

<b>To:</b>	Warden Halliday and Members of Grey County Council
<b>Committee Date:</b>	April 26, 2018
<b>Subject / Report No:</b>	PDR-CW-15-18
<b>Title:</b>	Sahara Gardens – Lease/License Renewal – CP Rail Trail
<b>Prepared by:</b>	Randy Scherzer, Director of Planning
<b>Reviewed by:</b>	Kim Wingrove, CAO
<b>Lower Tier(s) Affected:</b>	Municipality of Grey Highlands
<b>Status:</b>	Recommendation adopted as presented by Committee of the Whole per Resolution CW108-18; Endorsed by County Council on May 10, 2018.

## Recommendation

1. That Report PDR-CW-15-18 regarding a lease renewal with Sahara Garden Centre be received; and
2. That a by-law be prepared for Council's consideration authorizing the Warden and Clerk to sign a lease/license renewal agreement with Sahara Garden Centre for a portion of the former CP Rail lands located directly south east of Plan 15, Lots 10 and 11, located in the Municipality of Grey Highlands.

## Executive Summary

In 2008, the County entered into a 10 year lease agreement with Sahara Gardens to lease a portion of the former CP rail lands directly south east of Plan 15, Lots 10 and 11, in the Municipality of Grey Highlands. The agreement required Sahara Gardens to install a fence to separate the leased lands with the CP Rail Trail and to also relocate a gate on the CP Rail Trail further south. Sahara Gardens is interested in renewing the lease agreement for another 10 years. The current lease agreement expires on May 15, 2018. A draft lease/license renewal agreement is attached for Council's consideration.

## Background and Discussion

In 2008, the County entered into a 10 year lease agreement with Sahara Garden Centre, which is operated by Cathy Saharevich, to lease a portion of the former CP Rail lands located directly southeast of Plan 15, Lots 10 and 11, in the Municipality of Grey Highlands (see Map 1). Sahara Garden Centre is located in the community of Ceylon and is directly south of Grey Road

4 and west of the CP Rail Trail. The lands are used primarily for storing landscape material associated with the business.

### Map 1 – Subject Lands



There were a number of options discussed with Committee as part of the original lease agreement. What was decided by Council in 2008 was that the lands would be leased to Sahara Gardens for two dollars annually and that Sahara Gardens was responsible for installing a fence to separate the leased lands from the CP Rail Trail portion and to also relocate a gate on the CP Rail Trail further south on the trail. It should be noted that the fence that was installed does not impact the use of the trail. Below are links to previous reports regarding this matter:

[CCR-PCD-47-06](#)

[CCR-PCD-38-07](#)

[CCR-PCD-25-08](#)

Sahara Gardens is interested in entering into a lease renewal agreement based on the same terms and conditions for another 10 year period. The agreement has been reviewed through the County agreement review process and there are some recommended revisions to the agreement. One revision is to update the language regarding the fence that was installed by Sahara Gardens and requiring them to maintain the fence in its current location. There was also some minor changes suggested to the insurance requirements. There was also some language in the previous agreement indicating that there could be compensation provided by the County if the County decided to end the Lease within the first 4 years. This compensation section has been removed as we are now into year 10 of the original lease. The agreement has also been revised to distinguish between the Leased Premises (lands shown in red on Map 1) and the Licensed Premises (lands shown in green on Map 1). The Leased Premises are the lands that are leased by Sahara Gardens where landscape materials are stored. The Licensed Premises are lands where a 'non-exclusive' license is granted to Sahara Gardens to access the leased portion of the property in accordance with Section 6.02 of the Lease/License Agreement.

The following is a summary of some of the other key items in the lease/license agreement:

- Sahara Gardens is responsible for paying any property taxes attributable to the leased premises.
- Any building, structure and any other work of a physical character on the leased lands requires the written consent of the County.
- Sahara Gardens is responsible for any damage to the leased and licensed premises or any buildings or improvements on the leased lands.
- Both parties can terminate the lease/license by giving one (1) years written notice to the other party.
- An indemnification clause indicating that Sahara Gardens shall indemnify the County against any and all claims, liens, etc. in respect of the leased/licensed premises.

Attached is a revised draft lease/license agreement for Council's consideration.

## Legal and Legislated Requirements

The original lease agreement was reviewed and prepared by legal. The updated draft lease/license renewal agreement has been reviewed through the agreement review process with some minor edits suggested. A draft of the agreement was sent to Sahara Gardens and they are satisfied with the suggested edits.

## Financial and Resource Implications

Should there be any property tax increases associated with the commercial use on the Leased Premises, Sahara Gardens would be responsible for paying these taxes. Sahara Gardens would also be responsible for maintaining the fence in a state of good repair and for any damage to the Leased Premises/Licensed Premises. There are no other financial or resource implications for Grey County.

## Relevant Consultation

- Internal – Clerks, Agreement Review Staff
- External – Sahara Gardens

## Appendices and Attachments

*Lease/License Agreement with Schedule A*

THIS LEASE/LICENSE

Made this \_\_\_\_\_ day of \_\_\_\_\_.

