

## LEASE AGREEMENT

Effective the 1<sup>st</sup> day of December, 2020

**BETWEEN:**

**THE CORPORATION OF THE CITY OF KAWARTHA LAKES**

as Landlord  
(the "CITY")

- and -

**PIGEON LAKE YACHT CLUB INC.**

as Tenant  
(the "YACHT CLUB")

**RECITALS:**

- a) The CITY is the owner of certain lands legally described in Schedule "A" to this LEASE.
- b) The YACHT CLUB wishes to lease a portion of the LANDS for use as the location for the Pigeon Lake Yacht Club.

**THIS LEASE IS ENTERED** in consideration of the rents, covenants and agreements reserved and contained on the part of the YACHT CLUB, to be respectively paid, observed and performed, and for other consideration, the receipt and sufficiency of which are acknowledged, the CITY demises and leases the LANDS to the YACHT CLUB shown on the sketch attached as Schedule "B".

### **ARTICLE 1.00: INTERPRETATION**

1.01 **Definitions:** Wherever a terms set out below appears in the text of this LEASE in capital letters, the term shall have the meaning set out for it in this Section 1.01. Wherever a term below appears in the text of this LEASE in regular case, it shall be deemed to have the meaning ordinarily attributed to it in the English language.

- a) **BASE RENT** means, for the first year of the TERM, the sum of One Thousand Eight Hundred and Twelve Dollars and Fourteen Cents (\$1,812.14), plus HST, per annum. After that, BASE RENT means the amount determined pursuant to Section 2.02 of this LEASE.
- b) **BUSINESS** means the YACHT CLUB's business of carrying on activities related to the Pigeon Lake Yacht Club.

- c) **CITY** means the Corporation of the City of Kawartha Lakes, a municipal corporation duly incorporated pursuant to the laws of the Province of Ontario. Where the context permits, the term also includes the CITY's servants, employees, agents and delegated officials.
- d) **EVENT OF DEFAULT** means any one or more of the circumstances set out in the following numbered paragraphs.
  - i. The YACHT CLUB breaches its covenant to pay RENT. The default occurs whether the CITY has demanded payment or not, if the RENT remains unpaid for a period of thirty (30) days after it is due.
  - ii. The YACHT CLUB breaches any of its other covenants in this LEASE. The default occurs if the breach continues for a period of thirty (30) days (or such longer period as may be reasonably necessary to cure the breach) after notice by the CITY to the YACHT CLUB specifying the nature of the breach and requiring it to be remedied.
  - iii. In circumstances where the breach set out in the notice given to the YACHT CLUB by the CITY pursuant to paragraph (2) above reasonably requires more time to cure than the time period referred to in the notice, but the YACHT CLUB has not commenced remedying the breach; or, in the opinion of the CITY, has failed to diligently remedy it within a reasonable time.
  - iv. The LANDS are vacated by the YACHT CLUB or become vacant or remain unoccupied by the YACHT CLUB for a period of thirty (30) consecutive days.
- e) The **LANDS** are comprised of a portion of the lands described in Schedule "A" to this LEASE and more particularly set out in Schedule "B" to this LEASE.
- f) **LEASE** means this lease agreement, including its recitals and schedules, which form integral parts of it, as amended from time to time in accordance with Section 6.07.
- g) **PROPERTY MANAGER** means the CITY, or, where the CITY has hired an employee, consultant or contractor for the purposes of management of the LANDS, that person.
- h) **PROPERTY TAXES** means all taxes, rates, local improvement rates, impost charges, duties, assessments or levies which may be levied, rated, charged or assessed against any form of property, regardless of who is legally responsible for payment. It includes such requirements imposed by federal,

provincial, municipal (including the CITY), school board, utility commission or other authority, whether the requirement or the agency is now or in the future in existence.

- i) **RENT** means any and all sums due and payable by the YACHT CLUB pursuant to this LEASE. RENT includes the following amounts:
  - i. The BASE RENT;
  - ii. All other costs, expenses and charges (including interest on overdue payments) incurred in and about the LANDS required to be paid by the YACHT CLUB pursuant to any provision of this LEASE.
- j) The **RENT COMMENCEMENT DATE** is December 1, 2020.
- k) **RENTAL TAXES** means all Harmonized Sales Tax, sales taxes, excise taxes, business transfer taxes, value added taxes, or other taxes, duties, rates, levies or fees levied, rated, charged, assessed or payable with respect to, or calculated or measured in whole or in part in relation to:
  - i) The RENT payable by the YACHT CLUB to the CITY under this LEASE; or
  - ii) The LANDS; or
  - iii) The area of the LANDS; or
  - iv) The occupancy or leasing of the LANDS,and whether by law the responsibility of the CITY or the YACHT CLUB or both, and whether imposed by federal, provincial, municipal, school board, utility commission or other authority, and whether now or in the future in existence, and includes any other taxes, rates, duties, assessments, fees or levies which may be imposed on the CITY or the YACHT CLUB or anyone else on account or in lieu of it, or of a nature similar to it, and whether recurring annually, or at other intervals, or on a special or single instance basis only. RENTAL TAXES shall not include any PROPERTY TAXES.
- l) The **TERM** means the entire ten (10) year period during which this LEASE is operational, as set out in Article 2.00. In the event that a renewal is engaged pursuant to Section 2.02, the definition of TERM shall be deemed to be amended by adding the number of years of the renewal period.
- m) **YACHT CLUB** means the Pigeon Lake Yacht Club Inc., a corporation duly incorporated under the laws of the Province of Ontario.

1.02 **Legislation & By-laws:** Each reference to Provincial legislation in this LEASE, unless otherwise specified, is a reference to the Revised Statutes of Ontario, 1990 edition, and, in every case, includes all applicable amendments to the legislation, including successor legislation. Each reference to a By-law in this

LEASE, unless otherwise specified, is a reference to a By-law of the CITY, and, in every case, includes all application amendments to the By-law, including successor By-laws.

1.03 **Construing this LEASE:**

- a) The captions, article and section names and numbers appearing in this LEASE are for convenience of reference only and have no effect on its interpretation.
- b) All provisions of this LEASE creating obligations on either party will be construed as covenants.
- c) This LEASE is to be read with all changes of gender or number required by the context.
- d) The words 'include' or 'including' shall not be construed as limiting the words or phrases preceding them.

1.04 **Reasonableness:** Wherever any consent, agreement or approval of the CITY or the YACHT CLUB is required under the terms of this LEASE, then unless otherwise specifically mentioned, the party acting will do so reasonably.

**ARTICLE 2.00: DEMISE, TERM, AND RENTAL**

2.01 **Demise:** The CITY grants to the LEASE a leasehold interest in the LANDS to have and to hold for a TERM of ten (10) years, to be computed from the 1<sup>st</sup> day of December, 2020, concluding on the 30<sup>th</sup> day of November, 2030.

2.02 **Base RENT:** During the first year of the TERM of this LEASE, the BASE RENT will be as set out in Section 1.01(a). After the first year, the BASE RENT will be increased from the BASE RENT based on an increase in the tax rate.

2.03 **Payment of RENT:** The RENT is payable as follows:

- a) The BASE RENT shall be calculated at a yearly amount, shall be paid on the RENT COMMENCEMENT DATE, and thereafter shall be payable on the first day of December for each year of the TERM;
- b) PROPERTY TAXES, shall be paid upon the YACHT CLUB's receipt of invoice or demand thereof.
- c) All other costs, expenses and charges (including interest on overdue payments) incurred in and about the LANDS required to be paid by the YACHT CLUB pursuant to any provision of this LEASE, shall be paid upon the YACHT CLUB's receipt of invoice or demand thereof.

- 2.04 **RENT Abatement:** In the event of a Federal, Provincial or Municipal State of Emergency where the YACHT CLUB does not have access to the LANDS, the CITY will prorate the RENT accordingly.

