



**AGENDA ITEM # 6.3**

**REPORT TO CITY COUNCIL**

**Report Prepared by: Dawn Bittner**

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**Date:** December 3, 2019

**Subject:** License Agreement over Outlot A, Field of Dreams

**Report:** The property owner of Lot 4, Block 1, Field of Dreams, approached the City requesting driveway access across a corner of Outlot A. The Public Works Supervisor met with the property owner onsite and agreed the driveway could cross the corner of Outlot A. The property owner now needs an easement from the City. The proposed easement (License Agreement) area is indicated on the attached map in red. Use by the property owner as a driveway does not inhibit access by the City to Outlot A.

**Council Action Requested:** Council motion authorizing the Mayor and City Administrator to execute the License Agreement on behalf of the City.

## LICENSE AGREEMENT

This License Agreement (“License” or “Agreement”) is entered into on this \_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Pequot Lakes, a municipal corporation under the laws of the State of Minnesota (“City”), and Francis Patka and Kimberly Patka, husband and wife, residents of Crow Wing County, Minnesota (“Licensees”).

WHEREAS, the City owns real property located in Pequot Lakes, Crow Wing County, Minnesota, identified as Parcel Number 29100633 (the “City Property”), and

WHEREAS, the Licensees own real property located in Pequot Lakes, Crow Wing County, Minnesota, identified as Parcel Number 29100628 (the “Licensees’ Property”), which is adjacent to the City Property, and

WHEREAS, in order to avoid removing a large portion of trees from Licensees’ Property, the Licensees seek to construct an access area across the City Property (the “access”) for the Licensees to use to access the Licensees’ Property from Terrois Lane (the “project”), and

WHEREAS, in order to allow Licensee to complete the project and thereafter use the access, the City and Licensees desire to enter into a license agreement, and

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. LICENSE. The City shall grant to Licensees a nonexclusive license that may only be terminated pursuant to Paragraph 2 herein to use that portion of the City Property as depicted on Exhibit 1, which is attached to and incorporated herein by reference, and as described on Exhibit 2, which is attached to and incorporated herein by reference (the “licensed premises”) to make the necessary improvements to the licensed premises necessary to complete the project and to thereafter use the access subject to the following conditions:
  - a. Licensees shall take all necessary precautions to protect and preserve the City’s improvements within the City Property and the licensed premises during any activities within or use of the licensed premises as contemplated in this License.
  - b. Licensees shall take all necessary precautions to avoid creating unsafe or unsanitary conditions in the licensed premises.
  - c. Licensees shall make no improvements to the licensed premises nor make any excavations to or cause any disturbance to the licensed premises except as contemplated in this License or approved in advance by the City and as reasonably necessary to complete the project.
  - d. Licensees shall have the right to clear, re-clear and otherwise maintain using reasonable means the licensed premises of trees, brush, stumps, offending trees and

other obstructions, including any buildings or structures placed in the licensed premise after the initial installation of the line.

- e. Licensees shall notify the City of its intent to conduct work within the licensed premises pursuant to this License. Such notice shall be given to the City in writing no less than 24 prior to such work being performed. In the event of an emergency, Licensees shall make a reasonable attempt to notify the City prior to conducting any work in the licensed premises.
  - f. Licensees shall limit access to the licensed premises to Licensees and Licensees' agents, invitees and employees.
  - g. Licensees shall fully comply with all applicable federal, state and local laws, regulations and ordinances.
2. **TERM AND TERMINATION.** This License shall be for an indefinite term commencing on the date of the last signatory to this Agreement and continuing until terminated by either party pursuant to this Section 2. If the City is the terminating party, it must provide written notice to Licensees at least 90 days in advance of the effective date of termination. Such notice shall be delivered to Licensees or their successor in interest (as their interests and addresses may appear on the tax rolls of the County in which the Licensees' Property is located), either personally or by certified mail. If such service cannot be made, service may be posted on the building on the Licensees' Property.

This License may also be terminated at any time by Licensees by written notice to the City. Such notice shall be given at least ten days in advance of the effective date of such termination and shall be delivered either personally or by certified mail to the City Administrator at the City's main offices (4638 Main St, Pequot Lakes, MN 56472).

Before the effective date of any such termination of this License under this Section, Licensees shall remove all of the encroachments from the licensed premises, at Licensees' sole cost and expense, and shall restore the licensed premises to its preexisting condition or better, unless otherwise directed by the City in writing. In the event that Licensees fails to remove the encroachments from the licensed premises before the effective termination date of this License, the City or its authorized agents or representatives may perform any work necessary to remove the encroachments from the licensed premises and restore the licensed premises to its preexisting condition, and Licensee shall reimburse City for all expenses reasonably incurred by the City in performing such work. If Licensees fail to so reimburse the City as required by this paragraph within 30 days of Licensees' receipt of a billing statement for such charges from the City, the unpaid charges shall constitute a lien against the Licensees' Property from and after the date they were due and unpaid. The City may take any action it is authorized under law to take to recover such unpaid charges, including certifying such unpaid charges to the county auditor for collection with taxes.

