

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this \_\_\_\_\_ day of February, 2021

BETWEEN:

**FAIRVIEW MENNONITE HOMES**

(Hereafter referred to as "**Fairview**")

OF THE FIRST PART,

- AND -

**LANGS FARM VILLAGE ASSOCIATION**

(Hereafter referred to as the "**Association**")

OF THE SECOND PART,

**WHEREAS:**

- A. Fairview Mennonite Homes is the registered owner of the lands municipally known as 873 Concession Road, Cambridge, Ontario and legally described as set out on Schedule A attached hereto (hereinafter referred to as the "**Fairview Lands**");
- B. The Association and the Fairview have proposed to develop a parking area including 14 parking spaces and to be located on the Fairview Lands as illustrated on Schedule B (hereinafter referred to as the "**Parking Area**") attached hereto for their mutual use and benefit; and
- C. The parties wish to enter into this agreement (the "**Agreement**") to set out their mutual agreement regarding the terms and conditions for the development, construction, use, repair, and maintenance of the Parking Area.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual obligations and covenants hereinafter contained, the sufficiency of which are hereby severally and respectively acknowledged by the parties hereto as evidenced by the execution of this Agreement by the parties, the parties do hereby agree as follows:

### 1. GRANT OF USE

Subject to the termination and amendment provisions contained herein, Fairview hereby grants to the Association for a term of 10 years (the "**Initial Term**") commencing on the 1st day of March, 2021, unless earlier terminated as provided hereunder:

- 1.1 The exclusive right and license from Monday to Friday (excepting statutory holidays) between the hours of 8 a.m. and 8 p.m., subject to *force majeure*, to use and occupy the parking spaces proposed to be constructed within the Parking Area (the "**Parking Spaces**") solely for the purpose of automobile parking by Association officers, employees, agents, consultants, and other Association invitees, for pedestrian and vehicular ingress to and egress from the Parking Spaces and for no other purpose ); and
- 1.2 A non-exclusive license to share the use of the Parking Spaces for the Permitted Purposes at all other times, in common with Fairview.

The licenses as described in sub-paragraphs 1.1 and 1.2 are collectively the "**Permitted Purposes.**"

- 1.3 The Association may not charge or collect any fees or charges for use of the Parking Spaces by its employees or invitees. The Parking Area and Parking Spaces may not be used as a commercial parking lot. The Association further covenants that the Association, its employees, and invitees shall not:
  - (a) Park heavy construction vehicles, equipment, and/or trailers of any kind whatsoever in the Parking Area;
  - (b) Use the Parking Area for the storage of any personal property of any kind whatsoever, other than the short-term parking of personal automobiles;

- (c) Make any alteration or additions to the Parking Area without the express written consent of Fairview;
- (d) Block or otherwise impede Fairview's use of the Fairview Lands;
- (e) Deposit any hazardous substances or environmental contaminants upon the Parking Area and/or Fairview Lands; and
- (f) Carry on any other activities in the Parking Area.

1.4 The Association agrees to assume all risk of loss, damage, and injury to persons or property arising from its use of the Parking Area under the terms of this Agreement. Notwithstanding any other provision of this Agreement, Fairview, on its own behalf and on behalf of its trustees, officers, employees, authorized agents, and invitees, at all times retains the right to enter upon the Parking Area and Parking Spaces for any purpose that does not constitute an unreasonable interference with the rights of shared use hereby conferred on the Association. Upon request, Fairview shall be provided with such keys, fobs, and/or access codes as may be required so as to permit it to access the Parking Area and/or Parking Spaces as permitted herein.

## 2. PARKING AREA DEVELOPMENT

### 2.1 Costs of Parking Area Development

The Association shall be solely responsible to pay all costs associated with the development of the Parking Area and Parking Spaces, including without limitation all legal fees, all costs of retaining consultants, all fees and other costs associated with securing municipal approvals, all construction costs, all costs of electrical or other required service installations, paving costs, line painting costs, landscaping costs, equipment and fixturing costs, and all safety and construction perimeter or other fencing and gate costs, including any access gates and associated mechanical and electronic devices or equipment (the "**Development Costs**"). The Association further agrees to indemnify and save Fairview harmless against reasonable costs incurred by Fairview as a direct or indirect result of this Agreement (the "**Out of Pocket Costs**"), including without limitation reasonable and pre-approved Development Costs incurred by Fairview or any reasonable and pre-approved costs incurred by Fairview in relation to the removal and replacement of improvements currently situated within the Parking Area. The Association further agrees to incur and pay all costs associated with improved security lighting on the Fairview Lands.

