

LICENCE OF OCCUPATION
CANNERY LANE ZONE ____ AREA _____

THIS AGREEMENT dated for reference the _____ day of _____, 2021.

BETWEEN:

CITY OF KELOWNA
1435 Water St
Kelowna, BC V1Y 1J4
the "City"

OF THE FIRST PART

AND:

BUSINESS OWNER NAME
Address
Address
the "Licensee"

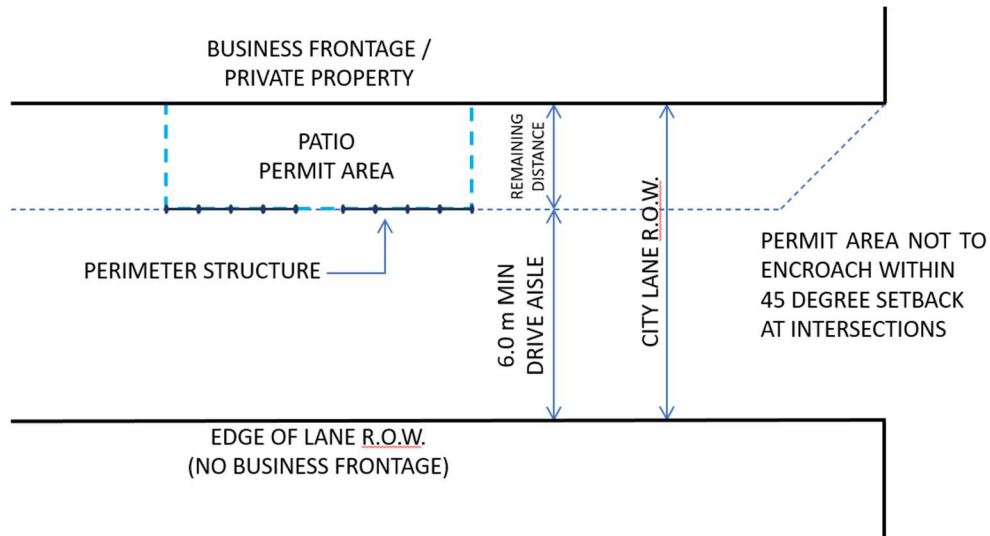
OF THE SECOND PART

WHEREAS:

- A. The City is the owner of the dedicated roadway known as Cannery Lane, located between 1223 Water Street and 1250 – 1298 Ellis Street in the City of Kelowna, as shown in grey on the attached Schedule A, (known as the "Lane");
- B. The Licensee is the legally registered business or building owner of the building located at 1250-1298 Ellis Street, of a portion of the building that is directly adjacent to the Lane.
- C. The Licensee wishes to license a portion of the Lane, identified by Zone and Area as per the attached Schedule A (known as the "Permit Area") to operate as a Large Patio – No Liquor to support the Licensee business operation, subject to the restrictions and limitations of this agreement and the Consolidated Sidewalk Patio Program Guidelines current edition; and
- D. The City is prepared to grant the Licensee a Licence of Occupation pursuant to Section 35(11) of the Community Charter, S.B.C. 2003, C.26 for a term of THREE (3) years, (known as the "Term") over the Permit Area to enable the Licensee to operate a Large Patio – No Liquor to support the Licensee business operation.

NOW THEREFORE in consideration of the payment of one dollar (\$1.00) and other good and valuable consideration, from the Licensee to the City, the receipt and sufficiency is hereby acknowledged, the City and the Licensee covenant and agree as follows:

