

**AGREEMENT OF SALE (ASSET; BUILDING) AND LAND LEASE**

This Agreement dated this 1st day of October, 2017.

**BETWEEN:**

**PURCHASER/ TENANT (Lessee), OAKWOOD AND DISTRICT LIONS CLUB**

- and -

**VENDOR/ LANDLORD (Lessor), THE CORPORATION OF THE CITY OF KAWARTHA LAKES**

**WHEREAS:**

A. The Vendor/ Landlord is a municipal corporation incorporated pursuant to the provisions of the *Municipal Act, 2001*, S.O. 2001, c.25.

B. The Purchaser/ Tenant is a not-for-profit corporation incorporated pursuant to [information to be inserted]. [Insert additional detail about the Tenant's charter/ mandate and activities]

C. The Vendor/ Landlord is the owner of property legally described as Plan 80 PT Block A to PT Block D, Ward 04 and municipally addressed as 1010 Eldon Road, Oakwood, Kawartha Lakes, Ontario, on which sits an arena, Works Depot, and a community hall, which is now vacant (the "Property"). These three buildings share a common access driveway and parking area. The community hall and arena share common servicing. The community hall is referred to as the Mariposa Hall.

D. Mariposa Hall was declared surplus to municipal needs on [date] by [council resolution number]. Severance of Mariposa Hall from the balance of the property would be problematic in that cross easements for servicing and access would be required and the resultant parcel would not have frontage. The Lion's Club advises that ownership of the building will allow it to access additional third-party financing. Accordingly, the community hall building, Mariposa Hall, will be sold and the land on which it sits, the access driveway, parking facilities and servicing exterior to the building will be offered for lease.

E. Pursuant to Council Resolution number [number], Council on [date] approved Policy [number], which directed that [all new leases and licenses are to be entered into at fair market value. Pursuant to Council Resolution number [number], Council on [date] directed that all new leases and licenses with commercial or industrial entities are to be entered into at the lesser of full market value and full cost recovery, including operating and capital costs.

The Purchaser hereby offers to purchase from the Vendor the community hall itself and all internal plumbing, electrical, fixtures [and furniture], and to lease that part of the Property as described herein on the terms and subject to the conditions as set out in this Agreement.

**1. DEFINITIONS:**

a. **PROPERTY:** Property legally known as Plan 80 PT Block A to PT Block D, Ward 04 and

**INITIALS OF TENANT:**

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municipally addressed as 1010 Eldon Road, Oakwood, City of Kawartha Lakes, Province of Ontario.

**b. MARIPOSA HALL:** A a single-story building of approximately 8,044 square feet more or less known as “Mariposa Hall”, located on the Property. A photograph of this building is attached as Schedule A. All exterior staircases and ramps exclusively servicing Mariposa Hall are a part of Mariposa Hall.

**c. PREMISES:** The premises consisting of the land on which sits Mariposa Hall and exterior walkways accessing solely Mariposa Hall.

**2. SUMMARY:** The Mariposa Hall shall be sold as an asset to the Purchaser, on the condition that the Purchaser remain a not-for-profit community service organization operating at the Premises. The Premises shall be exclusively leased to the Lion’s Club on the basis of full cost recovery to the City (for all operating costs, utilities and taxes). The Tenant shall be licensed to use the access driveway and common parking on the Property. The Tenant shall share use of these facilities with other users of the Property, including the City and its guests and agents accessing / utilizing the Works Yard and/or arena on the Property.

**3. CONDITIONS OF SALE:** The Lion’s Club will, at its sole cost and expense, register ownership of “Mariposa Hall” pursuant to the *Personal Property and Security Act*, Ontario. The Lion’s Club will, at its sole cost and expense, register notice on title to property described at Schedule “A” (the “Property”), advising persons that it owns Mariposa Hall. The City will consent to such registration. If: the Lion’s Club allows, at any time during the term of the Lease, Mariposa Hall to remain in disrepair<sup>1</sup> for a minimum consecutive period of 1 year; then the Lion’s Club shall, at its sole cost and expense, cap all servicing at the building, disconnect hydro to the building, and remove Mariposa Hall from the Property or demolish Mariposa Hall and remove the debris from the Property. The Lion’s Club will be additionally responsible for breaking up and removing exterior walkways being part of the Premises. The Lion’s Club will be additionally responsible for backfilling the foundation with clean fill and sodding the area previously occupied by Mariposa Hall and its exterior walkways. In the event that the Lion’s Club defaults on these obligations, the City may - on 60 days’ notice - enter and do these works and then invoice the Lion’s Club for the actual cost of this work, plus a 25% administration fee.

