner satisfactory to the Town's Planning and Sustainable Growth Department. The top rail of the fence shall be painted white and the remainder of the fence shall be painted in a contrasting colour for the benefit of visually impaired people or as otherwise approved by the Town.
20. No patio operator shall fail to maintain the sidewalk leased as a patio and it shall be an offence to fail to clean the sidewalk required for the patio.
21. No person shall deviate from the approved plans for the patio attached hereto as Schedule A. The approved plan may only be modified upon approval of the Director of Planning and Sustainable Growth.
22. These are standard lease agreement conditions; however, the Town may impose other requirements depending on the individual proposals.
23. This Agreement shall ensure to the benefit of and be binding upon the parties herein and their respective heirs, executors, successors, administrators and assigns except where specifically

excluded and all covenants and agreements herein contained, assumed by or imposed upon the Lessee are deemed to be covenants which run with and bind the Lessee's lands.

24. The Owner agrees to register this Agreement on title to the Owner's lands. The Owner shall be responsible for advising all affected mortgagees and encumbrancers. The Owner shall be responsible for all costs related to registration of this agreement.

If the Lessee does not proceed with a patio in the calendar year in which it is approved, the agreement will be void and the applicant shall be required to re-apply the following year.

Signature of Lessee
I/We have the authority to bind the Corporation

Signature of Lessee
I/We have the authority to bind the Corporation

Date

Date

Signature of Mayor

Signature of Clerk

Date

SCHEDULE 'A' – Approved Patio Plan

Plan prepared by [Name], [Date], [Title], [Address].

All schedules may be subject to red line amendment (modifications approved by the Director of Planning and Sustainable Growth) in accordance with this agreement. The Clerk of the Town of Smiths Falls shall keep a copy of any redline amendment on file with the original by-law.

SAMPLE