### **ARTICLE 3.00: COVENANTS, WARRANTIES & ACKNOWLEDGEMENTS**

- 3.01 **Covenant to Pay RENT:** The YACHT CLUB agrees to pay the RENT at the times and in the manner prescribed in this LEASE, without any abatement or deduction, except as provided for in section 2.04.
- 3.02 **Interest on Overdue RENT:** Without waiving any right of action of the CITY in the EVENT OF DEFAULT of any payments pursuant to this LEASE, in the event that the YACHT CLUB is delinquent in payment of any RENT for thirty (30) days or more, the YACHT CLUB agrees to pay interest on the arrears of RENT at the rate of one point two eight five (1.285%) per cent per month, compounded, (which equates to a rate of sixteen point five six (16.56%) per cent per annum), retroactive from the date the amount was due and payable, until it is actually paid.
- 3.03 **Access:** The YACHT CLUB agrees to provide the CITY with full and free access (for inspection purposes), during normal business hours, and in the presence of the YACHT CLUB, to any and every part of the LANDS. It is understood and agreed, however, that in cases of emergency, the CITY shall at all times and for all purposes have full and free access to the LANDS.
- 3.04 **Quiet Enjoyment:** Subject to the provisions of this LEASE, the CITY agrees that the YACHT CLUB shall have quiet possession of the LANDS. The YACHT CLUB specifically acknowledges that the LANDS are adjacent to a sewage treatment and sludge storage facility and that, from time to time, offensive odours may be experienced. The YACHT CLUB shall not make any claim against the CITY as a result of such odours or nuisance.
- 3.05 **Maintenance/Refuse Handling:** The YACHT CLUB agrees to regularly maintain the LANDS in good condition, and to keep the LANDS free of debris and neat and tidy at all times. The YACHT CLUB acknowledges and agrees that no stockpiling of goods or refuse is permitted on the LANDS. The YACHT CLUB agrees to provide complete and proper arrangements for the adequate sanitary handling and disposal of all trash, garbage and other refuse on or in connection with the BUSINESS, all to the satisfaction of the PROPERTY MANAGER.
- 3.06 **Operational and Capital Costs:** The YACHT CLUB agrees that they shall be solely responsible for all operational and capital costs in relation to the BUSINESS. The CITY acknowledges that there is a 1.5 storey building located on the LANDS which belongs to the CITY. The YACHT CLUB acknowledges and agrees that they shall be solely responsible for all operational and capital costs associated with the 1.5 storey building.

- 3.07 **Utilities:** The YACHT CLUB agrees that they shall be solely responsible to pay for all utilities including, but not limited to, water, hydro, cable, and telephone. All minimum billings for the winter months are the responsibility of the YACHT CLUB. The CITY agrees to supply and install a water meter provided that the YACHT CLUB gives written notice yearly when the YACHT CLUB wishes the meter to be installed and removed from the one-inch hose line which runs overground from the sewage plant. The YACHT CLUB agrees to remove the water meter for the winter months and replace in the spring to save harmless the CITY from any damage that could occur to the LANDS if said meter was not removed.
- 3.08 **No Damage:** The YACHT CLUB agrees that it shall not do (or allow to be done) anything which may damage the LANDS beyond the damage occasioned by reasonable use. The YACHT CLUB further agrees that it shall, at its cost and expense, repair all portions of the LANDS which may at any time be damaged by the YACHT CLUB or its invitees (ordinary wear and tear only excepted). In the event of the failure on the part of the YACHT CLUB to repair pursuant to this section, the YACHT CLUB agrees to indemnify and save harmless the CITY from all damages, costs and expenses suffered or incurred by the CITY, the public, or any other third parties by reason of the damage to the LANDS, to the extent that the YACHT CLUB is liable for the same in law. The YACHT CLUB agrees to make payment forthwith upon receipt of appropriate accounts for these damages.
- 3.09 **Laws & Rules:** The YACHT CLUB agrees to abide by all applicable Federal, Provincial, and/or Municipal or local Statutes, Regulations, and By-laws.
- 3.10 **Fire Prevention:** The YACHT CLUB agrees to take all precautions to prevent fire from occurring in or about the LANDS. The YACHT CLUB further agrees to observe and comply with all instructions given from time to time by the PROPERTY MANAGER with respect to prevention and extinguishing of fires.
- 3.11 **Signs:** The YACHT CLUB agrees that it shall not construct, erect, place, or install on or at the LANDS, any poster, advertising sign or display, electrical or otherwise, without first obtaining the consent, in writing, of the CITY.
- 3.12 **Liability Insurance:** The YACHT CLUB shall provide and maintain:
- a) Commercial General Liability insurance with limits of not less than Five Million (\$5,000,000.00) dollars per occurrence and with a deductible acceptable to the City. Coverage shall include but is not limited to bodily injury including death, property damage including loss of use thereof, personal injury, blanket contractual liability, products and completed operations liability, owners and contractors protective, host liquor liability, non-owned automobile liability and contain a cross liability and severability of interest clause. The policy shall be endorsed to name *The Corporation of the City of Kawartha Lakes* as an additional insured.

