

THIS LICENCE AGREEMENT

Made as of ~ day of ~ , 201~

BETWEEN:

(Hereinafter called the "Owner")

-AND-

The Corporation of the Municipality of Kincardine

(Hereinafter called the "Municipality")

WHEREAS the Owner is the registered owner of certain lands and premises legally described in Schedule "A" attached hereto, hereinafter called the "Property", and municipally known as , Kincardine .

AND WHEREAS the Municipality has established a committee known as the Kincardine Trails Association, hereinafter called the "KTA", to operate a recreational hiking trail system within the Municipality of Kincardine, hereinafter called the "Kincardine Trail".

AND WHEREAS the Municipality wishes to construct and maintain a portion of the Kincardine Trail over the Property for pedestrian use, such portion hereafter called the "Trail", as identified on Schedule "B" attached hereto.

NOW THEREFORE WITNESSETH in consideration of the mutual covenants contained herein and the payment by the Municipality to the Owner of the sum of one dollar (\$1.00), the receipt of which the Owner hereby acknowledges, the parties hereto agree as follows:

1. The Owner hereby grants to the Municipality a licence to construct and maintain a portion of the Kincardine Trail over the Property for the purposes and upon the terms and considerations hereinafter set forth.
2. The approximate location and route of the Trail shall be mutually agreed upon by the Municipality or its authorized representative and the Owner acting reasonably. The precise location of the Trail shall be flagged in the field to the satisfaction of both the Municipality and the Owner prior to development of the Trail. The location and route of the Trail, including any developments or improvements existing within a 7.5 metre corridor on both sides of the Trail as of the date of this agreement (the "Corridor"), may be amended by mutual written agreement of the parties hereto without affecting the validity of the terms hereof. Any changes to the Trail

and/or any developments or improvements outside the Corridor must be agreed to in writing by both parties prior to commencement of work. The terms or written agreement(s) referred to above shall then apply to the newly agreed to Trail and/or Corridor.

3. The Municipality shall be responsible for construction and maintenance of the Trail and Corridor in a condition that is clean and safe for pedestrian travel by the public as determined by the Municipality in its absolute and sole discretion. The Municipality shall be responsible for all aspects of the ongoing maintenance, including but not limited to any costs associated with the construction, repair, maintenance and ongoing use of the Trail as deemed necessary or advisable by the Municipality. The Municipality shall also undertake to remove any litter and correct, to the extent possible, any minor problems such as fire scars or damage to fencing, structures or vegetation which may occur along the Trail or the Corridor. The Municipality will ensure that any employees, contractors, agents or assigns using chainsaws, string trimmers and other equipment are properly trained in the safe use of the equipment. The removal of any trees shall be approved in advance by the Owner unless the Municipality deems the removal of any such tree necessary to ensure the safety of the Municipality's employees, contractors, agents, assigns or the public.

4. The parties hereto will allow use of the Trail to the general public without charge.

5. The Municipality will exercise such duty of care to persons using the Trail as is imposed by the *Occupiers' Liability Act*, R.S.O 1990, Chapter O.2, and amendments thereto or successors thereof, during the term of this Agreement.

6. The Municipality shall comply with all provisions of law, including, without limiting the generality of the foregoing, federal and provincial legislation, municipal by-laws, and any other government or municipal regulations which relate to the establishment, maintenance and use of the Trail.

7. The Municipality will ensure that the Trail is marked in the following manner:

- a) By signs indicating that the Trail is on private land through the courtesy of the Owner and restricted to pedestrian use by the public. Pedestrian use shall be defined for the purposes of this Agreement as any of the following uses: walking, hiking, jogging, cycling, cross-country skiing and snow shoeing;
- b) By visible coloured markings on trees or other landmarks of a size no more than 5 centimetres by 15 centimetres and at a height of between 1 and 2 metres indicating the Trail is reserved for pedestrian use by the public; and

- c) Any other signage or markings deemed necessary or advisable by the Municipality in its sole and absolute discretion.