LICENCE OF OCCUPATION – CANNERY LANE



1. Grant – The City grants to the Licensee the non-exclusive right and licence to enter onto and use that portion of the Permit Area shown in bold on Schedule A, identified by Zone and Area which is attached hereto for the purposes of this agreement.
2. New Improvements – To facilitate the operation of the Large Patio – No Liquor within the Permit Area, the Licensee agrees to make improvements to the Permit Area as shown on Schedule C (the “Proposed Licensee Permit Area Design & Costs”). All costs associated with the Permit Area Design, as itemized on Schedule C, will be borne by the Licensee. The Licensee will be required to obtain all required permits associated with the improvements.
3. Term – the duration of this Agreement and Licence herein granted shall be for a term of 3 years (the initial term) commencing on the day of 2021, unless earlier terminated in accordance with Section 20.
4. Licence Fee – The licensee agrees to make annual payments with respect to the Permit Area as shown in the Fee Schedule attached as Schedule B. Annual licence fee payments are due twice annually, in May and September of each year of the Term.
5. Licence Fee Determination – the fees are determined by the **Consolidated Sidewalk Patio Program Guidelines current edition, Water to Ellis area, and Parking Fees of Traffic Bylaw No.8120.**
6. **Regulations Within Permit Area – Sidewalk Seating & Retail Display Program Guidelines, current edition serves as the regulations for the Cannery Lane Initiative and must be adhered to. The following use regulations listed in this section (6.) are specific to Cannery Lane and are supplemental to Sidewalk Seating & Retail Display Program Guidelines.**
 - a. Definitions:
 - i. **Drive Aisle** – The area of Lane designated exclusively for transportation (i.e. vehicle, cycle, pedestrian). The drive aisle running north/south is 6.0 m in width, aligned along the west boundary of the Lane. The drive aisle running east/west is the entire width of the Lane. An attended vehicle loading/unloading may be stopped in the drive aisle for the sole purpose of loading/unloading.
 - ii. **Lane** – The dedicated roadway known as Cannery Lane, located between 1223 Water Street and 1250 Ellis Street in the City of Kelowna, as shown in grey on the attached Schedule A.

- iii. **North Zone** – The portion of available Permit Area for Licence of Occupation along the northern half of the Lane, identified as one contiguous area. As shown on Schedule _____. The width of the Permit Area is the remainder of the Lane outside of the 6.0 m wide Drive Aisle.
 - 1. Permitted uses within North Zone are **Parking** and **Large Patio** to support the Licensee business operation. If both uses are to occur within North Zone, a detailed drawing of the proposed Large Patio and Parking uses will need to be reviewed and approved by the City. The drawing is to include a detailed paint marking plan to clearly identify the different uses.
- iv. **Perimeter Structure** – a structure erected within the Permit Area for the purpose of a required “fence”. *“A fence must be constructed to separate any permit area which extends into a roadway from the remainder of the roadway.” Traffic Bylaw No. 8120, part 7.* Perimeter structures to be transparent. The height of any Perimeter Structure must be between 0.85 m and 0.95 m (33 to 37 in.) above the Permit Area Surface. A Perimeter Structure is not required for North Zone, Parking use.
- v. **Permit Area** – The area of Lane designated for non-exclusive use (by Licence of Occupation) by an adjacent business. The Permit Area uses are defined by Zone.
- vi. **Planter** – any container used of the purpose of containing vegetation. Maximum height 0.76 m (30 in), maximum length 1.8 m (70 in). Height of planter and plant material combined not to exceed 1.3 m (51 in) in height. A tree is regulated in this Agreement may exceed this height. The City reserves the right to remove plant materials and planters deemed to be a risk to public safety.
- vii. **South Zone** – The portion of available Permit Area for Licence of Occupation along the southern half of the Lane. South Zone is divided into individual areas identified by adjacent building unit address. The width of the Permit Area is the remainder of the Lane outside of the 6.0 m wide Drive Aisle.
 - 1. Permitted uses within Zone B are **Large Patio** to support the Licensee business operation.
- viii. **Tree** – a single leader (stem/trunk) plant with a canopy. The leader must be free of branches or vegetation for a height of 2.3 m from grade.
- b. **Permit Area Boundary** – The boundary of the Permit Area extends vertically. No overhang of shade structures, plant material, or signage is permitted. (No overhang into Drive Aisle).
- c. **No Anchoring – securing of any structure must be completed using stabilizing design by way of bracing and weight on grade. No perforation into road surface of any depth.**
- d. **Lighting** – Exterior lighting must be installed on the building frontage adjacent to the Permit Area and must illuminate the entire permit area. New installation of lighting to meet Sign Bylaw No. 11530 Fascia Sign siting regulations. (shall not project more than 0.4 m from wall face. Shall have a minimum vertical clearance of 2.5 m.)
- e. **Permit Area Surface** - Lane surface within Permit Area may be painted in a manner that is accessible and slip-proof. The Licence is to consult with the City of Kelowna Traffic Operations department. At

the termination of the Agreement the Licensee must remove all paint or markings without damaging the Lane surface.