- b) All Risk Property insurance in an amount equal to the full replacement cost of property of every description and kind owned by the YACHT CLUB or for which the YACHT CLUB is legally responsible, and which is located on or about the LANDS, including without limitation anything in the nature of a leasehold improvement. The policy shall not allow subrogation claims by the Insurer against the CITY.
- c) Tenant's Legal Liability insurance for the actual cash value of the building and structure on the LANDS, including loss of use thereof. The policy shall not allow subrogation claims by the Insurer against the CITY.
- d) Comprehensive Boiler and Machinery insurance on mechanical equipment on or about the LANDS controlled by the YACHT CLUB. The policy shall not allow subrogation claims by the Insurer against the CITY.

The YACHT CLUB shall provide the CITY, upon execution of this LEASE and annually thereafter, a Certificate of Insurance. All policies shall be with insurers licensed to underwrite insurance in the Province of Ontario. The insurance shall be with insurers acceptable to the CITY and with policies in a form satisfactory to the CITY. All policies shall be endorsed to provide the CITY with not less than thirty (30) days' written notice in advance of any cancellation, change or amendment restricting coverage. All premiums and deductibles under the insurance policies are the sole expense of the YACHT CLUB. All policies shall apply as primary and not as excess of any insurance available to the CITY. As determined by the CITY, the YACHT CLUB may be required to provide and maintain additional insurance coverage(s) or increased limits, which are related to this LEASE.

- 3.13 **Coverage to be Maintained:** The YACHT CLUB agrees that it shall not do anything (nor omit to do anything, nor allow anything to be done or omitted to be done) on the LANDS which will in any way impair or invalidate the policies provided pursuant to Sections 3.12.
- 3.14 **Objectionable Materials:** The YACHT CLUB agrees that it will not, upon or about the LANDS, bring, keep, sell, store, offer for sale, give away or otherwise use, handle or dispose of any merchandise, goods, materials, effects or things which may by the PROPERTY MANAGER for any reason be deemed objectionable.
- 3.15 **No Claims:** The YACHT CLUB shall not have any claim or demand against the CITY for damages of any nature, however caused to the LANDS, or any person or property, on or about the LANDS, unless the damage is due to the gross negligence of the CITY (or any of its officials, employees, servants or agents while acting within the scope of his or her duties or employment).

- 3.16 **Indemnification:** The YACHT CLUB agrees that it shall at all times indemnify and save harmless the CITY, its employees and Members of Council, from and against all claims and demands, by whomsoever made, which are occasioned by or attributable to the existence of this LEASE or any action taken or things done or maintained because of this LEASE, or the exercise of rights arising pursuant to this LEASE (excepting claims for damage resulting from the gross negligence of any officer, servant or agent of the CITY while acting within the scope of his or her duties or employment).

