

THIS AGREEMENT made as of the 9th day of November 2021.

B E T W E E N:

THE CORPORATION OF THE TOWN OF TECUMSEH,
hereinafter called the "Town"

OF THE FIRST PART;

- and -

KEITH RAJSIGL, OWNER OF 2759098 ONTARIO INC.,
hereinafter called the "Concessionaire"

OF THE SECOND PART.

WHEREAS the Town is the owner of the lands and premises known as the Lakewood Park, located at 13451 Riverside Drive, in the Town of Tecumseh (hereinafter "Lakewood Park");

AND WHEREAS the Concessionaire has applied to the Town for permission to operate a food and beverage concession (herein Concession) at Lakewood Park, reflected in Attachment 1;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the rents, covenants and agreements contained herein, the Town does demise and grant access to the premises described herein to the Concessionaire upon the following terms and conditions.

1 THE TOWN COVENANTS AND AGREES:

- 1.1. To grant permission to the Concessionaire to operate a Concession in Lakewood Park, located in the building on the south side of Riverside Drive east of the Lakewood Park parking lot, for the period of five (5) years starting the 1st day of January 2022 and ending the 31st day of December 2026.
- 1.2. To grant the Concessionaire access to the Concession commencing November 15, 2021 for the purposes of completing renovations required to prepare the Concession for the 2022 operating season in accordance with Section 2.12.
- 1.3. To provide the required utilities and pay for the same.
- 1.4. That the Concessionaire will be responsible for determining the food and beverages to be served in the concession and that the Concessionaire will ensure that the products offered will consist of quality food and beverages to meet the needs of the visiting public.
- 1.5. That the Concessionaire will receive all revenue generated from the sale of food, beverages and other concessions through this Agreement.
- 1.6. To be responsible for ensuring that the concession area is clean and ready for occupancy for the Concessionaire by the 1st day of January, 2022.
- 1.7. That all appliances and preparation tables/counters, coolers, freezers are the property of the Concessionaire.
- 1.8. That the Town will not compete with the Concessionaire however, the Concessionaire does not have exclusive operating rights within Lakewood Park.
- 1.9. The Town hereby acknowledges that the Concessionaire is not bound by the contract the Town has with Pepsi Bottling Group (Canada), Co.

2. THE CONCESSIONAIRE COVENANTS AND AGREES:

- 2.1. To operate a concession in Lakewood Park, located in the building on the south side of Riverside Drive east of the Lakewood Park parking lot, for the period of five (5) years starting the 1st day of January 2022 and ending the 31st day of December 2026.
- 2.2. That the seasonal operation of the concession shall be from April 1 to October 31; and that upon mutual written agreement by both parties, the duration may be extended if necessary to respond to community demand.
- 2.3. That the seasonal hours of operation shall be 11:00 AM to 9:00 PM, Monday through Sunday; and that upon mutual written agreement by both parties, the hours may be adjusted if necessary to respond to community demand.
- 2.4. To pay to the Town rent on the first day of each month as follows:
 - a) The sum of \$1,750.00 plus HST per operational month as per Section 2.2.
 - b) The sum of \$300.00 plus HST per non-operational months.
- 2.5. To pay to the Town all monies owed by the first (1st) day of the month following the month of agreed upon operations that such charges were incurred. Interest at the rate of one and one-half percent (1.5%) shall be charged on all accounts that are thirty (30) days overdue from the date that the month statements are issued.
- 2.6. That the Concessionaire shall pay a \$2,500.00 refundable cash deposit to the Town upon execution of the Agreement and prior to commencement of services. No interest will be paid on the deposit over the life of the contract. The deposit will be refunded at the conclusion of the contract subject to inspection of the facility confirming no damages or irregularities.
- 2.7. To pay any property taxes (included in monthly rental fees) that may be assessed to the contracted concession area.
- 2.8. That all expenses for the food and beverage service, staffing and security personnel will be the responsibility of the Concessionaire. All necessary food preparation equipment will be the responsibility of the Concessionaire.
- 2.9. That the sale of alcohol and /or tobacco products in any manner is strictly prohibited.
- 2.10. To secure all licenses, permits, and approvals required for operation of the concession service and shall pay HST, and other business taxes attributed to the concession operation.
- 2.11. To supply, install and provide all appliances and preparation tables/counters, coolers, freezers, and any other equipment required for the operation of the Concession.
- 2.12. That no re-modeling or structural changes will be made to the Concession or any property of the Town without the prior written consent of the Director of Community and Recreation Services.
- 2.13. To be responsible for the maintenance of the Concession and all related equipment including annual maintenance and repair to the leased area, which results from normal use. Daily clean up and weekly deep cleaning, to a standard acceptable to

