

LICENSE AGREEMENT

Effective when fully executed.

BETWEEN:

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

(hereinafter called the "City")

- and -

COUNTRY CLUB HEIGHTS ASSOCIATION INCORPORATED

(hereinafter called the "Licensee")

WHEREAS:

- a) The Licensee is an association duly incorporated under the laws of the Province of Ontario, as Ontario Corporation Number 1705038. The Licensee is made up of a group of residents who own property in the Country Club Heights subdivision, located in the Geographic Township of Verulam, City of Kawartha Lakes;
- b) The City is the owner of those public highway lands known as Clonsilla Drive and Alymer Drive, and legally described as Clonsilla Drive on Plan 373, in the Geographic Township of Verulam, City of Kawartha Lakes, being PIN: 63126-0485 (LT) (the "City Property"); and
- c) As per CR2020-156, Council for the Corporation of the City of Kawartha Lakes has agreed to allow the creation of three permanent parking spaces for the Licensee's use (the "Parking Spaces").

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Grant of License

- 1.1. The City hereby grants to the Licensee an exclusive license to cut brush, weeds and grass, overhanging tree branches and immature trees (less than 5 inches in diameter at 4.5 feet from ground), and a non-exclusive license (the "License") to occupy and use a part of the City Property, as more specifically shown outlined in red on Schedule "A" attached hereto (the "Lands"), for the sole purpose of creating space to park three (3) motor vehicles thereon, and for parking motor vehicles thereon, respectively, and for no other purpose.

2. License Term

- 2.1. This License will commence on the date it has been fully executed and terminate on the 31st day of August, 2025.

3. License Fee

- 3.1. In consideration for its use and occupation of the Lands, the Licensee agrees to pay to the City an annual license fee (the "License Fee") of One Hundred Twenty-Five Dollars (\$125.00), increased annually by the Consumer Price Index – All Items, with payment due upon execution of this License and annually thereafter on or before the 1st day of August. The Licensee may make full payment for the entire term of the license upfront (\$625.00), in which case the License Fee will not be indexed annually. The License Fee is in addition to and separate from any other fees or payments being made to the City by the Licensee in relation to the Licensee's use or license of any other portion of the City Property not covered by this License.

4. Road Maintenance Fee

- 4.1. The Licensee agrees to pay to the East Beehive Community Association an annual fee of Five Hundred Dollars (\$500.00) as contribution to the costs associated with road maintenance (the "Road Maintenance Fee").
- 4.2. The payment of the Road Maintenance Fee shall be payable at execution and, for subsequent years, on or before the 1st day of September of each year of the term.

5. Payment of Fees

- 5.1. All payments of the License Fee to be made by the Licensee pursuant to this License shall be delivered to the City at the City's address for service set out in Section 16 or to such other place as the City may from time to time direct in writing.
- 5.2. All payments of the Road Maintenance Fee to be made by the Licensee pursuant to this License shall be delivered to the City in trust for the East Beehive Community Association or made directly to the East Beehive Community Association.

6. Licensee's Covenants

- 6.1. The Licensee shall not do or permit to be done on the Lands anything that may:
 - a) constitute a nuisance;
 - b) cause damage to the Lands;

- c) cause injury or annoyance to occupants or owners of neighbouring properties;
- d) make void or voidable any insurance upon the Lands;
- e) constitute a breach of any by-law, statute, order or regulation of any municipal, provincial, federal or other competent authority relating to the Lands; or
- f) cause any lien, mortgage, or other encumbrance to be incurred or registered against the Lands.

7. State of the Lands

- 7.1. The Licensee agrees to accept the Lands on an “as is” basis.
- 7.2. The Licensee covenants and agrees that, upon expiration or other termination of this License, it will remediate the Lands to the state and standard of repair to which they existed prior to installation of the Parking Spaces, in the sole and absolute discretion of the City, reasonable wear and tear excepted.

