

THE CORPORATION OF THE CITY OF KENORA

BY-LAW NUMBER 3-2007

A BY-LAW TO EXECUTE A LEASE AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF KENORA AND THE KENORA NORDIC TRAILS ASSOCIATION (KNTA)

WHEREAS it is deemed necessary and expedient to authorize the execution of an Lease Agreement between The Corporation of the City of Kenora and The Kenora Nordic Trails Association (KNTA) for a five year lease agreement for use of municipal property for their trails commencing at Mount Evergreen Ski Club and proceeding over approximately 20 km;

NOW THEREFORE, the Council of the Corporation of the City of Kenora hereby enacts as follows:-

1. **THAT** the Mayor and Clerk of the Corporation of the City of Kenora are hereby authorized to execute a Lease Agreement attached to and forming part of this By-Law as Schedule "A" between The Corporation of the City of Kenora and the Kenora Nordic Trails Association.

2. **THAT** this By-Law shall come into force and be in effect from and after the final passing thereof.

BY-LAW READ FOR A FIRST & SECOND TIME THIS 15TH DAY OF JANUARY, 2007.

BY-LAW READ FOR A THIRD & FINAL TIME THIS 15TH DAY OF JANUARY, 2007.

THE CORPORATION OF THE CITY OF KENORA:

.....**MAYOR**
Len Compton

.....**CLERK**
Joanne McMillin

THIS INDENTURE

Made the 1st day of February, 2007

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

BETWEEN:

THE CORPORATION OF THE CITY OF KENORA (Herein after referred to as the "City")

- and -

THE KENORA NORDIC TRAILS ASSOCIATION

A Corporation incorporated under The Corporations Act of Ontario (Herein after referred to as "KNTA")

WHEREAS the City of Kenora is the owner of lands adjacent to the Mount Evergreen area; and

WHEREAS KNTA has established cross-country ski trails on the premises adjacent to downhill ski trails maintained and operated by the Mount Evergreen Ski Club; and

WHEREAS the City has agreed to lease the said premises to KNTA and to make all other necessary arrangements for KNTA to operate and allocate the use of the said premises including areas of common use with Mount Evergreen Ski Club, being the parking lot and trail access from parking lot to the cross-country trailhead;

THEREFORE the parties hereto covenant and agree as follows:

1. The City shall lease the premises (more particularly described in paragraph 2 below) to KNTA for \$1.00, receipt of which is acknowledged, rent commencing on the 1st day of February, 2007, for a term of the lesser of:

- a. 5 years; and
- b. the point in time when KNTA ceases to use the premises for cross-country skiing for one (1) calendar year.

2. The land to be leased to the KNTA is described as follows:

- a. City of Kenora CON 7J PT LOT 12K120 PCL22669 less Hwy. Exp. & Pt. Lot 12. Town of Jaffray Melick CON 6J PT LOC 263P PT EB 1298 Des RP 23R 2441 Part 2 PCL 28156 & PT S PT LOC EB1298 PCL 21441 & all LOC EB1300 PCL 21568 (See attached map as Schedule "A")
 - i. This land is for the exclusive use by and for the KNTA. The KNTA has the right to control access to this particular property in order to protect the assets and equipment owned by the KNTA;
 - ii. KNTA shall be entitled to develop and extend the cross-country ski trails on this land;
 - iii. KNTA shall be responsible for routine maintenance, debris collection, and signage of the cross-country ski trail system, as well as joint maintenance of the parking lot and trail access to the cross-country trailhead with the Mount Evergreen Ski Club;

- iv. The City, during the currency of the within lease, or any renewed term thereof, shall not develop, sever, sell, mortgage or in any other way convey any portion of the premises, without the express written consent of KNTA

3. KNTA is responsible to pay applicable taxes and hydro for the area described in Section 2(a).

4. INSURANCE:

- a. KNTA is to adequately insure the premises and shall name The City in its insurance policy from any and all claims, which may arise from the use of the premises as a cross-country ski site. The City shall approve the amount of public liability insurance from year to year, provided that the amount in the first year shall be \$2,000,000.^{oo}. KNTA shall provide to The City a copy 'of said insurance policy;
- b. Should KNTA fail to adequately or properly insure the premises and having been notified of such default for 14 days, then and only after said default, The City shall be entitled to resume occupation and operation of the premises in accordance with the procedure for termination hereinafter set out;
- c. KNTA shall set, place and govern, subject only to applicable City By-laws, all rules of play, conduct and behavior regarding the use of the premises, as KNTA, in their sole discretion deem appropriate.