the Town, of the concession area and patio shall be the responsibility of the Concessionaire. Any damage to the area resulting as a result of negligent operation of the Concessionaire shall be repaired by the Town and invoice the expense for the Concessionaire. The Town may hold the Concessionaire's deposit to cover any unpaid repairs that have been identified as the Concessionaire's responsibility.

- 2.14. Accepts that the Town may coordinate and permit various special event organizers to operate an event within a designated area of Lakewood Park and that a component of the event may include food / beverage vendors. During these events, the Concessionaire will have the right to operate during regular business hours or may choose to close.
- 2.15. That the Town has an existing contract agreement with the Pepsi Bottling Group (Canada), Co. as the exclusive supplier of soft drinks to the Town's indoor and outdoor recreation facilities. The Concessionaire hereby acknowledges that the Town currently has vending machines at Lakewood Park on the north side of Riverside Drive and that the Town has the right to allow these vending machines to operate and the location of vending machines will be at the discretion of the Town.
- 2.16. Shall defend, indemnify and save harmless the Town, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Concessionaire, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Concessionaire in accordance with this Agreement and shall survive this Agreement
- 2.17. The Concessionaire shall during the entire term hereof, at its sole cost and expense, take out and keep in force and effect the following:
 - a) Public liability insurance applying to all operations of the Concessionaire and which shall include insurance against personal injury, death, property damage, products liability, non-owned automobile liability and Concessionaire legal liability with respect to the occupancy by the Concessionaire of the premises. Such policies shall be written on a comprehensive basis with limits of no less than five million (\$5,000,000.00) dollars per occurrence.
- 2.18. The Concessionaire agrees that:
 - a) all insurance policies shall be taken out with insurers reasonably acceptable to the Town;
 - b) shall name the Town as an additional insured;
 - c) shall contain a severability of interest clause or a cross liability clause;

- d) shall be in a form satisfactory to the Town, and shall be signed by the insurer(s).
- 2.19. Concessionaire further agrees to submit to the Town certified copies of each such insurance policy. All policies shall contain an undertaking by the insurers to notify the Town in writing not less than thirty (30) days prior to any material change, cancellation or other termination thereof.
- 2.20. To comply with all requirements of the Workplace Safety & Insurance Act, the Occupational Health and Safety Act, Environmental Protection Act and all other applicable law, regulations and by-laws. The Concessionaire shall provide evidence to include a certificate of good standing issued prior to the execution of the Agreement, and a further certificate issued annually on or before the anniversary date of each year.
- 2.21. To be familiar with all such laws, regulations and policies which in any manner affect the performance of the Agreement, those engaged or employed in the work, or affect facilities or equipment used in the work, or which in any way may affect the conduct of the work and no plea of misunderstanding will be considered on account of ignorance thereof. Without limiting the generality of the aforesaid, it shall be the Concessionaire's responsibility to comply with:
 - a) Food Premises Regulation 493
 - b) Certified Food Handler
 - c) Workplace Safety and Insurance Act
 - d) Occupational Health and Safety Act
 - e) Electrical Safety Authority
 - f) Safety or other Policies established by the Authority or the Town
- 2.22. To comply with the Town's Policy on Health & Safety and any other applicable policies and understands and agrees to ensure that employees are advised and have a sound knowledge of this policy. The Concessionaire shall:
 - a) Provide and maintain the necessary items and equipment as called under the First Aid Regulations of the Workplace Safety and Insurance Act and the Occupational Health and Safety Act
 - b) Comply with requirements of Workplace Hazardous Materials Information System (WHMIS) regarding use, handling, storage, and disposal of hazardous materials; and regarding labeling and provision of material safety data sheets acceptable to Labour Canada and Health and Welfare Canada. Deliver copies of WHMIS data sheets to the Town on delivery of materials.
 - c) Provide the company's Health and Safety Policy within thirty (30) days of the Agreement.
- 2.23. To comply with all applicable municipal, provincial and federal laws pertaining to the Concessionaire's services provided herein to the Town including, without limiting generality, all labour, police, health, environmental, public health and sanitation laws and regulations imposed by public bodies having jurisdiction over such matters.