### 2.2 Parking Area Development – Safety and Fencing

Prior to construction and development of the Parking Area, the Association shall erect temporary construction or permanent fencing and appropriate signage around the entire Parking Area for the purpose of preventing persons or employees of Fairview from entering the Parking Area and to eliminate dangers or risks associated with all construction and development activities therein, in accordance with the following requirements:

- (a) the Parking Area shall be fully enclosed with a permanent, galvanized chain link fence six (6) feet high, together with appropriate signage concerning access and safety warnings;
- (b) for the purposes of the *Occupational Health and Safety Act*, the Association shall be the "constructor";
- (c) any gates or access portions of the construction fence shall be kept closed and locked except when required for construction and development purposes;
- (d) the Association shall ensure that all requirements of the *Occupational Health and Safety Act* and all best construction safety practices with respect to construction sites are implemented and fully complied with during construction and development;
- (e) the Parking Area shall not be accessible to Fairview, its employees or its invitees during the time of construction and development and will be accessible only from adjacent lands owned by the Licensee;
- (f) all construction and permanent fencing and signage shall be inspected and approved in writing as to location and design by Fairview's representatives prior to commencement of construction and development;

- (g) the Association shall keep a photo log of the Parking Area from the commencement of erection of the construction fence until the completion of all construction and development work (including the erection of the permanent fence) and approval thereof by Fairview; and
- (h) upon completion of construction and development of the Parking Area, Fairview may conduct an inspection thereof, and upon issuance of written approval by Fairview, the Parking Area will then be open for access to Fairview, its employees and invitees as contemplated by the terms of this Agreement.
- (i) the Association will commit to installing an access gate from the adjacent property owned by Fairview to the parking lot during the construction of the new lot or during the development of Fairview's project at a mutually agreed upon cost sharing arrangement.

### 2.3 Oversight of Parking Area Development

Fairview shall at all times be permitted to oversee, approve and control the development process for the Parking Area, including procurement of any required consultants and contractors. Fairview shall have final decision-making authority with respect to all aspects of the design and construction of the Parking Area and any changes to other parts of the Fairview Lands necessitated by the Parking Area Development.

## 3. LICENSE FEES

The fees payable by the Association to Fairview for the Parking Area on the Fairview Lands (the "**License Fee**") are \$ 588 per month or \$ 7,056 per year (\$ 42/spot per month @ 14 spots).

Fairview shall invoice the Association on an annual basis by March 1<sup>st</sup> for the entire amount due for the period of April 1<sup>st</sup> to March 31<sup>st</sup>. The Association shall provide twelve (12) post-dated cheques for the monthly installments of the License Fees. In the event the Term begins after the first day of any month, or ends prior to the last day of any month, the License Fees payable for such part month shall be based on a per diem amount calculated on a 365-day year. This License Fee does not include the Maintenance Costs described in section 5 hereof

## 4. RENEWAL

Provided the Association is not in default under this Agreement, the Association shall have the option to extend the Initial Term of this Agreement for two (2) additional periods of five (5) years commencing on the day after the expiration of the Initial Term (the "**Renewal Term**"). In order for the Association to exercise its right to the Renewal Term, it shall deliver a written notice to Fairview not more than twelve (12) months and not later than one hundred and eighty (180) days prior to the end of the Initial Term. The Renewal Term will be on the same terms and conditions as set forth herein, except there will be no further right to extension and the Association shall be required to pay a monthly parking License Fee throughout the Renewal Term in an amount to be mutually agreed on between Fairview and the Landlord based on the fair market value for comparable parking rights (the "**Base Monthly Parking License Fee**") in the local market. If the parties are unable to agree as to the amount of the Base Monthly Parking License Fee to be paid by the Association during the Renewal Term, then the parties shall select an agreed upon accredited real estate appraiser with knowledge of the local market conditions to appraise the fair market value of the Permitted Uses granted to the Association herein. If the parties are unable to agree upon the appraiser within sixty (60) days of the Association's delivery of notice of exercise of the Renewal Term, then either party may apply to the Superior Court at Kitchener on notice to the other to have an appraiser appointed. The Base Monthly Parking License Fee shall be payable by the Association in advance on the first day of each month throughout the Renewal Term.