8. Construction of the Parking Spaces

- 8.1. The Licensee may cut brush, weeds and grass, overhanging tree branches and immature trees (less than 5 inches in diameter at 4.5 feet from ground) in the areas indicated in red in the attached Schedule A.
- 8.2. The Licensee agrees that the Parking Spaces shall encompass no more than 54 square metres of space (approximately 580 square feet). Each parking space will be 18 square metres, with a length of 6 metres and a width of 3 metres.
- 8.3. The Licensee is required to satisfy itself as to the boundaries of the City’s Property, by reference to survey stakes, and to ensure that all construction remains within the City Property. If any of the work under this License will interfere with a third party encroachment into City Property, the Licensee must notify Municipal Law Enforcement at: bylawcomplaints@kawarthalakes.ca and request that the interfering structure (i.e. fence, sign, driveway, etc.) be removed. The Licensee is not entitled to remove any encroachment.
- 8.4. In the event that survey stakes cannot be located, the Licensee is required to hire an Ontario Land Surveyor, at its sole cost, to stake the boundaries of the City Property.

9. Licensee Expenses

- 9.1. The Licensee shall maintain the Lands in a good and safe state of repair. Such maintenance shall include grass cutting and any other necessary repairs as may be required by the Licensee in order to continue to use the Lands for the purpose intended herein, being the use and enjoyment of the Parking Spaces.

10. Repairs and Maintenance

- 10.1. The Licensee acknowledges that the City shall not be responsible for nor shall it assume any liability or responsibility for any capital expenditures, repairs or alterations of any nature whatsoever related to the Licensee's use of the Lands and in default of this covenant, the City shall have the right to terminate this License.
- 10.2. The Licensee shall not obstruct persons authorized by the City to enter the Lands to examine the condition thereof and view the state of repair at all reasonable times:
- a) and if upon such examination repairs are found to be necessary, written notice of the repairs required shall be given to the Licensee by or on behalf of the City and the Licensee shall make the necessary repairs within the time specified in the notice;
 - b) and if the Licensee refuses or neglects to keep the Lands in good repair the City may, but shall not be obliged to, make any necessary repairs, and shall be permitted to enter the Lands, by itself or its servants or agents, for the purpose of effecting the repairs without being liable to the Licensee for any loss, damage or inconvenience to the Licensee in connection with the City's entry and repairs, and if the City makes repairs the Licensee shall pay the cost of them immediately.
- 10.3. Upon expiry of the Term or other determination of this License the Licensee agrees to peaceably surrender the Lands, including any alterations or additions made thereto, to the City in a state of good repair.
- 10.4. The Licensee shall immediately give written notice to the City of any damage that occurs to the Lands from any cause.
- 10.5. In the event the City or a third party utility, during the term of this License, undertakes any use, alteration, addition, improvement, expansion, renovation or repair (the "work") to the City Property, and/or other assets of the City (or third party utility within the City Property from time to time during the term of this License) in the vicinity of the Parking Spaces, and if, in the discretion of the City staff, agents or contractors undertaking the work, such work requires the removal of all or a portion of the Parking Spaces forming the subject matter of this License, to the extent same encroaches on the City Property, or should the work result in damage to the Parking Spaces, the Licensee herein acknowledges that

the City shall not be responsible for, nor shall it assume any liability or responsibility for, such removal and/or damage and that the Parking Spaces, or any portion thereof, will not be replaced and/or repaired and this License will be terminated effective immediately. **Without limiting the generality of the foregoing, the Licensee specifically acknowledges that, in the event of work including but not limited to snow removal or control, sidewalk improvements, watermain breaks, gas leak and repair, sewer main repair or replacement or any other works or emergency repair as required for public safety, conducted by the City, its agents or contractors, to municipal infrastructure that results in damage to, or requires the removal of, all or a portion of the Parking Spaces located on the City Property, the City will never repair, replace, or provide compensation for same.**

11. Environmental

- 11.1. The Licensee shall be, at its own expense, responsible for any loss, costs, damages, charges or expenses whatsoever which may be sustained by the City as a result of any environmental contamination, spill or hazard as may be created by the Licensee during its use of the Lands.
- 11.2. Execution of this License constitutes confirmation that any environmental damage occurring as a result of its occupation of the Lands shall be remedied upon the expiration of the License at the sole cost of the Licensee.

12. Insurance

- 12.1. During the License Term and any renewal thereof, the Licensee shall provide and maintain Comprehensive General Liability insurance including but not limited to, bodily injury including death, property damage including loss of use thereof, personal injury, blanket contractual liability, and include a cross liability/severability of interest clause.
- 12.2. The policy shall be in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence with a deductible of \$1,000.00 or less.
- 12.3. The policy shall be issued by an insurance company authorized by law to carry on business in the Province of Ontario and *The Corporation of the City of Kawartha Lakes* shall be named as an additional insured on the policy.
- 12.4. The insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the City.
- 12.5. The insurance will not be cancelled, permitted to lapse or materially changed unless the insurer for the Licensee notifies the City in writing at least thirty (30) days prior to the effective date of cancellation, expiry or change.
- 12.6. Upon execution of this License, and annually thereafter, the Licensee shall provide the City with a Certificate of Insurance as confirmation of the above-

requested insurance coverage, extending full coverage to the Parking Spaces located on the Lands. If requested by the City, the Licensee shall provide copies of the said insurance policy.

- 12.7. If the City receives notification that the insurance policy has been cancelled, this License will terminate immediately.

13. Indemnity

- 13.1. The Licensee shall at all times indemnify and save harmless the City, its employees, agents and members of council from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever made or brought against, suffered by, or imposed on the City in respect of any loss, damage or injury to any person or property directly or indirectly arising out of, resulting from, or sustained, arising out of or occasioned by the maintenance, use or occupancy of the Lands or as a result of this License or any operation connected therewith except for the negligence or willful misconduct of the City.
- 13.2. The Licensee further covenants to indemnify and save harmless the City with respect to any encumbrance on or damage to the Lands or the Corporation of the City of Kawartha Lakes occasioned by or arising from the act, omission, default, or negligence of the Licensee, its officers, agents, servants, employees, contractors, customers and/or invitees.
- 13.3. The foregoing indemnities shall survive the termination of this License notwithstanding any provisions of this License to the contrary.

14. Acts of Default and City's Remedies

- 14.1. An "Act of Default" has occurred when:
- a) The Licensee has breached its covenants or failed to perform any of its obligations under this License; and
 - i. the City has given fifteen (15) days' notice, or such longer period as the City may determine in its sole discretion, specifying the nature of the default and the steps required to correct it; and,
 - ii. The Licensee has failed to correct the default as required by the notice;
 - b) The Licensee has;
 - i. become bankrupt or insolvent or made an assignment for the benefit of creditors;
 - ii. had its property seized or attached in satisfaction of a judgment;

- iii. had a receiver appointed;
 - iv. committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the City's property;
 - v. without the consent of the City, made or entered into a license to make a sale of its assets to which the Bulk Sales Act applies;
 - vi. taken action if the Licensee is a corporation, with a view to winding up, dissolution or liquidation;
 - vii. ceased to exist.
- c) any insurance policy is cancelled or not renewed by reason of the use or occupation of the Lands, or by reason of non-payment of premiums;
 - d) the Lands;
 - i. are used by any other person or persons, or for any other purpose than as provided for in this License without the written consent of the City.

14.2. When an Act of Default on the part of the Licensee has occurred:

- a) the City shall have the right to terminate this License.

14.3. If, because an Act of Default has occurred, the City exercises its right to terminate this License prior to the end of the Term, the Licensee shall nevertheless be liable for payment of the License Fee and all additional fees and all other amounts payable by the Licensee in accordance with the provisions of this License.

14.4. If, when an Act of Default has occurred, the City chooses not to terminate the License, the City shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Licensee and to charge the costs of such to the Licensee.

14.5. If, when an Act of Default has occurred, the City chooses to waive its right to exercise the remedies available to it under this License or at law, the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the City to prevent its exercising its remedies with respect to a subsequent Act of Default. No covenant, term, or condition of the License shall be deemed to have been waived by the City unless the waiver is in writing and signed by the City.

15. Termination Upon Notice and at End of Term

- 15.1. Either party shall have the right to terminate this License by giving sixty (60) days prior written notice to the other party, in which case the License shall be cancelled without further recourse by either party against the other.
- 15.2. This License terminates on the 31st day of August, 2025, and is not subject to renewal. The Licensee may seek an extension or renewal of the License at or prior to the end of the Term, at their own initiation and expense and the City is under no obligation to permit or agree to same.