- 2.24. That the Concessionaire represents to the Town and shall ensure that all its employees, agents, volunteers, or others for whom the Concessionaire is legally responsible receive training regarding the provisions of the goods and services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/07 (the "Regulation") made under the Accessibility for Ontarians with Disabilities Act, 2005 as amended (the "Act").

The Concessionaire shall ensure that such training includes, without limitation, a review of the purpose of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. The Successful Respondent shall submit to the Town, as required from time to time, documentation describing its customer service training policies, practices and procedures and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents, volunteers or others who received such training.

The Concessionaire acknowledges that the Town has the right to require the Concessionaire to amend its training policies to meet the requirements of the Act and Regulation.

- 2.25. That this Agreement may not be transferred or assigned by the Concessionaire. The Concessionaire shall not sublet any portion of the Concession areas without written approval from the Town.
- 2.26. That in November of each year during the term of this Agreement, the parties hereto shall meet to review and agree upon the months and hours of operation of the Concessionaire's business for the next following year to ensure such business is open during peak months and hours of operation.
- 2.27. Upon termination of this Agreement, the Concessionaire shall at its own expense remove all of its chattels from the premises and leave the Concession in a clean and well-maintained state of repair. The Concessionaire shall not be entitled to be compensated for any of the improvements, which the Concessionaire may have made to the concession area.
- 2.28. That upon the failure of the Concessionaire to carry out any of the provisions of this Agreement or any renewal thereof or upon the failure of the parties to agree on minimum hours of operation, this Agreement may be cancelled by either party upon ninety (90) days' written notice.
- 2.29. That the Town may terminate this Agreement at any time if the Concessionaire fails to perform any of its covenants and obligations provided that the Town provides at least thirty (30) days' notice in writing of termination. If within the thirty (30) day period the Concessionaire complies with all covenants and obligations contained in this Agreement then the notice of termination will become null and void.

It is further understood and agreed by and between the parties hereto that all notices, demands and requests which may be or are required to be given by the Town to the Concessionaire or

by the Concessionaire to the Town under the provisions of this Agreement, shall be in writing and may be mailed or delivered, and shall be addressed:

in the case of the Concessionaire, to:

Keith Rajsigl
680 Gauthier Drive
Tecumseh, ON N8N 3P8

or in the case of the Town, to:

Town of Tecumseh
917 Lesperance Road
Tecumseh, ON N8N 1W9
Attention: Director of Community and
Recreation Services

or to such other address as either party may from time to time designate by written notice to the other.

The Concessionaire has the option to negotiate renewal terms for an additional five (5) year term, upon providing 120 days' notice in writing to the Town. If the parties are unable to agree to terms of renewal by the 31st day of October 2026, then this Agreement will terminate on the 31st day of December 2026.

The parties agree that any disputes pursuant to this Agreement will be determined pursuant to the Arbitrations Act, R.S.O. 1990, Chapter A-24.

The laws of the Province of Ontario shall apply and bind the parties in any and all questions pertaining to this Agreement.

This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties and their administrators and their organizational successors.

IN WITNESS WHEREOF the parties hereunto affixed their signatures and corporate seals, attested to by the hands of their proper officers duly authorized in that behalf.

SIGNED, SEALED & DELIVERED

In the presence of

“Seal”

Witness:

**THE CORPORATION OF THE
TOWN OF TECUMSEH**

By:

Name: Gary McNamara

Title: Mayor

Name: Laura Moy

Title: Clerk

2759098 ONTARIO INC.

Name: Keith Rajsigl

I/We have authority to bind the Corporation.

Attachment 1:

