

Township of North Kawartha

280 Burleigh Street, PO Box 550, Apsley, ON K0L 1A0
Tel: 705-656-4445 | 1-800-755-6931 | Fax: 705-656-4446
www.northkawartha.ca

Report to Council

To: Mayor and Council Members
From: Alana Solman, Chief Administrative Officer
Date: May 13, 2025
Subject: License Agreement with David Mark Tucker and Kimberly Jo Tucker

Recommendation:

That Council pass a by-law at the end of the meeting to authorize the Mayor and the Clerk to enter into a License Agreement with Kimberly and David Tucker to establish the terms under which the licensee would be given permission to improve, repair, maintain, and from time to time make improvements over certain lands, being a portion of the Road Allowance between Concessions 4 and 5, Burleigh (Southern Division) Township of North Kawartha and that portion of the Highway known as the Old Burleigh Road as depicted in Schedule "B" of the License Agreement.

Background:

The property at 6072 Highway 28, roll number 1536-020-001-51900 was purchased by David Tucker and Kimberly Tucker. The Tuckers applied to build an additional dwelling unit on their property. Through the zoning review, it was recognized that a portion of the driveway being used by the owners is located on unmaintained and unassumed municipal road allowance.

Analysis:

As this is unassumed and unopened municipal road allowance is used by others and could potentially be required for surrounding properties, the sale of the unopened municipal road allowance was not recommended by the Junior Planner. In order to facilitate the continued use of the driveway area, it is necessary for the owners and the Township to enter into a License Agreement.

As per the Agreement, the Tuckers can improve, repair, maintain, and from time to time make improvements on the unassumed road and unopened road allowance identified in the Agreement. The Licensee indemnifies the Township and has provided a Certificate of Liability Insurance to the satisfaction of the Township in the amount of \$ 2,000,000.



Township of North Kawartha

280 Burleigh Street, PO Box 550, Apsley, ON K0L 1A0
Tel: 705-656-4445 | 1-800-755-6931 | Fax: 705-656-4446
www.northkawartha.ca

The term of the agreement is ten years with an option upon expiration and at the written request of the Licensee, to renew for an additional term of ten years.

Financial Implications:

The licensee shall pay the Township an annual fee of \$ 250 per annum. The fee for the first year has been received.

Strategic and/or Other Plans:

Infrastructure 1. 3 Facilitate the creation of more housing including new builds, multi-residential, and secondary dwelling units for the following markets; seniors, families, affordable housing options, and rental units.

Governance 3.1 Maintain policies and processes that enable effective governance

In Consultation with:

Emily Fitzgerald, previous Junior Planner; Matt Aldom, CBO; Kimberly and David Tucker

Attachment:

Licence Agreement between the Township of North Kawartha and Kimberly and David Tucker



LICENSE AGREEMENT

B E T W E E N:

THE CORPORATION OF THE TOWNSHIP OF NORTH KAWARTHA
(herein called the "Township")

OF THE FIRST PART

- and -

 **DAVID MARK TUCKER**
and
 **KIMBERLY JO TUCKER**
(herein called the "Licensee")

OF THE SECOND PART

WHEREAS the Licensee is the owner of lands described in Schedule "A" to this Agreement (the "Lands");

AND WHEREAS the Licensee has applied to the Township for permission to improve, repair, maintain, and from time to time make improvements deemed appropriate to the surface of a section of an unmaintained and unassumed municipal road allowance, as shown and described in Schedule "B" to this Agreement (the "Township Lands") for the purposes of providing access and egress to the Lands;

AND WHEREAS the Township has reviewed the request and application of the Licensee and will permit in the circumstances for the Licensee to make the agreed upon improvements and surface that portion of the unmaintained and unassumed municipal road allowance as shown on the attached Schedule "B" subject to the terms and conditions of this License Agreement;

NOW AND THEREFORE THIS AGREEMENT WITNESSES, that in consideration of the mutual covenants contained in this Agreement, and the sum of two-hundred and fifty dollars (\$250.00) per annum, payable by the Licensee to the Township for the term of ten (10) years in accordance with the requirements set out in Section 5 below, the Parties agrees as follows:

1. The Township hereby grants the Licensee a licence to use the Township Lands as described and depicted in Schedule "B" attached to this Agreement on the Township Lands for the purpose of access and egress to the Lands. The Licensee acknowledges and agrees that no improvements are permitted in, on, or under the Township Lands unless specifically provided in writing by the Township.
2. The Township Lands shall at all times be accessible to the public and the Licensee acknowledges that any changes made to the Township Lands or Improvements accrue to the benefit of the Township and the public generally.
3. The Licensee shall at its' own expense and to the satisfaction of the Township, keep and maintain the Township Lands and Improvements in good and proper repair and condition at all times and shall ensure that at all times the Township Lands shall comply with all Applicable Laws including but not limited to all environmental and regulatory laws.
4. The Licensee agrees that this Agreement shall be binding on the Licensee's heirs, successors, administrators and assigns and shall run with the Lands. The Licensee agrees to execute such further and other documents, consents or applications as required for the purposes of giving effect to the provisions of this Agreement. The Licensee covenants and agrees to obtain a similar covenant from any successor, heir or assign and shall

provide actual notice of this Agreement to such persons (hereinafter referred to as a "Purchaser"). The Licensee shall obtain from any Purchaser a similar covenant to provide actual notice to any subsequent Purchaser *ad infinitum*.

5. Notwithstanding the general terms set out in Section 4 above relating to the transfer and assignment of this Agreement, the Licensee acknowledges and agrees that this Agreement shall not be transferred and may not be assumed, without the prior written consent of the Township and such consent may be withheld in the sole and absolute discretion of the Township.
6. In the event of the Licensee transferring or selling the Owner's Lands or any portion thereof, the Licensee shall forthwith notify in writing the Public Works Manager of such sale or transfer, together with the name and address of the transferee or Purchaser.
7. The Licensee shall pay to the Township an annual Fee of two-hundred and fifty (\$250.00) per annum within ten (10) days upon receipt of an invoice for such fee by the Township, and further agree to pay, in the future, such annual License fee as may be determined and/or amended by resolution of the Township from time to time. In the event that the Licensee fails to pay the annual License fee to the Township, the outstanding debt shall be deemed to be a debt owing to the Municipality and collectible in the same manner as and like taxes and to which the provisions the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, shall apply.
8. The Licensee may not assign their rights or obligations under this Agreement without the prior written consent of the Township. This Agreement ensures to the benefit of, and binds the parties, their respective successors and permitted assigns.
9. The use of the Township Lands by the Licensee shall be permitted by the Township but shall be deemed to be with the license of the Township with the intent that the Licensee shall at no time acquire an easement over for access and egress across the Township Lands.
10. The Licensee shall indemnify, hold harmless and defend the Township, its employees, sub-contractors, agents and elected officials from and against any and all claims, losses, costs, damages, demands, causes of action, suits, administrative penalties, administrative orders, judgments and expenses (including legal fees on a substantial indemnity, solicitor/client basis and all other costs of defence thereof) suffered by or occasioned to the Township in any manner whatsoever, by reason of the use of the Township Lands by any person whatsoever including but not limited to the general public, emergency vehicles, and the Licensee's own employees, sub-contractors, heirs, assigns, and/or agents, sustained, incurred or arising out of, or occasioned by the use of the Township Lands, the condition or state of repair of the Township Lands, or the Township's refusing continued access to the Township Lands.
11. The Licensee hereby remises, releases and forever discharges the Township, its elected officials, employees, agents and contractors, of and from any and all claims, actions, causes of action, administrative penalties, losses, damages, expenses, suits and other proceedings and any liability for damages, costs and expenses for or relating to any loss which the Licensee may suffer arising out of or occasioned by the use of the Township Lands by the Licensee, the condition or state of repair of the Township Lands, or the requirement for the Licensee to cease using the Township Lands, and the Licensee covenants not to bring any such claim, demand, action or other proceeding against any other person or persons who might claim contribution or indemnity therefor over against the Township, its elected officials, employees, agents, sub-contractors and contractors.
12. The Licensee further acknowledges and agrees to indemnify the Township, in accordance with the provisions of this Agreement for any and all losses or damages that may arise as a result of improvements on the Township Lands as described herein. Without limiting

the foregoing, the Owner covenants and agrees that it will hold back in its payments to any contractor who may construct on municipal or publicly owned lands or within lands subject to municipal easements, such amounts as may be required under the provisions of the *Construction Act*. The Licensee, further agrees to indemnify and save completely harmless the Township from and against any and all claims, demands, actions, causes of action and costs resulting from any construction being performed by the Owner, its' agents and assigns pursuant to the provisions of this Agreement and, on demand by the Township, the Owner will take such steps as may be necessary to immediately discharge all liens.

13. The Licensee hereby covenants and agrees that it shall, at its' sole cost and expense, obtain and maintain throughout the term of this License Agreement liability insurance covering the use and maintenance of the Township Lands with coverage for bodily injury and property damage and shall obtain and maintain third party liability insurance for not less than \$5,000,000.00 per occurrence inclusive for public liability or such other amount as the Township in its sole discretion may determine. The Licensee shall provide the Township with a Certificate of Insurance or other satisfactory evidence of such insurance prior to the execution of the License Agreement and annually of the policy described in this Section 12 and shall name the Township as an additional insurance. The Licensee is responsible for the payment of all premiums and for the costs and expenses of defending or settling any such actions, suits, claims and/or demands against the Township. In the event any renewal premium is not paid, the Township, in order to prevent the lapse of such liability insurance policy, may (i) pay the cost of such renewals within ten (10) days of the account thereof being rendered to the Township; or (ii) revoke this Agreement upon ten (10) days' written request of such revocation from the Township to the Owner. In the event the Township is required to make payment with respect to the cost of renewing the premium(s), the costs so incurred by the Township shall be deemed to be a debt owing to the municipality and collectible in the same manner like taxes and to which the provisions of the *Municipal Act, S.O. 2001, c. 25 (The "Municipal Act")*, as amended, shall apply.
14. The Licensee shall at all times keep and maintain the Township Lands and surrounding area clean, well-kept and in good repair to a standard acceptable to the Township, failing which the Licensee will at their sole cost and expense, upon receiving written notice from the Township, forthwith cease using the Township Lands for access/egress to the Lands without compensation for any such lack of use and/or access.
15. The Licensee shall not call into question directly, or indirectly, in any proceeding whatsoever in law or in equity or before any court, administrative or other tribunal the right of the Township to enter into this Agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Township in any such action or proceeding as a complete and conclusive estoppel or denial of such right.
16. The Licensee shall pay all reasonable costs as may be incurred by the Township, its' solicitor and its' staff for any work to be performed in connection with the preparation, execution and administration of this Agreement or any subsequent costs as a result of non-compliance with this Agreement. The Licensee acknowledges and agrees that it will be responsible for the costs and performance of all the Licensee's obligations herein unless specifically relieved from such obligation by the terms of this Agreement.
17. No repairs, extensions, expansions or improvements, other than those required to keep and maintain the Township Lands in a good state of repair shall be made unless and until such alterations, extensions, repairs, expansions or improvements are approved in writing by the Township.
18. In the event that the Township at any time, acting reasonably, requires for any reason whatsoever the Licensee to cease using the Township Lands or the termination of this

License Agreement, the Licensee shall, at the Licensee's sole cost and expense, cease using the Township Lands upon sixty (60) days' written notice from the Township to do so, and shall not make any claim against the Township on account of such removal, and shall replace and restore the entire Township Lands to a safe and proper condition, to the satisfaction of the Township. If the Licensee neglects, refuses or fails to do so within the term specified in the notice, then the Township may remove any and all installations and block access to the Township Lands and may charge the costs incurred of any repairs and restoration to the Licensee, and the Township may recover such costs from the Licensee in like manner as taxes that are due and payable.

19. The Township, its' officers, servants, workers, employees, agents, contractors and subcontractors under its' control or supervision, or any of them shall have the right from time to time and at all reasonable times during the currency of this Agreement and may provide notice, to enter in and upon the Lands or any part thereof, with all necessary works, plant equipment and material for the purpose of inspecting the Township Lands; provided that such inspection shall not free or relieve the Licensee in any way whatsoever from liability under the covenant to keep and maintain the Township Lands in good and proper repair and condition.
20. For the purposes of this Agreement, notice may be given to the Licensee by the Township by prepaid registered post at their tax roll address and service shall be deemed effective five (5) days after mailing or alternatively by email and service shall be deemed effective the following business day. The Licensee may amend the address for service under this Agreement by delivery of notice in writing to the Township. Notices to the Township shall be to the attention of the Township Clerk.
21. For the purpose of the Agreement, notice may be given to the Township by the Licensee by prepaid registered post addressed to the Township's Municipal Office to the attention of the Township Clerk and service shall be deemed effective five (5) days after mailing or alternatively by email and service shall be deemed effective the following business day.
22. The Licensee agrees to pay all taxes, rates and assessments relating to the Township Lands being utilized by the Licensee if they are ever levied by the Township.
23. Upon expiration of this License Agreement and at the written request of the Licensee, this License Agreement may be renewed at the discretion of the Township for an additional term of ten (10) years and may be renewed from time to time for additional terms not exceeding ten (10) years at the sole, unfettered discretion of the Township.
24. The Township and the Licensee agree that this Agreement shall be registered against title to the Licensee Lands at the sole cost and expense of the Licensee.
25. The Licensee acknowledges and agrees that the following activities shall be prohibited and at no time shall it be permitted to engage in the following:
 - a. Make any other improvement or change to any other portion of the Road Allowance except as permitted by this Agreement;
 - b. Leave any excavation open so as to form a hazard to any person using the surface of the Township Lands or the Improvements. Any excavation made shall be filled and graded so that it is safe for public passage at all times;
 - c. Leave any obstruction on the surface of the Township Lands or suspended over the surface of any other part of the Township Lands that would result in a hazard to any member of the general public using the Township Lands;
 - d. Place any bridge or structure on the Township Lands unless it is designed and its construction has been carried out under the supervision of a professional engineer

in good standing licensed to practice in the Province of Ontario and a certification is provided from that engineer that such bridge or structure is safe for public use. Such certification shall be provided to the Township forthwith following the construction of the bridge or structure and prior to any use the certification shall be confirmed to be acceptable to the Township in its sole and absolute discretion;