- f. **Awning** – an awning, attached to a building is to meet regulations meeting Kelowna’s Building Bylaw, 1993, No. 7245. For purposes of the Cannery Lane Initiative, “the extent of awning be not less than one metre (1.0 m) from the Drive Aisle boundary of the Permit Area.”
 - g. **Lighting** – Exterior lighting must be installed on the building frontage directly adjacent to the Permit Area and must illuminate the entire permit area. New installation of lighting to meet Sign Bylaw No. 11530 Fascia Sign siting regulations. (shall not project more than 0.4 m from wall face. Shall have a minimum vertical clearance of 2.5 m.)
 - h. **Bicycle Racks** – a Licensee may enroll in the City of Kelowna’s bicycle rack program for installation by the City within the Licensee’s Permit Area. A bike rack may not be installed by a licensee that protrudes into the surface of the Lane (no anchoring).
 - i. **Prohibited Materials** - any materials that will shatter, creating jagged debris are prohibited for use within the Permit Area. Materials include but are not limited to glass and ceramics. These materials are prohibited in structures and drink/table wear and decorations.
7. Extension – The Term of this Licence of Occupation may be renewed for a further 3 year period (the renewal term) at the sole discretion of the City. Compensation to the City by the Licensee for the renewal period will be subject to negotiations between the parties at that time.
 8. Maintenance – The Licensee will at its own expense keep the Licence Area in a safe, clean and tidy condition.
 9. State of Licence Area at Termination - In the event that this Agreement terminates or expires for any reason, the Licensee will cease all occupation of the Licence Area and will remove all equipment, chattels, fixtures, and other improvements from the Licence Area. The Licensee will leave the Licence Area in a safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. In the event that the Licensee fails to remove any equipment or chattels upon termination of this Agreement then the City may do so and recover the expense thereof from the Licensee. All buildings, improvements and fixtures remaining on the Licence Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to the Licensee.
 10. Non-exclusive Use – The Licensee agrees that:
 - a. the rights granted under this Agreement do not constitute any interest in the Licence Area or entitle the Licensee to exclusive possession of the Licence Area; and
 - b. the Licensee’s rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the Licence Area.
 11. No Waste or Nuisance – The Licensee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
 12. Terms and Conditions – The Licensee will comply with all the terms, conditions, rules or regulations that the City may from time to time impose in respect of the use and administration of the Licence Area. The Licensee acknowledges that the fact that the Licence is granted by the City does not excuse the Licensee from obtaining building permits, development permits, business licences and other required permissions.

