

CASH-IN-LIEU OF PARKING AGREEMENT
(IN CONNECTION WITH A TEMPORARY OUTDOOR PATIO EXPANSION)

THIS AGREEMENT made this day of , 2020

BETWEEN:

THE CORPORATION OF THE CITY OF BRAMPTON

(the “City”)

-and-

(the “Operator”)

WHEREAS:

- A) The Operator owns and operates the business located at (the “**Subject Lands**”) and is carried on under the name of (the “**Business**”);
- B) The Operator has applied to the City for a permit to authorize a temporary outdoor patio expansion pursuant to By-law 103-2020 (the “**Patio By-law**”), during the period between the date of this Agreement and January 1, 2021 at 3:00 a.m. (the “**Permit**”);
- C) Section 40(1) of the Planning Act, R.S.O., c. P.13, as amended, permits the Council of a municipality and an owner or occupant of a building to enter into an agreement exempting the owner or occupant, to the extent specified in the agreement, from the requirement of providing or maintaining parking facilities that are otherwise required under a by-law of the municipality;
- D) The Patio By-law authorizes the City Clerk to execute an agreement pursuant to section 40 of the Planning Act in connection with an approved application for a Temporary Outdoor Patio Expansion where a temporary exemption from the parking requirements as set out the City’s Zoning By-law 270-2004 (the “**Zoning By-law**”) is required;
- E) The Patio By-law provides that any agreement under s. 40 of the Planning Act executed pursuant to the by-law shall require payment of no more than nominal consideration;
- F) The City has approved the issuance of the Permit subject to the execution of this Agreement;

IN CONSIDERATION of the sum of One Dollar (\$1.00) and other good and valuable consideration, the parties to this Agreement hereby covenant and agree as follows:

- 1. The Operator shall pay to the City the sum of \$1.00 in lieu of the Parking Spaces at the Subject Lands prior to the execution of this Agreement by the City.
- 2. Upon receipt of the payment referred to in paragraph 1 of this Agreement, the Operator shall be exempted during the validity of the Permit from the requirement to provide and maintain the parking spaces in the parking lot adjacent to the Business on the Subject Lands as described in sketch included in the Operator’s application for the Permit (the “**Parking Spaces**”) if otherwise required to be provided pursuant to the Zoning By-law.
- 3. The Operator shall provide and maintain the balance of the parking spaces as required for the Business pursuant to the Zoning By-law.

4. The Operator shall comply with all municipal, provincial and federal laws and regulations and other requirements, including the Patio By-law, the City's COVID-19 Temporary Outdoor Patio Expansion Guidelines and, if applicable, the Liquor Licence Act;
5. Subject to paragraph 6, the exemption provided pursuant to paragraph 2 of this Agreement shall apply to the Subject Lands only so long as the Operator complies with this Agreement and the Patio By-law.
6. Unless earlier terminated pursuant to the terms herein, this Agreement shall expire and the exemption provided pursuant hereto shall cease to apply upon the expiry or earlier revocation of the Permit.
7. In the event that the Operator changes the business conducted on the Subject Lands from that in respect of which the Permit is issued or in any manner that changes the number of parking spaces that may be required, the City may revoke the Permit in which event this Agreement shall terminate without refund of payment made pursuant to paragraph 1 and the Operator shall be required to apply for a new permit under the Patio By-law and if approved execute a further agreement pursuant to s. 40(1) of the Planning Act.
8. In the event of default by the Operator of any of the terms herein, this Agreement shall terminate, the exemption granted pursuant to this Agreement shall become null and void and the Operator shall be required to provide and maintain the number of parking spaces in accordance with the Zoning By-law and the City shall not be liable to refund or account to the Operator for any payments made by the Operator to the City pursuant to this Agreement.
9. The granting of the exemption in this Agreement in no way binds or commits the City to provide alternate parking in the vicinity of the Subject Lands or at all.
10. The Operator covenants, warrants and represents that:
 - a. it is the sole and beneficial owner of the Business;
 - b. It is the sole and beneficial owner of the Subject Lands or has obtained and produced to the City the written permission of the owner(s) of the Subject Lands to obtain the Permit, enter into this Agreement and to operate a temporary outdoor patio expansion in connection with the Business in accordance with the Permit and this Agreement;
 - c. prior to the expiry or earlier termination of this Agreement, the Operator shall cease the use of the Parking Spaces for a temporary outdoor patio expansion, remove all installations made thereon and shall restore the markings and use of the Parking Spaces for vehicular parking to the satisfaction of the City.
11. The exemption under this Agreement applies only to the Subject Lands and shall not be assignable or transferable to any other lands or in relation to any other business and the Operator shall not assign this Agreement or any of its obligations hereunder without the prior written consent of the City. In the event the Subject Lands are sold during the currency of the Permit and this Agreement, the Operator shall forthwith obtain and produce to the City the written permission of the new owner of the Subject Lands to continue to operate a temporary outdoor patio expansion in connection with the Business in accordance with the Permit and this Agreement.
12. This Agreement shall not be varied, altered, amended or supplemented except in writing signed by the authorized representatives of both parties.
13. No waiver of a breach by a party under this Agreement shall constitute a consent to or waiver of any other different or subsequent breach.

14. The parties understand and agree that nothing contained in this Agreement shall constitute or be deemed to create a partnership, relationship of principal and agent or joint venture between parties and neither party may act as an agent for the other or make any representation or incur any obligation on behalf of the other.
15. The Operator acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M 56 and any information provided to the City in connection with the Business, the Permit or this Agreement may be subject to disclosure in accordance with the Act.
16. If any term or provision of this Agreement or the application thereof to any person shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to all persons other than those to whom it was held to be invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
17. The parties to this Agreement hereby covenant and agreed that this Agreement shall be binding upon them, their respective heirs, executors, administrators, successors and permitted assigns.
18. This Agreement shall be governed by the laws applicable in the Province of Ontario.
19. Each Party shall send any notice or communication required or permitted to be given under this Agreement in writing, by pre-paid courier, email, or registered mail; and addressed to the other Party as follows:

If to City: Attention: City Clerk
 2 Wellington Street West
 Brampton, Ontario, Canada L6Y 4R2
 Email: Cityclerksoffice@brampton.ca

and if to Operator at or to an address in accordance with the contact information for the Operator as contained in the Operator's application for the Permit, or to such other address as each Party may from time to time designate to the other in writing. All notices are effective at the time the delivery is made if the notice is delivered by courier or by email or five days after the day the notice was sent by registered mail, provided that in the event of a postal interruption, notices shall not be given by registered mail until such interruption ends.

20. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitutes one and the same instrument. A party may deliver an executed copy of this Agreement by facsimile or electronic PDF transmission with the original copy to be delivered by regular mail no later than two (2) business days thereafter.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first written above.

Authorized by By-law BY-LAW # 103-2020	
Approved as to form Legal Services _____ _____	Approved as to content Commissioner, Planning and Economic Development R.F.

THE CORPORATION OF THE CITY OF BRAMPTON

Per:
 City Clerk

I have authority to bind the corporation

Per:
 Authorized Signing Officer

I have authority to bind the corporation

SAMPLE ONLY