- e. Block, impede or otherwise interfere with any existing natural drainage course or watercourse, or redirect drainage onto any abutting lands;
 - f. Place any structure including but not limited to buildings, sheds, tents, docks boat houses etc. or store/park any private property on the Township Lands without express advance written approval from the Township;
 - g. Leave debris, brush, wood, garbage or any other material resulting from the work conducted on the Improvements, whether it is located on the Township Lands or on abutting lands not owned by the Licensee.
 - h. Cause damage to any municipal structures such as culverts within the area of the Improvements or on the Township Lands;
 - i. Cause erosion or the depositing of silt or other materials into any waterway whatsoever;
 - j. Fail to obtain any permits required from the Ministry of Natural Resources and Forestry, the Department of Fisheries and Oceans, Conservation Authority, or any other governmental or regulatory authority, the costs of which shall be the sole responsibility of the Licensee;
 - k. Interfere with any access to any portion of Township Lands.
26. At the time of signing this Agreement, the Licensee shall ensure that all property taxes and any arrears are paid on the Lands.
27. The Licensee acknowledges and agrees that, for any work to be carried out on the Township Lands Allowance as set out in this Agreement, the Licensee is the constructor under the *Ontario Occupational Health & Safety Act*.
28. The Licensee acknowledges that the Township has not assumed responsibility for maintenance of the Township Lands or the Improvements, and at no time will the Licensee ask the Township to do so on the basis of the completion of any works completed pursuant to this Agreement.
29. The Licensee shall not represent to any person at any time that the Road Allowance are maintained by the Township.
30. The Licensee agrees that the rights of others already using the Township Lands or the Improvements or who may use the Township Lands in the future shall continue and must be protected and respected. This Agreement does not provide the Licensee with exclusive use of the Township Lands. The Licensee hereby acknowledges the approval as herein granted does not provide the Licensee with exclusive use of the Township Lands.
31. If the Township decides in its sole and absolute discretion at a subsequent date to enact a by-law assuming responsibility for maintenance on the Township Lands, the Licensee is not entitled to any compensation for costs incurred in carrying out the work authorized by this Agreement.

- 32. The Licensee shall upon revocation or termination of this Agreement ensure that no further work is done on the Township Lands, except any clean-up and removal of equipment which is deemed appropriate in the Township’s absolute and sole discretion.
- 33. The Licensee shall at all times be responsible for the ongoing maintenance of the Township Lands such as potholes, ditching, litter, erosion control, trees etc. and this must be maintained at all times to a reasonable safe standard, to the satisfaction of the Superintendent of Public Works or designate.
- 34. This Agreement shall be reviewed from time to time during the term of this Agreement, and any applicable additions or deletions considered necessary and appropriate shall be made by the Township and notification given to the Licensee.
- 35. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original hereof and fully binding upon the signatory thereto and all such counterparts shall together constitute one and the same instrument. A signed facsimile, or a signed copy of this Agreement scanned in Adobe® Portable Document Format (PDF) and sent by e-mail, or docusign shall be effective and valid proof of execution and delivery. This Agreement may be signed with an electronic signature pursuant to s. 11(1) of the *Electronic Commerce Act* (Ontario).

IN WITNESS the Parties have set their hands and seals.

SIGNED, SEALED AND DELIVERED
In the presence of



Witness

)
)
)
)


David Mark Tucker

SIGNED, SEALED AND DELIVERED
In the presence of




Witness

)
)
)
)
)


Kimberly Jo Tucker

IN WITNESS WHEREOF the Party herein has hereunder caused to be fixed its corporate seal under the hand of its proper signing officer duly authorized in that behalf.

DATED at Apsley, Ontario this ^{March} 27 day of ~~February~~ 2025. 

The Corporation of the Township of North Kawartha

Carolyn Amyotte - Mayor

Connie Parent – Clerk

We have the authority to bind the Township.

Schedule "A"
The Owner's Lands

The Owner and any subsequent Licensee(s), are the Licensee of lands described as:

PT LT 7, CON5 Burleigh (Southern Division) as in R606012 Except DEP 2993 & DEP 1524, S/T R458158, North Kawartha, being all of PIN 28303-0160 (LT)

Schedule "B"

That section of an unmaintained and unassumed municipally owned highway (the "Township Lands")

Being a portion of the Road Allowance between Concessions 4 and 5, Burleigh (Southern Division) Township of North Kawartha and that portion of the Highway known as the Old Burleigh Road as depicted and set out below.