BETWEEN:

Corporation of the County of Grey  
(hereinafter called the "Landlord")

OF THE FIRST PART

AND;

Cathy Saharevich carrying on business as Sahara Garden Centre  
(hereinafter called the "Tenant")

OF THE SECOND PART

ARTICLE 1.01-LAND

In consideration of the rents, license fees, covenants, and agreements hereinafter reserved and contained on the part of the tenant, to be paid, observed and performed, the Landlord, being registered as owner of that parcel of land and premises located in the Municipality of Grey Highlands, County of Grey; in the Province of Ontario, being composed of a square shaped parcel of land containing a total of twenty one thousand four hundred and forty (21,440) square feet, more or less, (hereinafter called "the Leased Premises") as shown outlined in red on a plan attached hereto as Schedule "A" and forming part hereof, leases to the Tenant the Leased Premises, and grants a non-exclusive license to the Tenant for the use of the Landlord's premises adjacent to the Leased Premises which may consist of roadways or rights-of-way which measures approximately fourteen thousand two hundred and fifty (14,250) square feet, more or less, as shown outlined in green on Schedule "A", and hereinafter referred to as "the Licensed Premises" subject to the following terms, covenants and conditions:

SAVING AND RESERVING to the Landlord or its agent the right to use any part of the Leased Premises not actually covered by any building or structure hereinafter mentioned, and of access to enter for such purposes the whole of the Leased Premises without liability on the part of the Landlord to pay for compensation or damages respecting any damage resulting from the exercise of these rights.

ARTICLE 1.02- ADJUSTMENT OF DESCRIPTION

If any time during the Term of this Lease/License, the Leased Premises are surveyed and the area of the Leased Premises is found to be smaller or greater than described herein, the Landlord shall have the right, if it so desires, to adjust the area and description of the Leased Premises and the rental hereinafter reserved shall be accordingly adjusted.

ARTICLE 2.01-TERM

To have and to hold the Leased Premises, and a non-exclusive license to use the Licensed Premises for the purposes described in Article 6.02, for and during the term of ten (10) years less a day commencing the Fifteenth day of May, 2018 and from thenceforth next ensuing and to be fully complete and ended on the Fifteenth day of May, 2028 (herein called the "Term").

ARTICLE 2.02-RENTAL PAYMENT AND LICENSE FEES

The Tenant shall pay to the Landlord, its successors and assigns, without any deduction, set off, or abatement whatsoever, yearly and every year or portion thereof during the Term the sum of Two Dollars (\$2.00) of lawful money of Canada, payable in yearly installments of Two Dollars (\$2.00) each in advance on the first day of each lease/license year during the Term of the Lease/License, the first payment to be made on the Fifteenth Day of May, 2018. In addition, Tenant shall pay to Landlord, its successors and assigns, any applicable Goods and Services Tax (being the tax imposed pursuant to the *Excise Tax Act* (Canada)) and similar taxes or levies.

ARTICLE 2.03-INTEREST

If the Tenant fails to pay when due and payable any rent, license fees, additional rent or other sum required to be paid by the Tenant to the Landlord pursuant to this Lease/License, the unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate of Five per cent (5%) per annum payable monthly (or if such rate of interest shall become unlawful, at the maximum rate permitted by law).

ARTICLE 2.04-CONTINUATION

Provided that the Tenant shall not be in default of any of the terms, covenants and conditions

herein contained at the expiration of the Term of this Lease/License, the Lease/License shall continue in force from year to year as a yearly Lease/License upon the same terms, covenants and conditions as are contained in this Lease/License.

Provided further that should this Lease/License continue in force as a yearly Lease/License as herein provided, then the rent/license fees payable for the first year of such yearly Lease/License will be determined by increasing the annual rent/license fees stipulated in Article 2.02 by Two (2%) per cent and rounded off thereafter to the nearest dollar and rent/license fees payable for each Lease/License year thereafter will be determined by increasing the rent/license fees payable for the immediate preceding Lease/License year by Two (2%) percent and rounded off thereafter to the nearest dollar. If in any Lease/License year during the period that this Lease/License is a yearly Lease/License, the Landlord determines that the fair market rental value of the Leased Premises is greater than the rent/license fees so calculated for that Lease/License year, then the rent/license fees payable for that Lease/License year shall be such fair market rental value.

#### ARTICLE 2.05-TERMINATION

Notwithstanding any other provision of this Lease/License, this Lease/License may be terminated at any time, by either party giving one (1) year's written notice of termination to the other party without liability to such other party for damages or compensation by reason of such termination.

#### ARTICLE 3-USE

The Leased Premises shall be used and occupied by the Tenant, in a lawful manner, solely for the purpose of sites to maintain garden centre stock thereon, and that except as herein permitted no goods of an environmentally hazardous, explosive, dangerous or inflammable nature or character shall be stored in or upon the Leased Premises, without the written consent of the Landlord, nor shall the Leased Premises be used in any way which the Landlord considers objectionable.

#### ARTICLE 4-ASSIGNMENT

The Tenant shall not assign this Lease/License in whole or in part, nor sublet all or any part of the Leased Premises, nor mortgage, or encumber this Lease/License or the Leased Premises or any part thereof, nor suffer or permit the occupation of all or any part thereof by others without the written consent of the Landlord.