5. In the event that KNTA ceases to operate the premises as a cross-country ski site for a period of one year or fails to properly insure The City in accordance with paragraph 3a hereof, The City may terminate the lease by complying with the following procedures;

- a. In the event KNTA does not carry out the terms of this Lease or cease to function as an active and effective organization in the City of Kenora, The City may cancel all arrangements made with KNTA and this Lease and any other Lease entered into verbally or in writing, between The City and KNTA concerning the said cross-country ski site, shall then be at an end and wholly determined and neither party shall be bound by the unfulfilled terms thereof. The City may determine the said arrangements by:
 - i. Mailing a Notice of Determination (i.e. registered letter) addressed to KNTA at its last known address, and
 - ii. By publishing the said Notice in a local newspaper having circulation in the City of Kenora, if one is in existence at the time;
- b. If a Notice of Objection is not received by The City within 30 days from the "effective date" (date of newspaper notice), then this Lease and any other Agreement, verbal or written, entered into between The City and KNTA concerning the cross-country ski site, shall become null and void and completely at an end and neither party shall be bound by the terms thereof;
- c. If KNTA wishes, it may object to the Notice of Determination. Such objections may be made by KNTA by serving a Notice of Objection on The City. The Notice shall:
 - i. Be in writing (no particular form shall be required);

- ii. Be served on The City of Kenora by registered mail with an acknowledgement of receipt card attached;
 - iii. Be signed by the signing officers of KNTA on behalf of KNTA;
 - iv. Be served on The City within 30 day of the "effective date" and which shall be: (1) the date on which Notice is published in a newspaper as aforesaid, or (2) the date on which Notice is received by the president: of KNTA, or

(3) the date on which the last of the said five Notices posted in the City of Kenora, (whichever date is last shall be "the effective date"),
- d. If a Notice of Objection is served on The City as herein provided, then a Board of Arbitration shall be established. The City and KNTA shall appoint one member each to the Board. These two members shall then appoint a third member to the Board. If either party will not appoint a member to the Board or if the two members so appointed cannot agree on a third, then the matter shall be referred to the District Court Judge for arbitration and his decision shall be final.
- e. If a Board of Arbitration shall hold hearings and permit the parties hereto to make its presentation to the Board, the number of hearings to be held and the procedure to be followed shall be decided by a majority vote of the Board.

TERMINATION

This lease agreement may be terminated by KNTA upon sixty (60) days' written notice to the City of Kenora Clerk's Department, One Main Street South, Kenora, ON P9N 3X2, outlining their intentions with a projected date to terminate said agreement.

ASSIGNMENT

- a. KNTA shall not assign this lease or sublet the whole or any part of the Premises unless it first obtains the consent of the City in writing, which consent shall not unreasonably be withheld. It is understood that the City may consider the purpose to which the property would be used and the party involved.
 - i. And KNTA hereby waives its right to the benefit of any present or future Act of the Legislature of Ontario; which would allow KNTA to assign this lease or sublet the Premises without the City's consent.

Any disagreements between the parties shall be dealt with pursuant to The Arbitrations Act of Ontario.

IN WITNESS WHEREOF the Corporation of the City of Kenora and Kenora Nordic Trails Association has caused their corporate seals to be hereunto affixed, attested to by the hands of the proper officers in that behalf.

THE CORPORATION OF THE CITY OF KENORA:

Per: _____ Len P. Compton MAYOR

Per: _____ Joanne L. McMillin CLERK

THE KENORA NORDIC TRAILS ASSOCIATION

Per: _____

Print Name/Position _____

Per: _____

Print Name/Position _____

