

**LICENSE AGREEMENT**

Effective the 1<sup>st</sup> day of March, 2022.

<b>Appendix D</b> <b>to</b> <b>Report : 2022-015</b> <b>File No. L17-21-RS031</b>
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**BETWEEN:**

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

(hereinafter called the "City")

- and -

**TERRENCE SEAL**

(hereinafter called the "Licensee")

**WHEREAS:**

- a) The City is the owner of those public highway lands known as the City of Kawartha Lakes Municipal Airport, 3187 Highway 35 North, Lindsay and legally described as Part of Lot 23, Part of Lot 24, Part of Lot 25, Concession 3, as in VT63568, A12243 and VT63532, in the Geographic Township of Ops, City of Kawartha Lakes, being PIN: 63202-0168 (the "City Property");
- b) The Licensee has an advertising sign (the "Encroachment") which encroaches on the City Property and as a result requires the use of municipally owned property; and
- c) The Licensee has applied to the City for a license for a period of ten (10) years in order to provide the Licensee with a non-exclusive license to use the City Property.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. Grant of License**

- 1.1. The City hereby grants to the Licensee a non-exclusive license (the "License") to occupy and use a part of the City Property, as more specifically shown on Schedule "A" attached hereto (the "Lands"), for the sole purpose of the use and enjoyment of the Encroachment and for no other purpose.

**2. License Term**

- 2.1. This License will commence on the 1<sup>st</sup> day of March, 2022 and terminate on the 29<sup>th</sup> day of February, 2032.

**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 eight hundred dollars per a side of two structures being a total of One Thousand, Six Hundred dollars (\$1,600.00) annually, increased annually by the Consumer Price Index – All Items, with payment due upon completion of construction of this License and annually thereafter on or before the 1<sup>st</sup> day of January. The Licensee may make full payment for the entire term of the license upfront (\$16,000), 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.

3.2. The parties to this Agreement agree that rental payments shall not commence until such time as the Encroachment is erected.

#### **4. Payment of Fee**

4.1. 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 14 or to such other place as the City may from time to time direct in writing.

#### **5. Licensee's Covenants**

5.1. 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.

#### **6. State of the Lands**

6.1. The Licensee agrees to accept the Lands on an "as is" basis.

6.2. 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 Encroachment, in the sole and absolute discretion of the City, reasonable wear and tear excepted.

#### **7. Licensee Expenses**

7.1. The Licensee shall maintain the Encroachments in a good and safe state of repair. Such maintenance shall include providing snow removal services, grading, grass cutting and any other necessary works as may be required by the Licensee in order to continue to use and access the Lands for the purpose intended herein, being the use and enjoyment of the Encroachment.

#### **8. Construction, Repairs and Maintenance**

8.1. The Licensee shall within twelve (12) months of the commencement of this Lease shall complete the Encroachment. If the construction of the said Encroachment is not substantially completed within the agreed upon period, this lease shall be terminated at the end of such period. Notwithstanding any other term to the contrary, the Tenant shall have thirty (30) days in which to remove any partially constructed Encroachment on the demised premises. If not removed within such period, any partially constructed Encroachment or remains thereof shall become the property of the City and if the City removes the partially constructed Encroachment in accordance with this clause the Licensee shall pay the cost of removal of the partially constructed Encroachment to the City immediately.

8.2. 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 or access of the Lands and in default of this covenant, the City shall have the right to terminate this License.

- 8.3. The Licensee shall not obstruct persons authorized by the City to examine the condition of the Encroachment and view the state of repair of the Encroachment 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 Encroachment 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 to the City immediately.
- 8.4. 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.
- 8.5. The Licensee shall immediately give written notice to the City of any damage that occurs to the Lands from any cause.
- 8.6. 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 Encroachment, and provided the Work is not undertaken due to, or in, an emergency, the Licensee shall receive not less than twelve hours advance notice for the Work. If, in the discretion of the City staff, agents or contractors undertaking the Work, the Work requires the removal of all or a portion of the Encroachment 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 Encroachment, 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 Encroachment, 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 the 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 Encroachment encroaching on the City Property, the City will never repair, replace, or provide compensation for same.**

## **9. Environmental**

- 9.1. 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.
- 9.2. 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.

## **10. Insurance**

- 10.1. During the term of this License Agreement and any renewal thereof, the Licensee shall provide and maintain the following insurance coverage:

- a) Commercial General Liability insurance including but not limited to bodily injury including death, personal injury, property damage including loss of use thereof, contractual liability, tenant's legal liability, owners and contractors' protective, contingent employers' liability, products and completed operations, sudden and accidental pollution liability, non-owned automobile and cross liability/severability of interest clause subject to limits not less than Two Million Dollars (\$2,000,000.00) per occurrence with a deductible acceptable to the City. The policy shall be endorsed to name *The Corporation of the City of Kawartha Lakes* as an additional insured.
  - b) "All Risk" Property insurance on all property owned by or for which the Licensee is legally liable in an amount of the full replacement cost of the property and include coverage for debris removal and cleanup costs for any damage to the property or City Land. The policy shall not allow subrogation claims by the Insurer against the City.
- 10.2. All required insurance shall be at the Licensee's sole cost and expense and all policies shall apply as primary and not as excess of any insurance available to the City. The Licensee shall be required to pay any deductible amounts in connection with all insurance policies.
  - 10.3. The insurance and any payment of the proceeds thereof to the City shall not relieve the Licensee of its obligations to repair, restore and maintain the City Land.
  - 10.4. All policies shall be written with insurance companies qualified to underwrite insurance in the Province of Ontario.
  - 10.5. The insurance will not be cancelled, permitted to lapse or materially changed unless the Licensee notifies the City in writing at least thirty (30) days' prior to the effective date of cancellation, expiry or change.
  - 10.6. The Licensee shall provide the City within ten (10) days of signing the License Agreement and annually thereafter, a Certificate of Insurance as confirmation of the above requested insurance coverage and if requested by the City, the Licensee shall provide copies of the said insurance policies.
  - 10.7. Failure to provide an insurance policy annually, naming *The Corporation of the City of Kawartha Lakes* as an additional insured, will terminate the License Agreement immediately.
  - 10.8. If the City receives notification that any applicable insurance policy has been cancelled, this License Agreement will automatically terminate.

## **11. Indemnity**

- 11.1. 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.
- 11.2. 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.
- 11.3. The foregoing indemnities shall survive the termination of this License notwithstanding any provisions of this License to the contrary.

## **12. Acts of Default and City's Remedies**

12.1. 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 thirty (30) 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) become vacant or remain unoccupied by the Licensee for a period of ninety (90) consecutive days or
  - (ii) is 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.
- e) When an Act of Default on the part of the Licensee has occurred the City shall have the right to terminate this License.
- f) 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.
- g) 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.
- h) 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.

### **13. Termination Upon Notice and at End of Term**

- 13.1. Either party shall have the right to terminate this License by giving sixty (60) days prior written notice to the other party with reasons specified.
- 13.2. In the event of a termination initiated by the City within the first five (5) years of this agreement, the City agrees to compensate the Licensee the following to reimburse the Licensee for the costs associated with erection of the signs, where each year commences on the 1<sup>st</sup> of January of each year from the commencement of the License. These amounts are as follows:  
Year 1 - \$6,083.53  
Year 2 - \$4,866.82  
Year 3 - \$3,650.12  
Year 4 - \$2,433.41  
Year 5 - \$1,216.71
- 13.3. In the event of a termination initiated by the City after the first five (5) years of the term, the City agrees to compensate the Licensee any reasonable penalties or fines associated with the early termination incurred by the Licensee.
- 13.4. This License terminates on the 29<sup>th</sup> day of February, 2032, 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.
- 13.5. If the Licensee remains in possession of the Lands after termination of the License as aforesaid and if the City then accepts payment of the License Fee for the Lands from the Licensee, it is agreed that such overholding by the Licensee and acceptance of License Fee by the City shall create a monthly license and that the occupation of the Lands by the Licensee shall remain subject to all the terms and conditions of this License except those regarding the Term.
- 13.6. Upon termination of this License, the Licensee is responsible for dismantling and removing the erected Encroachment within sixty (60) days. If not removed within such period, any constructed or partially constructed Encroachment or remains thereof shall become the property of the City.

### **14. Notice**

- 14.1. Any notice required or 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  
Attention: Clerk  
26 Francis Street, P.O. Box 9000  
Lindsay, Ontario K9V 5R8

Fax: 705-324-8110  
E-mail: clerks@kawarthalakes.ca

To the Licensee at:

Terrence Seal  
152 Baseline Road  
Coboconk, On.

E-mail: terryseal@sympatico.ca

- 14.2. The above addresses may be changed at any time by giving ten (10) days written notice to the other party to this License.

- 14.3. 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 facsimile or e-mail transmission or seventy-two (72) hours after mailing if the notice is mailed.

## **15. Registration**

- 15.1. 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 an existing fence. 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.

## **16. Assignment and Transfer**

- 16.1. 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 not be unreasonably withheld.
- 16.2. In the case of the Licensee transferring an assignment, sale, conveyance, sublease, disposition, or licensing of the whole or any part of the License, the Licensee shall receive written consent from the Airport Manager or designate. In the event written consent is not given to the Licensee by the Airport Manager, the Airport Manager shall provide to the Licensee in writing the reason, which the Licensee will be entitled to appeal with the City.
- 16.3. 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.
- 16.4. 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.
- 16.5. 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.
- 16.6. 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.

## **17. Amendment**

- 17.1. 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.

## **18. Confirmation**

- 18.1 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.

## **19. Entire License**

19.1. 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.

## **20. General Matters of Intent and Interpretation**

- 20.1. Each obligation under this License is a covenant.
- 20.2. 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.
- 20.3. 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.
- 20.4. 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.
- 20.5. 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.
- 20.6. This License will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 20.7. Time is of the essence of this License.
- 20.8. 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.

## **21. Force Majeure**

- 21.1. 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.



**22. Compliance With Laws**

22.1. 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.

**23. Successors**

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

**24. Electronic Signatures**

24.1. 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 \_\_\_\_\_, 2022

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

PER: \_\_\_\_\_

Name: Robyn Carlson

Title: City Solicitor

*(I have authority to bind the Corporation in accordance with By-Law 2016-009 section 5.05(1))*

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

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Witness Name:

\_\_\_\_\_  
Name: Terrence Seal

## SCHEDULE "A"



Schedule A