Following the effective date of any termination of this License under this Section, the City may, at its cost, restore the licensed premises to its preexisting condition.

3. **CONDITION OF PREMISES NOT WARRANTED.** The City does not warrant that the licensed premises is suitable for the purposes for which it is permitted to be used under this License. The City shall have no responsibility with regard to any failure of or damage to Licensees' equipment or other property within the licensed premises. Licensees understand and acknowledge that this Agreement grants them only a terminable license to use the licensed premises, and does not confer any permanent property rights with respect to the licensed premises upon Licensees. Licensees further know, understand and acknowledge the risks and hazards associated with using the licensed premises for the purposes permitted herein and hereby assume any and all risks and hazards associated therewith. Licensees hereby irrevocably waive any and all claims against the City or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Licensees and hereby irrevocably release and discharge the City and any of its officials, employees or agents from any and all such claims of liability related in any way to the licensed premises, or the City's maintenance, repair or other work conducted within the licensed premises.
4. **INSPECTION.** This License is nonexclusive and Licensees understand that the City and its authorized agents or representatives, and all others authorized by law, may access the licensed premises for any purpose not inconsistent with this License at all times during the term of this License.
  - a. The City may order the immediate cessation of any use or activity that exceeds the scope of this license or otherwise poses a serious threat to the life, health, safety or welfare of the public.
  - b. The City may order Licensees to correct any conditions caused by Licensees in violation of this License and to comply with this License or other applicable standards, conditions or laws. Any such order by the City authorized by this Paragraph shall state the violation(s), the terms of correcting the violation(s) and that failure to correct the violation(s) within the stated time limits shall be cause for immediate revocation of this License. If the violation(s) is not corrected within the stated time limits, the City may immediately revoke this License pursuant to the terms of Paragraph 2 above.
5. **INDEMNIFICATION.** Licensees shall indemnify, protect, save, hold harmless and insure the City, and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages, including expenses, reasonable attorneys' fees, and costs of alternative dispute resolution, which may arise out of or be caused by Licensees or their agents, employees, contractors, with respect to Licensees' use of the licensed premises. Licensees shall defend City against the foregoing, or litigation in connection with the foregoing, at Licensees' expense, with counsel reasonably acceptable to the City. The City, at its expense, shall have the right to participate in the defense of any Claims or litigation and

shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the gross negligence or willful misconduct of the City. All indemnification obligations shall survive termination, expiration or cancellation of this License.

6. **INSURANCE.** Licensees shall, at their expense, maintain in effect liability insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes, Section 466.04; the City of Pequot Lakes shall be a named insured on such policy. The insurance policy and certificate shall not be canceled or its conditions altered in any manner without ten (10) days prior written notice to the City Administrator of the City of Pequot Lakes. The insuring company shall deliver to the City Administrator, certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied. If Licensees fail to give such certificate of insurance to the City within ten days after execution of this Agreement, this License shall be null and void. Licensees shall annually provide additional certificates of insurance to the City. If Licensees fail to maintain a policy of insurance as required by the City for the term of this Agreement, the City may immediately revoke this License and require the immediate restoration of the licensed premises to its preexisting condition at the Licensee's sole cost and expense.

7. **GENERAL TERMS.**

- a. **VOLUNTARY AND KNOWING ACTION.** The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. **AUTHORIZED SIGNATORIES.** The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. **ASSIGNMENT.** This Agreement may not be assigned by either party without the written consent of the other party.
- d. **MODIFICATIONS/AMENDMENT.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the City and Licensee.
- e. **RECORDS—AVAILABILITY AND RETENTION.** Pursuant to Minn. Stat. § 16C.05, subd. 5, Licensees agree that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as

they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Licensees and involve transactions relating to this Agreement. Licensees agree to maintain these records for a period of six years from the date of termination of this Agreement.

- f. COMPLIANCE WITH LAWS. Licensees shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, improvements, programs and staff for which Licensees are responsible.
- g. GOVERNING LAW. This Agreement shall be deemed to have been made and accepted in Crow Wing County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.
- h. DATA PRACTICES. The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- i. NO WAIVER. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- j. SEVERABILITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- k. ENTIRE AGREEMENT. These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
- l. HEADINGS AND CAPTIONS. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- m. SURVIVABILITY. All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of City and

Licensees arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

n. RECORDING. This Agreement shall not be recorded by either party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above mentioned.