16. Notice

- 16.1. Any notice required of permitted to be given by one party to the other pursuant to the terms of this License shall be given:

To the City at:

The Corporation of the City of Kawartha Lakes
 26 Francis Street, P.O. Box 9000
 Lindsay, Ontario K9V 5R8
 Attention: Clerk
 Fax: 705-324-8110
 E-mail: clerks@kawarthalakes.ca

To the Licensee at:

Country Club Heights Association
 c/o Ann Davidson, President
 28 Golf Course Crescent
 Fenelon Falls, ON K0M 1N0
 E-mail: ann.davidson16@gmail.com

- 16.2. The above addresses may be changed at any time by giving ten (10) days written notice to the other party to this License.
- 16.3. Any notice given by one party to the other in accordance with the provisions of this License shall be deemed conclusively to have been received on the date delivered if the notice is served personally or sent by e-mail or facsimile transmission or seventy-two (72) hours after mailing if the notice is mailed.

17. Registration

- 17.1. The Licensee hereby acknowledges and agrees that this License does not create or confer on the Licensee any interest in the Lands, that this License is personal to the Licensee and that this License merely confers on the Licensee the non-exclusive right to enter onto and occupy the Lands for the Term for the purpose of the use and enjoyment of the Parking Spaces. Accordingly, the Licensee agrees that it shall not at any time register notice of or a copy of this License on title to the Lands or the property of which the Lands forms part.

18. Assignment and Transfer

- 18.1. The Licensee shall not assign or transfer all or any part of its interest in this License without the prior written consent of the City, which consent may be unreasonably withheld.
- 18.2. The consent of the City to any assignment or transfer of interest in this License shall not operate as a waiver of the necessity for consent to any subsequent assignment or transfer.
- 18.3. Any consent granted by the City shall be conditional upon the assignee or transferee executing a written License directly with the City agreeing to be bound by all the terms of this License as if the assignee or transferee had originally executed this License as Licensee.
- 18.4. Any consent given by the City to any assignment or other disposition of the Licensee's interest in this License shall not relieve the Licensee from its obligations under the License.
- 18.5. If the party originally entering into this License as Licensee, or any party who subsequently becomes the Licensee by way of assignment or transfer or otherwise as provided for in this License, is a corporation then;
 - a) the Licensee shall not be entitled to deal with its assets in any way that results in a change in the effective voting control of the Licensee unless the City first consents in writing to the proposed change, and;
 - b) if any change is made in the control of the Licensee corporation without the written consent of the City then the City shall be entitled to treat this License as terminated.

19. Amendment

- 19.1. No alteration, amendment, change or addition to this License shall be binding on the City and/or the Licensee unless such alteration, amendment, change or addition is reduced to writing and signed by both the City and the Licensee.

20. Confirmation

- 20.1. The parties hereto hereby confirm that this License is a non-exclusive license to occupy and use the Lands only and shall not constitute a lease of the Lands and that the provisions of the *Commercial Tenancies Act* (Ontario) shall not apply hereto.

21. Entire License

- 21.1. It is agreed and understood that this License (including the schedules referred to herein, which are hereby incorporated by reference) constitutes the entire License between the parties with respect to the subject matter hereof and supersedes all prior arrangements, proposals, understandings and negotiations, both written and oral, between the parties or their predecessors with respect to the subject matter of this License.

22. General Matters of Intent and Interpretation

- 22.1. Each obligation under this License is a covenant.
- 22.2. The headings in this License are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 22.3. The use of the neuter singular pronoun to refer to the City or the Licensee is a proper reference even though the City or the Licensee is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The grammatical changes needed to make the provisions of this License apply in the plural sense when there is more than one City or Licensee and to corporations, associations, partnerships or individuals, males or females, are implied.
- 22.4. Whenever a statement or provision in this License is followed by words denoting including or example (such as "including" or "such as") and there is a list of, or reference to, specific matters or items, such list or reference shall not be read so as to limit to restrict the generality of such statement or provision, even though words such as "without limitation" or "without limiting the generality of the foregoing" do not precede such list of reference.
- 22.5. If a part of this License or the applications of it to a person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, that part:
- a) is independent of the remainder of the License and is severable from it, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this License; and
 - b) continues in all circumstances except those as to which it has been held or rendered invalid, unenforceable or illegal.
- 22.6. This License will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 22.7. Time is of the essence of this License.

22.8. To the extent that liability exists at the time of expiry or earlier surrender or termination of this License, the covenant(s) from which such liability is derived shall survive such expiry or earlier surrender or termination.