**a.** If Mariposa Hall is demolished or removed from the Property, the Lion’s Club shall void its

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<sup>1</sup> Such that an Unsafe Condition exists on the Property pursuant to the Building Code Act, or such that a Property Standards Order could be issued against the building for failure to maintain the exterior in a slightly manner. Examples of the latter could include, but are not limited to, failure to keep trim painted, failure to maintain sidewalks in a safe manner, free of trip hazards, and failure to keep roofing systems in good repair to prevent damage to the interior of the building.

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registration under the *Personal Property and Security Act* and shall provide consent to the City for the removal of the notice on title to the Property.

4. **USE:** The Premises shall be used only for community events, including fundraising events and member meetings. The Premises shall only be operated by a not-for-profit entity.

5. **TERM OF LEASE:**

- a. The Lease shall be for a term of 5 years, commencing on the 1st day of September, 2017, and terminating on the 31st day of August, 2022.
- b. Provided the Tenant is not at any time in default of any covenants within the Lease, the Tenant shall be entitled to renew this Lease for 4 additional terms of 5 years each on written notice to the Landlord given not less than 4 months prior to the expiry of the current term on the same terms.

6. **RENTAL:** The Property will be leased out to the Tenant as a triple net and full carefree lease to the Landlord. In exchange for exclusive use of the Premises, the Tenant is responsible to keep the Premises in a well maintained condition and is obligated to pay all operating and capital costs of the building during the term of the lease and any renewals thereof.

- a. The Landlord is entitled, on 7 days written notice, to enter the Premises on or about each anniversary date of this Lease to inspect any document or thing to satisfy itself that the Premises is being well maintained by the Tenant (as further described in paragraph 5(a) and Schedule B. Additionally, the Landlord is entitled to conduct a move-in and move-out inspection and determine the condition of the Premises and identify any deficiencies requiring repair, which shall be at the sole cost of the Tenant.

7. **STATE OF THE PREMISES:** The Purchaser accepts the Premises on an "as is" basis and acknowledges that it has sat vacant for some time and may require additional capital improvements or maintenance than as identified in Schedule B. The Purchaser is solely responsible for said costs and any additional and unidentified costs.

8. **TENANT'S RESPONSIBILITIES:**

- a. **Maintenance of the Premises:** The Tenant shall, at its sole cost, manage, maintain, operate and repair the Premises. This obligation includes, but is not limited to, at reasonable intervals, making replacements to ramps, staircases and walkways on the Premises.
- b. **Maintenance of the Sanitary Bed serving the Premises:** The Premises has a separate septic bed from the arena on the property. The Tenant is fully responsible for maintenance, repair and replacement of this bed. The Tenant is responsible for cleanup of any spills from this bed.

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**Comment [RC1]:** The Lion's Club has asked this be removed.

c. **Snow Removal:** Tenant is responsible for snow removal and sanding/ salting walkways, ramps and stairs for the sole purpose of access to and from Mariposa Hall (walkways, ramps and stairs on the Premises); Landlord is responsible for snow removal and sanding/salting the shared access to the property and shared parking lot (the balance of the Property excluding the Premises).

**Comment [RC2]:** Lion's Club has indicated it wants to be responsible for all snow removal

d. **Garbage Removal:** Municipal garbage collection is available at the curb on a weekly basis.

e. **Grass Cutting:** The Landlord is responsible for cutting grass on the entire Property, including in proximity to the Premises.

f. **Realty Taxes:** The Tenant will be invoiced annually for realty tax, and will pay it to the Landlord upon demand. Realty Tax estimated as attributable to Mariposa Hall for 2017 - to be used by the Tenant as guidance only in determining its financial affairs - is \$1,300.

g. **Society of Composers and Music Publishers of Canada license:** The Tenant is responsible for obtaining its own license, if required.