#### **ARTICLE 4.00: IMPROVEMENTS**

- 4.01 **Condition of the LANDS:** The YACHT CLUB accepts the LANDS in an "as is" condition without any obligation on the part of the CITY to make the LANDS suitable for the BUSINESS except as otherwise noted in this LEASE.
- 4.02 **Alterations:** The YACHT CLUB agrees that it will not make alterations to the LANDS, until plans showing the design and nature of the proposed alterations to the LANDS have been approved by the CITY. It is understood and agreed that any approved alterations to the LANDS must be completed and then maintained by the YACHT CLUB to the satisfaction of the CITY and/or the PROPERTY MANAGER. The CITY and the YACHT CLUB agree to execute an agreement addressing the timing and maintenance of the YACHT CLUB's improvements to the LANDS. The YACHT CLUB acknowledges that its development on the LANDS may be subject to site plan control.

#### **ARTICLE 5.00: TERMINATION**

- 5.01 **Termination without Cause:** The CITY and the YACHT CLUB have the right to terminate this LEASE upon twelve (12) months' notice in writing to the other party.
- 5.02 **Surrender:** At the expiration or sooner determination of the TERM of this LEASE, the YACHT CLUB shall peaceably surrender and yield to the CITY, the LANDS in a well-maintained, fully operating condition with all related facilities, buildings, structures and improvements (excepting those removed pursuant to Section 5.03) in a good state of repair (reasonable wear and tear excepted). At the expiration of this LEASE, the CITY will have and enjoy absolute title to all of the LANDS without compensation to the YACHT CLUB, and free of any claim or encumbrance. In the event that this LEASE is terminated due to an EVENT OF DEFAULT, no goods, materials or chattels of any sort may be removed by the YACHT CLUB without the CITY's express consent.
- 5.03 **Removal of Improvements:** Notwithstanding Section 5.02, and provided the YACHT CLUB is not in default of its obligations pursuant to this LEASE, at the expiration of the TERM or any renewal period, or upon earlier determination of the TERM, the CITY shall have the first right of refusal to purchase some or all of the YACHT CLUB's leasehold improvements at its then market value. In the event that the YACHT CLUB and the CITY cannot agree on terms of purchase, the YACHT CLUB shall remove, at its sole cost, all improvements on the LANDS

which the CITY does not require. The YACHT CLUB agrees to restore the LANDS upon which the removed improvements were located, to a state of repair satisfactory to the CITY within twelve (12) months of the date of the termination of the TERM.

- 5.04 **Default:** Upon the occurrence of an EVENT OF DEFAULT, at the option of the CITY, the TERM shall become forfeited and void, and the CITY may, without notice or any form of legal process whatsoever, forthwith re-enter upon the LANDS and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding, and the provisions of Section 5.02 shall apply.
- 5.05 **CITY's Performance:** Nothing in this LEASE prevents the CITY, in the circumstances of an EVENT OF DEFAULT, from entering upon the LANDS and performing the YACHT CLUB's obligations. This work shall be completed at the sole cost and expense of the YACHT CLUB and in addition, the CITY may levy any charge as may then be applicable, in accordance with the policies of the CITY for administration and overhead. It is expressly understood and agreed that the CITY is not under any obligation to perform any of the YACHT CLUB's covenants.
- 5.06 **Other Remedies:** Forfeiture of this LEASE by the YACHT CLUB shall be wholly without prejudice to the right of the CITY to recover arrears of RENT or damages for any antecedent breach of covenant on the part of the YACHT CLUB. Notwithstanding any forfeiture, the CITY may subsequently recover from the YACHT CLUB damages for loss of RENT suffered by reason of the YACHT CLUB having been determined prior to the end of the TERM as set out in this LEASE. This clause and the right under it shall survive the termination of this LEASE whether by act of the parties or by operation of law.