CITY OF PEQUOT LAKES

LICENSEE

By: \_\_\_\_\_  
James Tayloe, Mayor

By: \_\_\_\_\_  
Francis Patka

By: \_\_\_\_\_  
Nancy Malecha, City Administrator

By: \_\_\_\_\_  
Kimberly Patka

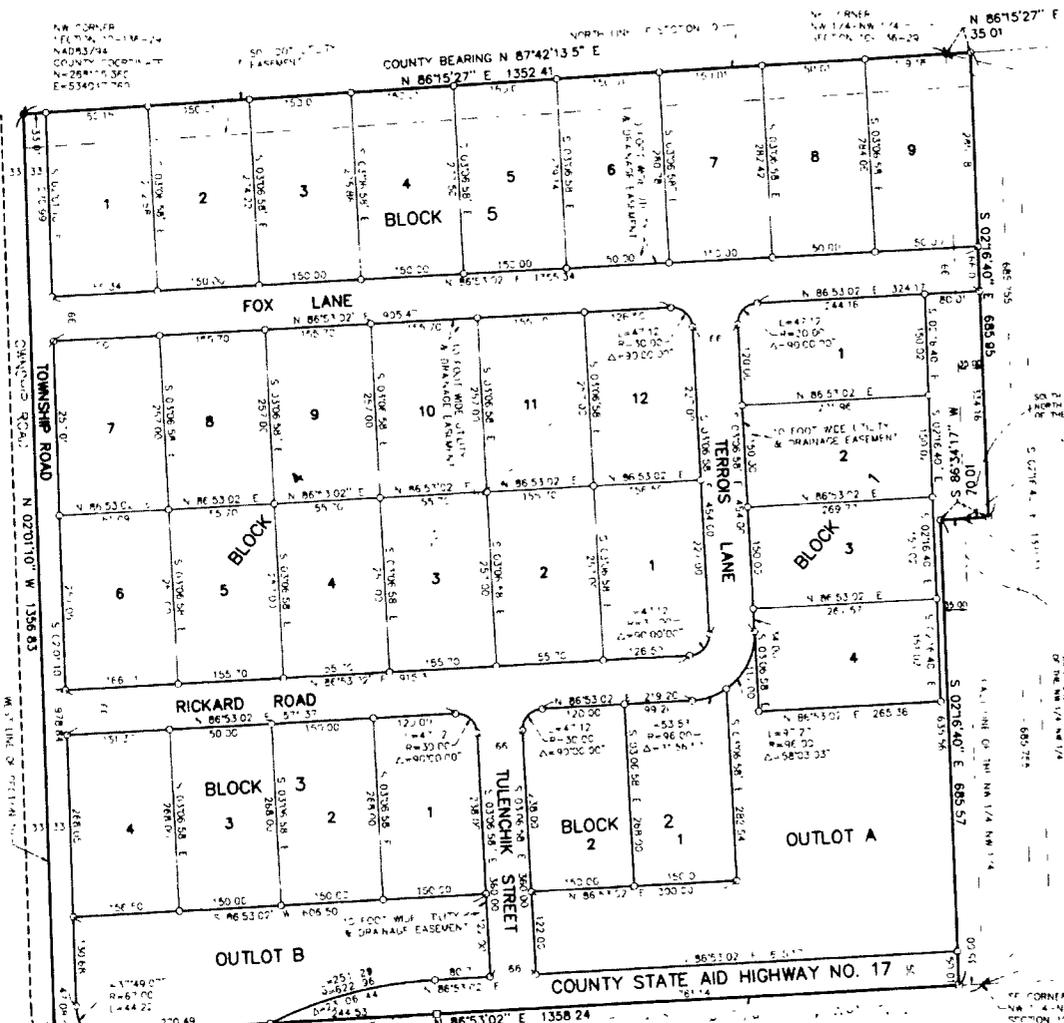
**EXHIBIT 1**

**Depiction of Licensed Premises**



# FIELD OF DREAMS

DID 1/19/99 REAR DOES NOT SHOW 0.10100 DEBRIS & Utility Easements  
SEPARATE BLOCKS



KNOW ALL MEN BY THESE PRESENTS, That Kirk A. Tulenchik and Joni L. Tulenchik, husband and wife and Dean R. Tulenchik and Cindy M. Tulenchik, husband and wife, the owners and proprietors, of the following described property situated in the County of Crow Wing, State of Minnesota, to wit:

The West 35 00 feet of the North One-Half of the Northeast Quarter of the Northwest Quarter Section 10 Township 136 North, Range 29 West, Crow Wing County Minnesota AND

The Southwest Quarter of the Northwest Quarter, Section 10 Township 136 North, Range 29 West, Crow Wing County, Minnesota, except the East 15 00 feet of the South One-Half thereof.

Subject to assessments, restrictions and reservations of record.

Also subject to mineral reservations of record, if any.

Have caused the same to be surveyed and platted as FIELD OF DREAMS and do hereby dedicate to the public for public use hereunder Outer A, Outer B, the thoroughfares as shown on the plat, and also dedicating the easements as shown on the plat for the purposes specified.

In witness whereof Kirk A. Tulenchik and Joni L. Tulenchik, husband and wife have hereunto set their hands this 16<sup>th</sup> day of June 1999.

**FIELD OWNERS**  
*Kirk A. Tulenchik*      *Joni L. Tulenchik*  
 Kirk A. Tulenchik      Joni L. Tulenchik

STATE OF MINNESOTA  
 COUNTY OF CROW WING

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 1999 by Kirk A. Tulenchik and Joni L. Tulenchik, husband and wife.

*Janice K. Johnson*  
 Notary Public, Crow Wing County, Minnesota  
 My commission expires 01-31-2000

In witness whereof Dean R. Tulenchik and Cindy M. Tulenchik, husband and wife have hereunto set their hands this 16<sup>th</sup> day of June 1999.

**FIELD OWNERS**  
*Dean R. Tulenchik*      *Cindy M. Tulenchik*  
 Dean R. Tulenchik      Cindy M. Tulenchik

STATE OF MINNESOTA  
 COUNTY OF CROW WING

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 1999 by Dean R. Tulenchik and Cindy M. Tulenchik, husband and wife.

*Janice K. Johnson*  
 Notary Public, Crow Wing County, Minnesota  
 My commission expires 01-31-2000

I hereby certify that I have surveyed and platted the property described on this plat as FIELD OF DREAMS and do hereby certify that this plat is a correct representation of the survey and that all distances are correctly shown on the plat in feet and hundredths of a foot, that all easements have been correctly placed on the ground as shown, that the outside boundary lines are correctly delineated on the plat, and that there are no wet lands as defined in M.S. 905.02, Subd. 1, or public highways to be designated other than as shown.

*David S. Landecker*  
 David S. Landecker, Land Surveyor  
 Minnesota License Number 17008

STATE OF MINNESOTA  
 COUNTY OF CROW WING

The foregoing Surveyor's Certificate was acknowledged before me this 16<sup>th</sup> day of June, 1999 by David S. Landecker, Minnesota License Number 17008.

*Dana J. Johnson*  
 Notary Public, Crow Wing County, Minnesota  
 My commission expires 03-31-2000

I, Roy Laaksonen, Auditor of Crow Wing County, Minnesota, do hereby certify that the taxes on the lands described herein have been paid for the years prior to 1999.

*Roy Laaksonen*  
 Roy Laaksonen, Crow Wing County Auditor

I, Lauren Borders, Treasurer for Crow Wing County, Minnesota, do hereby certify that the taxes on the lands described herein have been paid for the year 1999.

*Lauren Borders*  
 Lauren Borders, Treasurer for Crow Wing County

Approved by the Planning Commission of the City of Pequot Lakes this 15<sup>th</sup> day of June, 1999.

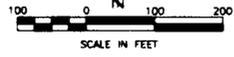
*Forbes Mattsson*      *Greg Welch*  
 Forbes Mattsson, Chairman      Greg Welch, Secretary

This plat of FIELD OF DREAMS was approved by the City of Pequot Lakes, Minnesota, this 15<sup>th</sup> day of June, 1999.

*Jack Schmidt*      *Mark French*  
 Jack Schmidt, Mayor      Mark French, Clerk

● DENOTES MONUMENT - 3" N.P.  
 ○ DENOTES MONUMENT - 5" N.P.  
 MARKED BY LENSE NO. 15000  
 □ DENOTES OR. N.A. 56"

ORIENTATION OF THIS BEARING SYSTEM IS BASED ON THE NORTH LINE OF NW 1/4 AND NE 1/4 SECTION 10 TO HAVE AN ASSUMED BEARING OF N 86°15'27" E



PREPARED BY  
**LANDECKER & ASSOCIATES INC.**  
 P.O. BOX 120, PEQUOT LAKES, MN 56472

**EXHIBIT 2**

**Description of Licensed Premises**

That part of Outlot A, FIELD OF DREAMS, according to the recorded plat thereof, on file in the Crow Wing County, Minnesota, Recorder's Office described as follows:

Beginning at the southwest corner of Lot 4, Block 1, said FIELD OF DREAMS; thence North 03 degrees 06 minutes 58 seconds West, bearing based on said FIELD OF DREAMS, 117.00 feet along the west line of said Lot 4; thence southwesterly 97.27 feet along the southeasterly line of TERROIS LANE, said FIELD OF DREAMS, along a nontangential curve, concave to the northwest, having a radius of 96.00 feet, a central angle of 58 degrees 03 minutes 03 seconds and a chord which bears South 25 degrees 54 minutes 31 seconds West, to the northeast corner of Lot 1, Block 2, said FIELD OF DREAMS; thence South 54 degrees 56 minutes 20 seconds East 57.50 feet to the point of beginning.