9. **SERVICES:**

The Tenant shall pay the cost of hydro, gas, water, heating, air-conditioning and for all other services and utilities as may be provided to the premises. The Tenant shall arrange with the local authority for connection of gas, electricity and water in the name of the Tenant.

10. **ADDITIONAL RENT AND CHARGES:**

The Tenant shall additionally pay a proportionate share of all costs and expenses incurred by the Landlord in maintaining, operating, cleaning, insuring and repairing the property and without limiting the generality of the foregoing, such costs and expenses shall include the costs of:

**Comment [RC3]:** This captures all the regular costs, however, irregular costs such as septic cleanout and repair can be apportioned back to the septic users proportionate to their use. Therefore, suggest this term stay broad, although Lion's Club has asked that this list be made finite

a. insuring the Premises and such other insurance as the Landlord will effect against public liability, property damage, loss of rental income and other casualties and risks.

11. **SCHEDULES:** The Schedules attached hereto shall form an integral part of this Agreement to Lease and consist of: Schedules A & B.

12. **NOTICES:** Any notice required or contemplated by any provision of this Lease shall be given in writing and addressed as follows:

For the Landlord:

City of Kawartha Lakes  
26 Francis St., P.O. Box 9000  
Lindsay, Ontario K9V 5R8  
Fax: 705-324-8110  
Attention: Clerk's Department  
[Clerks@city.kawarthalakes.on.ca](mailto:Clerks@city.kawarthalakes.on.ca)

INITIALS OF TENANT:

INITIALS OF LANDLORD:

And to:

Realty Services Division, Legal Services Department

12 Peel Street

Lindsay, Ontario K9V 5R8

Fax: 705-324-2982

[insert information for Lion's Club]

Either party may, at any time, notify the other of a change in contact information for service.

- 13. TENANT'S WORK:** The Tenant agrees to complete all work as described in Schedule B attached hereto. Throughout the Term of the Lease, including any renewals thereof, the Tenant is responsible for all work to keep the Premises in good repair, whether or not such works were identified in Schedule B. The Tenant agrees to complete any additional work necessary to prepare the Premises for the Tenant's use. The Tenant shall not proceed with any work within or affecting the Premises that may limit the Landlord's use of the access driveway and/or the common parking area, without the Landlord's prior written approval, which approval shall not be unreasonable withheld.
- a.** The Tenant is an independent contractor with respect to the contracting for all work; the Tenant is not an agent of the City. The Tenant is fully responsible to ensure the work is done in accordance with the *Workplace Safety and Insurance Act*, 1997, c. 16, Sched. A requirement. The Tenant is the "constructor" within the meaning implied by the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.
- 14. SIGNAGE:** The Tenant may, at its own expense, erect signage in a good and workmanlike manner, subject to municipal by-laws and government regulations and subject to the Landlord's written approval as to the design, colour, and content of any such signs, which approval shall not be unreasonably withheld.
- 15. PARKING:** Parking shall be in common and unreserved.
- 16. ENVIRONMENTAL:** The Tenant shall be, at its own expense, responsible for any loss, costs, damages, charges or expenses that may be sustained by the City as a result of any environmental spill as may occur during the Term of the Tenancy.
- 17. INSURANCE:** The Tenant agrees to insure the property and operations of the Tenant, including property insurance for fire and such additional perils as are normally insured against, third party

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liability insurance including personal injury and death, naming the Corporation of the City of Kawartha Lakes as an additional insured and with minimum liability limits of Five Million Dollars per occurrence, and any other insurance as may be reasonably required by the Landlord. The Tenant will obtain liquor liability insurance and special events insurance for each event either involving the dispensation of liquor or being a special event. The Tenant will obtain environmental spill insurance on account of the oil tank located in the basement of the Premises. Without limiting the generality of the foregoing, the Tenant shall provide and maintain:

- a. 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, tenant's legal liability, products and completed operations liability, contingent employers' liability, host liquor liability, non-owned automobile liability and cross liability and severability of interest clause. The policy shall be in an amount no less than Five Million Dollars per occurrence and with a deductible acceptable to the Landlord. The policy shall name the Corporation of the City of Kawartha Lakes as an additional insured
- b. All Risk Property insurance on the Premises itself and all exterior walkways/ staircases, and including all internal fixtures, including that existing and that as repaired / replaced, and including personal property owned by the Tenant for the full replacement cost of the property. The policy shall be endorsed to include coverage for the oil tank located in the basement of the Premises including costs to cleanup and restore any property damaged by sudden and accidental escape of pollutants. The policy shall include business interruption for a period of not less than 12 months. The policy shall not allow subrogation claims by the Insurer against the Landlord. The Landlord shall be named as a Loss Payee on the policy.
- c. Comprehensive Boiler and Machinery insurance on mechanical equipment in the Premises controlled by the Tenant. The Landlord shall be named as a Loss Payee on the policy.
- d. For all events where alcohol will be served or provided, the Tenant shall ensure that appropriate coverage is in place for each such event and facility renters are required to provide Party Alcohol Liability in an amount not less than Five Million Dollars per occurrence for bodily injury, property damage and personal injury. The policy shall be underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall name the Corporation of the City of Kawartha Lakes as an additional insured.
- e. For all events where alcohol will be served or provided, the Tenant shall ensure that appropriate coverage is in place for each such event and facility renters are required to provide Party Alcohol Liability in an amount not less than Five Million Dollars per occurrence for bodily injury, property damage and personal injury. The policy shall be underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall name the Corporation of the City of Kawartha Lakes as an additional insured.

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f. The Tenant shall provide the Landlord within 10 days of signing the 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 Landlord and with policies in a form satisfactory to the Landlord. All policies shall be endorsed to provide the Landlord with not less than 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 Tenant. All policies shall apply as primary and not as excess of any insurance available to the Landlord. As determined by the Landlord, the Tenant may be required to provide and maintain additional insurance coverage(s) or increased limits which are related to this Lease.

**18. INDEMNITY AND LIMITATION OF LIABILITY:** The Tenant waives, releases, discharges, defends and indemnifies the Landlord from and against any and all rights, claims, demands or actions whatsoever of every kind and nature, direct and indirect, or any person whether in respect of damage to person or property arising out of or occasioned by the maintenance, use or occupancy of the Premises from any cause whatsoever, and including with respect to any design or feature of any capital item replaced or repaired by the Tenant. The Tenant agrees to look solely to its insurers in the event of loss. This term survives the Term of the Lease.

**19. ACTS OF DEFAULT AND LANDLORD'S REMEDIES:** An act of default has occurred when: the Tenant has breached any of its covenants, failed to perform any of its obligations under this Lease or has failed to complete the capital works as set out in Schedule B and the deficiency remains outstanding for a 30 consecutive day period, a construction lien is threatened or registered against the Property as a result of the Tenant's act or omission and the Tenant does not act swiftly to rectify the situation to the Landlord's full satisfaction, or the Tenant fails to defend and indemnify the Landlord as per section 18.

**20. ABANDONMENT:** If the premises become vacant or remain unoccupied by the Tenant for a period of 30 consecutive days, then this Lease will be deemed to be at and end. At the expiration of this 30 day period, the Landlord may re-enter the Premises.

**21. ASSIGNMENT:** This Lease shall not be assignable or otherwise transferable by the Tenant. The Tenant may not sublet or assign or transfer its interest in the Lease contemplated herein without securing the written consent from the Landlord, which consent shall not be unreasonably withheld, provided however, if the consent is granted, the Tenant shall remain liable for all obligations under the Lease.

a. If applicable, the transfer of the majority of the issued shares in the capital stock, or any transfer, issuance or division of shares of the corporation sufficient to transfer control of the corporation shall be deemed for all purposes to be an assignment within the meaning of this

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Lease. This provision shall not apply to a corporation whose shares are listed and traded on any recognized public stock exchange in Canada or the United States.