#### **ARTICLE 6.00: MISCELLANEOUS**

- 6.01 **Notice:** Any notice to be given under this LEASE shall be sufficiently given if delivered by hand, or facsimile, or if sent by prepaid first class mail and addressed to the YACHT CLUB at:

Pigeon Lake Yacht Club Inc.  
P.O. Box 622  
Bobcaygeon, ON K0M 1A0

or to the CITY at:

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

Receipt of notice shall be deemed on:

- a) The date of actual delivery of a hand delivered document; or
- b) The business day next following the date of facsimile or e-mail transmission;  
or
- c) Five (5) days following the date of mailing of the notice;

whichever is applicable. Notwithstanding Section 6.07, either party may change its address for notice by giving notice of change of address pursuant to this Section.

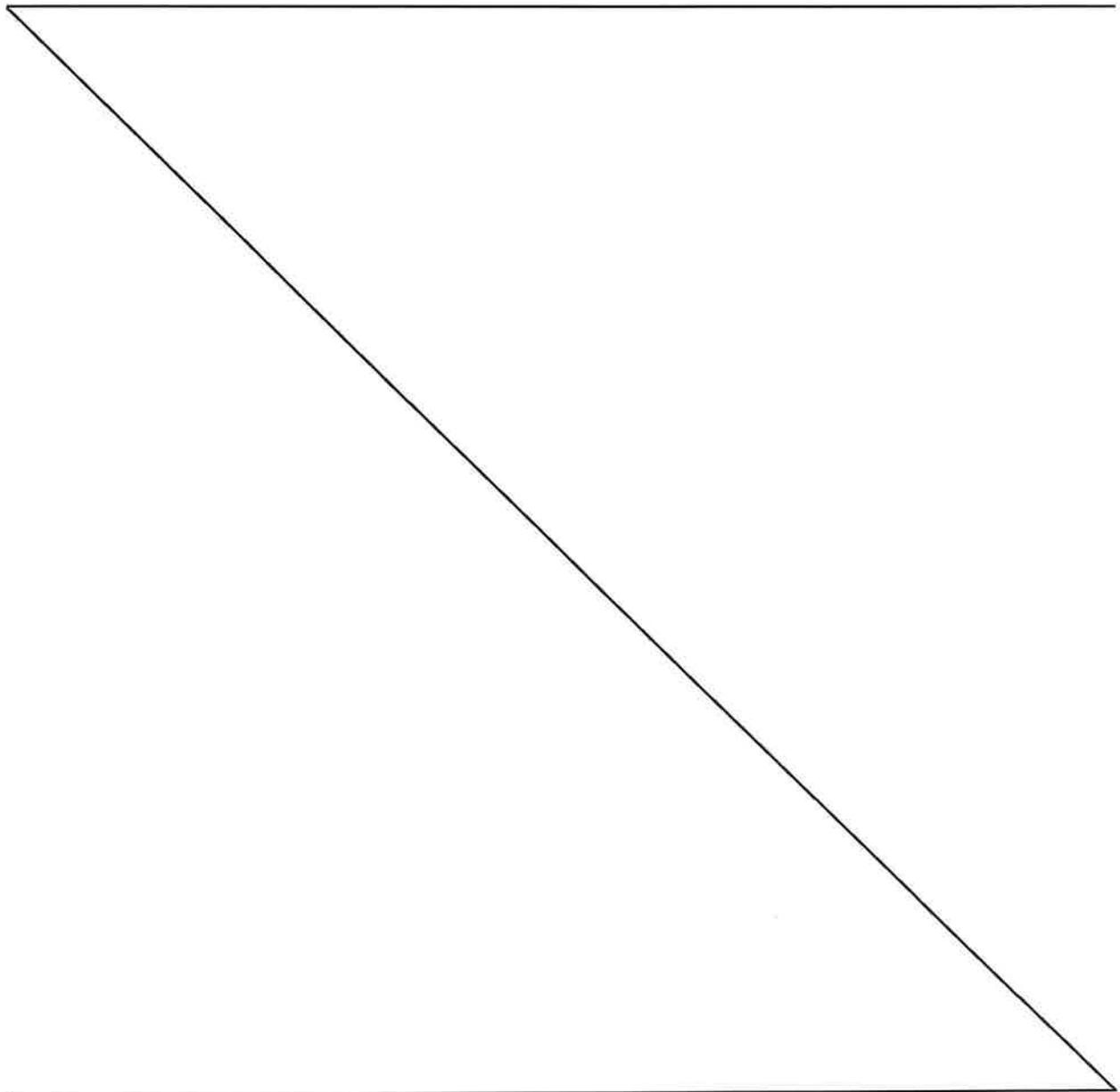
- 6.02 **Force Majeure:** Notwithstanding anything in this LEASE, neither party shall be in default with respect to the performance of any of the terms of this LEASE if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service, or any cause beyond the reasonable control of the party (unless such lack of control results from a deficiency in financial resources) . Otherwise, time shall be of the essence of this LEASE and all the obligations contained herein.
- 6.03 **Successors:** The rights and liabilities of the parties shall ensure to the benefit of and be binding upon the parties and their respective successors and approved assignees. Neither party shall assign this LEASE without the written consent of the other party.
- 6.04 **Entire Agreement:** This LEASE constitutes the entire agreement between the parties and it is agreed that there is no covenant, promise, agreement, condition precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth in this LEASE and this LEASE fully replaces and supersedes any letter, letter of intent, or other contractual arrangement between the parties related to the LANDS in existence at the time of execution and delivery of this LEASE.
- 6.05 **Partial Invalidity:** If any article, section, subsection, paragraph, clause or sub-clause or any of the words contained in this LEASE shall be held wholly or partially illegal, invalid or unenforceable by any court of competent jurisdiction, the CITY and the YACHT CLUB agree that the remainder of this LEASE shall not be affected by the judicial holding, but shall remain in full force and effect. The provisions of this LEASE shall have effect, notwithstanding any statute to the contrary.
- 6.06 **Relationship of Parties:** Nothing in this LEASE shall create any relationship between the parties other than that of landlord and tenant. It is specifically agreed that neither party is a partner, joint venture, agent or trustee of the other.

