

NON-EXCLUSIVE OCCUPANCY AGREEMENT

THIS AGREEMENT made in duplicate this _____ day of _____, 2018.

BETWEEN:

THE TOWN OF KINDERSLEY
(hereinafter referred to as the "**Town**")

- and -

on behalf of Kindersley Animal Welfare Society (**KAWS**)
(hereinafter referred to as the "**Occupier**")

WHEREAS:

A. The Town is the registered owner of the animal pound as described in Schedule "A" as attached hereto with the following civic land description of:

410 First Avenue West (the "Facility").

B. The Occupier wishes to be granted non-exclusive permission to use the Facility for purposes of sheltering and caring for homeless animals at the Facility, and the Town is agreeable to granting such a permission on the terms and conditions herein contained;

Now therefore this Agreement witnesses that in consideration of the mutual covenants, promises and agreements contained in this Agreement by the parties hereto to be observed and performed, the parties hereto agree as follows:

1. The Town hereby grants to the Occupier non-transferable, non-assignable and non-exclusive permission to use the Facility for a period of 1 years (the "Occupancy Period") commencing on January 30, 2018 and terminating on January 29, 2019 renewable upon mutual consent for an additional two (2) years, unless sooner terminated as set out herein (the "Termination Date").

2. The Occupier shall use the Facility solely for the purpose of sheltering and caring for homeless animals and storing supplies to required to support the health of these animals, and for no other purpose whatsoever. In using the Facility, the Occupier will comply with all applicable laws, statutes, regulations, by-laws, rules and codes (including, without limitation, the Kindersley Animal Control Bylaw, and any environmental, health and safety requirements).

3. The Occupier hereby accepts from the Town the non-transferable and non-assignable permission to use the Facility in an "as is - where is" condition. The Town makes no representation or warranty, express or implied, statutory or otherwise relating to the Facility, including, without limiting the generality of the foregoing, any representations or warranties with respect to a particular route of access to the Facility or the availability thereof, and the Occupier shall accept the Facility with all defects and faults and without warranty, including without limitation, that the Facility are fit for any particular purpose or use or in any particular state of repair. The Occupier hereby acknowledges to and agrees with the Town that it has heretofore conducted an inspection and review of the Facility and is relying upon its own knowledge,

review and inspection solely in making the decision to use the Facility by way of permission under this Agreement.

4. The Occupant may make written requests for Facility alterations or improvements to the Town. The Town will assess the requests within its formal budget process, and may approve alterations or improvements at its sole discretion.

5. All of the Occupant's equipment and supplies shall be inventoried, and it shall be clearly understood by both the Occupant and the Town, which equipment and supplies are for joint use by both parties, and which are for exclusive use.

6. Any Facility improvements, equipment, or supplies requested from the Town or facilitated by the Occupant (other than Trade Fixtures) shall immediately upon their placement become the Town's property without compensation to the Occupant, except as otherwise agreed by the Town in writing.

7. The Occupant warrants to keep the Facility in good repair, and shall report any damages or knowledge of unauthorized access breaches to the Town immediately. Any damages caused by the Occupant shall be repaired at its sole cost, to the Town's satisfaction.

8. The Occupier understands and acknowledges that the Town does not in any way represent, warrant or guarantee that the Occupier shall have exclusive or full use of the entirety of the Facility at any time during the Occupancy Period. Furthermore, the Occupier shall have no right to limit any third party from accessing or using the Facility during the Occupancy Period.

9. The Occupier is hereby granted unaccompanied access, for which the Town shall provide keys to the facility. The Occupier shall not allow access to any persons not pre-approved by the Town.

10. The Occupant shall regularly report to the Town when:

- (a) they have accessed the Facility
- (b) animals have been placed in, or removed from the Facility
- (c) when any animals that are in the Facility, or have recently been in the Facility, are ill or contagious
- (d) the Facility needs repair
- (e) materials and supplies need to be replaced
- (f) in the case of any emergency at the Facility, after the Occupant calls 911

11. The Point of Contact,

- (i) For the Town shall be: the Town's Municipal Enforcement Officer
- (ii) For KAWS shall be: Dawn Manning

12. The Occupier shall pay the sum of \$1.00 per annum to the Town for the permission granted to use the Facility, and no other amounts shall be payable by the Occupier to the Town for the Occupier's right to use the Facility, except as provided for in the indemnities forming part of this agreement.

13. The Occupier will not make or erect on the Facility any buildings, installations, alterations, additions or partitions without the prior written approval of the Town. Title to all such buildings, installations, alterations, additions or partitions shall vest in the Town, and not be sold, removed, disposed of or encumbered by the Occupier without the written consent of the Town, except as otherwise set out herein.

14. The Occupier shall, at their sole cost and expense, take out and maintain in full force and effect, at all times throughout the Occupancy Period, general liability insurance acceptable to the Town, acting reasonably, in an amount not less than \$2,000,000.00 per occurrence.

15. Either party shall have the right to terminate this Agreement on 30 days written notice to the other party.

16. On or before the Termination Date, the Occupier shall peacefully vacate the Facility. On or before the Termination Date, the Occupier shall, at its own expense, remove all of his property and all other assets from the Facility not owned by the Town. The Occupier acknowledges and agree that he will have no rights at law or in equity to occupy and use the Facility or otherwise have access to the Facility after the Termination Date.

17. No Facility improvements, Town equipment, or Town supplies shall be removed from the Facility by the Occupant either during, or at the expiry, or sooner termination of this permission, except for those otherwise agreed to by the Town in writing, and shall be done at the Occupant's sole expense.

18. The Occupier shall indemnify (the "**Indemnity**") the Town and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property: (a) arising out of any occurrence on or about the Facility except as may be caused by the Town or its agents, representatives or employees (b) occasioned or caused wholly or in part by any act or omission of the Occupier, its agents, representatives, employees, members, guests or invitees, or anyone else for whom it is in law responsible; (c) arising from any breach by the Occupier of any provision of this Agreement; or (d) any environmental damage to the Facility caused by the Occupier or those whom it is responsible for at law during the Occupancy Period.

19. Neither the Occupier nor anyone on the Occupier's behalf or claiming under the Occupier shall register an interest in respect of its rights hereunder against title to the Facility, in whole or in part.

20. The Occupier expressly acknowledges and agrees that the permission described in this Agreement is not a lease.

21. The contents of this Agreement shall, for all purposes, be construed according to the laws of the Province of Saskatchewan, and any cause of action arising hereunder shall be entered and tried in the judicial centre serving the area of Saskatchewan in which the land of this Agreement is located.

22. The term "Occupier" and "Town" shall include all successors and assigns and shall include the singular or plural and feminine or masculine gender when the context or the parties so require.

23. Upon the Occupier defaulting on any of its obligations herein contained, the Town shall be entitled to, but shall not be required, to do the following:

- (a) Make such payments as may be necessary to remedy the default, and, upon demand, recover such payments from the Occupier, together with any other sums then due and payable under this Agreement.
- (b) At the sole discretion of the Town, to immediately deem the term of this Agreement to have been forfeited and terminated.

24. The above Agreement shall not be assignable or transferrable by the Occupier, nor shall the Occupier be entitled to enter into a sub-licence of the Facility or allow any other person to use the premises without the prior written consent of the Town, which consent can be unreasonably or arbitrarily withheld.

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

Approved by the Town of Kindersley this _____ day of _____ 2018

KAWS

TOWN OF KINDERSLEY

Name of Signing Authority (Printed)

Bernie Morton, CAO

Signature of Singing Authority

Rod Perkins, Mayor

SCHEDULE "A"

