

ENCROACHMENT AGREEMENT

THIS AGREEMENT made in duplicate this day of , 2024

BETWEEN:

OBSIDIAN GROUP INC.

hereinafter called the "Operator" of the FIRST PART

- AND -

THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES

hereinafter called the "Municipality" of the SECOND PART

WHEREAS the Operator has requested permission from the Municipality to install a sidewalk patio, as defined below, which encroaches on Municipal property;

"Sidewalk Patio" means a group of tables and chairs and other accessories situated and maintained upon a public sidewalk or on a boulevard owned by the Municipality for the use and consumption of food and beverages sold to the public from, or in an adjoining or adjacent indoor restaurant located and adjacent to the business. A Sidewalk Patio shall extend no wider than the width of the associated indoor food and beverage establishment and shall be fenced. Table service and the consumption of alcohol are permitted.

AND WHEREAS the Operator is the operator of a business located at Lot 132, Plan 24 known as **41 Main Street**, (the "Property") which abuts the municipal property for which the encroachment is requested;

NOW THEREFORE this Agreement witnesseth that the Parties hereby acknowledged, covenant and agree each with the other as follows:

1. The sidewalk patio shall comply with all other provisions of applicable bylaws of the Municipality of Lambton Shores.
2. This licence shall be an annual license and nothing in this agreement will entitle the Operator to future annual licenses.
3. The sidewalk patio shall be permitted to operate from April 15, 2024 to November 1, 2024.

4. The sidewalk patio shall be for the sole purpose of food and beverage service associated with the adjacent restaurant. No retail sales of goods or products shall be permitted.
5. No food preparation shall be permitted in the sidewalk patio. This provision includes the use of an outdoor barbeque;
6. No audio speakers shall be permitted on the sidewalk patio and speaker sound from the adjacent restaurant is to be directed into the building rather than projecting out to the sidewalk patio.
7. The maximum area of the sidewalk patio is as shown on Attachment 1.
8. The use of the areas covered by the Encroachment Agreement, shall cease at 12:00 (midnight) p.m. every day, which means that serving and consumption of food and beverages shall stop at 12:00 (midnight) p.m. each day.
9. The Operator shall bear all costs of construction, installation, maintenance and removal of the sidewalk patio.
10. The Operator acknowledges that he/she is responsible to ensure that the liquor license for the establishment is extended to cover the sidewalk patio. The Operator shall provide proof to the Municipality that the liquor license for the establishment has been extended.
11. The Operator acknowledges that plans showing the location of the sidewalk patio, comprise Schedule "A" to this agreement.
12. The location of the sidewalk patio shall be in accordance with Schedule "A"
13. The sidewalk patio shall be enclosed with an open style fence/barrier which has a minimum height of 0.9 metres and a maximum height of 1.2 metres. Fences must be constructed for easy removal in the off season and they shall not be permanently attached to the sidewalk. Any supporting brackets shall not create a hazard.
14. The Operator shall pay to the Municipality a rental fee of \$2,220.00 plus HST thereon for the area of the sidewalk patio encroachment based on the area of the Patio having an area of 222 square feet (37 feet x 6 feet).
15. No music or entertainment provided to patrons of the sidewalk patio shall be amplified.

16. All exterior lighting shall be task lighting, shall not interfere with the sidewalk and shall be totally contained within the sidewalk patio. Lighting levels shall be low and directed onto the sidewalk patio and shall not spill onto abutting private properties or sidewalk. Lighting shall not have exposed cables. No lighting shall be installed without prior approval from the Municipality.
17. The owner/operator shall keep the sidewalk patio free from papers, garbage, rubbish and debris of any kind and the patio furniture clean.
18. The Municipality or any public utility shall have the right to enter any portion of the sidewalk patio at any time for the purpose of installing, maintaining or repairing pipes, cables, sidewalks, wires, poles and other installations.
19. No awnings shall be permitted on the sidewalk patio, but umbrellas are. No umbrella shall project beyond the perimeter fence.
20. The sidewalk patio shall be installed at existing grade.
21. Barrier free access of 1.5 metres in width shall be provided to the sidewalk patio.
22. All outstanding Municipal accounts against the Property are paid in full before the execution of this Agreement.
23. All taxes, charges and existing local improvements assessed against the Property are paid in full as of the date of signing of this Agreement. Such payments are to be made to the Municipality before the execution of this Agreement and a certificate of payment from the Treasury department will be proof that all outstanding charges are paid in full.
24. The Operator shall take out and maintain, at its expense, personal liability and property damage insurance in the minimum amount of \$2,000,000.00, such policy to name the Corporation of the Municipality of Lambton Shores as co-insured and to provide proof of such insurance to the Municipality. **If the insurance policy lapses during the term of this agreement, the permission for the sidewalk patio is revoked until such time as the Municipality receives a valid insurance policy meeting the requirements of section 24 of this agreement.**
25. The Operator hereby agrees to indemnify and save harmless the Municipality against any and all losses, costs (including legal costs of a solicitor and his client basis), claims, liabilities, expenses or damage sustained, incurred or arising from this Agreement.