#### ARTICLE 5-TAXES

The Tenant shall pay the real property taxes attributable to the Leased Premises when due, and the Tenant shall pay when due all other taxes, rates, duties, local improvements and assessments and other charges that may be levied, rated, charged or assessed against all improvements, equipment and facilities of the Tenant on or in the Leased Premises, and every tax and license fee in respect of any and every business carried on thereon or therein or in respect of the use or occupancy thereof by the Tenant (and any and every subtenant or licensee), whether the taxes, rates, duties, local improvements, assessments and license fees are charged by a municipal, parliamentary, school or other body during the Term, and will indemnify and keep indemnified the Landlord from and against payment for all loss, costs, charges and expenses occasioned by, or arising from any and all such taxes, rates, duties, local improvements, assessments, license fees, and any and all taxes which may be in future be levied in lieu of such taxes, and any such loss, costs, charges and expenses suffered by the Landlord may be collected by the Landlord as rent with all rights of distress and otherwise as reserved to the Landlord in respect of rent in arrears.

#### ARTICLE 6.01-TENANT NOT TO CONSTRUCT WITHOUT LANDLORD'S CONSENT

The Tenant shall not construct, erect or place, or cause to be constructed, erected or placed on the Leased Premises, including but not limited to, any building, structure, and any other work of a physical character (hereinafter referred to as "improvements"), without the written consent of the Landlord and if required by the Landlord, the Tenant shall submit to the Landlord all plans and specifications for the improvements. Any making of such improvements without the prior written consent of the Landlord shall constitute a breach of this covenant, in which event, the Landlord may, in its sole discretion, immediately terminate this Lease/License, and the Landlord shall not be liable to the Tenant for any damages or compensation by reason of such termination.

#### ARTICLE 6.02- ROADWAYS/RIGHTS-OF-WAY (THE LICENSED PREMISES)

(a) It is understood and agreed that the Licensed Premises, as shown in Schedule "A" may consist of roadways or rights-of-way used by third parties for the purpose of gaining access to adjoining land, including the CP Rail Trail. It is further acknowledged that third party access may be gained by way of a variety of methods including but not necessarily limited to by vehicles and



on foot, as permitted on the CP Rail Trail. Included in the License fee the Landlord grants a non-exclusive license to the Tenant to use such roadways or rights-of-way for the purpose of accessing the Leased Premises. The Landlord imposes the obligation upon the Tenant to ensure that such usage by the Tenant is reasonable at all times, and that the Tenant shall not use the Licensed Premises for storage or parking, but that the Licensed Premises shall be kept clear at all times for vehicular and pedestrian traffic.

(b) The Tenant acknowledges that the Licensed Premises may be part of a snowmobile trail between November 1 – March 31 of any year throughout the Term. The Tenant is not permitted to perform snow removal/winter maintenance on the Licensed Premises; nor shall the Landlord be responsible for the removal of snow from such roadways or right-of-ways on the Licensed Premises.

#### ARTICLE 6.03-EASEMENTS

It is further understood that all or a portion of the Leased Premises may be subject to the existence of or may later become subject to the existence of easements for power, telephone or communications' equipment such as fibre optic cable or easements for drains, sewers, pipes and subsurface structures or any other type of easement and the Tenant agrees to allow any and all personnel to enter upon the Leased Premises for the purpose of repairing and maintaining such power, telephone lines, drains, sewers, pipes and subsurface structures or for the purpose of doing those things which may arise from the grant of any easement which burdens the Leased Premises.

#### ARTICLE 6.04-FENCING

Currently on or near the Leased Premises, as shown in the attached Schedule "A", there is a now-existing page wire fence which was erected by the Tenant and for which the Tenant will be responsible to maintain in its current location, unless otherwise required or approved by the Landlord, acting reasonably. There is also a gate which was erected by the Landlord and for which the Landlord will continue to be responsible to maintain.

#### ARTICLE 7.01- REPAIR OF LEASED PREMISES AND LICENSED PREMISES

(a) The Tenant shall during the Term sufficiently repair and maintain and keep the Leased Premises and the improvements erected or to be erected thereon in good and substantial repair at its own cost and expense, and in the event of the destruction thereof by fire or otherwise, shall immediately rebuild the same, and shall whenever required by the Landlord, have all buildings painted to the satisfaction of the Landlord. The Tenant shall be responsible for any damage to the Leased Premises or any buildings or improvements on the Leased Premises that may occur during the Term of this Lease/License or during any renewal thereof.

(b) Throughout the Term, the Tenant shall always leave the Licensed Premises in the same condition as it was at the onset of the Term. Should the Tenant cause any damage to the Licensed Premises, it shall notify the Landlord immediately. The Landlord shall cause the repairs to be made and shall notify the Tenant at the earliest convenience and invoice the Tenant for the cost of the repairs, which the Tenant shall be responsible to pay in full.

(c) Throughout the Term, should the Tenant notice that the Licensed Premises becomes in a state of disrepair through no fault of its own, it shall notify the Landlord of the condition immediately.

#### ARTICLE 7.02-SURRENDER OF PREMISES

(a) The Tenant shall, prior to the expiration or sooner determination of the Term, unless otherwise required by the provisions of Article 7.02 (b), demolish and remove from the Leased Premises all buildings (including foundations), improvements and fixtures as well as any chattels located thereon and fill and compact all excavations thereon with gravel or clean fill and at the expiration or sooner determination of the Term, peaceably surrender and yield up to the Landlord, the Leased Premises in a neat, clean and level condition free and clear of all contamination, waste material, debris and rubbish all to the reasonable satisfaction of the Landlord and the Tenant shall make good any and all damages caused by such demolition, removal, filling and compacting.

(b) Notwithstanding the provision of Article 7.02 (a), the Landlord shall have the right by notice in writing given to the Tenant at any time prior to the expiry date or earlier termination of this Lease/License, to require the Tenant to leave on the Leased Premises any buildings, (including foundations), improvements and fixtures located thereon and to otherwise require the Tenant to peaceably surrender and yield up to the Landlord the Leased Premises in a neat and clean condition, free and clear of all contamination, waste material, debris and rubbish, and upon such expiry date or earlier termination of this Lease/License the said buildings (including foundations),

improvement and fixtures, all of which the Tenant shall surrender in good repair and condition and in a sound structural state, shall become the absolute property of the Landlord.

(c) If the Tenant fails to demolish and remove pursuant to Article 7.02 (a) or fails to peaceably surrender and yield up the Leased Premises in a neat, clean and level condition, as required pursuant to Article 7.02 (a) or in a neat and clean condition, as required pursuant to Article 7.02 (b), then the Landlord, in its sole discretion, may carry out such work and the Tenant shall pay to the Landlord all costs and expenses incurred in so doing, and the Landlord shall be entitled to recover from the Tenant the costs thereof together with a fee for supervision of carrying out such work in an amount equal to ten percent (10%) of the costs of so doing. The Tenant's obligations to observe or perform this covenant shall survive the expiration or other termination of this Lease/License.

#### ARTICLE 8.01-COMPLIANCE WITH STATUTES AND REGULATIONS

The Tenant shall, in the construction, location and operation of any buildings or other improvements erected or to be erected on the Leased Premises, and in the use of the Leased Premises observe and fully comply with any and all applicable federal, provincial or municipal statutes, regulations, orders or by-laws, now or hereafter in force.

#### ARTICLE 8.02-COMPLIANCE WITH ENVIRONMENTAL LAWS

(1) The Tenant agrees that it:

(a) shall not receive, handle, use, store, treat, ship or dispose of any environmental contaminants (as established from time to time by applicable legislation or regulation or by-law) except in strict compliance with all applicable environmental, health or safety laws, regulations, order or approvals; and

(b) will remove prior to the end of the Term, from and off the Leased Premises all environmental contaminants.

(2) The Tenant agrees that it shall not release into the environment, or deposit, discharge, place, or dispose of at, on or near the Leased Premises or the adjacent Landlord's premises any hazardous or toxic materials, substances, pollutants, contaminants or wastes as a result of any operations conducted by it.

(3) The Tenant further agrees that the Leased Premises, nor the adjacent Landlord's premises shall at no time be used by any person as a landfill or waste disposal site unless otherwise provided by this Lease/License.

(4) For further certainty, the Landlord acknowledges that the Leased Premises may have existing hazardous or toxic materials, substances, pollutants, contaminants or wastes from the use of the premises by a previous owner and, therefore, the Tenant shall in no way be responsible for any pre-existing condition found on the premises for any condition that was already in existence at the time the Tenant took occupation of the Leased Premises.

#### ARTICLE 9-LANDLORD MAY PERFORM COVENANTS

If the Tenant fails to perform any of the covenants, or obligations of the Tenant under this Lease/License, the Landlord in addition to its rights under this Lease/License may from time to time at its discretion perform or cause to be performed any of the covenants, or obligations, and for that purpose may do such things as may be requisite, including, without limitation, enter upon the Leased Premises on not less than five (5) days' prior notice to the Tenant or without notice in the case of an emergency and do such things upon or in respect of the Leased Premises and/or the adjacent Landlord's premises as the Landlord may consider requisite or necessary. All expenses incurred and expenditures made by or on behalf of the Landlord under this Article plus ten per cent (10%) for overhead will be paid by the Tenant upon presentation of a bill therefore, as additional rent. The Landlord will have no liability to the Tenant for loss or damages resulting from such action by the Landlord.

#### ARTICLE 10.01-RIGHT TO RE-ENTER

If the Tenant fails to pay rent or license fees when due or fails to perform any other of the terms, conditions or covenants of this Lease/License to be observed or performed by the Tenant, or if re-entry is permitted under any other terms of this Lease/License, then the Landlord in addition to any other right or remedy it may have, will have the right of immediate re-entry and may remove all persons and property from the Leased Premises and the property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of the Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for loss or damage occasioned thereby.