## 5. MAINTENANCE OF PARKING AREA & ACCESS

**5.1** The Association shall maintain and take good care of the Parking Area. Fairview and the Association acknowledge and agree that all costs associated with the maintenance and repair of the Parking Area and Parking Spaces, including without limitation the costs of maintenance and repair of any improvements, equipment and/or fixtures installed as part of the Parking Area Development or necessitated on other Fairview Lands as a result of the Parking Area Development, shall be borne exclusively by the Association, including all costs of snow and ice removal, all costs of concrete and asphalt repairs (including patching, sealing, and resurfacing), all electricity and other utility costs, all costs of fencing and access gate repair, and all costs of capital repair and/or replacement for any improvements, equipment and/or fixtures installed as part of the Parking Area

Development or necessitated on other Fairview Lands as a result of the Parking Area Development (the "**Maintenance Costs**").

- 5.2** In the event that Fairview incurs any Maintenance Costs, the Association shall reimburse Fairview any reasonable and pre-approved costs within thirty (30) days of Fairview submitting a written request for payment to the Association along with written evidence of the amount of the Maintenance Costs so incurred. The parties specifically agree that the Association will contract for winter maintenance services (snow and ice removal) for the Parking Area. The Association shall retain winter maintenance contractors in compliance with Sections 5.3 to 5.7 of this Agreement.

**5.3** Snowplowing

During the period of November 15 through April 15, the Association shall automatically clear the snow from the Parking Area based on the following:

- (a) 4 cm or greater of fallen snow;
- (b) if serious drifting has occurred; or
- (c) as requested by Fairview.

All areas are to be plowed to the bare surface.

Snow piles within the Parking Area may not exceed four (4) feet in height. The storage of snow in any area other than what is shown on Schedule B is expressly prohibited.

All areas within the Parking Area must be cleared of snow by 7:00 a.m.

Normal snowfalls of four (4) to thirteen (13) centimetres shall be plowed after the bulk of the snowfall has passed.

Poor service at any time during the season, or failure to comply with the requirements of this Agreement, may result in Fairview calling in its contractor and billing the Association for the service.

**5.4** Ice Control

During the period of November 15 through April 15, the Association shall automatically salt and/or sand respective areas based on the following conditions:

- (a) freezing rain or excessive ice conditions, including thaw and refreeze cycles; or
- (b) as requested by Fairview.

The Association shall use 100% sodium chloride (rock salt) unless low temperatures and/or ice conditions warrant salt/sand mixture. Salt/Sand mixtures may be used when the pavement temperatures are at or below -17°C.

The spreading of salt and/or sand shall be carried out by mechanical means to provide the proper coverage.

**5.5** Salt Usage

Salt usage information is to be supplied by the Association to Fairview on a monthly basis, as well as a season-ending recap of salt usage.

**5.6** Equipment

All vehicles used on Fairview property will meet Ministry of Transportation safety requirements.

All equipment shall be pneumatic mounted or rubber-tracked to prevent damage to present surfaces.

All vehicles and equipment used by the Association must be in good mechanical condition and comply with Ministry of Transportation standards.

All vehicles and equipment used by the Association must be equipped with a back-up warning signal which must be used at all times while servicing Fairview property.

## 5.7 Damage Caused by the Association

The Association is 100% responsible for damage to Fairview property.

Damages attributed to the Association must be repaired in a timely fashion.

Emergency repair may be completed by Fairview immediately if detrimental to Fairview safety or program. Full disclosure of all costs would be provided to the Association for payment.

## 6. SIGNAGE

Fairview shall permit the Association to erect signs within the Parking Area, at the expense of the Association, to indicate the Association's exclusive usage of the Parking Area at the times specified herein, provided the Association obtains Fairview's prior written approval of the form, location and content of the signage.