6.07 **Amendments:** No supplement, amendment or waiver of or under this LEASE (apart from amendments to notice provisions of Section 6.01) shall be binding unless executed in writing by the party to be bound. No waiver by a party of any provision of this LEASE shall be deemed to be a waiver of any other provision unless otherwise expressly provided.

6.08 **Governing Law:** This agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

6.09 **Freedom of Information:** The YACHT CLUB acknowledges that this LEASE is a public document.

6.10 **Independent Legal Advice:** The YACHT CLUB acknowledges that it has either received or waived the benefit of its own legal advice with respect to the execution of this LEASE.



6.11 **Electronic Signature:** This Agreement may be executed and delivered by facsimile or other electronic means, which electronic copies shall be deemed to be original.

By so executing this LEASE, the officers warrant and certify that the corporations for which they are signing are in good standing and duly incorporated and organized under the laws of the jurisdiction in which they are incorporated, and that the officers are authorized and empowered to bind the corporations to the terms of this LEASE by their signatures.

**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*

**PIGEON LAKE YACHT CLUB INC.**

PER:  \_\_\_\_\_  
Name: TOM LYCETT  
Title: COMMODORE

PER:  \_\_\_\_\_  
Name: Mike Burton-Joyes  
Title: Secretary

*We have authority to bind the Corporation*

## **Schedule "A"**

### **DESCRIPTION OF LANDS**

Part of Lot 15, Concession 19, Harvey, being Part 1 on Plan 57R-2573 & as in R267235  
East of Part 1 on Plan 57R-2795, in the Geographic Village of Bobcaygeon, City of  
Kawartha Lakes

Schedule "B"