26. The term of this Agreement shall expire on November 1, 2024, and on such date the sidewalk patio shall be removed forthwith at the expense of the owner.
27. In the event the sidewalk patio is removed, this Agreement is hereby terminated.
28. This Agreement is not transferable without the consent of the Municipality.
29. The Operator hereby acknowledges the Municipality's right to control the operation of the sidewalk patio, and any violation of the terms of this agreement may result in suspension or termination of the permission granted. In addition, the Municipality has the right to terminate this Agreement if in the Municipality's view complaints are not being addressed to the Municipality's satisfaction.

IN WITNESS WHEREOF the Operator and the Municipality have affixed their respective corporate seals over the hands of their duly authorized signing officers.

SIGNED, SEALED AND DELIVERED
in the presence of:

Witness

OBSIDIAN GROUP INC.

Per:

Owner/Operator

*JOHN AIZAKOS
LEGAL COUNSEL
I HAVE AUTHORITY TO SIGN THE CORPORATION*

**THE CORPORATION OF THE
MUNICIPALITY OF LAMBTON HORES**

MAYOR – Doug Cook

CLERK – Stephanie Troyer-Boyd

SCHEDULE "A"

This is Schedule "A" to the encroachment agreement dated the day of , 2024
between the Corporation of the Municipality of Lambton Shores and Obsidian Group Inc.
to which it is attached and forms a part.

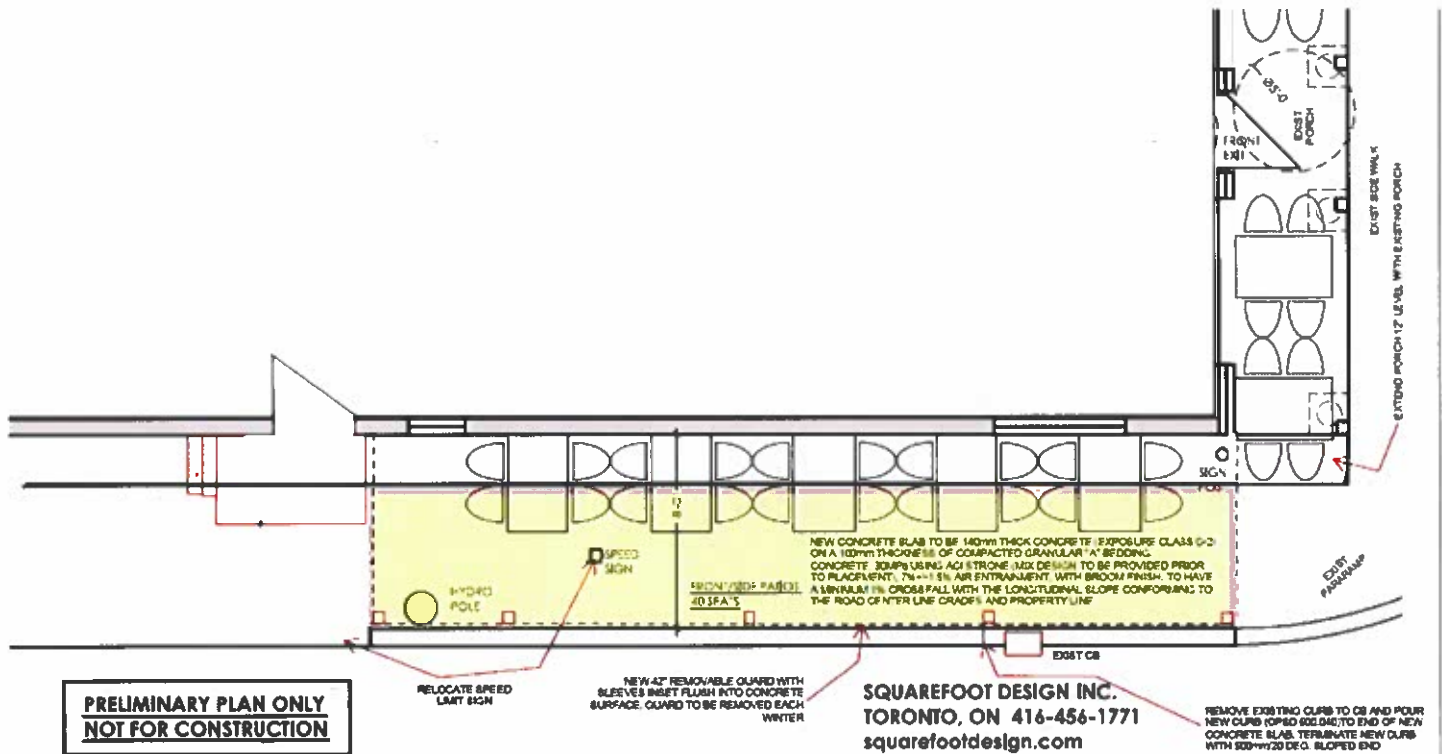


Figure 1 - Patio Area - 6' x 37'