13. Compliance with Laws – The Licensee will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.
14. Inspection by the City – The City may review and inspect the Licence Area and the work which the Licensee is undertaking pursuant to this Agreement to determine if the Licensee is in compliance with the terms of this Agreement.
15. No Transfer – The rights granted to the Licensee under this Agreement may not be sub-licensed, assigned or otherwise transferred.
16. Risk – The Licensee accepts the Licence Area on an as-is basis and agrees that it will use the Licence Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to property, loss of property or other loss or damage suffered by the Licensee, its contractors, subcontractors, agents, invitees, employees or any other person arising out of this Agreement or the use and occupation of the Licence Area except in the case of negligence or wilful act or omission by the City, its employees, agents or invitees.
17. Indemnity – The Licensee will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this Licence or any occurrence on or around the Licence Area during the term of this Licence, or by use or occupancy of the Licence Area by the Licensee or any default of the Licensee under this Agreement or any wrongful act, omission or negligence of the Licensee or its officers, employees, contractors, agents or others for whom the Licensee is responsible. This indemnity will survive the expiry or sooner termination of this Agreement.
18. Release – The Licensee hereby releases and forever discharges the City, its elected officials, officers, employees, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or in equity, including without limitation any claim under the Property Law Act (collectively “Claims”), which the Licensee may have, sustain or suffer, as the case may be, now or in the future arising from the Works, other improvements in the Licence Area, the expiry or termination of this Licence, the exercise by the City of any of its rights under this Licence or from or in any way connected with the Licensee’s use of the Licence Area, except claims arising from the exclusive negligence of the City.
19. Insurance – During the term of this Agreement, the Licensee will carry public liability insurance, in a form and with an insurer acceptable to the City, insuring the Licensee and the City under this Agreement in an amount not less than \$5,000,000.00 per occurrence as set out in Schedule B, and any other type of insurance that the City may reasonably require. The Licensee will provide the City with proof of insurance at the time of execution of this Agreement and at other times upon request.
20. Termination – The City reserves the right to terminate this Agreement if the Licensee breaches any of its obligations under this Agreement and fails to remedy the breach with thirty (30) business days of receiving written notice from the City. The City will not be liable to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination or any termination of this Licence.

21. Early Termination – The City reserves the right to terminate the Agreement at any time with thirty (30) days written notice to the Licensee, without liability to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination.
22. Notices – Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph.

All notices to the City must be marked to the attention of the Property Management Manager.

A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a business day, the next day that is a business day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

23. No Effect on Laws or Powers – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the Local Government Act or its rights and powers under any enactment to the extent the same are applicable to the Licence Area, all of which may be fully and effectively exercised in relation to the Licence Area as if this Agreement had not been fully executed and delivered.
24. Severance – If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Agreement.
25. Further Actions – Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
26. Waiver or Non-action – Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.
27. Reference – Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.
28. General –
 - a. This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors;
 - b. The Schedules attached to this Agreement form part of this Agreement;
 - c. This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement;

- d. Time is of the essence of this Agreement;
- e. This Agreement must be construed according to the laws of the Province of British Columbia.
- f. This License may be subject to approval of the Kelowna City Council.

29. Schedules – the attached schedules, as summarized below, form part of this Agreement:

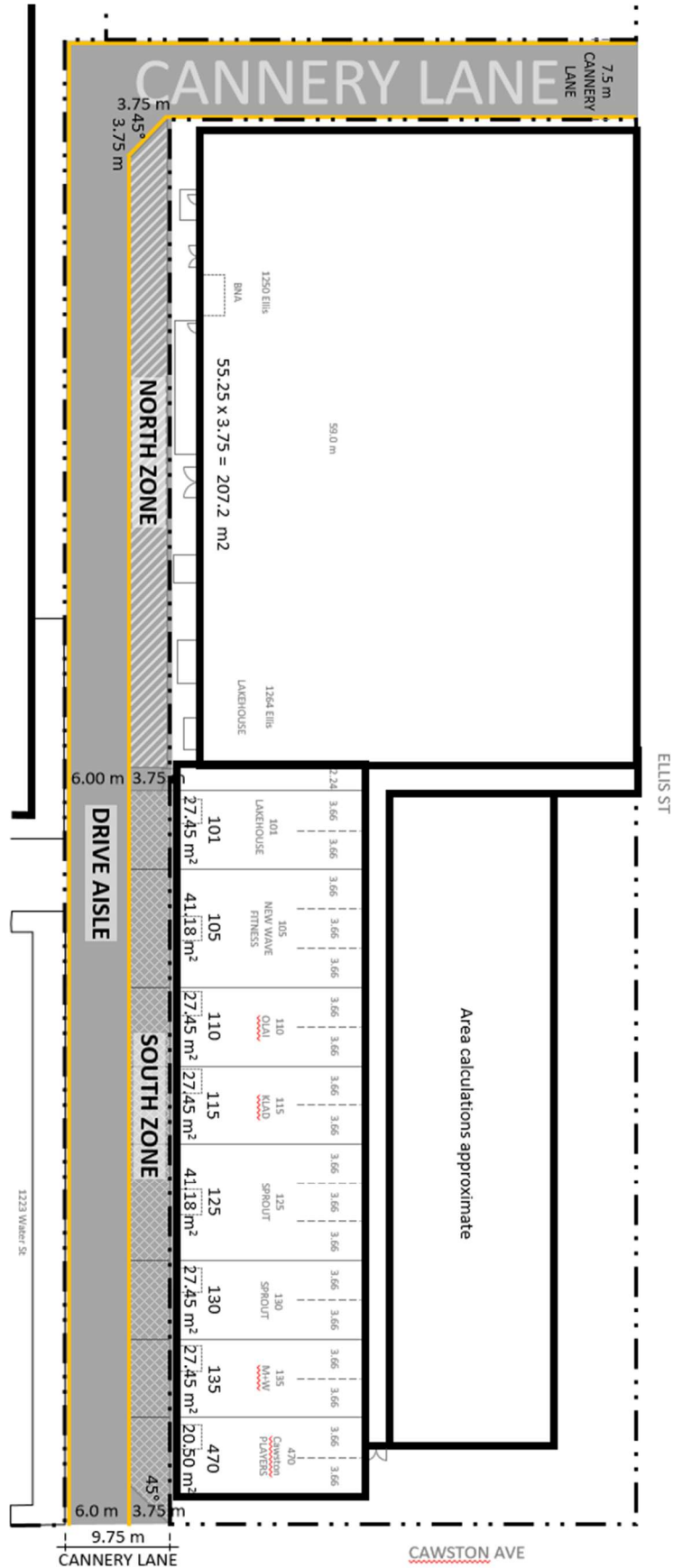
- a. Schedule A – Cannery Lane Initiative Layout
- b. Schedule B – Fee Schedule
- c. Schedule C – Proposed Licensee Permit Area Design & Costs

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed this Agreement below on the dates written below

<p>CITY OF KELOWNA by its authorized Signatory:</p> <p>_____</p> <p>Property Manager</p> <p>_____</p> <p>Print Name</p>
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<p>LICENSEE by its authorized signatory:</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Print Name</p>
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SCHEDULE A
CANNERY LANE INITIATIVE LAYOUT



SCHEDULE B
FEE SCHEDULE

Fees are based on noted Guideline and Bylaw regulations, which are subject to change. Prices and regulations noted in this schedule are as of May 2021. All fees are subject to applicable taxes.

Sidewalk Seating & Retail Display Program Guidelines - Schedule A Fee Schedule current edition.

Downtown Area Patio Fees (excluding Bernard Avenue)

Water to Ellis

	2019 - 2023	
	Seasonal	Annual
Small Patio/Limited Scope	\$382.50	n/a
* Large Patio/Food only or Large Scope Retail (per square foot)	\$3.00 / sf	\$7.20 / sf
* Large Patio – Food and Liquor (per square foot)	\$6.00 / sf	\$14.40 / sf

* The minimum fee will be the Small Patio annual fee or the cost per square foot per year whichever is greater.

Traffic Bylaw No. 8120 - Schedule A Fees current edition.

Subsection 4.4.2 (a) – Off-Street Pay Parking (Long Term Parking Lot)

DESCRIPTION	TERM	FEE (Zone 3)	FEE (Zone 4)
Reserved Stall Permit	1 Calendar Month	\$150.00	\$150.00

As regulated in Sidewalk Seating & Retail Display Program Guidelines – Permit Fee current edition. In addition to all guidelines, the following section is applicable to the fees of this agreement.

Discount for the first-year rent is due, the following discounts may apply:

- Patios that are contracted for less than \$2,500 receive \$0 credit
- Patios that are constructed for more than \$2,500 but less than \$5,000 receive a 50% credit
- Patios that are constructed for more than \$5,000 receive a 100% credit.

Licensee Fee Schedule

	Description	Rate	Discount	Payment
2021				
2022				
2023				
2024				
2025				
2026				
2027				