## 7. PARKING AREA RULES

The Association shall require that all its employees and invitees abide by normal parking rules, speed limits, and such reasonable parking rules as may be adopted by Fairview from time to time (and notified to the Association), to ensure the safety and security of the Parking Area and the Fairview Lands.

## 8. INSURANCE AND INDEMNITY

### 8.1 Insurance

Prior to any use of the Parking Area by the Association, its employees, and/or invitees, the Association shall at its sole cost and expense obtain and carry (a) commercial general liability insurance against claims for personal injury, death or property damage in an amount in no event less than Five Million (\$5,000,000.00) Dollars per occurrence (or such other amount as reasonably required by Fairview) and (b) any other coverage that Fairview may reasonably request. The Association shall include Fairview as an additional insured on such policy of insurance. All such insurance shall be on such terms and with such insurers as are approved by Fairview acting reasonably, and shall include a clause requiring that at least thirty (30) days' notice be given to Fairview of any cancellation or material change in coverage. The Association shall promptly deliver to Fairview copies of all such insurance policies or certificates of insurance and all renewals. The Association shall provide Fairview with satisfactory evidence that it has Workplace Safety Insurance Board (WSIB) coverage.

### 8.2 Release

The Association releases Fairview, its officers, trustees, employees, agents, volunteers, insurers and sureties and each of their estates and effects (the "**Fairview Releasees**") from all manner of actions, liability, claims, causes of action, suits, debts, liens, dues, accounts, bonds, covenants, contracts and demands which may be maintained directly or indirectly as a result of any matter of or relating to the use of the Parking Area by the Association, its employees and/or other invitees, unless arising from the negligence of Fairview.

### 8.3 Claims/Indemnity

The Association shall indemnify and hold harmless Fairview, its officers, trustees, employees, members and agents ("**Indemnitees**") from any and all claims, causes of action, damages, expenses and liability, including reasonable legal fees and disbursements on a full indemnity basis, sustained or incurred by the Indemnitees which are based upon or arise out of the negligence and wilful misconduct of the Association, its trustees, officers, directors, employees and agents. The Association shall promptly respond to and assume the investigation, defence and expense of all claims and causes of action arising out of or in connection with such occurrences. Fairview may, at its sole cost and expense, join in such defence with counsel of its choice. The Association hereby waives all rights of recovery against Fairview, its officers, trustees, employees, members, agents, volunteers, insurers and sureties for damage or destruction to its goods, fixtures and equipment arising out of fire, water damage or other casualty whether or not caused by the acts or negligence of Fairview, its officers, trustees, employees, members, agents, volunteers, insurers and sureties, excepting only the gross negligence thereof.

## 9. AMENDMENT

The parties may amend from time to time any terms of this Agreement by mutual consent in writing.

## 10. TERMINATION RIGHTS

**10.1** In the event either party is in default of its obligations under this Agreement and fails to remedy such default within thirty (30) days of written notice by the non-defaulting party specifying the details of the default and requiring same to be remedied, then the non-defaulting party may declare this Agreement at an end and any remaining portion of the Initial Term or Renewal Term, as the case may be, shall be forfeited. In the case of a non-monetary default, if the default cannot be remedied with the exercise of reasonable diligence during the thirty (30) day period, such period will be extended for reasonable additional time, provided that the defaulting party has commenced to remedy such default within the thirty (30) day period and proceeds diligently thereafter to effect such cure; and

**10.2** At any time that is more than ten (10) years after the date of commencement of the Initial Term, either party may terminate this Agreement upon providing one hundred and eighty (180) days' prior written notice to the other party of such termination.

## 11. FIXTURES & IMPROVEMENTS

All fixtures and improvements installed within or brought upon the Parking Area pursuant to the terms of this Agreement shall immediately upon affixation or installation become the property of Fairview. Notwithstanding the foregoing, Fairview may, in its sole discretion, permit or require the Association to remove any Association-installed signage, fixtures, or other improvements upon termination of the Agreement provided that any damage occasioned by such removal is repaired to the reasonable satisfaction of Fairview.