8. The Municipality shall conduct an inspection of the Trail on the Property on a yearly basis. All inspections of the Trail, shall be documented in a form determined by the Municipality and submitted to the Director of Public Works on an annual basis. The Municipality shall complete any repairs or maintenance required to the Trail arising out of the inspection within thirty (30) days of the inspection. The Owner may also provide a written request to the Municipality that the Trail be repaired or maintained. If, in the sole and absolute discretion of the Municipality, the aforementioned repairs or maintenance is required to meet the standard consistent with other areas of the Trail, then the Municipality shall begin the repairs or maintenance in the manner determined by the Municipality within thirty (30) days of the inspection or written request described above. Should the Municipality fail to commence the necessary repairs within the time specified, the Owner may carry out the Municipality's obligations and the Municipality shall reimburse the Owner for any reasonable expenses incurred thereby. The Owner and the Municipality hereby acknowledge that the aforementioned repairs and/or maintenance are seasonal and weather sensitive and may be delayed or suspended in adverse weather conditions or if such repairs and /or maintenance would interrupt normal farming operations.

9. The Municipality shall indemnify and save harmless the Owner from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to anything done or omitted to be done by the Municipality, its officers, employees, servants or agents as determined by the court of competent jurisdiction in connection with the Trail or purported or required fulfillment of any of the provisions of this Agreement; and provided that the Owner shall not, without the written consent of the Municipality or its insurer assume or admit liability with respect to any claim made against it for which it seeks indemnification pursuant to the provisions of this paragraph for the term of this Agreement. In addition hereto, the Municipality undertakes and agrees to reimburse and pay the Owner for any crop damage, which directly results from the construction, repair or maintenance of the Trail and, the Municipality agrees not to disrupt normal farming operations undertaken by the Owner during such maintenance, construction or repair of the Trail.

10. The Municipality shall not be responsible for any loss, claims, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to anything done or omitted to be done by the Owner, or

the Owner's employees, officers, servants or agents in the course of the Owner's farming operations or otherwise.

11. The Municipality shall at all times during the term of this Agreement maintain comprehensive general liability insurance in an amount not less than two million dollars (\$2,000,000.00) per occurrence for bodily injury including personal injury and death, showing the Owner as an additional insured with respect to the operation of this Agreement. The Municipality agrees to provide a copy of the liability insurance policy to the Owner upon execution of this Agreement and annually thereof, if requested by the Owner.

12. Nothing herein shall be interpreted or construed as giving rise to a claim by the Municipality that it has acquired title by possession or prescription to the Trail or any part of the Property either during the currency of this Agreement or upon the termination of same. The parties hereto agree that this Agreement shall not be registered on title.

13. This Agreement will be automatically renewed for successive annual terms until terminated. This Agreement, and any renewals thereof, may be terminated in its entirety by mutual agreement, or, notwithstanding any other provisions of this Agreement or any oral understanding between the parties, by providing six (6) months' written notice of termination to the other party at the addresses provided in paragraph 17 herein.

14. In the event that there is a dispute between the parties regarding the existence of a breach or the satisfactory remediation of such breach within the time stipulated, an arbitrator shall be appointed to resolve the dispute according to the provisions of the *Arbitration Act*, 1991, S.O. 1991, c. 17, and any amendments thereto or successor legislation. The decision of the arbitrator shall be binding on both parties and either party shall take no further action.

15. Upon termination of this Agreement, and within a reasonable timeframe, the Municipality shall, to the extent feasible to do so as determined by the Municipality in its sole and absolute discretion, remove any signage, and appurtenances relating to the Trail from the Property.

16. This Agreement and the covenants, provisos, conditions and schedules in this agreement shall be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

17. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

18. Any amendments to this Agreement shall be in writing and agreed upon by the parties.

19. Time shall be of the essence.

20. The parties agree that this Licence constitutes the entire agreement between the parties with respect to the subject-matter hereof, and that this agreement supersedes all proposals, oral or written, all previous negotiations and all other communications between the parties with respect to the subject-matter hereof.

IN WITNESS WHEREOF the parties have duly signed and/or affixed their corporate seals attested by the hands of their respective officers duly authorized in that behalf.

Witness

Owner

Witness

Owner

THE CORPORATION OF THE MUNICIPALITY
OF KINCARDINE

Anne Eadie - Mayor

Sharon Chambers – CAO
We have authority to bind the Corporation

SCHEDULE A