#### ARTICLE 10.02-BANKRUPTCY OF TENANT

If the Term or any of the goods and chattels or improvements of the Tenant on the Leased Premises at any time during the Term are seized or taken in execution or attachment by a creditor of the Tenant, or if the Tenant or a guarantor or indemnifier of this Lease/License, makes an assignment for the benefit of creditors or a bulk sale from the Leased Premises or becomes bankrupt or insolvent or takes the benefit of a Statute now or hereafter in force for bankrupt or insolvent debtors, or if an order is made for the winding-up of the Tenant, or if the Tenant abandons or vacates or attempts to abandon or vacate the Leased Premises or sells or disposes of goods or chattels, or the improvements, if any, of the Tenant or removes them or any of them from the Leased Premises so that there would not in the event of abandonment, vacating, sale or disposal, be sufficient assets on the Leased Premises subject to distress to satisfy all rentals due or accruing due hereunder, then and in every such case, in addition to the remedies herein provided, the then current month's rent/license fees and the next ensuing three (3) months' rent/license fees (i.e., three-twelfths (3/12) of the next preceding year's rental) immediately will become due and payable and the Landlord may re-enter and take possession of the Leased Premises as though the Tenant or the servants of the Tenant or any other occupant of the Leased Premises were holding over after the expiration of the Term and the Lease/License, at the option of the Landlord will forthwith become forfeited and determined. In every one of the cases above mentioned the accelerated rent/license fees will be recoverable by the Landlord in the same manner as the rents/license fees hereby reserved and as if the rents/license fees were in arrears and the option will be deemed to have been exercised if the Landlord or its agents give notice to that effect to the Tenant.

#### ARTICLE 10.03-RIGHT TO RELET

Should the Landlord re-enter, as herein provided, it may either terminate this Lease/License or it may from time to time without terminating the Tenant's obligations under this Lease/License, make alterations and repairs considered by the Landlord necessary to facilitate a reletting, and relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental or rentals and upon such other terms and conditions as the Landlord in its reasonable discretion may deem advisable; upon each reletting all rentals received by the Landlord from the reletting will be applied first to the payment of any indebtedness other than rent/license fees due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of the reletting including brokerage fees and solicitor fees and of costs of the alterations and repairs; third, to the payment of rent/license fees due and unpaid hereunder; and the residue, if any, will be held by the Landlord and applied in payment of future rent/license fees as it becomes due and payable hereunder. If the rent received from the reletting is less than the rent/license fees to be paid hereunder by the Tenant, the Tenant will pay the deficiency to the Landlord. The deficiency will be calculated and paid annually. No re-entry by the Landlord will be construed as an election on its part to terminate this Lease/License unless a written notice of that intention be given to the Tenant. Despite a reletting without termination the Landlord may at any time thereafter elect to terminate this Lease/License for the previous breach. Should the Landlord at any time terminate this Lease/License for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it may incur by reason of the breach, including the cost of recovering the Leased Premises, reasonable legal fees, and the worth at the time of termination of the excess, if any, of the amount of rent/license fees and charges equivalent to rent/license fees reserved in this Lease/License for the remainder of the Term over the then reasonable rental value of the Leased Premises for the remainder of the Term, all of which amounts will be immediately due and payable from the Tenant to the Landlord.

#### ARTICLE 10.04-LEGAL EXPENSES

If the Landlord brings an action to recover possession of the Leased Premises or to recover rent/license fees or other money due under this Lease/License, or to enforce any covenant or condition of this Lease/License, and the action is successful, or if because of the breach of any other covenant on the part of the Tenant to be kept or performed, a breach is established, the Tenant will pay to the Landlord all expenses incurred therefore, including the Landlord's reasonable fees incurred in any such action and in any successful appeals from a judicial decision made in such action. The Tenant will further pay all reasonable and legal fees and disbursements incurred in any appeals from municipal assessments relating to the Leased Premises.

#### ARTICLE 10.05-WAIVER OF DISTRESS

In case of removal by the Tenant of the goods and chattels of the Tenant from the Leased Premises, the Landlord may follow them for one (1) year. The Tenant covenants with the

Landlord in consideration of the premises and of leasing and letting by the Landlord to the Tenant of the Leased Premises for the Term, and it is upon that express understanding that this Lease/License is entered into that notwithstanding anything contained in any Statute in force limiting or abrogating the right of distress or any successor statute, none of the goods and chattels of the Tenant during the Term on the Leased Premises is exempt from levy by distress for rent/license fees in arrears by the Tenant and that upon a claim being made for exemption by the Tenant or on distress being made by the Landlord, this covenant and agreement may be pleaded as an estoppel against the Tenant in an action brought to test the right to levy upon any goods named as exempted in such Statute or amendment or amendments thereto, the Tenant waiving, as it does every benefit that could have accrued to the Tenant under or by virtue of any such Statute or any amendment or amendments thereto but for this covenant.

#### ARTICLE 11-RIGHT OF ENTRY

The Landlord, its agents or servants, may at all times enter upon the Leased Premises, or enter any building or improvement situate thereon for the purpose of viewing the state of repair, conditions and use of the Leased Premises, or to perform any work or repair thereon, or to show the Leased Premises to prospective purchasers, mortgagees, or tenants or to exercise any of the rights or obligations of the Landlord under this Lease/License.

#### ARTICLE 12-SUBORDINATION AND ATTORNMENT BY TENANT TO MORTGAGEE

This Lease/License is subordinate to all mortgages (including any deed of trust and mortgage securing bonds and all indentures supplemental thereto) which now affect the Leased Premises and to all renewals, modifications, consolidations, replacements and extensions thereof. Subject to the proviso contained in this sentence the Tenant agrees to subordinate this Lease/License to all mortgages (including any deed of trust and mortgage securing bonds and all indentures supplemental thereto) and to all renewals, modifications, consolidations, replacements and extensions thereof which may hereafter affect the Leased Premises and to execute promptly a document in confirmation of the subordination if requested by the Landlord, and hereby constitutes the Landlord, the agent or attorney of the Tenant for the purpose of executing the document and of making application at any time and from time to time to register postponements of this Lease/License in favour of any such mortgage, provided that the mortgagee (or trustee) agrees in writing that if the mortgagee (or trustee) becomes a mortgagee in possession or takes action to realize the security of the mortgage the Tenant may attorn to the mortgagee (or trustee) as a tenant upon all the terms of this Lease/License and continue in occupation of the Leased Premises unless and until this Lease/License is terminated by passage of time or by action taken because of a default of the Tenant.