## 12. NO ASSIGNMENT

This Agreement is personal to the Association and shall not be assigned by it except with the prior written consent of Fairview, which consent may not be unreasonably and arbitrarily withheld.

## 13. NOTICES

Any notice herein provided for or permitted to be given by either of the parties hereto shall be sufficiently given if delivered to the other of them if mailed, postage prepaid, addressed to the other party at their address for service at the following address:

to Fairview at: **Fairview Mennonite Home**  
515 Langs Drive  
Cambridge, Ontario N3H 4L6  
Attention: Chief Executive Officer

to the Association at: **Langs**  
1145 Concession Road  
Cambridge, Ontario N3H 4L5  
Attention: Chief Executive Director

Any such notice given as aforesaid shall be deemed to have been given on the date on which such notice is delivered, or on the fifth (5<sup>th</sup>) business day following the day on which such notice is mailed, as the case may be. Any party may, at any time, give notice in writing to the other party of any change of address of the party giving such notice, and from and after the giving of such notice the address therein specified shall be deemed to be the address of such party for the giving of notices hereunder.

## 14. NO REGISTRATION

The Association shall not register any caution or notice of this Agreement on title to the Fairview Lands.

## 15. CONFLICT RESOLUTION

If issues and matters arise during the term of this Agreement that are not definitively controlled by the provisions of this Agreement, the parties shall act reasonably, and in good faith endeavour to resolve such issues and matters. However, in the event a dispute arises between the parties hereto with respect to the terms and provisions of this Agreement that cannot be resolved by negotiation, any party hereto may at any time give notice to the other party of its desire to submit

such dispute to arbitration. Within thirty (30) days after receipt of such notice, the parties hereto shall appoint a single arbitrator to determine such dispute. If the parties hereto fail to appoint an arbitrator, any party may apply to a Judge of the Superior Court of Justice at Kitchener to appoint an arbitrator to determine such dispute. The arbitrator so appointed shall forthwith proceed to arbitrate the dispute between the parties in accordance with the provisions of the *Arbitrations Act* (Ontario) and shall render his decision in writing as soon as may be practical. The decision of such arbitrator shall be final and binding upon all parties hereto.

**16. AMENDMENTS**

This Agreement may not be amended or altered except by instrument in writing signed by the parties hereto or by their respective successors and permitted assigns.

**17. TIME OF ESSENCE**

Time shall be of the essence of this Agreement in all respects.

**18. FURTHER ASSURANCES**

Each party shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Agreement that the other party may require for the purposes of giving effect to this document.

**19. NO JOINT VENTURE**

Fairview does not in any way or for any purpose become a partner of the Association in the conduct of its business or otherwise or a member of a joint venture or joint enterprise with the Association. The Association does not in any way or for any purpose become a partner of Fairview in the conduct of its business or otherwise or a member of a joint venture or joint enterprise with Fairview. It is not intended that any agency be established between the Association and Fairview.

**20. ENTIRE AGREEMENT**

This document constitutes the entire agreement among the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements among the parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Agreement.

**21. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of, and be binding on, the parties and their respective successors and permitted assigns.

**22. HEADINGS**

The headings of this Agreement have been inserted for convenience of reference only and do not form part of this Agreement. They shall not be referred in the interpretation of this Agreement.

**23. GENDER AND NUMBER**

This Agreement shall be read with all changes of gender and number as required by its context.

**24. GOVERNING LAW/JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties attorn to the non-exclusive jurisdiction of the courts of Ontario,

**25. SEVERANCE**

If any covenant, obligation, agreement, term or condition of the Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligations, agreement, term or condition to persons or circumstances other than those to which it is held unenforceable shall not be affected thereby and each covenant, obligation, agreement, term and condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**26. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

**IN WITNESS WHEREOF** the parties hereto have hereunto executed this Agreement as of the date first above written.

**FAIRVIEW MENNONITE HOMES**

Per: \_\_\_\_\_

Name: Elaine Shantz  
Title: Chief Executive Officer

*I have the authority to bind Fairview.*

**LANGS FARM VILLAGE ASSOCIATION**

Per: \_\_\_\_\_

Name: Bill Davidson  
Title: Chief Executive Officer

*I have the authority to bind the Association.*