23. Force Majeure

23.1. Except for any obligation to pay money, neither party will be liable for any failure or delay in its performance under this License due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labour shortage or dispute, governmental act or failure of the Internet, provided that the delayed party:

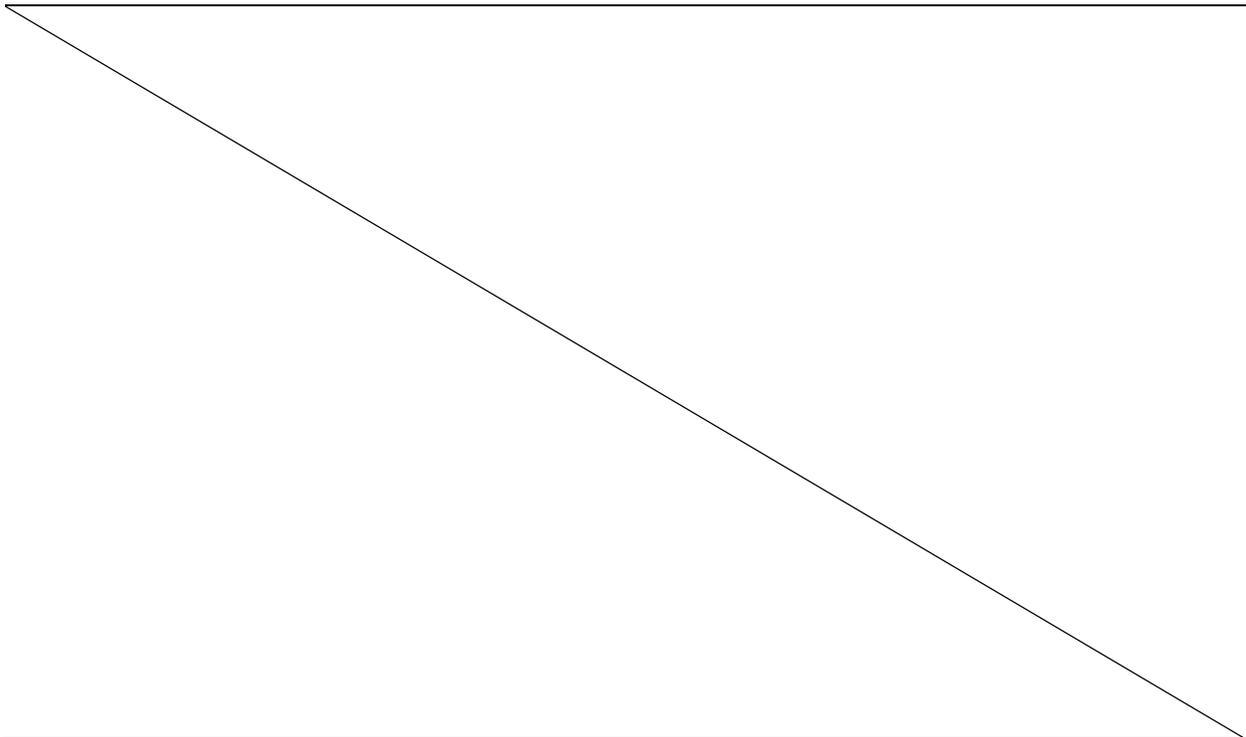
- a) gives the other party prompt notice of such cause; and
- b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance.

24. Compliance With Laws

24.1. The Licensee agrees to comply with all lawfully enacted statutes, regulations and by-laws of the Province of Ontario, the Government of Canada, and the City, as such may from time to time apply to the Licensee or its occupation of the Lands.

25. Successors

25.1. The rights and obligations under this License extend to and bind the parties and their respective successors and permitted assigns.



26. Electronic Signatures

26.1. This Agreement may be executed and delivered by facsimile or other electronic means, which electronic copies shall be deemed to be original.

DATED at Lindsay, this _____ day of _____, 2020

THE CORPORATION OF THE CITY OF KAWARTHA
LAKES

PER: _____
Name: Andy Letham
Title: Mayor

PER: _____
Name: Cathie Ritchie
Title: Clerk

*(We have authority to bind the Corporation in
accordance with Council Resolution CR2020-157)*

We hereby accept the above License on the terms and conditions contained therein.

DATED at _____, this _____ day of _____, 2020

COUNTRY CLUB HEIGHTS ASSOCIATION
INCORPORATED

PER: _____
Name:
Title: President

PER: _____
Name:
Title: Treasurer

(We have authority to bind the Corporation)