#### ARTICLE 13-CONSTRUCTION AND BUILDER'S LIEN

The Tenant shall not suffer or permit any construction or builder's lien or similar lien to be filed or registered against the Leased Premises. If such lien shall at any time be filed or registered the Tenant shall procure its discharge within twenty (20) days after the lien has come to the notice of the Tenant, provided however, that if the Tenant desires to contest in good faith the amount or validity of the lien and shall have so notified the Landlord, and if the Tenant shall have deposited with the Landlord or paid into the Court to the credit of any lien action the amount of the lien claimed plus a reasonable amount for costs, then the Tenant may defer payment of such lien claim for a period of time sufficient to enable the Tenant to contest the claim with due diligence, provided always that neither the Leased Premises nor the Tenant's leasehold interest therein shall thereby become liable to forfeiture or sale. The Landlord may, in its sole discretion, discharge any lien filed or registered at any time against the Leased Premises, and any amount paid by the Landlord in so doing together with all reasonable costs and expenses of the Landlord including its legal fees shall be paid to the Landlord by the Tenant on demand.

#### ARTICLE 14.01-INDEMNIFICATION OF LANDLORD

The Tenant shall indemnify and save harmless the Landlord from and against any and all claims, liens, demands, awards, judgments, actions and proceedings by whomsoever made, brought, filed or prosecuted, arising out of this Lease/License and in respect of loss or damage to or destruction of property or personal injuries, including death, and from and against any and all loss of, damage to or destruction of property and expenses and costs suffered or incurred by the Landlord by reason of the act, omission, negligence or misconduct of the Tenant or any assignee or subtenant or its and their servants, agents, invitees and licensees or any of them while in the course of exercising any right, licence or privilege or doing anything which is required or permitted by reason of this Lease/License.

#### ARTICLE 14.02-LOSS AND DAMAGE

The Landlord shall not be liable for death or injury or damage to property of the Tenant or of others located on the Leased Premises, nor for the loss of or damage to any property of the Tenant or of others by theft or otherwise from any cause whatsoever except by the negligence of the Landlord.

#### ARTICLE 14.03-ENVIRONMENTAL INDEMNIFICATION

The Tenant shall and does indemnify and save harmless the Landlord from and against any and all (i) liabilities, losses, claims, costs and damages (including lost profits, consequential damages, interest, penalties, fines, monetary sanctions); and (ii) expenses incurred or suffered by the Landlord (including amounts paid to lawyers, accountants, and engineers) by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any term contained in Article 8.02 respecting the Tenant's obligation to comply with all Environmental Laws. This indemnification shall remain in full force and effect notwithstanding the expiration or other termination of the Term of this Lease/License.

#### ARTICLE 15-INSURANCE

The Tenant covenants that it shall take out and keep in full force and effect throughout the Term of this Lease/License, and any renewals thereof, comprehensive general liability insurance with respect to the Leased Premises and the operations of the Tenant and its obligations under this Lease/License, with limits of not less than FIVE MILLION (\$5,000,000) DOLLARS or such other amount as the Landlord may from time to time determine, and such insurance shall specifically state by its wording or by endorsement that;

the Landlord is included as an additional insured under the policy as its interest may appear and supply the Landlord with a certificate of insurance stating such on an annual basis;

- i) any persons, firms or corporations designated by the Landlord are included as additional insureds under the policy as their interests may appear;
- ii) the policy contains a cross-liability clause in respect of the named insured;
- iii) the policy extends to cover the contractual obligations assumed by the Tenant under the terms of this Lease/License;
- iv) the insurers have received a copy of this Lease/License and are fully aware of the contractual obligations of the Tenant;
- v) such policy shall not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material is given by the insurers to the Landlord at least thirty (30) clear days before the effective date thereof.

The Tenant covenants that it shall take out and keep in full force and effect such other types of insurance in such reasonable terms as determined by the Landlord and its insurance advisors from time to time. All policies of insurance stipulated in this Article will be with insurers acceptable to the Landlord and in a form satisfactory to the Landlord, and the Tenant will see that there is delivered to the Landlord a copy of all policies or certificates of insurance within sixty (60) days of the commencement of the Term of the Lease/License or of the date that the Tenant takes possession of the Leased Premises, whichever is earlier. The Tenant agrees that if the Tenant fails to take out or keep in force any policy of insurance when so required by the Landlord, the Landlord has the right to do so and to pay the premium, and in that event the Tenant will repay to the Landlord the amount so paid as premium plus ten per cent (10%) for overhead as additional rent and it will be due and payable on the first day of the month next following the payment by the Landlord. Any insurance coverage taken out by the Tenant hereunder will, in no manner, restrict or limit the liabilities assumed by the Tenant under this Lease/License.

#### ARTICLE 16-QUIET ENJOYMENT

The Landlord covenants with the Tenant for quiet enjoyment.