- 22. **AMENDMENT:** Any amendment to this Lease, with the exception of a change in contact details for notice as per section 10, shall take effect once reduced to writing and signed by both parties.
- 23. **TERMINATION UPON NOTICE AND AT END OF TERM:** Each party has the right to terminate this Lease by giving 60 days prior written notice to the other party.
- 24. **AGREEMENT IN WRITING:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between Landlord and Tenant. There is no representation, warranty, collateral agreement or condition that affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
- 25. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The Tenant acknowledges that any information or estimates provided by the Landlord is not legal, accounting, tax or environmental advice. The Tenant is encouraged to obtain independent professional advice prior to signing this document.
- 26. **BINDING AGREEMENT:** This Agreement and the acceptance thereof shall constitute a binding agreement by the parties to enter into the Lease of the Premises and to abide by the terms and conditions herein contained.
- 27. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and permitted assigns of the undersigned are bound by the terms herein.

For the Purchaser & Tenant:

SIGNED, SEALED AND  
DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal

DATE:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Tenant by Authorized  
Representative signature)

\_\_\_\_\_  
Name (print)

DATE:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Tenant by Authorized

**INITIALS OF TENANT:**

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\_\_\_\_\_  
Representative signature)

\_\_\_\_\_  
Name (print)

For the Vendor & Landlord:

IN WITNESS whereof I have  
hereunto set my hand and seal:

\_\_\_\_\_  
DATE:

Judy Currins, Clerk

\_\_\_\_\_  
DATE:

Andy Letham, Mayor

#### SCHEDULE A

[insert floor layouts for the leased premises, and show common area parking, and ingress/egress]

#### SCHEDULE B

**Comment [RC4]:** Lion's Club has preferred this be removed, but I prefer this stay in b/c it shows the state of the premises accepted in an "as is" state, allows City to determine scope of inspections and assists Lion's Club in planning repairs.

Projected Year for Repair	Item	Anticipated Cost
2017	<p>opening hall: complete facility re-construction along with accessibility upgrades to meet <i>Building Code Act</i> and <i>Accessibility for Ontarians with Disabilities Act</i> requirements. A complete detailed breakdown of reconstruction needs are as follows:</p> <p>Mariposa Hall:</p> <ul style="list-style-type: none"><li>• Remove centre wall and ceiling in bathroom</li><li>• Remove all wiring</li><li>• Replace 4 bathroom windows</li><li>• Install new wires, lights, plugs, heaters, switches and exhaust fans (2)</li></ul>	\$90,000.00

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	<ul style="list-style-type: none"> <li>• Replace both entrance doors to 36 inch steel door with closures</li> <li>• Remove all plumbing water lines and drain lines</li> <li>• Re-plumb both washrooms: toilet, sinks and stalls</li> <li>• Add a new vent through the roof in a new location to prevent ice damage</li> <li>• Repair roof</li> <li>• new underlay and flooring in both washrooms</li> <li>• reinsulate walls, ceiling, vapour barrier, drywall</li> <li>• prime and paint</li> <li>• new baseboard and trim</li> </ul> <p><b>Safe Room</b></p> <ul style="list-style-type: none"> <li>• Repair drywall</li> <li>• Replace door with new steel insulated door</li> </ul> <p><b>Basement</b></p> <ul style="list-style-type: none"> <li>• New 2x4 wall under bathroom, lions den, insulate and vapour barrier</li> <li>• Replace 2 basement windows</li> <li>• Electrical upgrades</li> </ul> <p><b>Main Room</b></p> <ul style="list-style-type: none"> <li>• Replace 6 windows and trim</li> </ul> <p><b>Furnace</b></p> <ul style="list-style-type: none"> <li>• Replace old furnace with new gas furnace, upgrade duct work to washrooms</li> <li>• Replace electric hot water heater rental with new natural gas heater</li> </ul>	
2018	oil storage tank replacement: This may have to be done as part of opening work, and replaced with another form of fuel delivery, if insurance is unavailable otherwise	\$5,000.00 (replacement value)
2022	furnace replacement	\$7,000.00
2027	hot water storage tank replacement	\$7,000.00
2030	electrical service replacement	\$47,000.00
2032	kitchen renovations	\$7,000.00

**Comment [RC5]:** Lion's Club has asked that this be removed at City cost. This is to be done at Lion's cost; not the City's.

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