#### ARTICLE 17-EXPROPRIATION

If at any time during the Term of this Lease/License or during any renewal term the whole or any part of the Leased Premises, and/or the Landlord's adjacent premises, shall be taken by any lawful power or authority by the right of expropriation, the Landlord may, at its option, give notice to the Tenant terminating this Lease/License in its entirety or, only insofar as it affects the part of the Leased Premises, and/or the Landlord's adjacent premises, taken by the lawful power or authority by right of expropriation, on the date when the Tenant or Landlord is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Tenant shall immediately surrender the Leased Premises or the part of the Leased Premises and/or the Landlord's adjacent premises, taken by the expropriating authority, as the case may be, and all its interest therein, and the rent/license fees shall abate and be apportioned to the date of termination and the Tenant shall forthwith pay

to the Landlord the apportioned rent, license fees and all other amounts which may be due to the Landlord up to the date of termination. The Tenant shall have no claim upon the Landlord for the value of its property or the unexpired Term of this Lease/License, or for any loss of business income or for any loss of any kind whatsoever sustained as a result of the expropriation, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Leased Premises and/or the Landlord's adjacent premises, taken and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively.

#### ARTICLE 18-NON-REGISTRATION OF LEASE/LICENSE

The Tenant covenants and agrees with the Landlord that it will not register or cause to be registered or permit to be registered this Lease/License or any Notice thereof at any time in any Registry Office or Land Titles Office and in the event that this Lease/License is at any time so registered, the Tenant will upon the request of the Landlord forthwith withdraw, discharge and release or cause to be forthwith withdrawn, discharged and released such registration at its own expense.

#### ARTICLE 19-NET LEASE/LICENSE

It is agreed by the Landlord and the Tenant that the rentals and license fees reserved to the Landlord under this Lease/License shall be net to the Landlord and shall be clear of all taxes, rates, duties, assessment, costs, charges, utilities charges and insurance premiums arising from or relating to the Leased Premises and that the Tenant will pay all of the foregoing, together with all expenses of every nature and kind whatsoever relating to the Leased Premises and the Lessee covenants with the Lessor accordingly.

#### ARTICLE 20-TIME

Time shall be of the essence of this Lease/License.

#### ARTICLE 21-APPLICABLE LAW

This Lease/License shall be construed pursuant to the laws of the Province in which the Leased Premises are situated.

#### ARTICLE 22-SUCCESSORS AND ASSIGNS

This Lease/License extends to and binds the respective heirs, executors, administrators, and successors of the parties hereto as the case may be. The necessary grammatical changes required to make the provisions of this Lease/License apply in the plural sense where there is more than one tenant, and to corporations, associations, partnerships or individuals, males or females, in all cases will be assumed as though in each case fully expressed.

#### ARTICLE 23-WAIVER

The waiver by the Landlord of a breach of a term, covenant or condition herein contained will not be deemed to be a waiver of the term, covenant or condition of a subsequent breach of the same or another term, covenant or condition herein contained. The subsequent acceptance of rent/license fees by the Landlord will not be deemed to be a waiver of a preceding breach by the Tenant of a term, covenant or condition of this Lease/License, other than the failure of the Tenant to pay the particular rent/license fees accepted, regardless of the Landlord's knowledge of the preceding breach at the time of acceptance of the rent/license fees. No covenant, term or condition of this Lease/License will be deemed to have been waived by the Landlord unless the waiver is in writing signed by the Landlord.

#### ARTICLE 24-HEADINGS

The captions and headings are inserted only as a matter of convenience and for reference only.

#### ARTICLE 25-NO OPTION

Submission of this Lease/License for examination does not constitute a reservation of or option for the Leased Premises and the Lease/License becomes effective as a Lease/License only upon execution and delivery thereof by the Landlord and the Tenant.

#### ARTICLE 26-NOTICE

Any noticed required to be given by either party under this Lease/License and all rent/license fees, additional rent and or other sum payable hereunder by the Tenant to the Landlord shall be sufficiently given if mailed by registered letter, prepaid or delivered to the parties at their respective addresses as follows:

- a) The Landlord:  
The Corporation of the County of Grey,  
595 9<sup>th</sup> Avenue East,  
Owen Sound, ON N4K 3E3
- b) The Tenant:  
Cathy Saharevich  
Sahara Garden Centre  
400052 Grey Road 4  
RR#5 Flesherton,  
ON N0C 1E0

Such notice shall be deemed to have been given to and received by the addressee in the case of mailing, five (5) business days following the mailing thereof, and in the case of delivery, the day on which notice was delivered.

#### ARTICLE 27-PLANNING LEGISLATION

The Tenant acknowledges that this Lease/License may be subject to the provisions of planning legislation of the Province in which the Leased Premises are situated and the Parties agree, at the Tenant's sole cost and expense to take such action as may be necessary to comply with the provisions of any planning legislation, as amended, in force in the Province in which the Leased Premises are situated.

#### ARTICLE 28-REPRESENTATION BY LANDLORD OR NO WARRANTY

The Tenant hereby accepts the Landlord's title to the Leased Premises and/or the Landlord's adjacent premises, and the rights herein granted and agree that nothing in this Lease/License expressed or implied shall operate or have effect as any warranty, guarantee, or covenant of title.

#### ARTICLE 29-ENTIRE AGREEMENT

The Leased Premises are taken by the Tenant without any representation or warranty of any kind other than those contained in this Lease/License on the part of the Landlord or its agent. This Lease/License contains all of the terms, covenants, conditions and agreements between the parties hereto and any addition to or alteration of or changes in this Lease/License to be binding must be made in writing and signed by both parties.

#### ARTICLE 30-SHORT FORMS

This Lease/License is made pursuant to the short forms of leases legislation of the Province of Ontario.

The Tenant hereby accepts this Lease/License of the Leased Premises and the Landlord's adjacent premises, to be held by it as Tenant subject to the terms, covenants and conditions above set forth. IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

LANDLORD: THE CORPORATION OF THE COUNTY OF GREY

\_\_\_\_\_  
Stewart Halliday, Warden

\_\_\_\_\_  
Heather Morrison, Clerk

TENANT: Cathy Saharevich, operating as "SAHARA GARDEN CENTRE"





\_\_\_\_\_  
Owner, Cathy Saharevich

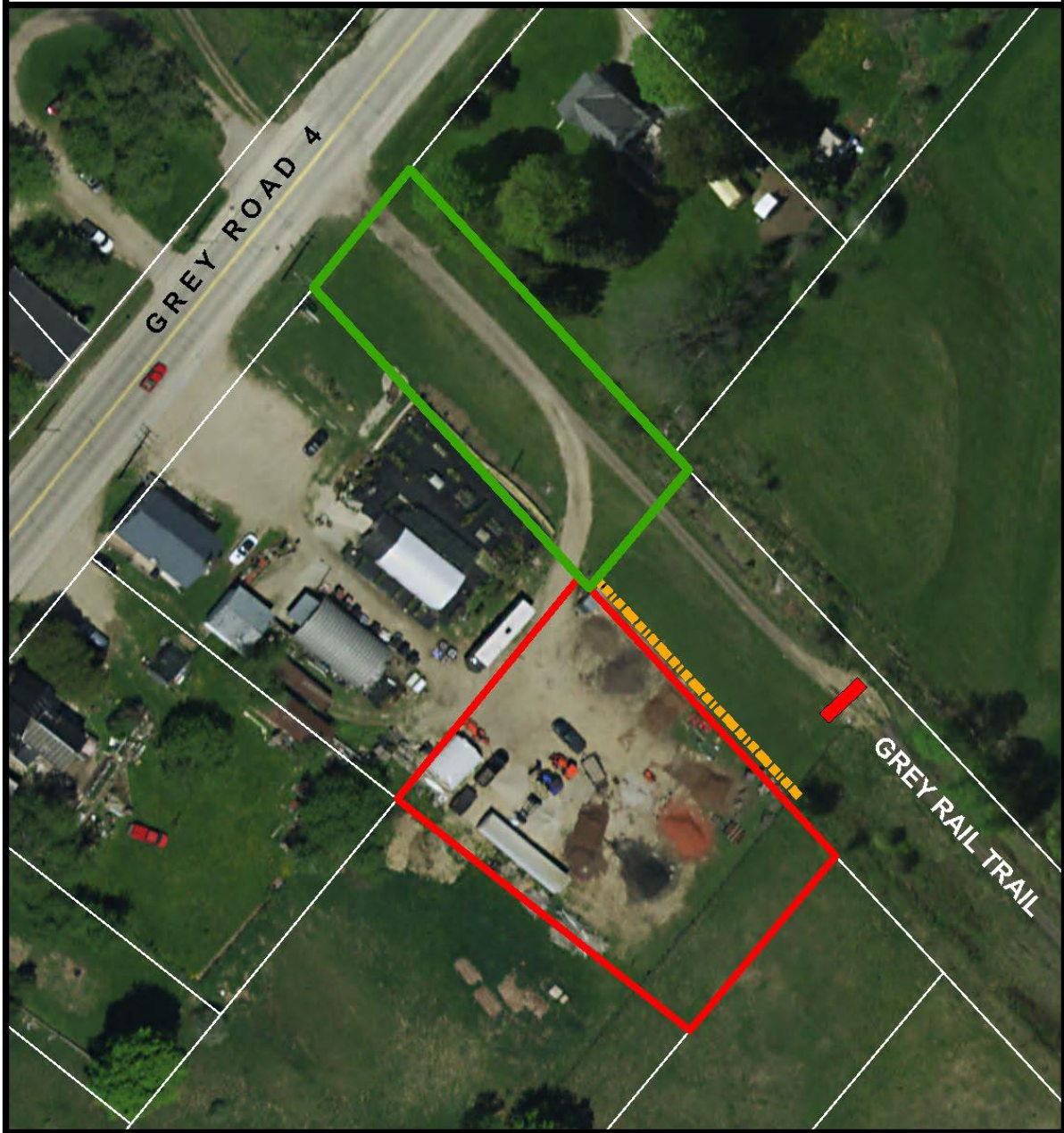
\_\_\_\_\_  
Witness, \_\_\_\_\_  
(Print Name)

DRAFT

# SCHEDULE A

## Legend

-  Leased Premises
-  Licensed Premises
-  Fence
-  Gate



Grey County 201804\_RailTrail\_gateandfence.mxd